



U.S. FEDERAL FISCAL RESPONSIBILITY AMENDMENT ACADEMY

RESOURCES

U.S. Federal Fiscal Responsibility Amendment Academy

July 30, 2021 | 2:30-6:30 PM MT

Thank you for joining us for a convention of state legislators to consider next steps toward proposing a constitutional amendment to address the federal debt crisis. We've assembled the country's leading experts on Article V and national debt solutions to answer questions. However, the most important questions for America's future are the ones on which you will vote, as only the states can provide this needed counterbalance to Washington's fiscal mismanagement.

Agenda

The Academy's moderator will be former Utah State Representative Ken Ivory.

1. Presentation on America's fiscal future and Necessary Course Corrections from Former U.S. Comptroller General and Social Security Trustee David Walker
 - a. A panel of experts will be introduced to field questions during the Academy
 - b. For consideration: Will Congress address the unsustainable deficit spending without an enforceable state-drafted and ratified Fiscal Responsibility Amendment?
 - c. Voting and results
2. Presentation on the History and Safety of Article V Conventions including the Constitutional Convention of 1787 from Professor Robert G. Natelson. David Biddulph will present on the 44 No-Runaway State Ratification Conventions of 1933.
 - a. For consideration: Should your state pass an Article V No-Runaway Convention Delegate Selection & Recall Law?
 - b. Also consider: Should your state pass a No-Runaway State Ratification Convention Law that ensures that, like the 21st Amendment, the people of 38 states can ratify an Amendment?
 - c. Voting and results
3. Robert Natelson continues with a presentation on the Aggregation of Article V Balanced Budget Amendment Applications
 - a. Announcements from U.S. Representative Yvette Herrell and SC State Senator Rex Rice
 - b. Consider: Will you encourage your state legislature to pass a new Article V Balanced Budget Amendment Application and/or oppose rescission of any such existing Application?
 - c. Voting and results
4. Presentations on Fiscal Rules to Guide a Balanced Budget Amendment from David Walker, Dr. Barry Poulson, David Biddulph, and AMAC President Bob Carlstrom
 - a. For consideration: As a potential delegate to the Balanced Budget Amendment Convention, which of the fiscal rules proposals do you currently prefer?
 - b. As a potential delegate to the Balanced Budget Amendment Convention, would you support the incorporation of the Bill of Financial Responsibilities into a Balanced Budget Amendment?
 - c. Voting and results

Academy Presenter Bios

David Biddulph



David Biddulph is a semi-retired entrepreneur and citizen activist who has been a leader since 1992 in empowering citizens to vote for state and national constitutional amendments.

In the late 1980s, Mr. Biddulph successfully led a state petition drive to constitutionally cap homestead taxable value assessment increases as the lesser of inflation or 3%. Florida voters approved the “Save Our Homes” amendment in 1992 by 54%. “Save our Homes,” saving Florida homeowners over \$60 billion to date.

In 2010, David and his wife Susie became concerned about the mounting national debt and its threat to their grandchildren’s access to the American Dream. In pursuit of a solution, the Biddulphs were instrumental in the founding of the Balanced Budget Amendment Task Force which successfully encouraged the passage of 16 Article V Applications, limited to the single subject of balancing the federal budget.

With the discovery that Congress was not counting Article V Applications as constitutionally required and would likely obstruct any call for a convention, the Biddulphs started a new initiative, the “Let Us Vote for a Balanced Budget Amendment Campaign” to inform U.S. Citizens of their constitutional right to vote on a U.S. Fiscal Responsibility Amendment.

Bob Carlstrom



Bob leads AMAC Action, the advocacy affiliate of Amac, Inc, and brings a credential that is a blend of senior executive business, government, politics, communications, and media.

In public affairs and communications, Bob has represented major corporations, industries, associations, and coalitions before Congress and various Administrations, as well as in the communications strategies arena, including crisis communications.

In government and politics, Bob served as a senior executive in the Reagan White House Office of Management and Budget where he coordinated and directed the Administration's interagency review and analysis, including the development, of a broad range of legislation. He has also served on the national and state finance committees of a presidential, candidate, several Members of, or candidates for, Congress, as well as the campaign manager for a gubernatorial candidate. In 2016, he co-chaired a national coalition for the election of President Trump and Vice President Pence.

Bob is a graduate of Augustana College (IL) with an advanced degree from The American University in Washington, DC. In addition, Bob studied law at Wayne State Univ. Law School.

Professor Robert G. Natelson



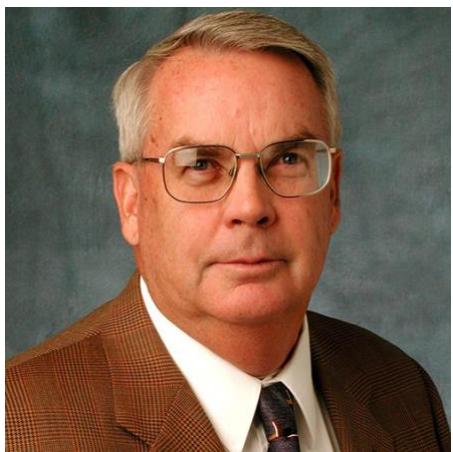
Professor Robert G. Natelson is Senior Fellow in Constitutional Jurisprudence at the Independence Institute in Denver. He is widely acknowledged to be the country's leading scholar on the Constitution's amendment process. He was a law professor for 25 years, serving at three different universities. Among other subjects, he taught Constitutional Law, Constitutional History, Advanced Constitutional Law, and First Amendment.

U.S. Supreme Court justices have relied explicitly on Professor Natelson's research studies in seven cases—sometimes several times in the same case. He is the principal author of several important Supreme Court briefs, and his research has been relied on by federal appeals courts and by the Supreme Courts of sixteen states.

Professor Natelson is the author of several books, including *The Original Constitution: What It Actually Said and Meant*, the legal treatise entitled *The Law of Article V*, and the official ALEC guide to the amendment process. He is a member of the ALEC board of scholars.

In addition to his academic background, Professor Natelson has wide private sector experience, both in business and non-profits, and extensive political experience as well: He has successfully led several statewide ballot issue campaigns and, in 2000, placed second of five in the open party primaries for Governor of Montana.

Dr. Barry Poulson



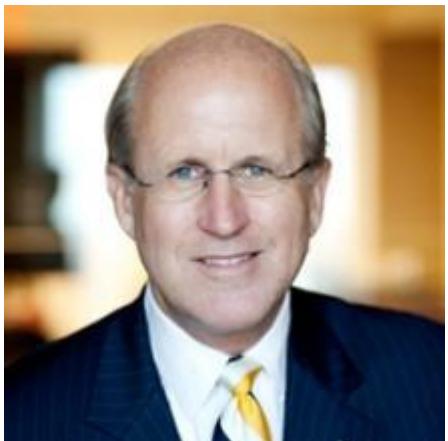
Barry W. Poulson is Emeritus Professor of Economics at the University of Colorado. He has been a Visiting Professor at several Universities including, Universidad Autonomo De Guadalajara, Mexico; University of North Carolina; Cambridge University; Konan University, Kobe Japan; and Universidad Carlos Tercera, Madrid, Spain.

Dr. Poulson is the author of numerous books and articles in the fields of economic development and economic history. His current research focuses on fiscal policies and fiscal constitutions. He has

served on the Colorado Tax Commission and as Vice Chair of the State Treasurer's Advisory Group on Constitutional Amendments in Colorado.

Professor Poulson is Past President of the North American Economics and Finance Association. He is an Advisor to the Task Force on Tax and Fiscal Policy of the American Legislative Exchange Council and serves as a consultant on fiscal policy and fiscal constitutions to a number of state and national think tanks.

The Honorable David M. Walker Immediate Former U.S. Comptroller General



David M. Walker is a nationally and internationally recognized expert in government transformation and fiscal responsibility. He has over 40 years of executive level experience in the public, private and non-profit sectors, including heading three federal agencies, two non-profits, including serving as Comptroller General of the United States and CEO of the U.S. Government Accountability Office (GAO) from 1998-2008. He has also served on many non-profit boards and advisory committees, including serving as a Public Trustee for Social Security and Medicare, and as a member of the Defense Business

Board.

Mr. Walker is also a writer, speaker, and media commentator. He is the author of four books and has been featured in several nationally

syndicated programs and documentaries. Mr. Walker recently completed serving as the Distinguished Visiting Professor (William J. Crowe Chair) at the U.S. Naval Academy where he taught the Economics of National Security.

David Walker is a non-practicing CPA. He has a B.S. in Accounting from Jacksonville University, an SMG Certificate from the JFK School of Government at Harvard University, and a Capstone Certificate from the National War College. He also holds four honorary doctorate degrees from American University, Bryant University, Jacksonville University and Lincoln Memorial University.

TABLE OF CONTENTS

<u>INTRO TO ARTICLE V & CONVENTION HISTORY</u>	1
COURSE CORRECTING OUR NATIONAL GOVERNMENT, PATH TO REFORM	2
POINT/COUNTERPOINT, THE COLORADO SPRINGS GAZETTE	4
SUMMARY OF REMARKS BY MATT HUFFMAN, OHIO SENATE PRESIDENT	7
THE CONVENTION OF STATES IN AMERICAN HISTORY BY ROBERT NATELSON	9
THE HISTORY OF HOW CONVENTIONS HAVE HISTORICALLY WORKED BY MIKE KAPIC	15
MYTH: THE CONSTITUTION WAS ILLEGALLY CALLED AND ARTICLE V IS A 'CON CON,' BY MIKE KAPIC	16
CONVENING A MORE PERFECT UNION, PATH TO REFORM	17
<u>PROTECTIONS FOR A "NO RUNAWAY" ARTICLE V CONVENTION</u>	23
A RESPONSE TO THE RUNAWAY SCENARIO, BY ROBERT NATELSON	24
ARTICLE V RUNAWAY: A BRIEF EXPLANATION, BY MIKE KAPIC	32
WHY STATES SHOULD PURSUE AN ARTICLE V AMENDING CONVENTION & AMENDMENT EXAMPLES	33
MODEL POLICY FOR DELEGATE LIMITATION ACTS	34
LIST OF CURRENT DELEGATE LIMITATION LAWS	35
INTRODUCTION TO THE RATIFICATION OF THE TWENTY-FIRST AMENDMENT, BY EVERETT SOMMERVILLE BROWN	36
AMERICA'S LAST CHANCE: AN ARTICLE V GENERAL CONVENTION FROM THE AMERICAN CONSTITUTION FOUNDATION	46

<u>RECENT CONVENTIONS OF STATES</u>	52
ARIZONA BBA PLANNING CONVENTION SUMMARY	53
CONVENTION RESOLUTION 1 INDEX	55
CONVENTION RESOLUTION 1	59
THE MOUNT VERNON STATEMENT	73
A BRIEF ASSESSMENT OF THE PROPOSED CONVENTION RULES ADOPTED BY THE ASSEMBLY OF STATE LEGISLATURES, BY ROBERT G. NATELSON	75
ASL RULES FOR AN ARTICLE V CONVENTION FOR PROPOSING AMENDMENT(S)	88
RESOLUTION OF THE ASSEMBLY OF STATE LEGISLATURES	107
BYLAWS OF THE ASSEMBLY OF STATE LEGISLATURES, INC	108
<u>ARTICLE V AGGREGATION AND PROGRESS TOWARD A BALANCED BUDGET AMENDMENT</u>	111
COUNTING TO TWO-THIRDS, BYROBERT NATELSON	112
MODEL ARTICLE V BALANCED BUDGET AMENDMENT CONVENTION APPLICATION	123
LIST OF ACTIVE ARTICLE V BBA APPLICATIONS	124
U.S. REPRESENTATIVE YVETTE HERRELL: PRESS RELEASE	127
34 STATES V. CONGRESS	128

**FISCAL RULES TO GUIDE A BALANCED BUDGET/FISCAL RESPONSIBILITY
AMENDMENT**

133

FISCAL RULES SUMMARIES	134
FORMER U.S. COMPTROLLER GENERAL DAVID WALKER: DEBT TO GDP	135
DR. BARRY POULSON: BBA WITH EXPENDITURES LIMITATION ACT.	136
DAVID BIDDULPH: MAXIMIZING AMERICANS' PROSPERITY AMENDMENT	146
AMAC PRESIDENT, BOB CARLSTROM: THE BILL OF FINANCIAL RESPONSIBILITIES	148
A PROPOSED BALANCED BUDGET AMENDMENT, BY ROBERT G. NATELSON	149
ARTICLE V CONVENTION GENERAL SOURCES, BY MIKE KAPIC	155
ADDITIONAL RESOURCES	156



Tab 1

INTRO TO ARTICLE V & CONVENTION HISTORY:

- COURSE CORRECTING OUR NATIONAL GOVERNMENT, PATH TO REFORM
- POINT/COUNTERPOINT THE COLORADO SPRINGS GAZETTE
- SUMMARY OF REMARKS BY MATT HUFFMAN, OHIO SENATE PRESIDENT
- THE CONVENTION OF STATES IN AMERICAN HISTORY BY ROBERT NATELSON
- THE HISTORY OF HOW CONVENTIONS HAVE HISTORICALLY WORKED BY MIKE KAPIC
- MYTH: THE CONSTITUTION WAS ILLEGALLY CALLED AND ARTICLE V IS A 'CON CON,' BY MIKE KAPIC
- CONVENING A MORE PERFECT UNION PATH TO REFORM



Additional Resources:

- America in 2040: Still a Superpower? A Pathway to Success: Walker, David M., Owens, Bill, Knubel, John
Available for purchase [here](#).
- [Listen](#) to the podcast: David Walker reviews the content of the above book.
- Find A Fiscal Cliff, New Perspectives on the U.S. Federal Debt Crisis, Edited by John Merrified and Barry Poulson [here](#).
- The Ratification of the Twenty-First Amendment to the Constitution of the United States, by Everett Somerville Brown is available for purchase [here](#).

COURSE CORRECTING OUR NATIONAL GOVERNMENT



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.

-Tenth Amendment

State Legislators must save “We the People” from the Federal government

by Colorado State Senator Kevin Lundberg (ret.) and Iowa State Senator Neal Schuerer (ret.)

Just about every part of the constitutional jurisdiction of state legislation, and for that matter the lives of every U.S. citizen, is unduly influenced by Congress, the President, and the Supreme Court.

Under the shadow of Article VI, the Federal government has usurped the authority of The States and their citizens by egregiously determining that every act of the Federal government “shall be the supreme Law of the Land.”

The time has come to return to an equally distributed balance of government power and authority between the central government and The States—which is the nature of Federalism.

James Madison instructs us that the powers delegated to the central government “are few and defined and those that remain in the States are numerous and indefinite.”

As State Legislators, we have a solemn obligation to defend the rights of the people and protect the sovereign authority of our States. The Federal government has all but destroyed the constitutional federalism that our founding fathers established and it must be rebuilt in order to protect the future of our Union of States.

HISTORICAL GUIDE

Article I, Section 8 enumerates the specific powers assigned to the Federal government by express consent of The States.

Article IV establishes the equivalency of State and Federal authority in its requirement that “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

*“I sir have always conceived—
I believe those who proposed the
Constitution conceived... that this
[is] not an indefinite government...
but a limited government tied down
to the specific powers.”*

~ James Madison

Article V establishes the equivalency of State and Federal authority in that the collective legislative bodies of both the national government and the state governments have the authority to amend the U.S. Constitution: "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..."

The **Tenth Amendment** clarifies that “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.”

THREATS TO THE UNION

HR1 will put Congress in control of our ***elections***, forcing states to adopt wholesale mail ballots, accept ballots ten days after the election, set up a commission to replace the legislature’s responsibility to redistrict congressional districts.

HR5, the “Equality Act,” will demand the states implement a ***wide range of moral values*** that violate the consciences of many of our citizens. And this dangerous bill usurps the authority of our state legislature.

HR842, the “PRO Act,” will outlaw millions of independent contractors in all 50 states. Congress has no business dictating such restrictions on individual freedom, but it passed the U.S. House on March 10.

For many years the Federal government has set the ***education policies*** of every state with a small token of funding promises and for ***Medicaid*** (again, our tax-debt dollars at work) federal mandates drive much of our medical industry policies.

Highway construction dollars don’t go very far after the Federal government’s expensive and time-consuming regulations are applied. This is all done to get back a portion of the gas tax dollars that our citizens pay at the pump, and then send to Washington...

Land use has become the domain of the Federal government’s power. Federal ***clean air*** programs dictate how state laws interact with the auto industry and industrial air quality issues. State ***water policy*** is too often set by federal policies, US laws on ***endangered species*** dictates where and how we can use our own property and state ***drivers licenses*** are now issued according to federal standards.

Call to Action

- 1) States using their power to propose amendments—Article V.**
- 2) National Federalism Task-force—for states to speak in one voice in an environment that all ideas can be discussed, even the minority position.**
- 3) States uniting to push back on federal government overreach.**



articleVcaucus.com

POINT/COUNTERPOINT: Is it time for an Article V Convention of the States?

Neal Schuerer and Josh Dunn | Sunday, January 10, 2021 | The Colorado Springs Gazette

Point: Neal Schuerer

We agree that something is broken: it is self-evident that our voices are not being heard and that our national government no longer serves us but itself. Where we might differ is not in our observations of today's problems but in how to solve them. Regardless of the ideas of how to remedy what is wrong, the process to do so is clear and it is found in the fifth part (Article 5) of the United States Constitution, namely, a convention of states called by Congress on the application of two-thirds of the state legislatures.

Such a convention would likely be official meetings where commissioners from all 50 states gather to discuss ideas, debate solutions, and propose amendments to the U.S. Constitution. Then we the people, through our elected representatives, will be able to consider and approve the solutions. Amendments proposed by the convention would require ratification by three-fourths of the states to take effect.

Why is this doable? The first four parts of the U.S. Constitution create four co-equal parts of government through which the citizens can control their lives. And the fifth part provides a remedy for when politicians start to control us.

Nearly every citizen has a basic understanding of the concept of separation-of-powers. The U.S. Constitution, in Articles 1, 2, and 3 identify the roles and responsibilities of the legislative, executive, and judicial branches, respectively. What surprises some is that Article 4 establishes a coalition of the states as the fourth and equal part of our citizen-run government. The three branches of our national government in Washington, D.C., and the 50 parts of our several states are equals.

Now, it was the humility of the founders that caused them to write Article 5 which provides two distinct processes to change our constitution: amendment proposed by Congress and ratified by the States or amendment proposed by a convention of states and ratified by the states. The founders understood that this compound republic was a new experiment in self-government. They also believed that future generations could make it better by voting to improve it.

Need convincing that amending the constitution is a good thing? The U.S. Constitution has, through Article 5, been amended 27 times. The Bill of Rights came through the amendment process. So did every woman's right to vote.

The national government will never fix itself, thus it is time for the states to act on their authority, which is often called federalism and sometimes referred to as "state sovereignty" or "local control." The most informed and best decision makers are the ones closest to us, our schools, our businesses, and our houses of worship. Our elected officials working in Denver, Boston, Lincoln, and Austin are best prepared to solve local, state, and national issues.

A convention of states will improve the way government works for future generations. By fostering a conversation of state leaders from red and blue states and requiring more than 75% of the states to approve proposed amendments in a special election, we will make our lives better.

With such a high bar to enact change, there is no chance of such a process running away. There is no chance of us getting it wrong. We always get it right when there is broad coalition building and when the voice of the American people is heard.

We are speaking. Our state legislators must listen. They have the authority and duty to fix how the national government works, and our state leaders are our last best hope for America.

Counterpoint: Josh Dunn

Advocates for a convention of the states promise that it will restore our constitutional order. For a mild critic of the idea like me, this seems misguided for several reasons, not least of which is that when we are seeing cities looted and the Capitol stormed perhaps the current environment isn't conducive to sober constitutional reflection.

Further, as most of its supporters acknowledge, the existing Constitution is not the problem. Think about their desire to limit or forbid federal regulation of economic activity that occurs solely within a single state. Their goal is to restrain national power and return authority to states.

It turns out that we have a constitutional provision, the Commerce Clause, which says Congress can regulate interstate commerce but not intrastate commerce.

However, since the late 1930s, the Supreme Court has interpreted it to give Congress almost unlimited authority to regulate all activity. That includes activities that are entirely local in nature and don't involve commerce.

For example, in 2005 the Supreme Court ruled that the federal government could forbid the homegrown consumption of medical marijuana and that occurred solely within a single state. Regardless of one's position on marijuana this interpretation of the commerce clause seems difficult to reconcile with the constitutional text. This leads to one question: if Congress and the court won't follow the existing Constitution, why should we think that they will follow a revised one?

As well, a constitutional convention necessarily risks a runaway convention, a convention that goes far beyond the mandate given to it by the states. Recall that our first runaway convention occurred in Philadelphia in 1787. Convention advocates tell us not to worry because there are many safeguards built into the process preventing that from occurring, including that a convention can only propose amendments, not ratify them, and those amendments should be confined to the subjects for which the convention was convened.

If it does go beyond that scope, Congress can refuse to forward amendments to the states for ratification, and if all else fails the Supreme Court can declare any amendment outside the scope of convention as unconstitutional.

These assurances strike me as either too much or not enough. What would happen if Congress refused to call a convention? The Constitution isn't self-enforcing, so why would we expect Congress to call for a convention designed to limit its power? Or what if all the other safeguards fail and we're left with the Supreme Court to save us? In that case, please see the previous discussion of the Commerce Clause.

Even if the chances of runaway convention are small, a convention of the states doesn't address the underlying problem at the root of the constitutional disorder identified by proponents: our shocking lack

of civic and constitutional knowledge. One recent poll found that 10% of college graduates think Judge Judy is on the Supreme Court. Another found that only 32% of Americans can name all three branches of government and 33% could not name a single branch! Is it any wonder that public officials feel free to disregard the Constitution in the face of such ignorance?

Before opening a potential Pandora's box, perhaps we should ensure that Americans first know what's already in the Constitution and understand the critical role citizens play in holding elected officials and government officials accountable to uphold it.

You can amend the constitution all you want but without a broad change in public understanding and behavior nothing important will change.

In short, we desperately need to revive our constitutional culture and improve civic education, but a convention of the states treats the symptoms rather than the disease.

Neal Schuerer resides in Colorado Springs, is a recognized leader in The National Article V Movement and Executive Director of Path to Reform. Josh Dunn is Director of the Center for the Study of Government and the Individual (CSGI) and a professor of Political Science at the University of Colorado Springs. CSGI has just launched the Program on the American Constitution to increase understanding of America's civic and political traditions.

https://gazette.com/opinion/point-counterpoint-is-it-time-for-an-article-v-convention-of-the-states/article_095fa0ca-5125-11eb-a53e-efd98231fc18.html



Summary of Remarks by Matt Huffman, President of the Ohio Senate,

presented at an American Legislative Exchange Council workshop, July 23, 2020

"Four Paths to State drafted voter ratified Balanced Budget Amendment"

*The 12-minute presentation can be viewed at [Path To Reform YouTube channel](#)
The full workshop can be viewed at [ALEC.org](#)*

The US Constitution, The Several States, and the Authority of Article V

- The Constitution declares that the States establish the rules for the Federal Government.
- State Legislators are in essence the Board of Directors of the Federal Government and are empowered to dictate policy to the elected federal officers; the president, the treasurer, the secretary, etc., just like in a corporation, it's the same concept.
- Article V of the Constitution was put in place by the States, for the States. The founders understood that their current debates of balance of power would continue. That's why we have an alternate method [in addition to the US Congress] to make changes, the empowerment of the States to proposed amendments as established in Article V.
- We have strong need for the federal government to protect commerce, defend our country, and safeguard the rights of the people.
- In history, the States have wielded their authority as established in Article V. This is how we got the 16th Amendment. The US Congress passed Income Tax Legislation in the late 1880 which the Supreme Court deemed unconstitutional. Then a critical mass of states applied for a convention to propose an income tax amendment and Congress relented and said, "they were planning to pass this amendment anyways."
- Again, in the late 1980's, 32 States came together for a balanced budget amendment convention. At the same time, The Gramm Rudman Act, which constrained Federal Government spending, was passed when Ronald Reagan came into office. This suppressed the momentum for an Article V convention to propose a balanced budget Amendment. It should be noted that with new legislators and new terms, agendas and legislation will change.

Past and Present Challenges in Calling for an Article V Convention

- Congress has expressed their unwillingness to call a convention and opposition to the State's involvement in the working of the Federal Government. David Biddulph, founder of the Balanced Budget Amendment Task Force, declares that the attitude of two-thirds of Congress is, "We're not going to allow the states to decide how it is we are going to spend money." Congress is not willing to give up their power!
- Hurdles with Legislators:
 - It's difficult to get all legislators on the same page.
 - With varying schedules, it is hard to get everyone to show up.
 - With busy legislators, it's hard to get legislators to take a real interest.
 - Living in varying states, State legislators don't see each other much or know one another well.
- Article V Convention seekers often work at odds with each other wanting to push their own agenda.
- Many state legislatures don't want to work on the issue of a balanced budget because the funds they receive from the Federal Government is used to balance their own state budget.
- Anti-federalist groups regularly offer the idea of a "runaway convention," (regardless of the three-quarter state's ratification backstop), thus influencing legislative leaders.

The PATH Forward: Moving Past our Challenges

The States' greatest power is inherent within the understanding that the States created the Federal Government and must dictate current and future policy by proposing and ratifying amendments.

We must:

- Focus on the non-partisan issues most legislators can agree on: e.g. President/Executive line-item veto, money in politics, transparency in federal spending.
- Identify the States who are willing to lead, gather, and express ideas on how to improve the Federal Government. We need to assess what amendment ideas are viable.
- Assemble the leaders of the State Legislatures in an environment that is non-threatening and non-binding (not an Article V Convention), where we can vet ideas proposed the states.
- Have a candid, honest conversation about the process of states proposing amendments and the high bar required for ratification, thus overcoming the farce that is the idea of a "runaway convention."
- Publish the *Rules of Conduct for an Article V Convention* that have been passed by 35 states.
- Acknowledge that progress requires our effort; including any legal action to diffuse the gridlock.
- Remember that we, state legislators, are responsible for the conduct of the federal government and if we choose to say this is too hard, or determine other concerns are more pressing, we are not upholding our oath of office to protect the Constitution of the United States and the American people.

The Convention of States in American History

by Robert G. Natelson¹

When delegations from the states assemble in Phoenix, Arizona later this year, they will be basking in a long and rich American tradition.

THE COLONIAL HISTORY

As far back as 1677, British colonies in North America sent “commissioners” (delegates) to meet with each other to discuss common issues. These gatherings were essentially problem-solving task forces. That is, they were temporary assemblies charged with proposing solutions to prescribed problems.

During the colonial era, most conventions met in Boston, New York City, or Albany, New York: Albany was popular because it was close to the homes of the Iroquois tribes, who frequently participated. However, one of the most notable conventions occurred in Lancaster, Pennsylvania (1744).

The convention agenda was always set in advance. It sometimes involved common defense against hostile Indians or against French Canada. Often, the colonies convened to hammer out treaties with Indian tribes.

“Convention” was not the only name for these conclaves. Occasionally, they were called councils; more often congresses. (In the international practice of the time a “congress” was a diplomatic meeting of governments on equal terms.)

¹ Professor Natelson is the director of the Article V Information Center in Denver.

The Article V Information Center promotes truthful, unbiased information about the U.S. Constitution's amendment process. It does not take stands on particular amendments, but instead functions much like a non-partisan voter information resource. Just as a voter information center provides correct information and helps prevent efforts to suppress the vote, the Article V Information Center corrects misinformation so citizens may exercise an important constitutional right.

Professor Natelson is the most-published active scholar on the Constitution's amendment process. His biography and bibliography appears at <http://articlevinfocenter.com/about/>.

Most of these gatherings were regional. That is, they involved only three or four colonies. But the 1754 Albany Congress included colonies from all regions—that is, it was a national or “general” convention. The Albany Congress became famous because Benjamin Franklin served as a commissioner, and because it negotiated an Indian treaty and proposed a plan for a continental government.

When tensions with Britain grew, the colonies met in conventions to plan common strategy. In the years just before the Revolution, New York City hosted the Stamp Act Congress (1765) and the First Continental Congress (1774).

1776: CONVENTIONS OF COLONIES BECOME CONVENTIONS OF STATES

The Declaration of Independence (1776) converted the colonies into states. Even though they erected a permanent body (confusingly called “Congress”) to deal with national issues, they continued to meet among themselves in temporary *conventions of states*.

During the Revolution and for several years after, these conventions occurred regularly: In Providence, Rhode Island (1776-77 and again in 1781); in York Town, Pennsylvania and Springfield, Massachusetts (both during 1777); in New Haven, Connecticut (1778); in Hartford, Connecticut (1779 and again in 1780); in Boston and Philadelphia (both in 1780); and in Annapolis, Maryland (1786). Several other conventions were proposed, but never materialized. Most of these meetings were regional, involving as few as three states. Some, like the 1780 Philadelphia convention, called to address wartime inflation, were general (national).

HOW THE PROCESS WORKED

By 1787, colonies and states had been meeting with each other regularly for more than a century, so the basic protocols were well worked out. The first thing that happened was that a state—or occasionally Congress or a prior convention—issued an invitation usually designated a *call*.² The call specified what states were invited, the time and place of initial meeting, and the problems to be addressed. Conventions meeting between 1776 and 1786 were called to propose solutions for monetary inflation, defense against the British, interstate trade regulation, and other issues.

² *What is an Amendments Convention “Application?” What is a “Call?”*, <http://articlevinfocenter.com/what-is-an-amendments-convention-application-what-is-a-call/>.

Once invited, a state had to decide whether to accept. Usually this was up to the state legislature. If the legislature opted to attend, it chose representatives (commissioners) and provided them with instructions. Sometimes the legislature authorized the executive to choose and instruct commissioners.

When a quorum of invited states arrived at the designated meeting place, a temporary presiding officer called the group to order, and it elected permanent officers. For officer elections, as on all other matters, the rule of suffrage was “one state/one vote.”

If the convention was small, it might elect only a president and a secretary or clerk. Larger conventions chose additional officers and commissioned a committee to propose formal rules. Proposed rules were then amended and adopted on the floor. The clerk or a credentials committee verified the credentials of each person attending.

Next, the assembly turned to its assigned subject(s). After deliberation, the states voted on whether to propose a course of action and, if so, what to propose.

The whole process might last only a day. Or it might last several months.

In late 1786, Virginia (not Congress, as many have erroneously claimed) called the Constitutional Convention.³ It was to meet in Philadelphia the following May. The subject assigned was a very large one: “devising and discussing all such Alterations and farther Provisions as may be necessary to render the Foederal Constitution [i.e., the political system] adequate to the Exigencies of the Union.” The states elected George Washington to chair the gathering.

One reason the Constitutional Convention was so successful is all of the attending commissioners were familiar with the standard protocols. They had learned about them while serving in Congress or in state government. Many commissioners had served in prior conventions. Roger Sherman of Connecticut, for example, was attending his fifth!

CONVENTIONS OF STATES IN THE 19TH CENTURY

Creation of the federal government reduced the need for interstate conventions, but did not end it. In fact, Article V of the new Constitution explicitly recognized the interstate convention as a method for proposing constitutional

³ *Who Called the Constitutional Convention? Answer: The Commonwealth of Virginia,* <http://articlevinfocenter.com/newly-rediscovered-1889-st-louis-convention-states/>.

amendments.

In 1814, the New England states, unhappy with the War of 1812, convened in Hartford, Connecticut and proposed seven constitutional amendments—although that convention did not act under Article V. In 1850, the Nashville Convention met to develop a common Southern strategy against what Southerners thought was Northern overreaching.⁴

The year 1861 witnessed two competing interstate conventions, both triggered by the decision of some states to secede from the Union. Seceding Southern states gathered in Montgomery, Alabama to draft the Confederate constitution. Non-seceding states (including some that left the Union later) met in Washington, D.C. to propose a constitutional amendment in a last-ditch effort to prevent further secession.

The Washington Conference Convention, also called the Washington Peace Conference, proved to be the largest convention of states ever held. Twenty-one states participated. The gathering was chaired by former President John Tyler.⁵

The Washington conclave deliberated for three weeks, and, despite bitter dissension, finally recommended a constitutional amendment. Because the convention did not have Article V power, it could only recommend to Congress. But Congress delayed and the proposal died—and so did 620,000 Americans in the ensuing Civil War.

The recommendations of the 1889 St. Louis convention were more successful.⁶ The Kansas legislature called the gathering to propose a common solution to monopolistic practices in the meat industry. The nine states present issued proposals that led to adoption of remedial state laws and to congressional passage of the Sherman Anti-Trust Act the following year.

By and large, these 19th century conventions followed the same protocols established in the previous century—except that the St. Louis convention gave each state eight votes instead of one!

⁴ See THELMA JENNINGS, THE NASHVILLE CONVENTION: SOUTHERN MOVEMENT FOR UNITY (1980).

⁵ The proceedings of the Washington Conference Convention are available online at Google Books,

https://books.google.com/books/about/A_Report_of_the_Debates_and_Proceedings.html?id=Zh5cAAAAcAAJ.

⁶ On this interesting gathering, see *Newly Rediscovered: The 1889 St. Louis Convention of States*, <http://articlevinfocenter.com/newly-rediscovered-1889-st-louis-convention-states/>.

CONVENTIONS IN THE 20TH CENTURY

Early in the 20th century, the dry Western states were concerned that their scarce river water might be divided unfairly. Even worse, the federal government might divide it for them. However, Delphus Carpenter, a prominent Denver water attorney, was convinced that the states could reach acceptable solutions themselves. At his urging, the Colorado River states met in Denver in 1920. That gathering was followed by a series of conventions (called “commissions”) in which states negotiated in groups.⁷

The most important of these gatherings negotiated the Colorado River Compact in 1922.⁸ The State of Colorado issued the call, inviting the other six Colorado River states and the federal government to send representatives. President Harding chose as the federal representative Secretary of Commerce Herbert Hoover, who was elected chairman. Hoover thus became the third former or future president to preside at a convention of states. The first seven sessions occurred in Washington, D.C., the eighth in Phoenix, the ninth in Denver, and the remaining 18 in Santa Fe.

Other conventions met to divide up the waters of the North Platte and Rio Grande Rivers. As far as I can determine, the most recent convention of states was the assembly that negotiated the Upper Colorado River Basin Compact. It met intermittently from 1946 to 1949.⁹

Like the 19th century conventions, the 20th century conventions seem to have followed the established protocols, including one state/one vote. The chief exception was that the 1922 Colorado River convention required a unanimous vote for some decisions rather than a mere majority.

SOME “TAKE-AWAYS”

All this history inspires a few conclusions:

⁷These conventions or “commissions” should not be confused with the permanent commissions later established to administer the compacts.

⁸ *The Santa Fe Convention: A 20th Century Convention of States*, <http://articlevinfocenter.com/the-santa-fe-convention-a-20th-century-convention-of-states/>.

⁹*The Last Convention of States Ever Held? It Centered on the Upper Colorado River*, <http://articlevinfocenter.com/last-convention-states-ever-held/>.

First: The history of interstate conventions is not only long and rich, but a source of useful precedent. The standard protocols have worked even in situations of extreme political stress, as proved by the 1861 Washington Conference Convention.

Future conventions should stick with what has worked, updating only as necessary. Adopting novel, untested procedures is a prescription for trouble.¹⁰

One option is to begin the rule-making process with a set of rules I pulled together for Citizens for Self-Governance's "convention of states" project. Those rules are based firmly on traditional practice, with updates and other changes recommended by a panel of experienced state lawmakers. And they have proved themselves in actual practice: They were used at a simulated convention held in Williamsburg, Virginia in 2016, with great success.¹¹

Second: People who insist that every interstate convention is a "constitutional convention" reveal only their own ignorance. Among the more than 40 conventions of states already held, only two were constitutional conventions: Philadelphia in 1787 and Montgomery in 1861. Several other assemblies have proposed constitutional amendments, but none of those was ever called a constitutional convention.

Third: Not all conventions have been successful. The 1777 York Town convention ended in deadlock. The 1780 Philadelphia convention adjourned "temporarily" but never re-convened. And the 1786 Annapolis Convention had such poor attendance that it merely recommended another convention. But Americans learned from all those gatherings. Some of the "failures" led directly to later success. Perhaps the best example was how the recommendations of the Annapolis Convention were carried out by the Constitutional Convention the following year.

Finally: This history shows that state-selected commissioners are highly responsible and effective. They stick to their agenda and produce well-thought out proposals.

When commissioners from the participating states meet in Phoenix, may they attain the same high standard!

¹⁰On this, see *Robert G. Natelson: A Brief Assessment of the Proposed Convention Rules Adopted by the Assembly of State Legislatures*, <https://www.i2i.org/wp-content/uploads/2015/01/ASL-Rules-Assessment-Final.pdf>.

¹¹These rules, with slight revisions based on the Williamsburg experience are available at <http://robnatelson.com/wp-content/uploads/2017/05/2016-1221-rules-draft.pdf>.

American Conventions



How Conventions Have Historically Worked July 2021

An Article V convention is a conclave of state “committees,” operating in a distinct & separate manner than legislatures.

Over the past four centuries, scholars and historians have analyzed some 650 conventions.

Of hundreds of state & colonial conventions only two were “constitutional conventions” and they remodeled a political system: drafting of the 1787 proposed federal Constitution and the 1861 Confederate Constitution.

Convention types: 1814 & 1861: quasi-Article V amending (not ratified); 1922 & 2017 legislative conventions.

The formula for Article V is: 34-26-38: Of the 50 states, 34 to call, 26 to vote a proposal(s) and 38 to approve.

For a runaway convention, 51% or 26 states would have to go rogue, exposing delegates to their state’s laws.

What changes occur to the Constitution at an amending convention? None. It only *PROPOSES* amendments.

Congress’ Article V authority, when presented with 2/3 of states applications, it “*SHALL*” set the date & location.

An amending convention is the alternative to Congress proposing an amendment that must still be approved by 38 states.

State applications need not be identical and are interpreted by intent, not verbiage.

State’s power allows them to commission, recall, suspend commissions, or discipline their delegates.

States may apply for an unrestricted convention or one dedicated to a particular subject.

Constitution signer, James Wilson: “Commissioners authorized to conclude nothing, but...at liberty to propose anything.”

Conventions average 12 days prior to sine die while ratifications average 20 months and 7 days.

Since an Article V convention receives its power from the Constitution, it cannot alter the Constitution, e.g. ratification.

Conventions are forbidden to rewrite or propose a new Constitution, expand its limited powers, or declare amendments.

Convention Historical Standard Operating Procedure: regional or national, select officers, draft parliamentary rules, maintain order, arbiter of delegates credentials, states choose delegates, states have one vote, not plenary, take up any topic-but still limited, held secret or open, recorded.

Congress has no constitutional authority to *Call* a state convention.

In the first 200 years following the founding, the judiciary, including SCOTUS, decided over 3 dozen cases interpreting Article V & generally followed historical practice.

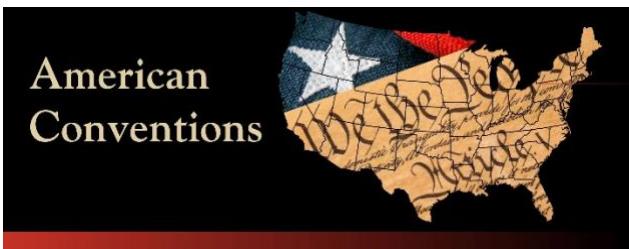
Article V is an example of federalism’s shared responsibility between the national and state governments.

Congress has ignored 11 complete Article V state applications and 500-700 individual state calls.

JBS believes in the authority of the Constitution, therefore it is not evil, except for the second clause of Article V.

The states may have to force Congress to act on their *Call* by utilizing judicial review or by lawsuit.

States have written legislation protecting their state against their commissioner’s nefarious behavior.



Myth: The Constitution was Illegally Called, and Article V is a ‘con con.’ July 2021

We do not take oaths to defend our nation, government, or leaders. Our oath is to preserve, protect and defend the Constitution.

Critiquing the Constitution as being illegally formed and then taking an oath of allegiance to defend it is contradictory and self-evident that the Constitution was lawfully and properly adopted.

Critics mistakenly claim the Constitutional Convention was called by Congress; but it was officially called by Virginia, Nov. 23, 1786

The words used for the *Call* by VA, also by the Annapolis convention, were, “...to render Federal Constitution adequate to the Exigencies of the Union...” There was no mention of the Articles of Confederation. In other words, to reform the failing government into a functioning and deliberative body. Newspapers of the era erroneously reported it as a “revision.”

The impetus for the convention’s call was the states realizing the inability of Congress to pay War debts and to keep the young U.S. from heading into civil war, bankruptcy and collapse due to the inadequate and ineffectual Articles of Confederation.

In the founding era conventions occurred, on average, every 3 ½ years to attempt to resolve issues Congress could not.

Federalist No. 40 & No. 78, successfully argue that the commissioners acted within their states delegated authority.

The 1787 call by Congress for a “revising” convention was invalid because 1) the resolution did not address the states directly, as it had in the past, & 2) Congress did not use its normal protocol for submitting measures to the states for consideration. Virginia had fulfilled the *Call* requirement on Nov 23, 1786.

In ten conventions occurring after the Declaration of Independence, Congress never called one. The Articles of Confederation did not contain authorization for Congress to call a convention of states together.

MA & NY were the only states to instruct their delegates to implement Congress’ “revision” in their commissions. The rest followed Virginia’s call. 85% of the states recognized the necessity of ‘reform’ versus ‘amendment.’

During the Convention, every allegation that delegates were exceeding their credentials was directed at the Virginia Plan and not the final product. The debate led to the Great Compromise and our form of representation.

Absent from records is any claim that Congress had called the Convention and given the delegates their instructions and authority, proof that Congress did not believe it had made the call or issued binding instruction.

George Washington acknowledged in a March 25, 1787, letter to Marquis de Lafayette that the states had called the Philadelphia general convention and that “Congress have also recognized, & recommended the measure.”

Basically, JBS/Eagle Forum contend Madison, Washington, et al, overthrew the Confederation with a new unauthorized form of government. Congress did not charge anyone with insurrection, but forwarded it to the states for consideration.

Four of the original 13 articles in the Articles of Confederation are in the renamed Constitution.

Although only nine states were required for ratification of the reformed government, all 13 states approved it.

The Constitution does not allow itself to be rewritten but authorizes “amending” it with approval of ¾ of the states.

Ten days after submitting the Constitution, Congress debated & defeated the accusation of an illegal convention. The states did not exceed their authority.

CONVENING A MORE PERFECT UNION

An essay on the history, value, and purpose of State Leaders convening to discuss national issues

A More Perfect Union

In the last decade, American's approval of Congress has been hovering around 20% and a May 2019 Gallup poll found that 19% of American's identified that the "most important problem facing this country today" was "The government/Poor leadership." What is to be done and by whom?

We the people, in order to form a more perfect union, must endeavor to commit ourselves to the efforts of safeguarding liberty and security for all Americans. We, the people, can no longer abdicate our responsibilities of self-governance to an unchecked and unaccountable abstract governmental ideal that cannot be recognized for what it is supposed to be. We, the people, through our state governments, can and must guide us to a place where all Americans approve of the work of our federal government. Our founders pointed us in the direction we must and will go, convening the states to discuss ideas, champion new policies, and extend new guidance to our federal government.

When anxieties rise due to political and economic conflict, an inflated and encroaching federal government, and politicking in lieu of governing, solutions lay not in representative assemblies in Washington, D.C., but rather in the State Legislatures who, by Article V of the U.S. Constitution, hold the key to a more reliable process to change how government works. In today's seemingly never-ending partisan divide, a constitutionally sanctioned Convention of States is the necessary remedy to create a "more perfect union."

The year 2020 risks being remembered as an age of socialist rhetoric and nearly fascist extremes. Instead, may it be a year mindful of the words of Abraham Lincoln, "that government of the people, by the people, for the people, shall not perish from the earth."

A Constitution in the Rearview Mirror

A look back to the origins of the Constitution prepares us to better understand the future of America. We must do this as any history is incomplete if the complexities of the pre-founding period are ignored. We look back because we the people, in order to form a more perfect union today than we had yesterday, need to embrace that our collective voice, our collective ideas, and our collective solutions, are preeminent within American civics and government. We, the people, have for too long allowed politicking to usurp governing as the means of creating and accomplishing our national goals. And when we citizens are silent, the opinions of the few become the mandates to the many. And so it now is, but it need no longer be.

In the late 1700s, in Philadelphia, the United States of America was formed. It was created by representatives from the numerous early colonies who, like many before them, gathered at a convention to discuss and debate and endeavor toward what was in the best interest of all of the American colonies. The work of these delegates in Philadelphia culminated on September 17, 1787 with the crafting of our United States Constitution. But when this gathering assembled four months earlier it might have been just another one of the hundreds of regular multi-state gatherings of representatives which had convened throughout the years. But this one was different as the delegates arrived with the hope they might agree upon a form of government to protect each state's efforts to govern her people in her own way. It was the age of mercantilism, the idea and practice that each state would profit from mutually beneficial trade between the

states. The question was, “When trading between states, which state laws were to be upheld?” And following a time of national unity in the fight for independence from the British government, the colonies, without a common cause, were beginning to suffer disunity. The result was a national constitution, one that would afford each colony and state with the governing structure to work together for the common good as needed.

The Groundwork of Self-Governance

To many Americans, the United States magically appeared on July 4, 1776. In fact, its foundation began at least a century and a half earlier. America’s founding era (1750s - 1790s) came about as the result of an evolutionary process of citizen associations whose origins date back to the Sumerians (southern Iraq) ca 2300 BC. This self-governance process matured over millennia as associations and constitutions formed.

One of the earliest forms of a contemporary constitution was developed in Athens in 594 BC. Then, in 508 BC, the Athenian constitution was reformed toward democracy and the “rule by the people” consisting of the separation of powers. Similarly, in 1215 the British signed the *Magna Carta* at a convention called by the nobility and commoners at Runnymede, England. Each of these was a movement toward self-governance by the people.

In the 1600s, while America remained a British colony, numerous conventions were hosted and constitutions signed. In 1639, the first modern American constitution was written at a convention in Hartford, CT. It consisted of a preamble and eleven articles describing the rules for self-governance including term limits for the governor.¹

Many thousands of conventions (aka councils, congresses, and committees of correspondence and safety) have occurred in towns, counties, regions, and nationally since. In the colonies, and then the states, 648 recorded events have been identified by historians.² Their administrative protocols soon evolved into a standard operating procedure for debates and voting. Early gatherings resolved local problems such as security, safety, and trade. As immigrants arrived, many fleeing government persecution, the colonist’s motives were simple: self-defense and religious freedom.

For the people to adequately satisfy their motives and in the spirit of self-governance, they met informally, outside of their routine government assemblies which were organized in accordance with the ruling authority of the British Crown. In doing so, they sought the freedom to pursue mutual benefit and consensus. They met not to legislate, as that was the authority of the Crown, but to debate and agree on recommendations that would become the foundation of movements in each of the states that would rise to the ears of the Crown. A movement’s power was then and always is in the voice of its people. Edmund Burke and Alexis de Tocqueville commented that people associating with such purpose is the basis for citizenship.³

A Tipping Point in America, Then and Now

In the late 17th and early 18th centuries, international issues impacted England (i.e. the Glorious Revolution, Seven Years War). Britain needed help with its war debt and turned to the American Colonies with Acts (Stamp, Tea, Sugar, Intolerable). Colonial anxiety grew as did inflation and manufacturing regulations. In addition, political issues included a weakening English governance, random troop violence, safety with neighboring Indians, and the strain of growing boycotts of English goods.

¹ Michael Kapic, *Conventions That Made America: A Brief History of Consensus Building*, Author2Market, 2018, 8

² Timothy J. Dake, *Far From, Libertas Books*, 2017, Appendix B,

³ Jonathan Sacks, *The Dignity of Difference*, Continuum, 2003, 152, 158

The people, still governed by British officials, grew frustrated as they were ignored. By the mid-1770s the colonies experienced a radical shift toward independence and more difficult issues arose such as inland navigation, foreign trade, embargos, and intercolonial trade tariffs. As a result, the frequency of calling for conventions grew and the topics discussed included defense, English boycotts, inflation, and price controls.⁴

In the late 1700s, through a series of national meetings, representatives from many of the colonies and states convened to discuss, debate, and present ideas for approval, and finally, in September 1787 at the Philadelphia Constitutional Convention, the representatives penned the United States Constitution to be considered and approved by the leaders of those same states and colonies. The convention was timely. It was required because following the War for Independence against Britain, state leaders from New York and Massachusetts began calling for the need to Amend the Articles of Confederation, the National Congress wanted to address numerous concerns but did not have the authority to convene representatives from the states to do so, jurisdictional arguments between the colonies were growing, and heavy taxes and unpaid War wages led to regional rebellions including that of Shays Rebellion in Massachusetts. It can be imagined that the same farmers who threw British tea into the Boston harbor, that fought to win their liberty from the tyranny of a government across the pond, were beginning to turn that same ire toward the now heavy-handed ways of burgeoning local and national government policies, cronyism, and unwarranted profits in the pockets of wealthy state legislators.

So, in the summer of 1787, the people convened to discuss that which was most important, and what began unassumingly as the Philadelphia Convention soon bore the name-The Constitutional Convention. And since this is where our modern government started, the question for us today as we see a similar tipping point looming in the 21st century is, “What must we, the American people, do to ensure that a vibrant government continues to help ensure security and liberty for all?”

A History of American Conventions Shaping a National Unity

The purpose of the 1774 convention, the *First Continental Congress*, was to debate solutions for responding to Parliament to end the Intolerable Acts. John Rutledge noted that conventions were for recommendations.”⁵ The next convention, the *Second Continental Congress* was scheduled for May 10, 1775.⁶

The Revolutionary War began three weeks before the *Second Congress* was to convene as a convention. However, it quickly became an ad-hoc committee and then morphed into a de facto legislative government. Over the next six years it was knee-deep in the business of creating an army, finding a commander, drafting independence, writing a constitution (Article of Confederation), developing allies, financing its efforts, and sending a peace committee to Paris. Talk began for convening “a general council, or convention of faithful, honest, and discerning men...” in which a convention is “not to exercise legislative power, but only to debate freely, and agree upon particulars...”⁷

The *Second Continental Congress* agreed with John Adams assertion that the people must endeavor toward the “defence of this colony” against Britain and “to erect the whole building with their own hands upon the broadest foundation,” and that could only be done “by convention of representatives chosen by the people in the several colonies.”⁸ Essentially, that the people must work together to build something new to continue to protect themselves.

⁴ Ibid., Kapic

⁵ Ibid., 317

⁶ Ibid., Kapic, 59

⁷ Russell Caplan, *Constitutional Brinksmanship*, Oxford Univ Press, 1988, 4,

⁸ Ibid., 9

The *First and Second Congresses* were defining moments for America. They also helped to define and elevate the prestige of a convention of the people's rights over ordinary legislative processes from which the people were absent. For the people, the convention had become the extraordinary instrument of a constitution-making body. Other conventions easily followed as conventions, in practices, had by this time a well-developed and trusted operating system.⁹

In the early 1780's, sentiment in Congress grew for a broad range convention, but it had no authority to call one. Under the Articles of Confederation, the U.S. lacked a strong central government while the states were individually more powerful. But broad abusive government mandates were being imposed on the people and economic instability grew. The states quarreled among themselves, individually establishing their own tariffs, currency, and regulations.¹⁰ Richard Henry Lee of Virginia noted many members were suggesting "the calling upon the states to form a convention for the sole purpose of revising the Confederation...to enable Congress to execute with more energy, effect, & vigor, the powers assigned it."¹¹ George Washington, also of Virginia, protested the "want of energy in the Federal Constitution...which I wish to see given to it by a Convention of the People."¹² Washington insisted on power being held by the people and not a federal government.

In 1785 the Virginia and Maryland assemblies realized that a conflict was brewing related to the use of the Potomac River and the Chesapeake Bay waterways between Virginia and Maryland as there was a growing need for increased commerce and trade westward to the Shenandoah and Ohio Valleys. With this increased activity a need arose for jurisdictional agreements and travel rights for the waterways. Negotiations between the assemblies were hosted by George Washington at a 3-day conference in Mount Vernon beginning on May 25, 1785. Agreements were made and the Potomac Company was created to finance navigation improvements and oversee jurisdictions. Both Maryland and Virginia approved the compact such that the Potomac "shall be considered as a common highway..." The success of the Mount Vernon Conference paved the way to the *Annapolis convention* (1786), and later to the *Philadelphia convention* of 1787.

The *Annapolis Convention* commenced on September 4, 1786. It was intended to be a "commercial convention" to include representatives involved in trade, interstate commerce, and regulations, so that "when unanimously ratified; that will enable the United States in Congress effectively to provide for the same." However, only five of thirteen states attended. This was supposed to be a continuing effort by the states to balance the lopsided federated relationship between states and the national government as the early *Articles of Confederation* had provided for independent and powerful 'countries' within the whole of the early colonies.

Heeding the seriousness of the need to collaborate with other state leaders, those present proposed to hold another meeting of the states in Philadelphia the following year. Their purpose? To "take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the *constitution* of the Federal Government adequate to the exigencies of the Union..." The Annapolis convention contemplated a convention that could do more than merely propose changes to the Article of Confederation. "The word *constitution* in this context," Professor Natelson says, "was not limited to the Articles of Confederation. The prevailing political definition of "constitution" at the time was political structure as a whole—much as we refer today to the British "constitution." What we today call a "constitution" was more often called an "instrument," "frame," "system," or "form" of government. The Annapolis statement was recommending a convention to consider and propose alterations in the federal

⁹ Ibid., Kapic,

¹⁰ Ibid., Dake, 131, 132,

¹¹ Ibid., Caplan, 21,

¹² Ibid., Caplan, 21,

© Path To Reform, 2020

political system, not merely to the Articles. Subsequent proceedings in Congress confirm that understanding.”

The *Constitutional Convention* in Philadelphia lasted for four months, convening May 25, 1787 and concluding on September 17, 1787.¹³ With George Washington serving as president of the convention, delegates from all the states thoughtfully deliberated a new form of collaborative government put into place by the signing of the newly crafted United States Constitution that would ultimately put the power in the hands of the people, separate the powers of government into three branches with a system of checks and balances, divide power between the states and the federal government, prescribe duties, scopes, and limits of said governments, and identify rights and freedoms of the people.

A More Perfect Union

In order to form a more perfect union, we the people can embrace the safe process that was used then and is still applicable today. We the citizens have the solution. We are empowered through the states, through federalism, with the necessary tools and authority to create a new era of constitutional viability and adherence.

Now, it seems, in our politically charged rhetoric, that adherents to each of our two political parties hold strongly to opinions of what the U.S. Constitution was, is, and will be. Some argue that the constitution is to be observed dogmatically, that is it is to be bound to as law, as written. Some in this group even proffer that the U.S. Constitution should no longer be changed. Others believe that this noble document drafted in the late 1700s is living; In the same way that it represented the hearts and minds of the American people then, the Constitution can and should be changed to reflect the hearts and minds of Americans today. The answer to what the Constitution is and will be lies in the truth that gratefully each viewpoint is half right. Any legal system born out of a viable constitution must be adhered to fully as it is written as this is the foundation of any society. It is that which shapes all institutions, political debates, public discourse, and identifies the legal rights of the individual. And it is also a framework for each ensuing generation insofar as it breathes life into all of our security and liberty, and is, if only allegorically, living. To be clear, The United States Constitution is a document that can be changed. But it is only to be changed by “the people” and never altered based on political whims or judicial activism.

The remedy for the missing halves is a recognition and implementation of the process of convention as outlined in Article V of the U.S. Constitution that empowers an assembly of representatives from each of the sovereign states to enact their will upon the federal government. This is how the federal government was created by the states in 1787 and this is how the federal government can be improved by the states today.

It is important for us to understand the role of the federal government within the actuality of the United States of America. We are 50 individual states each organized and governed by her own people. And collectively the people of the 50 states desire that one federal government, subject to the states and their citizens, oversee security and liberty, which are paramount in the minds of all Americans. The people have created a form of governing that exists simultaneously, with veritable tensions, at the national, state, and local levels. This was what the people of the early American colonies wanted in the late 1700s and this is what we continue to desire today. And when any one of these levels is out of balance, as it is with our federal government today, the voice of the American people is heard through ballot boxes and political polling, and 80% of us are displeased with the way things are.

For too long, we the people have neglected our collective voice, our collective ideas, our collective solutions. In this vacuum our silence has been heard as approval by those who strive to do good in a system too large,

¹³ James Madison, Journal of the Federal Convention, Vol 1, Vol 2, 1787

© Path To Reform, 2020

PathToReform.org

Page 5 of 6

too bureaucratic, too far from home, and too far from its purpose of safeguarding liberty and security while overseeing the practices of the laws between the states. For too long our state governments have relinquished to the federal government their own powers enumerated in the U.S. Constitution and in doing so we have become a land of people who are governed by government and no longer a people who govern through government. The distinction should not be lost on current State Legislatures or Governors who can and should lead the charge in enacting the will of the people.

Convening an Old Process in a New Way

The question today is, “do we live in the republic instituted by the Constitution?” Certainly, we’re in a technological and different time and society. But do we the people enjoy the same liberties identified in our founding documents and noted as coming from our Creator? Or has a more intrusive and abusive government usurped our constitutional federal republic? Are ‘we the people’ respected by this government as the defining voice in American governance or not? Who decides?

The Colonies, like the people, had individual identities and characteristics. And yet they, at the directive of the people, managed to convert themselves into states under a Union. Today, we the leaders of our state governments, can confidently stand on the shoulders of greatness and knowingly act in a legally sanctioned and purposeful way to bring a remedy to our nation’s plights. We stand on solid footing with the Mayflower Compact (1620), First & Second Continental Congress (1774 & 1775), and Constitutional Convention (1787) acting as our guides.

As for recent political leaders echoing the voice of our country’s early statesmen, President Barack Obama said, “We, the People, recognize that we have responsibilities as well as rights; that our destinies are bound together; that a freedom which only asks what’s in it for me, a freedom without a commitment to others, a freedom without love or charity or duty or patriotism, is unworthy of our founding ideals, and those who died in their defense.” And President George W. Bush proclaimed, “Our founding fathers understood that our country would survive and flourish if our Nation was committed to good character and an unyielding dedication to liberty and justice for all.”

Bold and tenacious leaders have long searched for a way to enshrine into our American Government the Declaration of Independence’s assertion that “governments are instituted among Men, deriving their just powers from the consent of the governed.” Yet since 1788 there has been a great disparity in where these bold leaders act from. While the Constitution, including Article V, grants The States equal power with the national government, the United States Congress has made nearly 12,000 amendment proposals to the Constitution with 33 of the proposals being voted on by The States with 27 of them formally passing. Meanwhile, The States have never fully embraced their authority to formally propose an amendment to the United States Constitution. Article V equally empowers the state governments and the federal government equally, but only one has been faithful in her duties, and by all accounts, the voters are pleased with neither, the federal government for doing too much and the albeit, unknowingly, The States for doing too little.

As President, Franklin D. Roosevelt understood his obligation saying, “Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and senators and congressmen and government officials, but the voters of this country.” There are no leaders closer to the voters than those in The States. And we can all be assured that the voters will have great confidence in their local leaders as they work to improve the work and reputation of “the government” and its failed leadership in Washington D.C. We, the people, may not know it yet, but the leaders in our State Legislatures are our last best hope for America. And our next best step is to call for a Convention of States to discuss old and new ideas, debate current and future policies, and provide guidance to ongoing national discussions, all to enact the will of the people and improve the government that works to provide for their liberty and security.



PROTECTIONS FOR A “NO RUNAWAY” ARTICLE V CONVENTION:

- A RESPONSE TO THE RUNAWAY SCENARIO, BY ROBERT NATELSON
- ARTICLE V RUNAWAY: A BRIEF EXPLANATION, BY MIKE KAPIC
- MODEL POLICY FOR DELEGATE LIMITATION ACTS
- LIST OF CURRENT DELEGATE LIMITATION LAWS
- INTRODUCTION TO THE RATIFICATION OF THE TWENTY-FIRST AMENDMENT, BY EVERETT SOMMERSVILLE BROWN
- AMERICA’S LAST CHANCE: AN ARTICLE V GENERAL CONVENTION FROM THE AMERICAN CONSTITUTION FOUNDATION

Tab 2

A Response to the Runaway Scenario

By Robert G. Natelson

Professor of Law (ret.), University of Montana

Senior Fellow in Constitutional Jurisprudence, the Independence Institute

INTRODUCTION

Many Americans favor constitutional amendments to correct dysfunctions in the federal government. Because experience shows that Congress is unlikely to propose such amendments, there is growing interest in the Constitution's procedure enabling the states to propose an amendment through a mechanism the Constitution calls a "convention for proposing amendments."

A convention for proposing amendments has never been held. While there are several reasons for this, a primary one has been the "runaway" scenario. This scenario was first widely popularized in the 1960s and 1970s by left-leaning politicians, judges, and activists eager to block amendments overruling liberal Supreme Court decisions. It is ironic that a handful of right-wing groups have swallowed their arguments.

This memorandum discusses their arguments. However, it is no substitute for careful reading of the essays at the **Article V Information Center**, <https://articlevinfocenter.com/>.

CONSTITUTIONAL WHACK-A-MOLE

The essence of the "runaway" scenario is that a convention for proposing amendments would be a "constitutional convention" in which the commissioners (delegates) could disregard limits on their authority and push America further along the road to perdition. The scenario seems to have misled enough people to effectively disable a core mechanism in our Constitution's system of checks and balances.

As explained below, the "runaway" writings display deep ignorance of both history and law. Some are so confused and/or frantic that you often have to re-state their objections before even beginning to rebut them. If you do rebut them, you find that doing so is like a game of Whack-A-Mole: No sooner do you dispose of one objection than another pops up. New objections often contradict earlier ones.

THE OBJECTIONS

Although Article V alarmists are always inventing new objections, thus far their principal ones are as follows:

- The composition and protocols of an amendments convention is a complete mystery.
- An amendments convention is a constitutional convention, inherently sovereign, and “like the first constitutional convention” it may exceed its mandate—that is, “run away.”
- Congress has power, either incidental to its call or pursuant to the Necessary and Proper Clause, to set the convention’s agenda, rules, and powers, irrespective of the desires of the applying states, thereby enabling the Washington, D.C. establishment to re-write the Constitution.
- Even if the convention proposes useful amendments and the states ratify them, they will make no difference. (This is sometimes stated as, “They aren’t following the Constitution anyway.”)

Right-wing alarmists add that the existing Constitution is sufficient to deal with the current federal crisis if we follow the strategy of electing conscientious people, repealing the 17th amendment, and reclaiming the 10th amendment. Because those alarmists have been employing this strategy without success for over 60 years, their argument will not be considered further.

THE CONSTITUTIONAL HORROR NOVEL

If you read the alarmists’ objections carefully, you will see that several contradict each other. For example: If it is true that we don’t know the protocols of an amendments convention, then how do we know we can’t control it? And if such a convention is by definition uncontrollable, then how can Congress control it? And, if amendments will make no difference, then why should we care what the convention proposes? It is clear, though, that the purpose of these objections is not consistency or accuracy, but opposition.

Unfortunately, the runaway scenario does frighten people. Its components work together to form a structure like the plot of a horror novel: The plot is that the innocent convention advocate resorts in good faith to the Founders’ defense against the federal octopus only to find that his efforts have strengthened the tentacles’ grip. It’s the stuff of scary fiction and of nightmares.

But like a nightmare or horror novel, the runaway scenario is not real. In the words of Professor Ann Diamond, it’s but a “rhetorical ploy to terrify sensible people.”

FIRST OBJECTION: YOU DO NOT KNOW THE HORRORS BEHIND THIS DOOR!

This claim is that the composition and protocols of an amendments convention are complete mysteries. The claim originated in a short 1963 article by Yale law professor Charles Black. But the article was not a piece of serious research; it was a polemic opposing some amendments then under public consideration. Yet convention opponents have been citing it ever since.

Black was wrong: There is no mystery. An amendments convention is a “convention of the states,” the same kind of gathering occurring 40 times in U.S. history. Its make-up and basic procedures were well-established even before the Constitution was written. They were used in the 2017 Phoenix Balanced Budget Planning Convention.

Why did Black and his successors not know that an amendments convention is a convention of the states? Whatever the reason, they overlooked:

- a vast number of Founding-era records designating an amendments convention as a “convention of the states;”
- a U.S. Supreme Court case using the same label;
- a Tennessee Supreme Court case (*ditto*);
- legislative applications using the same language;
- the parliamentary common law, a long-established set of rules for group decision making;
- newspaper articles from the late 18th through the early 20th centuries; and
- two prior articles in Professor Black’s own *Yale Law Journal*!

SECOND OBJECTION: IT MIGHT HAPPEN AGAIN AS WE IMAGINED IT HAPPENED BEFORE!

Otherwise stated, “An amendments convention is a constitutional convention. We’ve only had one constitutional convention and it exceeded its mandate. It ‘ran away’ and that could happen again.”

A very quick answer to this claim is: “This isn’t 1787. That convention met in secrecy and no one could follow its proceedings. Today the convention proceedings would be open and televised, so state lawmakers could watch them 24/7. The minute a commissioner stepped out of line, he’d get a call from home telling him, ‘Straighten up or get recalled.’”

One advantage of this response (besides the fact that any fair person can see it is true) is that it turns against the runaway alarmists their own argument that conditions have changed since 1787. Realistically, though, it’s unlikely that any proposal outside the convention’s authority would survive a single “out of order” objection from the convention floor.

There are many other responses—in fact, so many you can easily get tied up in “protesting too much.” I’ll list them and you can take your choice:

First: An amendments convention is not a “constitutional convention.” That’s a 20th century misnomer. It’s a misnomer because it implies that the convention may re-write the entire Constitution. But Article V explicitly limits the convention to proposing “Amendments to THIS Constitution.”

Of course, someone might respond by saying, “Any gathering to addresses changes in constitutional rules is a ‘constitutional convention.’” The answer is, “Then why did you say we’ve had only one constitutional convention? By your definition, we had ‘constitutional conventions’ in 1754, 1774, 1780, 1786, 1814, and 1861. And none of them ran away.” This can leave opponents flatfooted because, of course, they are invariably ignorant of those other conventions.

Second: The 1787 convention did not run away. The claim that it did so originated as a smear against the Framers by the Constitution’s opponents. It relies on the assumption that the Constitutional Convention was called by the Confederation Congress and received its powers from the congressional call. But this is wrong. The Constitutional Convention was called by Virginia in December, 1786 and empowered by the states themselves (under their reserved powers) to re-write the entire political system. The February 21, 1787 congressional resolution the alarmists cite as the “call” was, by its very wording, a mere expression of “opinion.”

Third: If we’ve had 40 conventions of states and only one exceeded its charge, then those are pretty good odds, aren’t they? Especially since many of those 39 were much more recent than the 1787 convention.

Fourth: The Electoral College is a kind of convention. It’s chosen for a specific purpose and empowered directly by the Constitution. Should we stop holding presidential elections because the Electoral College might run away?

Fifth: No amendment outside the convention’s authority will go to the states for ratification because Congress will refuse to choose a “mode of ratification.”

Sixth: Even if the convention exceeded its call and somehow got to the states for ratification—so what? No amendment is effective unless three fourths of the states ratify it, *including the same states the convention disobeyed!*

THIRD OBJECTION: MANY CONSTITUTIONAL “SCHOLARS” SAY THE CONVENTION CAN’T BE LIMITED

This objection is supported by (1) citing older articles (1960s – 1980s), (2) circulating flyers claiming conventions are sovereign and cannot be limited, and (3)

presenting testimony from people who purport to be Article V scholars but are not. Let's take each in order:

Older articles. During the 1960s through 1980s law professors wrote several articles claiming a convention cannot be limited. They all overlooked the relevant materials listed in the response to the first objection. Those articles were corrected by a leading book, Russell Caplan's *Constitutional Brinksmanship*, published in 1988 by Oxford University Press.

To my knowledge, every scholar publishing articles or books on the subject during the 21st century agrees that a convention can be limited. They include University of San Diego Professor Michael Rappaport, Middle Tennessee State University Professor John Vile, former U.S. House of Representatives counsel Michael Stern, and myself. As far as I know, since 2000 no scholar has contradicted this conclusion in any academic journal.

The “convention can do anything” view. This view directly contradicts established constitutional law. The established constitutional law is that when assemblies act under Article V, they derive their authority exclusively from the Constitution, and their power is limited accordingly. To take one example: A state convention commissioned to consider only a particular amendment can be limited to that purpose. *In Re Opinions of the Justices*, 204 N.C. 306, 172 S.E. 474 (1933). The courts can stop any proposed amendment outside the convention's authority.

The John Birch Society (JBS) has circulated a flyer claiming that conventions are inherently unlimited and citing *Corpus Juris Secundum*, a legal encyclopedia. The flyer is legal gibberish. I've written a legal memorandum for the Convention of States movement dissecting it. Incidentally, you should never accept *any* JBS legal argument as true. They rarely know what they are talking about.

Testimony from “experts.” Throughout all of CoS's legislative hearings, opponents have *never* presented testimony from a scholar who has published Article V research in any academic journal. For example, the most common academic opponent, Georgetown law professor David Super has no publication credits on Article V. Before coming to Georgetown, he was a “progressive” political activist, and he has since retained that role.

Robert Brown, a JBS operative who introduces himself as a “constitutional scholar” has no relevant background or training. Before taking his current job with JBS he was a bicycle repairman.

FOURTH OBJECTION: THE CONVENTION COULD CHANGE THE RATIFICATION PROCESS

This argument is “Just as the 1787 convention changed the Articles of Confederation rule requiring that amendments be approved by all states, so a future ‘constitutional convention’ could change the rule that three fourths of the states must ratify.”

As any qualified constitutional lawyer can tell you, this argument derives from the planet Neptune:

- * It misinterprets the power of the 1787 convention, which met under the states' reserved powers and not under the Articles of Confederation;
- * it contradicts the specific words of Article V, which lays out how amendments to “this Constitution” must be ratified;
- * it contradicts 200+ years of Article V court decisions, which rule that every actor in the amendment process must follow the rules laid out in Article V; and
- * it defies reality: The convention has no military force nor even any existence after adjournment. How will it enforce its decree? Call out the army?

FIFTH OBJECTION: THE FRAMERS INSERTED THE CONVENTION PROCESS IN THE CONSTITUTION ONLY TO CORRECT DRAFTING ERRORS, NOT TO CORRECT ABUSES

This objection appears to originate with Robert Brown, the JBS operative, and it reflects the shortcomings in his own research. Constitutional Convention delegate George Mason of Virginia promoted the convention procedure at the Constitutional Convention specifically to correct federal abuse. The Article V Information Center has collected other Founding-Era sources to the same effect. See *The Founders Pointed to Article V as a Cure for Federal Abuse*, at <https://articlevinfocenter.com/the-founders-pointed-to-article-v-as-a-cure-for-federal-abuse/>.

SIXTH OBJECTION: CONGRESS IS THE PUPPETMASTER!

This objection originated with Professor Black. He asserted that Congress has power, either as incidental to its call or pursuant to the Necessary and Proper Clause (U.S. Constitution, Article I, Section 8, Clause 18), to set the convention's agenda, rules, and powers, irrespective of the desires of the applying states.

This was bad constitutional law then, and intervening court decisions have made it worse. First, the Necessary and Proper Clause does not actually give Congress additional power; it is, as Chief Justice Roberts and many others have

observed, merely a memorial that the Federal Congress, unlike the Confederation Congress, has powers incidental to those enumerated.

Second, the Necessary and Proper Clause authorizes the making of “laws.” Numerous courts have ruled that the Article V amendment procedure is not constrained by ordinary laws.

Third, the convention is not an entity covered by the Necessary and Proper Clause. Nor is Congress when calling the convention.

The objection is also wrong as a matter of *agency* law: As the California Supreme Court recently pointed out in an Article V case, one cannot have incidental power to invade the prerogatives of another. The Constitution granted state legislatures authority to force a convention to *bypass* Congress. Congress does not have incidental power to disable the mechanism designed to check it.

Some opponents round out this objection by saying that the Supreme Court has held Article V cases to be “non-justiciable”—that resolving all Article V issues is left to Congress, and the courts do not interfere. But courts at all levels have adjudicated at least 40 reported Article V cases, and objections to justifiability have been uniformly overruled.

SEVENTH OBJECTION: IT'S HOPELESS!

The claim here is that even if the convention proposes useful amendments and the states ratify them, they will make no difference.

This is historical nonsense. Constitutional amendments have been powerful tools for reform. This would be a very different country without the Bill of Rights, without amendments abolishing slavery, ensuring minorities equal rights, enfranchising women, and limiting the president to two terms.

It is sad but true that the judiciary and other branches of government usually respect amendments more than they respect many parts of the original Constitution.

TIME TO WAKE UP FROM THE NIGHTMARE

The Founders inserted the convention procedure for state legislatures to use—particularly in times of federal overreaching. If James Madison and John Dickinson were to come among us today, and we were to tell them of our current predicament, what would they say?

No doubt, they would ask if we had resorted to the state-driven process in Article V to correct the problem. And when we admitted that we had not—that we

had allowed ourselves to be gulled by alarmists and quacks—what would these Founders say then?

They would tell us that the whole mess was our own fault.

And they would be right.

PARTIAL BIBLIOGRAPHY

Treatise: THE LAW OF ARTICLE V: STATE INITIATION OF CONSTITUTIONAL AMENDMENTS (Apis Books, 2d. ed., 2020)

All of the following are available without cost in the Article V Information Center’s “Research/Resources” section:

<https://articlevinfocenter.com/researchresources/>

Is the Constitution’s Convention for Proposing Amendments a “Mystery?” Overlooked Evidence in the Narrative of Uncertainty, 104 MARQUETTE L. REV. 1 (2020)

Counting to Two Thirds: How Close Are We to A Convention for Proposing Amendments to the Constitution? 19 FED. SOC. REV. 50 (2018)

The Article V Convention Process and the Restoration of Federalism, 36 HARVARD J. L. & PUB. POL. 955 (2013)

Founding-Era Conventions and the Meaning of the Constitution’s “Convention for Proposing Amendments,” 65 FLA. L. REV. 615 (2013)

Proposing Constitutional Amendments by Convention: Rules Governing the Process, 78 TENN. L. REV. 693 (2011)

AMENDING THE CONSTITUTION BY CONVENTION: PRACTICAL GUIDANCE FOR CITIZENS AND POLICYMAKERS (Independence Institute, 2012)

AMENDING THE CONSTITUTION BY CONVENTION: LESSONS FOR TODAY FROM THE CONSTITUTION’S FIRST CENTURY (Independence Institute, 2011)

AMENDING THE CONSTITUTION BY CONVENTION: A MORE COMPLETE VIEW OF THE FOUNDERS’ PLAN (Independence Institute, 2010)

American Conventions



Article V Runaway: A Brief Explanation – July 2021

A few claim that Article V's "...shall call a convention for proposing amendments..." could lead to a bad "runaway."

The "runaway" originated in 1951 by US Rep Patman (TX-D) attacking the attempt to repeal the 16th Amendment by state convention. He coined, it could "rewrite the whole Constitution,"

The term "constitutional convention" is not found in any 18th or 19th century state application or any court decision.

The claim is called the "runaway Scenario" and has almost no basis in history or law, needlessly frightening Americans. Madison noted our Constitution was unique and, "it was incumbent on their successors to improve and perpetuate."

Progressives needed to neutralize the Article V movement to protect their Court & government expansion gains.

In 1901 a congressional staff compiler gave the erroneous title "constitutional convention" to a state legislative resolution, and after 1903, a few resolutions actually used that term instead of *amending convention*.

Of the nearly 650 recorded conventions over 400 years, no evidence of a 'run away' can be found.

The principle of Article V is for the people, through their states, to bypass their governor, the President, and Congress (except to set the date and place) to PROPOSE changes to the Constitution's blueprint of their government.

Article V's second clause insured that Congress could not control the process of repairing a dysfunctional government.

What changes at an amendatory convention? Nothing: It only *proposes*, debates, votes, and forwards results.

Congress has attempted 12,150 amendment *proposals* with 33 being sent to states of which 27 have been approved.

If a 'runaway' were possible by the states, why hasn't Congress also 'runaway' and changed the Constitution on its own?

The Electoral College and Article V conventions are controlled by states, yet the EC has not been accused of a "runaway."

Since 1791, Congress has received enough state applications to have called eleven conventions & yet ignored them all.

Arguing against an Article V convention disables one of the Founders constitutional *checks* on bad government.

Conventions were held in the founding era, on average every 3 ½ years, codifying the process into the Constitution.

There is widespread support for amendments such as term limits and tax/spending constraints that Congress is not motivated to propose through Article V's first clause, leaving the second clause as the only solution.

The Bill of Rights & Article V's first two clauses protect Americans from government. Article V's second clause protects we the people from Congress.

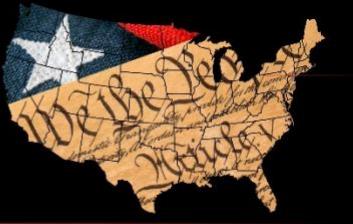
Article V is a federalism feature of the states to check the national government.

Congressman Larry McDonald (GA), JBS Chairman, led an attempt by both clauses of Article V when he died in a plane crash. Known as the Liberty Amendment, it is in the House Congressional Record— Oct 9, 1975

Runaway prospects: Article VII & 21st Amendment ratification (52 conventions), 1814 & 1861 produced amendments.

The claim that only Congress should amend the Constitution because the convention process has never been used, ignores the scholarly and historical analyzed records of 400 years.

American Conventions



Why States Should Pursue an Article V Amending Conventions & Amendment Examples – July 2021

The few examples below are selected SCOTUS rulings that have impacted the Founders ‘intent’ and distorted the Constitution thereby enlarging government beyond ‘limited’.

- *Gibbons v. Ogden* (1824) began the redefinition and expansion of the commerce clause.
- *Prigg v. PA* (1842) found slaves arrested across state lines Constitutional, superseding state laws.
- *Dred Scott v. Sandford* (1857) ruled black people had no rights under the Constitution.
- *U.S. v. Dewitt* (1869) Congress can meddle with trade under the commerce clause when its “necessary & proper.”
- *Langnes v Green* (1931) found that ‘discretion’ means that those in power are exempt from obeying any law.
- *Schechter Poultry v. U.S.* (1935) expanded Congress’ implied powers under the Necessary & Proper clause.
- *US v. Butler* (1936) misconstrued the welfare clause, opening unlimited unconstitutional taxing, spending & debt.
- *Helvering v Davis* (1937) ruled that Social Security was only a revenue source on one end and welfare program on the other.
- *U.S. v. Darby* (1941) ruled Congress has power to regulate intrastate activities if they have a *substantial* effect on interstate commerce.
- *Wickard v. Filburn* (1942) ruled the government could regulate noncommercial activity via the commerce clause.
- *Korematsu v. U.S.* (1944) ruled 6-3 that detention in a concentration camp was “necessary” and not a race issue.
- *Everson v. Board of Education* (1947) “wall of separation” was ‘codified’ by atheist Justice Black misconstruing Jefferson’s Danbury letter regarding church and state.
- *Chevron v. NRDC* (1984) ruled agencies prove by ‘deference’ their regulations are Constitutional themselves- usurping *Madison v Marbury* (1803),
- *So. Bay...Church v Newsom* (2020) ruled churches are not exempt from government attendance restrictions (while other commercial organizations are exempt)
- *Jane Roe v. Wade* (1973) ruled against state requiring abortion doctors to have admitting privileges.
- *Bostock v. Clayton County* (2020) codified in law the abolition of male/female genders without it being a law.

SCOTUS has successfully injured the American people who have limited recourse for their actions.

The DC culture has enabled politicians, special interests, the three Branches, & the 4th branch (bureaucracy) to control the people, their state legislators and basic American institutions with graft, corruption, debt, and a loss of our power.

The Declaration and Constitution lay a ‘surrendered power’ for a limited government with the consent of We the People.

JBS/Eagle Forum’s only ‘evidence’ that an amending convention will destroy our Constitution is that “it’s a bad idea.”

With government not listening to the people & Congress at ~10% approval, it is time to declare our intentions for a return to federalism. *Only our State Legislators can save our Constitutional, federal, republic!*

Suggested Amendments to Consider:

Balanced Budget Amendment

Limit terms on Congress

Limit terms on all federal judges

Limit fed tax/spend by fixing welfare clause

Limit regulatory power by fixing commerce clause

Allow states to override Supreme Court ruling

Require Congressional approval of federal rules that exceed a determined percent of GDP

States to approve raising the national debt

Super majority of states required to raise taxes

Repeal the 16th Amendment

Repeal the 17th Amendment

Godspeed, America

Set SCOTUS at nine justices

Clarify Executive war powers

Simplify Article V

Tax filing day the day before elections

Pro-life decisions by states

Allow states to overrule federal law, regulation, or executive order.

Limits on emergency mandates

All Fed Laws Preamble (meets Constitutionality)

No state bailouts

No exemptions for Congress

Hunt For Liberty.com

ARTICLE V CONVENTION OF STATES COMMISSIONER OATH, INSTRUCTIONS AND RECALL

No Commissioner from [INSERT STATE] to an Article V convention shall have the authority to vote to allow consideration of or vote to approve an Unauthorized Amendment for ratification to the United States Constitution; and

Any Commissioner casting a vote to allow consideration or approval of an Unauthorized Amendment or Article V Convention rules that are in conflict with, one-state one-vote and a majority-vote to propose an Amendment, shall be subject to recall by the State Legislature or its authorized representative(s) and face [civil or criminal] charges; and Every candidate for Commissioner or Alternate from [INSERT STATE] to the Article V convention shall be required to take the following oath:

[Suggested language] ["I do solemnly swear (or affirm) that to the best of my abilities, I will, as a Commissioner or Alternate to an Article V convention, uphold the Constitution and laws of the United States of America and the State of [INSERT STATE]. I will not vote to allow consideration of or to approve any Unauthorized Amendment or Article V convention rules that are in conflict with one-state one-vote vote and a majority-vote to propose an Amendment. I acknowledge that violation of this oath may result in my recall and [civil, criminal] penalties."]

The State Legislature [or an official or committee authorized by a Resolution of the State Legislature] shall certify in writing to the Article V convention the selection of Commissioners and Alternates, the recall and replacement of Commissioner[s] with Alternates[s] of [INSERT STATE]; and

[Optional Language] Any commissioner who violates the oath contained in this section shall be subject to [the civil, criminal penalty] provided for by [INSERT STATE] law; and

This act shall take effect 60 days after its passage.



States with Delegate Limitation Legislation for an Article V Convention

	State	Passed	Linked Legislation
1.	Alaska	2016	HCR 4
2.	Arizona	2017	HCR 2022
3.	Florida	2014	HB 609
4.	Georgia	2014	HB930
5.	Indiana	2013	SB 224
6.	Louisiana	2018	HCR 4
7.	North Dakota	2015	HB 1441
8.	Oklahoma	2017	HCR 1007
9.	South Dakota	2015	HB 1069
10.	Tennessee	2014	SB 1432
11.	Texas	2017	SB 21
12.	Utah	2014	HB392
13.	Wisconsin	2017	AB 165
14.	Wyoming	2017	HB50

INTRODUCTION

THE proposal by Congress that the question of the repeal of the Eighteenth Amendment should be submitted to conventions in the states, instead of to state legislatures, as in all previous instances, marked an important innovation in American Government. Americans are quite familiar with the convention idea, for it has played a large part in their political and social life. A convention drafted the Constitution itself, and conventions in the states, called for the express purpose, ratified it. Conventions have drafted state constitutions and have met to revise them. Every four years nominating conventions are called to name the presidential candidates of the respective political parties. Yet almost one hundred and fifty years elapsed between the calling of conventions in the states to ratify the Federal Constitution and the first use of the convention method in amending that document. Attempts to do so were made at various times, but to no avail.¹ The Corwin amendment of 1861, which provided that "no amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or to interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State," although submitted to the legislatures of the several states, was "ratified" by a constitutional convention in Illinois,² an action which probably would have been held null and void if tested in the Supreme Court.³ There was much contemporaneous criticism of the action of Illinois on two grounds: that the proposed amendment had not been submitted to conventions and that the convention in Illinois had been called, not to pass upon an amendment to the Federal Constitution, but to revise the constitution of the state.⁴ Since the proposed amendment was not ratified the direct issue was never raised.

Much of the criticism of the Eighteenth Amendment was based on the claim that its ratification had not properly reflected the opinion of the people of the country. The point was constantly emphasized that no change in the Constitution vitally affecting the habits or the morals of the individual citizens ought to be made without recourse to conventions called for that specific purpose. The platforms of the two major parties in the presidential campaign of 1932 recommended that a repeal amendment be submitted to conventions. The Republican plank on this subject read: "Such an

amendment should be promptly submitted to the States by Congress, to be acted upon by State conventions called for that sole purpose . . . and adequately safeguarded so as to be truly representative." The Democratic plank differed little from the Republican, so far as procedure is concerned. It was as follows: "We advocate the repeal of the Eighteenth Amendment. To effect such repeal we demand that Congress immediately propose a constitutional amendment to truly representative conventions in the States called to act solely on that subject."

¹ See Herman V. Ames, *The Proposed Amendments to the Constitution of the United States*, pp. 286-287; *Proposed Amendments to the Constitution*, 69th Congress, 1st Session, Sen. Doc, No. 93, and 70th Congress, 2d Session, House Doc, No. 551, p. 199. Also 71st Congress, 2d Session, Sen. Doc, No. 78, wherein is given a compilation of applications to the Senate by the legislatures of various states for the calling of a constitutional convention for the purpose of proposing amendments. The classic treatise on the general subject is John A. Jameson, *Constitutional Conventions*. See also Everett S. Brown, "The Procedure of Ratification," 185, *Annals of the Academy of Political and Social Science*, 1936, pp. 85-91.

² Ames, *op. cit.*, pp. 196, 286; *Documentary History of the Constitution*, 518-519.

³ Cf. *Havjke v. Smith*, 253 U. S. 221, 64 L. Ed. 871. *United States v. Sprague et al.*, 282 U. S. 716, 75 L. Ed. 640.

⁴ See the remarks of Senator Ashurst, *Congressional Record*, 72d Congress, 2d Session, 4151.

In accordance with this latter pledge Senate Joint Resolution 211 was introduced by Senator Blaine of Wisconsin on December 6, 1932. It proposed submitting the question of repeal of the Eighteenth Amendment to conventions in the states.⁵ The report of the Committee on the Judiciary, to which the resolution had been referred, was printed in the *Congressional Record* on January 12. The resolution had been amended by the committee to provide for the submission of the proposal of repeal to legislatures of the states, instead of to conventions.⁶ This proposed change in procedure immediately aroused the criticism of officers of associations which had fought for years to persuade members of Congress to submit a repeal amendment to conventions in the states. Charles S. Rackemann, president of the Constitutional

Liberty League, in a letter of January 9, 1933, to Senator Walsh of Massachusetts, wrote: "The proposal that the amendment should be referred to State legislatures comes as a complete surprise. We had supposed that the plan of referring this question, so important in its relations to the fundamental principles of the Constitution, to conventions of the people meeting in the several States had received practically unanimous support."⁷ Jouett Shouse, president of the Association against the Prohibition Amendment, protested in similar vein. After referring to the platform pledges of the two major parties, he continued: "It would seem, therefore, wholly improbable that Congress in submitting the resolution would flaunt these specific platform promises and would refer it for action to legislatures instead of to conventions. . . . Moreover, it is obvious that the only method whereby popular expression on this proposition, which deals so intimately with the life and habits of the people, could be had is through the convention method of ratification."⁸ Similarly, R. H. Anderson, coauthor of the repeal plank in the Democratic Party platform, pointed out that the proposed ratification by conventions was the "one phase of the prohibition question upon which sentiment was unanimous in both Republican and Democratic conventions," and declared: "In this way the question would be divorced from all others and an expression of popular sentiment obtained upon one of the most controversial issues which has ever faced this country."⁹

In explanation of the amendment of the proposal by the Committee on the Judiciary, Senator Blaine said that at the moment there were over forty state legislatures in session. If the joint resolution should be acted upon by the then session of Congress it could go to these legislatures immediately for action; if the convention method should be agreed upon as the mode of ratification it was obvious, according to Senator Blaine, that ratification would be deferred about four years, or even more.¹⁰ He also emphasized the fact that the convention method would be an expensive one, involving large campaign expenses, as well as the cost of election of delegates and the holding of the convention. Time and expense could be saved by submitting the question to legislatures. So far as public debate was concerned, Blaine contended that the matter had been thoroughly discussed throughout the country. Replying to the suggestion that the Federal Government might pay the cost of holding an election for the purpose of electing delegates to the conventions in the respective states, Blaine

said that it was the consensus of opinion of the Committee on the Judiciary that there was no constitutional authority for the Federal Government to set up machinery throughout the country for the conduct of such an election.¹¹

⁵ *Congressional Record*, -jzi Congress, 2d Session, 64-65. "Ibid., 1621.

"Ibid., 1622. 'Ibid., 1622. 'Ibid., 4001. ¹⁰Ibid., 4005. "Ibid.. 4140.

Despite the opinion of the Committee and Blaine's argument in support of it, Senator Robinson of Arkansas, on February 15, 1933, offered an amendment to the resolution to change the method of ratification from state legislatures to conventions in the states.¹² In the debate which followed, much of the discussion was concerned with the power of Congress to provide by law for the election of delegates to the conventions in the states. Senator Walsh of Montana declared that such a suggestion was "contrary to the most fundamental principles upon which our dual system of government is founded."¹³ In this contention he was supported by such prominent senators as Robinson of Arkansas, Borah, Ashurst, and Glass. Senator Robinson expressed the opinion that, even if the power of Congress were conceded, any attempt of Congress to exercise it would result in the defeat of ratification in a large number of states.¹⁴ The Robinson amendment was then passed by a vote of 45 yeas to 15 nays,¹⁵ and the proposed amendment in its final form by 63 to 23.¹⁶

There was little debate in the House on the method of ratification. The most pertinent remark on the subject was that of Representative Celler of New York, who stated that in his belief the word "convention" as used in Article V of the Constitution precluded and repelled the idea that the conventions in the states could be governed by congressional fiat. Each state must set up its own procedure. There might be forty-eight types of machinery, which was unfortunate, Mr. Celler said, but it could not be helped.¹⁷ The joint resolution passed the House on February 20, 1933, by a vote of 289 to 121.¹⁸

The enrolled joint resolution was delivered on February 20, 1933, to the Secretary of State, Henry L. Stimson, who on the next day sent certified copies of it to the respective governors of the forty-eight states. During 1933 laws were passed in forty-three states (Georgia, Kansas, Louisiana, Mississippi, and North Dakota being the

exceptions) providing for action upon the proposed amendment. During that same year conventions were held in thirty-eight states, and all except one, South Carolina, ratified the amendment. In North Carolina the electorate voted for convention delegates, but also voted against holding a convention. Montana, Nebraska, Oklahoma, and South Dakota made provision for the selection of convention delegates in 1934, but Montana alone elected delegates and held a convention in that year. Ratification of the amendment was completed on December 5, 1933, and a certificate to that effect, as required by law, was signed at 6:37 P.M. by Acting Secretary of State, William Phillips.¹⁹

Perhaps the most outstanding feature of the repeal conventions is their lack of a truly deliberative character. The fundamental nature of a constitutional convention was placed squarely before the justices of the supreme judicial court of Maine in the request of the Senate of that state for an advisory opinion on the question: "Must a convention assembling in a state to pass upon an amendment to the Constitution of the United States and submitted by vote of the Congress to the action of conventions in the several states be a deliberative convention?" The justices replied: "A convention is a body or assembly representative of all the people of the state. The convention must be free to exercise the essential and characteristic function of rational deliberation. This question is, therefore, answered in the affirmative."²⁰

¹² *Congressional Record*, 72d Congress, 2d Session, 4148-4149. ¹³ *Ibid.*, 4148-4149.

¹⁴ *Ibid.*, 4154. ¹⁵ *Ibid.*, 4169. ¹⁶ *Ibid.*, 4231.

¹⁷ *Ibid.*, 45x5. ¹⁸ *Ibid.*, 4516.

¹⁹ See *Ratification of the Tiaenty-first Amendment to the Constitution of the United States*, Publication No. 573, Department of State (1934)- Also, Everett S. Brown, "The Ratification of the Twenty-first Amendment," *American Political Science Review*, XXIX (Dec, 1935), '005 1017.

A contrary view was expressed by the justices of the supreme court of Alabama. Replying to the question of whether the binding of delegates to abide by the result of the state referendum, as provided in the Alabama law, prevented the proposed convention from being a convention as intended by Article 5 of the Constitution of the

United States, the justices advised in the negative. They held that a convention was more truly representative when expressing the known will of the people, and they were "unable to see in the federal Constitution any purpose to prohibit a direct and binding instruction to the members of the convention voicing the consent of the governed."²¹

The lack of deliberation in the conventions followed as a matter of course from the nature of the elections at which delegates were chosen. As a rule, the choice of the voters was between delegates pledged for or against repeal, although in some states provision was made for unpledged delegates. Aside from the South Carolina convention, which was composed of delegates opposed to repeal, who voted against the ratification of the proposed amendment, the delegates favoring repeal were overwhelmingly in the majority. In only six of the thirty-eight states which ratified the Twenty-first Amendment were votes registered in the conventions against repeal, and in five of these the vote was almost negligible: Oregon, 5; Montana, 4; Washington, 4; New Jersey, 2; and Michigan, 1. Indiana was the exception. There the vote stood 246 to 83, and, moreover, in the Indiana convention a definite attempt was made by the opponents of repeal to elect their slate of officers to preside over the convention. Speeches were delivered in opposition to repeal. Indiana more than any other state adhered to the idea of a deliberative convention, although even in Indiana the law required from each delegate a pledge that he would, if elected, vote in accordance with the declaration made in his petition of candidacy.²² At the opposite extreme was Arizona, where the law providing for election of delegates to the convention declared that a delegate failing to carry out a previous pledge to vote for or against ratification would be "guilty of a misdemeanor, his vote not considered, and his office deemed vacant."²³ In Arkansas, in addition to the election of delegates to the convention, a popular referendum was held on the question of repeal. The law providing for the convention required the Secretary of State to tabulate the result of this referendum and to certify it to the chairman of the convention. The convention, in turn, was required to cast its vote for whichever side of the question had received a majority of the total number of votes cast in the entire state and immediately to adjourn.²⁴ In the Arkansas convention the amendment was adopted by a vote of 42 to 15, following which the unanimous vote of the convention was cast for repeal.²⁵ Even where there

was no definite pledge the delegates were expected to follow the election returns. Their position was clearly stated by Delegate W. W. Montgomery, Jr., of Pennsylvania, in the following words:

²⁰ *Maine Legislative Record*, 1933, pp. 598, 804; ><>7 *Atlantic Reporter*, 178, 180.

²¹ *148 Southern Reporter*, 107—in. See comments on these cases in *47 Harvard Law Rev.*, 130; *18 Minnesota Law Rev.*, 70-71; *37 Law Notes*, 121-122. The comments in the latter two articles differ as widely as the opinions of the justices in the two cases cited.

²² *Indiana Acts of the 78th Session*, 1933, p. 853.

²³ *Laws of Arizona*, 1933, p. 407.

²⁴ *Arkansas Acts of the 49th Assembly*, 1933, pp. 457-469.

²⁵ *Arkansas Gazette*, August 2, 1933.

"Men and women of this Convention, we are here under a solemn oath to do our duty. We are free agents to exercise our discretion; we are not pledged to any action. We must use our own conscience and our own judgment, as the Constitution of the United States requires that we shall do, in taking this most important action which we today are called upon to take; but in forming our judgment, irrespective of our former or present personal ideas, it seems to me proper to bear in mind that we, all of us, who are elected as delegates to this convention, asked and received the votes of the vast majority of the voters of Pennsylvania upon our representation that we favored the repeal of the Eighteenth Amendment, and that while we are free and are in duty bound to vote on this question as our conscience and our judgment dictate, we would I think be false if we fail to recognize as a very important influence in forming our conclusion, that position we took and upon which we individually invited the votes of the people, who elected us and sent us here."

President Goolrick of the Virginia convention summed the matter up tersely: "Conventions ordinarily are deliberative bodies but no deliberation is necessary where the people have spoken in plain and decisive manner on a public question, fully understood by every intelligent voter."

Because of the lack of deliberation the sessions of the conventions were correspondingly brief. New Hampshire required only seventeen minutes for her favorable action on repeal, and in no instance did the sessions of a convention extend beyond the space of a single day. Organization routine and roll calls consumed considerable time, but in this respect there were wide variations in practice. While some conventions were quite punctilious concerning the selection of committees, others regarded them as utterly unnecessary and a waste of time. So, too, did the conventions differ with respect to speeches. In some conventions there was little oratory; in others, brief extemporaneous talks were made; while still others were made the occasion of lengthy prepared addresses, principally on the history of the repeal movement.

In the speeches which were delivered certain points were commonly emphasized. One was the novelty and historical significance of the event. Governor Wilbur L. Cross of Connecticut, for example, in addressing the delegates in that state, said: "You may have been told that this is an historic occasion. Never before has this State ratified a proposed Amendment to the Constitution of the United States by means of a Convention." Similarly, attention was repeatedly called to the fact that for the first time an amendment was being repealed. Speaker after speaker in the various conventions stressed the theme of our federal form of government and deplored the granting to the National Government by the Eighteenth Amendment of a police power which ought never to have been taken from the states. For example, Henry Marshall, vice president of the Indiana convention, declared: "So it is that we go forward, an impressive parade of the sovereign states, to bring about the orderly and inevitable repeal of a prohibition law which does not fit into the American scheme of ordered liberty; which is not in accord with the fundamentals of human rights as enunciated by the fathers. . . ." In like vein, Delegate Stricker in the Ohio convention decried "the error of writing into the Constitution a police regulation originally reserved to the states and placing same under federal control, without regard to the wishes, habits and temperament of the people of the several states, and imposing upon a large majority of the people the tyranny of a small minority with all its attendant evils." Considerable space in the speeches was devoted to the problem confronting the states incident to their responsibility for the control of the liquor traffic. Opposition to the return of the open saloon was uniformly voiced.

Many of the conventions opened their sessions with prayer. The high note of Americanism was sounded by the Reverend Mr. Noll of the Indiana convention when he thanked God "for America, Our Flag and form of American Government, with the feeling that we should rather live in our beloved land in the most isolated district in a log house on a hillside, burn a tallow candle and draw our drinking water with an old fashioned well sweep than to live with every convenience in the most densely populated districts with all modern conveniences in any other nation on the earth."

Only a few of the conventions followed the example of Indiana in preparing a special set of rules to govern procedure. Florida did so, but also stipulated that Robert's Rules of Order should govern parliamentary practice where applicable and not inconsistent with the standing rules. Robert's Rules of Order were used in the conventions in a number of states. Others adopted the rules of their legislative bodies. Impatience with parliamentary rules of procedure and a desire to push the resolution of ratification with as little delay as possible were evident in some of the conventions. In Massachusetts Delegate Charles F. Ely moved the suspension of the rules. When President Young pointed out that as yet there were no rules, Mr. Ely moved the adoption of the rules of the House of Representatives, which was done.

Here and there delegates showed an ignorance of the niceties of parliamentary procedure. In the Washington convention when Delegate Robert Alexander moved that the convention adjourn *sine die*, Delegate W. W. Conner moved a substitute, explaining it as follows: "A great many of the States of the Union holding conventions, instead of adjourning *sine die*, have adjourned without day and that fixes it so if there is anything that might happen or that might be incorrect in our records, the chairman could call us back into session, therefore, I move you as a substitute that this convention do now adjourn without day. The only difference is when we adjourn *sine die* we absolutely cannot come back and the other is if we adjourn without day and we find anything wrong with our record the president can again call us into session." Whereupon Delegate Alexander withdrew his motion in favor of the substitute, which was then carried unanimously and the Washington convention adjourned *without day* instead of *sine die*!

When one considers that these conventions met in the year following a presidential election it is noteworthy how little political partisanship crept into their proceedings. It is true that here and there vocal tributes were paid to President Roosevelt and in

one instance, in the Alabama convention, the delegates went so far as to adopt a resolution approving and endorsing the plans for relief of the administration in Washington and extending to President Roosevelt their best wishes for continued success. Yet on the whole the movement for repeal cut across party lines, as is reflected by the remark of James W. Wadsworth to Alfred E. Smith in the New York convention: "Think of you and me on the same ticket!"

A modern note was introduced by the broadcasting over the radio of the proceedings of several of the conventions, and in the New York convention popular stars of the radio world were called upon to sing the Star Spangled Banner.

In the action of these conventions was written another chapter in the history of the Constitution. They accomplished the purpose for which they were called and truly registered the will of the American people on a great national issue. Their detailed journals record the result of a popular referendum and will serve as a guide to future action in similar cases. But they also raise the important issue: Did these conventions justify the time and the expense incurred by them? Would it not be preferable to amend Article V of the Constitution and to permit the voters in the respective states to register their decision directly at the polls? A good argument for the latter alternative can be found in the journals of the repeal conventions.²⁶

²⁶ On this point see Charles S. Lobinger, "Some Obsolete Features of Our Federal Constitution," 72d Congress, 2d Session, Sen. Doc, No. 100, pp. 26-28.



America's Last Chance: An Article V General Convention

January 1, 2019

Executive Summary

The separation of powers, the secret to America's governing success, is on life support. Checks and balances, the glue that holds our country together, have eroded. WE THE PEOPLE are being replaced by 68 square miles, in Washington DC, of centralized special interests with governing power now in the grip of career politicians, unelected bureaucrats, and judges. Congress is increasingly cynical and unwilling to legislate. States, with over half of their annual budgets coming to them in the form of highly politicized federal grants, have become sub-units of the federal government. America, as we know it, is in trouble.

Our Founders understood the history of great societies, knew this would happen, and planned for it. Their plan, found in Article V of the United States Constitution, gives the states the power to impose reforms on the federal government without having to resort to war, revolution, secession, or nullification. It is the only constitutional, legal path to restore government to WE THE PEOPLE. **How do we do it?**

State legislators across the nation know the answer. They have submitted hundreds of applications to Congress to make the call for an Article V Convention and have been ignored. They are poised, they are nonpartisan in their desire to meet in Convention to consider solutions, they are experienced, and they love America. **Why haven't the states met in Convention?**

This white paper provides the answers to these questions and the politically-safe, time-sensitive solution that will empower our state legislators to take their rightful constitutional role in restoring parity in governing between the federal government and the states on behalf of WE THE PEOPLE.

Introduction

Do the states want to meet in Convention? The answer is a resounding yes!

State legislators have been unequivocal in their desire to meet in convention to discuss our nation's problems and propose amendments to address them: they began submitting Article V applications in 1789 and have submitted 437 since then. Two hundred seventy-eight applications from 42 states remain in force; and only one state, Hawaii, has yet to pass an Article V application. Over three dozen applications have been submitted by both Republican- and Democrat-controlled legislatures since 2010. Yet we still haven't had a Convention. **Why?**

Conventional wisdom holds that despite the continuous flow of Article V applications from the states to Congress throughout American history, there have never been enough applications addressing the same subject to reach the constitutionally-mandated two-thirds threshold needed for Congress to call the Convention. In 1993, however, former Department of Justice Attorney and St. Thomas University Professor of Law Michael Stokes Paulsen conducted an aggregation study and found valid, active applications for an Article V General Convention from 45 states, 11 more than the 34 required for the Convention to be called. Paulsen presented his findings to Congress and was ignored.

Or was he? Although Congress failed in its responsibility to call the Convention, a flurry of Article V activity ensued in the wake of the Paulsen aggregation. Naysayers began to spread fear, uncertainty, and doubt about the safety and legitimacy of the states meeting in convention. This opposition has come primarily from those who benefit from the status quo and those who have fallen prey to their scare tactics, rather than knowledgeable, principled objectors.¹ States began rescinding their applications, with enough eventually doing so to bring the count below the 34 applications required to call the convention.

To quell “runaway convention” fears, Article V advocacy organizations began to form around various renditions of a “limited convention,” at which only certain amendments, as stipulated in the applications aggregated to trigger the call, could be discussed and sent to the states for ratification.

It was only after Congress began receiving pressure from these advocacy organizations—nearly a quarter-century after having been approached by Paulsen—that it instituted a system in 2016 to track Article V applications.² Congress’ reluctance to appropriately discharge its duties surrounding Article V is further documented in a series of Congressional Research Service reports³ that hypothesize an active role in the proceedings of a convention the very purpose of which is to bypass Congress, and question whether Congress bears any obligation to even call the Convention.

After several years of lobbying, the Article V movement has been unsuccessful. ACF has the solution.

State legislators are now being lobbied by both professional lobbyists and grassroots activists arguing for an array of Article V amendments. Most, because of their subject matter, messaging, or both, have been perceived as too partisan, politically risky, or benefitting too few people to merit legislators’ limited time and attention. Consequently, no single effort has amassed enough applications to call the Convention.

Based on comprehensive research, a thorough application aggregation analysis,⁴ and the principals’ experience in the Article V movement, ACF has concluded an Article V Convention is achievable within the next two to four years using existing applications that can aggregate for a *General Convention*, one at which state legislators exercise their constitutional authority to set the agenda at the Convention rather than having it dictated ahead of time by language in the applications. ACF will work primarily with state legislative leaders to help them overcome the current inertia.

The ACF Model

The ACF model is built upon a comprehensive survey of political realities, constitutional scholarship, and legal opinion. While a thorough understanding of these matters is critical to properly lay this foundation, an in-depth exploration of the history and terminology of Article V is outside the scope of this paper. More information is available at ACF’s website, www.amconfdn.org.

Critical Key Terms

For this discussion, the most important concept to understand is the difference between a *general* and *limited* convention. Additional Article V terms and information are available at <https://www.amconfdn.org/glossary>.

- **General Convention:** At a *general convention*, the agenda is determined by the commissioned delegates, acting on the instructions given to them by their respective state legislatures, at the outset of the convention. No amendment is declared off-limits in advance by language in the applications. The very first application for an Article V Convention was for a General Convention and was passed by the State of New York to press for the Bill of Rights in 1789. It remains in force to this day.

. . . in the fullest confidence of obtaining a revision of the said Constitution by a General Convention . . . we, the Legislature of the State of New York, do on behalf of our constituents, in the most earnest and solemn manner, make this application to the Congress, that a Convention of Deputies from the several States be called as early as possible, with full powers to take the said Constitution into their consideration, and to propose such amendments thereto, as they shall find best calculated to promote

our common interests, and secure to ourselves and our latest posterity, the great and unalienable rights of mankind.⁵

- **Limited Convention:** A *limited convention* is commonly understood as one at which only certain amendments, as stipulated in the applications aggregated to trigger the call, may be discussed and passed to the states for ratification.

There is considerable divergence among constitutional scholars as to whether an Article V Convention may be limited in scope, and how such applications should be aggregated. Professor Robert Natelson of the Independence Institute contends that an Article V Convention may be limited, and “Congress has no choice...but to group [applications] according to subject matter.”⁶ Former Solicitor General & Assistant Attorney General Walter E. Dellinger, on the other hand, describes the assumption that Congress can call a limited-subject convention “erroneous,” and argues that “such an application must be considered invalid.”⁷ Advocates of illimitability note that Congress, when in session, has no limitation on amendments it may consider under the authority granted to it under Article V. They argue that since the purpose of Article V is to give the states parity with Congress, no limitations may be placed upon the states at a Convention called under Article V. They further note that Article V makes no provision for limitations to be placed on the Convention. Constitutional historian and former Department of Justice attorney Russell Caplan notes that the illimitability theory “holds the edge among constitutional scholars.”⁸

Strictest criteria approach

The ACF strategy uses the “strictest criteria” approach. In any political, scholarly, or legal endeavor, there is a diversity of opinion. At every decision point, ACF has opted to plan for the least favorable outcome. ACF has planned for opposition from Congress and the possibility of litigation in federal court.

ACF has surveyed a number of aggregation studies. One concluded that there are already 36 valid applications for an Article V Convention, and that Congress should call the Convention immediately. ACF, using its “strictest criteria” analysis, determined only 30, of 278, applications meet the criteria for aggregation. More details about the various aggregation studies are available at ACF’s website, <https://www.amconfdn.org/new-page-2>.

Congressional reluctance and litigation outcomes

While it is the requirement of Article V for Congress to call the Convention when noticed with 34 applications, based on the Congressional Research Service reports on Article V and Congress’ history, ACF believes Congress will stall or, as they did previously, ignore them. ACF’s strategy lays the foundation for a legal battle to assure the states are successful in getting to convention.

There are four possible litigation scenarios, based on three assumptions. First, the states are sufficiently motivated to hold the Convention and adequately organized and prepared to pursue litigation. As has already been established, the states are motivated. What has heretofore been absent is organization and preparation for litigation, which ACF stands ready to provide. Second, Congress will look for excuses to avoid calling the Convention, or attempt to insert itself into its proceedings in some way. Third, the interplay between the type of applications (limited vs. general) submitted by the states and the composition of the Supreme Court figures prominently in the likely outcomes.

- (1) The states file 34 or more limited applications. As has happened in the past, they are ignored, forcing the states to take action in federal court. Citing experts such as Dellinger & Caplan, Congress argues that they have no constitutional authority to call a limited convention. Whether the court hearing the case is composed of strict constructionists or jurists inclined to protect an expanded role for the federal government, **the states would most likely lose.**
- (2) The states file 34 or more limited applications. Congress calls the Convention, but as suggested in the CRS report, attempts to control it. In this scenario, the states would be forced to sue Congress for attempting to assume powers not specifically granted to it in Article V.

For the foreseeable future, strict constructionists will hold the majority in the Supreme Court, so the Court would most likely rule for the states in that Congress’ grab for authority does not comply with Article V, but

a court so composed would also likely hold that Congress has no authority to call a Limited Convention. Both the states and Congress lose, but **the states are the ultimate loser because there is no Convention.**

- (3) The states file 34 or more general applications. Congress ignores them, and the states sue in federal court. Because there is no limiting language providing Congress with a constitutional escape hatch, and because, for the foreseeable future, strict constructionists will hold the majority in the Supreme Court, the **states would most likely prevail.**
- (4) The states file 34 or more applications for a general convention. Congress calls the Convention but attempts to control it in some way. Because the majority of the Justices are strict constructionists, the court would support the General Convention and throw out Congress' demand for extra-constitutional power over the Convention and **the states would prevail.**

In light of the historical record and a careful assessment of the full range of scholarly opinions, ACF has concluded that the most effective strategy to prevent Congress from evading its responsibility to call the Convention and/or to control its proceedings is to (a) **focus its efforts and attention exclusively on applications for a General Convention**, and (b) **lay the foundation to prepare the states to be successful in litigation.**

The ACF Strategy

What Sets ACF Apart: Comprehensive non-partisanship and a strategy that addresses both the political and legal challenges for state legislators

ACF is the only Article V advocacy organization that has a strategy and resources to support state legislators beyond securing 34 applications. That strategy anticipates and plans for pushback from Congress and others attempting to prevent the states from exercising their authority under Article V. The ACF strategy includes the following:

- Secure the remaining applications necessary for Congress to make the call
- Support the states in notifying Congress to make the call
- Hold a preconvention assembly to prepare legislators to effectively participate in the Convention
- Facilitate the infrastructure for the actual convention (facility, communications, documentation, etc.)
- Provide the legal and administrative support to document and analyze proceedings
- Provide a comprehensive communications plan to notify the nation of all Convention activities and outcomes
- Support the states for any ratification litigation

ACF is the only Article V advocacy organization that is working for a General Convention. ACF exists for one purpose only: to bring about this Convention and support the states through the ratification of the amendments that come out of it. ACF's only agenda is to provide state legislatures a forum in which they can exercise their constitutional prerogative to set their *own* agenda. ACF is non-partisan in both name and practice.

While ACF considers these distinctive factors critical in facilitating the states' success, the organization stands ready to collaborate with all who support facilitating an Article V General Convention in a non-partisan manner. ACF will dissolve upon completion of its mission.

Counting to 34: How close are we to a Convention?

As mentioned in the previous section, in addition to surveying other scholars' work in this area, ACF has conducted an aggregation study using the "strictest criteria." ACF's criteria count those states with a valid general application, along with those that have an application that specifies a subject of special interest to the state but **does not contain limiting or exclusionary language.** Using these criteria, ACF has determined 30 states have submitted valid, active applications to Congress for an Article V General Convention. More detailed information is available at ACF's website, <https://www.amconfdn.org/new-page-2>.

Mobilize the states

ACF will work with state legislatures to remove limiting language from an existing application, or pass a new application for a General Convention, in order to secure the additional applications needed to reach the 34-state

threshold required to trigger a General Convention. ACF will then coordinate a unified notification to Congress from legislative leadership in these states—including the minority as well as the majority caucus, where possible—stating that they have a valid, active application for an Article V General Convention, and that they expect Congress to discharge its constitutional responsibility to call the Convention. Consistent with its “strictest criteria” strategy, ACF will also work to prepare the Attorneys General in those states to file suit in federal court to direct Congress to make the call, should the need arise.

Prepare & support the states

ACF will work with all 50 states to support legislators to effectively participate in the Convention. ACF will provide expert, non-partisan training regarding Article V topics such as delegate selection and oversight, Convention rules, amendment formulation, and the ratification process. ACF will also provide logistical support for the Convention itself, including facilities, communications, security, and media coverage. ACF will provide states with support all the way through the ratification of the amendments that are passed in the Convention.

Timeline: 2-4 years

ACF’s timeline is 2-4 years. Considering legislators’ other responsibilities, including having to campaign for reelection as often as every 2 years, it is difficult to sustain long-term legislative enthusiasm for any initiative, particularly in states with term limits. Several Article V advocacy organizations experienced this as their efforts began to stall in 2018. Additionally, there are those who believe that if this convention does not take place soon, the problems it is meant to address will become irreparable.

The most significant and historic event, next to the Convention itself, will be the ACF-sponsored Article V Pre-Convention Assembly. This will be the first time in the history of our nation the leadership of our 50 state legislatures has met. This event will allow state legislators to discuss rules for the Convention, meet their fellow legislators, and prepare for the Article V Convention.

After the Convention: Benefits to State Legislators

After the War for Independence, the states came together and created the federal government as a co-equal entity to handle functions that could be best provided by a national government: tasks like diplomacy and settling disputes between states. The states were never intended to be subservient to the federal government as they have become in many respects today. An Article V Convention is the constitutional vehicle to restore the states to their role as a check on federal overreach and champions of their citizens’ liberties and freedoms.

State legislators can realize the following tangible benefits from the Convention:

- Eliminate unfunded mandates and one-size-fits-all “solutions” dictated by unelected federal bureaucrats: state legislators can be empowered to respond to their own constituents instead of dutifully executing programs and having the majority of their budgets under the control of Washington.⁹
- End the forced subsidy of policy and program decisions made by their counterparts in other states.¹⁰
- Prevent Washington from using federal block grants to extort compliance in areas where it clearly has no constitutional jurisdiction.
- The states can be unleashed as fifty “laboratories of democracy,” learning from one another what works and what doesn’t, free to adapt to local conditions, and able to respond to changes on the ground much more quickly and effectively than the federal government can.
- Americans across the political spectrum are dissatisfied with Congress. Local control is a **winning issue with voters**, especially millennials. In overwhelming numbers, young voters want the poor cared for, consumers protected, and the environment kept clean. But in even larger numbers, they agree that the federal government is inefficient, wasteful, and untrustworthy.¹¹

Summary

- State legislators of both parties have demonstrated that they want to use the authority granted to them in Article

V to address their concerns and those of their constituents.

- Congress has shirked its constitutional responsibility to call a Convention; and the fear, uncertainty, and doubt spread by naysayers has successfully divided support for a Convention with limited-subject applications.
- Limited-subject applications are highly vulnerable to politicization and litigation.
- A General Convention is the fastest and safest legal and political path to a Convention.
- The states have already submitted to Congress, using ACF's strict criteria, 30 of the 34 applications needed to call a General Convention.
- ACF will assist states to secure the remaining needed applications, mobilize the states to notify Congress, file suit in federal court if needed, equip state legislators to effectively participate in the Convention, engage the media, and support the states up to and through the ratification of amendments.
- A General Convention is a safe, nonpartisan approach that provides an opportunity for state legislators to unite to impose badly-needed and widely-supported reforms on the federal government when Congress cannot—or will not—act.

A Call to Action

One of the founding principles that made the United States the most successful government in history was the concept that the power of the government comes from the *consent of the governed*. Our problem is not that a handful of bad legislation has become law. Nor is it the occasional self-serving politician. Our problem is excessive power has aggregated in Washington and our federal government represents special interests more than its people.

WE THE PEOPLE: our rights, our liberties, our future...they are in **our** hands. The only peaceful and legal means to rebalance power and impose badly-needed and widely-supported reforms is through an Article V Convention. **If we do not take this opportunity to define our future, someone else will do it for us.**

Endnotes

¹ Specific naysayer objections are identified and rebutted at ACF's website, <https://www.amconfdn.org/objections>.

² The Article V Records Transparency Act of 2016 arbitrarily begins recording applications submitted beginning in 1960, and is available at <http://clerk.house.gov/legislative/memorials.aspx>.

³ Links to Congressional Research Service Reports on Article V are provided at ACF's website, <https://www.amconfdn.org/article-v-library>.

⁴ It is assumed Congress will closely examine the language of applications to determine whether they can aggregate in sufficient numbers to meet the two-thirds (or 34-state) threshold for the call of a Convention.

⁵ Article V application by the State of New York, H.R. Jour., 1st Cong., 1st Sess. 29-30 (May 6, 1789).

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

⁷ Dellinger, Walter E. (1979), "The Recurring Question of the 'Limited' Constitutional Convention," 88 *Yale Law Journal*, 88, 1623-1640, p. 1640.

⁸ Caplan, Russell L., (1988), *Constitutional Brinksmanship: Amending the Constitution by national convention*, (New York, NY: Oxford University Press), p. 138.

⁹ To read testimony given by Utah Senate President Wayne Niederhauser on behalf of the Council of State Governments to the House Committee on Oversight & Government Reform's Subcommittee on Intergovernmental Affairs, please visit https://oversight.house.gov/wp-content/uploads/2017/04/Niederhauser_Testimony.pdf.

¹⁰ To learn more about how state labor law policies impact workers in surrounding states, please visit <https://news.illinois.edu/view/6367/204531>.

¹¹ Read *Millennials, the Politically Unclaimed Generation* at <https://reason.com/poll/2014/07/10/reason-rupe-2014-millennial-survey#.l1aq2yr:a5ca>.



RECENT CONVENTIONS OF STATES:

- ARIZONA BBA PLANNING CONVENTION SUMMARY
- ARIZONA CONVENTION RESOLUTION 1
- RESOLUTION OF THE ASSEMBLY OF STATE LEGISLATURES
- BYLAWS OF THE ASSEMBLY OF STATE LEGISLATURES

Tab 3

The Arizona Balanced Budget Amendment Planning Convention (AZ BBA).
19 states in attendance, 71 duly authorized state delegates, 4 days of work.

The first officially called Convention of States since 1861.

Work completed 9/15/2017.

Art V Rules Committee

- Summary of the rules:
 - Proposed rules for official Art V Convention. “will take the burden from the Art V Convention to do so”
 - Assure limited authority and scope based on applications. “shall not be amended or suspended, will not, cannot run away”

“My experience at this planning convention confirmed the virtue of the delegates sent by the states and their wisdom to uphold the principles of the constitution. In fact, the New Hampshire delegation would put their lives on the line to guard against a runaway convention, plus Oklahoma, Tennessee and Arizona would stand with them.”

“The decorum and atmosphere of the planning convention was like a legislative session; ordered, professional and congenial. Not like the rancorous setting of a political convention.”

- Outlining the duties of convention officers.
- Establish quorum and voting. “majority of the states present will constitute a quorum and one state, one vote will determine any decision.”

“This should encourage all states to attend even if the state has not passed an Art V application.”

- Other provisions are detailed on Heartland’s Constitutional Reform Center’s Website reporting information on the AZ BBA Planning Convention. Look for “Convention Resolution 1”

Art V Planning Committee

- Upon the receipt of the 34th application for a BBA Convention Congress is requested to call and convene the convention no later than 6 months.
- Request Congress to delegate to the states where the convention is to be held.
- The states are responsible for the cost of the convention.

- The states are encouraged to meet annually to assess the progress towards the goal of 2/3rd of the states and work on the logistics of an Art V convention.
- The states are encouraged to establish a process for the appointment of delegates. *“model delegate selection and standards are available on the Heartland’s Constitutional Reform Center’s Website reporting information on the AZ BBA Planning Convention”*

Limiting Outside Influence

- The AZ BBA Planning Convention drafted a strong statement guarding against special interest influence.
- *“The statement is available on the Heartland’s Constitutional Reform Center’s Website reporting information on the AZ BBA Planning Convention”*

And Most Importantly....

The creation of the Phoenix Correspondence Commission (**PCC**).

- Each state will have a voice in the process.
- Create a single point of contact with Congress. *“the states will speak in one voice, as a union of states to the national government”*
- Provide a process for legal representation, **if necessary**.

It was an honor to serve as a delegate and to deliver a “New Birth of Freedom” to these United States.

Neal Schuerer

Iowa Delegate to the Balanced Budget Amendment Planning Convention

Phoenix, Arizona September 2017 <http://www.azleg.gov/bbapc/>

319-551-3231 voice or text, nschuerer@outlook.com

Convention Resolution 1

PREAMBLE

ARTICLE 1 – Subject of the Convention

- 1.1 Convention Limited Authority
- 1.2 Temporary Rules
- 1.3 Initial Quorum
- 1.4 Prohibition on Amending or Suspending

ARTICLE 2 - Officers of the Convention

- 2.1 List and Duties of Officers
 - 2.1.1 Temporary President
 - 2.1.2 Permanent Officers
 - 2.1.2.1 Duties of the President
 - 2.1.2.1.1 Calling the Convention to Order
 - 2.1.2.1.2 Duty to Preserve Order and Decorum
 - 2.1.2.1.3 Authority to Enforce Rules
 - 2.1.2.1.4 Points of Order
 - 2.1.2.1.5 Committee Membership
 - 2.1.2.2 Duties of the Vice President
 - 2.1.2.2.1 Absence of the President
 - 2.1.2.2.2 Convention Manager
 - 2.1.2.3 Duties of the Secretary
 - 2.1.2.3.1 General Duties of the Secretary
 - 2.1.2.3.2 Journal Record of Proceedings
 - 2.1.2.3.3 Verbatim Record of Proceedings
 - 2.1.2.3.4 Numbering of Proposals
 - 2.1.2.3.5 Preparation of Calendar, Reports, and Amendments
 - 2.1.2.3.6 Preservation of Records

2.1.2.3.7 Necessary Deputies and Staff

2.1.2.3.8 Vote Tally

2.1.2.4 Duties of the Parliamentarian

2.1.2.4.1 Qualifications

2.1.2.4.2 Duties

2.1.2.5 Duties of the Sergeant-at-Arms

2.1.2.5.1 Convention

2.1.2.5.2 Committees

2.1.2.5.3 Deputies

2.1.3 Vacancy of an Officer

2.2 Election of the Officers

ARTICLE 3 – Quorums and Voting

3.1 Quorum

3.2 Voting

3.2.1 Voting by States

3.2.2 Majority Vote

3.2.3 Proposing an Amendment for Ratification

ARTICLE 4 – Committees

4.1 Rules Committee

4.1.1 Purpose of the Committee

4.1.2 Seating and Participation

4.1.3 Chair

4.1.4 Vice Chair

4.1.5 Sub-Committees

4.2 Amendment Committee

4.2.1 Purpose of the Committee

4.2.2 Seating and Participation

- 4.2.3 Chair
- 4.2.4 Vice Chair
- 4.2.5 Sub-Committees
- 4.2.6 Specific Issues Before the Committee
 - 4.2.6.1 State Participation
 - 4.2.6.2 Expert Testimony
- 4.3 Credentials Committee
 - 4.3.1 Purpose of the Committee
 - 4.3.2 Composition
 - 4.3.3 State Resolutions
 - 4.3.4 Recall Authority of the States
- 4.4 Additional Committees
- 4.5 Committee Debate

ARTICLE 5 – Sessions of the Convention

- 5.1 Composition
- 5.2 Rules and Procedures
- 5.3 Seating and Participation
- 5.4 Sessions
 - 5.4.1 Time of Meeting and Procedure
 - 5.4.2 Reading of the Journal
 - 5.4.3 Order of Business
 - 5.4.4 Prohibitions on the actions of the Convention
 - 5.4.4.1 Amending Convention Rules
 - 5.4.4.2 Proposing and Amending Amendment Language
 - 5.4.5 Voting Process
 - 5.4.5.1 Name of the State
 - 5.4.5.2 Votes Cast

5.4.5.3 Request for Leave

5.4.6 Additional Rules of Procedure

ARTICLE 6 – General and Miscellaneous Provisions

6.1 Costs of the Convention

6.2 Open Meetings

6.3 Adjournment

CONVENTION RESOLUTION 1

1 **Resolution creating rules of procedure for a future convention to propose a balanced budget**
2 **amendment to the Constitution of the United States convened pursuant to Article V of the**
3 **Constitution.**

4 **PREAMBLE**

5 Pursuant to Article V of the United States Constitution, we the delegates of the several
6 sovereign States, grateful to Almighty God, do assemble in this Convention of the States, called by
7 Congress, for the sole purpose of proposing an amendment to the Constitution.

8 **ARTICLE 1 – Subject of the Convention**

9 **1.1 Convention Limited Authority**

10 This Convention is convened under the authority reserved to the state legislatures of the
11 several States by Article V of the Constitution of the United States.

12 The only participants at this Convention are the several States represented by delegations
13 duly selected in such manner as their respective legislatures have determined.

14 The Convention derives its authority from the applications adopted by at least two-thirds
15 of the legislatures of the several States, and its authority is thereby limited to the subject of
16 proposing an amendment to the Constitution of the United States regarding balancing the
17 federal budget as specified in applications from at least two-thirds of the States. This
18 Convention and these delegates have no authority to propose an amendment or amendments
19 on any other subject.

20 **1.2 Temporary Rules**

21 For the purposes of organizing the Convention, all Articles herein shall be adopted by a
22 majority of the States voting, one vote per State, to serve as temporary rules for the
23 Convention save for any Article which requires more than a simple majority shall require, by
24 division, an equal majority of votes by the Convention. The Temporary Rules shall remain in

1 effect until the Rules Committee submits amendments to these rules which are subsequently
2 approved by the Convention in the same manner as the Temporary Rules were approved.

3 **1.3 Initial Quorum**

4 The initial quorum for the Convention shall be a majority of the several States whose
5 delegate or delegates are physically present at the time of the initial roll call of the Convention.

6 **1.4 Prohibition on Amending or Suspending**

7 Article 1 shall not be amended or suspended by the Convention.

8 **ARTICLE 2 - Officers of the Convention**

9 **2.1 List and Duties of Officers**

10 **2.1.1 Temporary President**

11 A temporary President shall be an individual selected by the State delegation from the
12 host State to preside and not necessarily a member of the delegation.

13 Upon the initial assemblage of the Convention, the temporary President shall call the
14 roll of the States, at which time the States shall present their credentials to the temporary
15 President and name all delegates present.

16 **2.1.2 Permanent Officers**

17 The officers of the Convention shall be a President, a Vice President, a Secretary, a
18 Sergeant-at-Arms, and a Parliamentarian. The President and Vice President shall be a
19 member of a State delegation and elected by a simple majority vote of the States voting
20 subject to Article 2.2. The Sergeant-at-Arms, the Parliamentarian and the Secretary shall be
21 appointed by the President with the consent of the Convention, and shall not be a member
22 of a delegation of a State. No more than one elected officer shall be from the same State.

23 **2.1.2.1 Duties of the President**

24 **2.1.2.1.1 Calling the Convention to Order**

25 The President or presiding officer shall take the chair each day at the hour to
26 which the Convention shall convene and shall call the Convention to order and, except
27 in the absence of a quorum as prescribed by these rules, shall proceed to business in
28 the manner prescribed by these rules.

29 **2.1.2.1.2 Duty to Preserve Order and Decorum**

1 The President or presiding officer shall preserve order and decorum, and during
2 debate, shall confine delegations and individual delegates to the question under
3 discussion and shall have general control of the Convention chamber, unless otherwise
4 ordered by the Convention, and in cases of disturbance or disorderly conduct on the
5 floor or in the public areas outside the bar of the Convention, shall have the power to
6 order the same cleared of any parties involved in such a disturbance or disorderly
7 conduct.

8 **2.1.2.1.3 Authority to Enforce Rules**

9 The President or presiding officer may rule out of order, or discipline, any state or
10 delegate for violating provisions of the rules of the Convention. Disciplinary action shall
11 not inhibit the right of a state to cast a vote in the Convention or any committee of the
12 Convention.

13 **2.1.2.1.4 Points of Order**

14 All questions of order shall be decided by the President or presiding officer,
15 subject to appeal to the Convention. On every appeal, the President or presiding
16 officer shall have the right to assign the reason for the decision. In case of such appeal,
17 no State shall speak more than once. All questions and points of order shall be noted
18 by the Secretary with the decision thereof.

19 **2.1.2.1.5 Committee Membership**

20 The President shall be an ex-officio member of all committees of the Convention
21 but shall not be a voting member of any save for the Credentials Committee.

22 **2.1.2.2 Duties of the Vice President**

23 **2.1.2.2.1 Absence of the President**

24 In the event of the temporary absence or inability to preside by the President, the
25 Vice-President shall preside over the Convention in the same manner as the President.

26 **2.1.2.2.2 Convention Manager**

27 The Vice President shall serve as the manager of the Convention with the duties to
28 provide necessary facilities, staff, audio visual equipment, and document reproduction
29 at the direction of the Convention and the committees. The Vice President may create

1 a committee to advise the Vice President on these matters.

2 **2.1.2.3 Duties of the Secretary**

3 **2.1.2.3.1 General Duties of the Secretary**

4 The Secretary shall be custodian of the records of the Convention and shall
5 perform the customary duties of clerks or secretaries of deliberative assemblies and
6 such other duties as shall be ordered by the Convention.

7 **2.1.2.3.2 Journal Record of Proceedings**

8 The Secretary shall keep a journal of the proceedings of the Convention and shall
9 publish an electronic copy from the proceedings of the previous day. The attested
10 "Journal of Proceedings" provided for in 2.1.2.3.6 below shall be the official legal
11 record of the Convention.

12 **2.1.2.3.3 Verbatim Record of Proceedings**

13 The Secretary shall cause to be produced a verbatim record of the daily floor
14 sessions of the Convention and shall likewise cause verbatim records to be produced of
15 each committee meeting convened in the course of the Convention. The verbatim
16 records required herein shall be published in electronic form and be made available to
17 the public via the Convention's website and any other means as soon as they are
18 reasonably available.

19 **2.1.2.3.4 Numbering of Proposals**

20 The Secretary shall give to every proposal when introduced a number, and the
21 numbers shall be in sequential order.

22 **2.1.2.3.5 Preparation of Calendar, Reports, and Amendments**

23 The Secretary shall prepare and provide to each delegate each day a calendar of
24 the business of the Convention, as provided by these rules, and shall arrange and
25 publish all committee reports and all amendments offered to pending amendments.

26 **2.1.2.3.6 Preservation of Records**

27 As soon as possible after the final adjournment of the Convention, the Secretary
28 shall prepare a "Journal of Proceedings" of the Convention, which shall be attested to
29 by the President and the Vice President. The Secretary shall cause the journal to be

1 both physically and electronically published in full. The Secretary shall cause the audio
2 and video records of the Convention to be compiled and preserved and shall file the
3 journal and all audio and video records with the Archivist of the United States for
4 keeping in the manner provided by law for the records, books, video and audio
5 records, documents, and other papers of the Convention. Likewise, the same records
6 shall be filed with the Library of Congress, and with the several States in a manner
7 directed by the Convention. The Secretary shall additionally send copies of all such
8 records to the Speaker of the United States House of Representatives, the President of
9 the United States Senate, the Clerk of the United States House of Representatives and
10 the Secretary of the United States Senate.

11 **2.1.2.3.7 Necessary Deputies and Staff**

12 The Secretary may secure necessary staff and assign deputies to fulfill such duties
13 as may arise in the course of the Convention.

14 **2.1.2.3.8 Vote Tally**

15 Whenever an issue is considered for a vote of the States, the Secretary (or Clerk)
16 shall call the roll, note how each State voted (Aye, Nay, Divided, or Pass), tally the
17 votes, and present the results to the President.

18 **2.1.2.4 Duties of the Parliamentarian**

19 **2.1.2.4.1 Qualifications**

20 The Chief Parliamentarian and any Assistant Parliamentarians shall be a current or
21 former member of the Mason's Manual Commission. The Chief Parliamentarian shall
22 have previously served as the Chief or Head Parliamentarian of a state legislative body.
23 A Parliamentarian shall not be a delegate. Each committee shall be assigned an
24 Assistant Parliamentarian upon request to the Chief Parliamentarian, who will make
25 such assignment.

26 **2.1.2.4.2 Duties**

27 Upon request, the Parliamentarian shall advise the presiding officer of the
28 Convention or a committee regarding questions of parliamentary procedure or the
29 rules of the Convention.

1 **2.1.2.5 Duties of the Sergeant-at-Arms**

2 **2.1.2.5.1 Convention**

3 Subject to the direction of the President or presiding officer, the Sergeant-at-Arms
4 shall enforce the rules of the Convention. The Sergeant-at-Arms shall be charged with
5 enforcing the rules as to admission on the Convention floor, only delegates and
6 designated staff are permitted to be on the Convention floor without leave of the
7 body.

8 **2.1.2.5.2 Committees**

9 Subject to the direction of the committee Chair, the Sergeant-at-Arms shall
10 enforce the rules to admission of the committee.

11 **2.1.2.5.3 Deputies**

12 The Sergeant-at-Arms, under the direction of the Secretary may arrange for
13 deputies to fulfill the duties of the Sergeant-at-Arms.

14 **2.1.3 Vacancy of an Officer**

15 In the event of a vacancy of the President, the Vice President shall temporarily rise to
16 President and conduct an election for a new permanent President. After the election of the
17 President, the temporary President shall return to the position of Vice President unless
18 elected President, and the President shall preside. In the event of a vacancy of any other
19 Office, the Office shall be filled in the same manner as prescribed in Article 2.2 with the
20 highest-ranking officer presiding over the election.

21 **2.2 Election of the Officers**

22 The election of the President and Vice President shall be conducted by the temporary
23 President. Nominations shall be made from the floor. Voting shall be by roll call vote by the
24 States with one vote per State. Voting shall continue with successive rounds, with the
25 individual receiving the fewest votes removed from consideration, until an individual receives a
26 simple majority of the States attending and voting. After the election of the officers, the
27 temporary President shall retire and the President shall preside.

28 **ARTICLE 3 – Quorums and Voting**

29 **3.1 Quorum**

1 Subject to Article 1.3, a quorum for all committee or voting sessions of the Convention
2 shall be a majority of the States present and for all committee meetings shall be a majority of
3 the members present. At least one delegate from a State who is physically present at a quorum
4 call during a committee or voting session of the Convention shall result in the presence of that
5 State for the purposes of establishing or determining the presence of a quorum.

6 **3.2 Voting**

7 **3.2.1 Voting by States**

8 All voting at the Convention or in a committee shall be by State with each State having
9 one vote, without apportionment or division. Each State shall determine the internal voting
10 and quorum rules for casting the vote of its delegation.

11 **3.2.2 Majority Vote**

12 A majority vote of the quorum shall prevail on all issues before the Convention and in all
13 committees, save for any vote to create a rule which requires a majority greater than a
14 simple majority, which shall then require an equal majority to prevail.

15 **3.2.3 Proposing an Amendment for Ratification**

16 An affirmative vote of a majority of States attending and voting shall be necessary to
17 propose an amendment for ratification by the several States.

18 **ARTICLE 4 – Committees**

19 **4.1 Rules Committee**

20 After the initial session of the Convention, the Rules Committee shall organize.

21 **4.1.1 Purpose of the Committee**

22 The committee shall review the rules of the Convention and make recommendations to
23 the Convention regarding the addition of committees, the duties of the Officers, and
24 procedures.

25 **4.1.2 Seating and Participation**

26 One delegate has the right to occupy the seat of the State and speak and vote on behalf
27 of the State and the balance of the delegation may be seated in the same location, space
28 provided, and the State may substitute the delegate in the seat of the State at its discretion.

29 **4.1.3 Chair**

1 The committee shall elect a Chair in the same voting manner the Officers are elected.

2 The Chair shall preside over the committee but not vote save for the case of a tie.

3 **4.1.4 Vice Chair**

4 The committee shall elect a Vice Chair in the same voting manner the Officers are
5 elected. The Vice Chair shall preside over the committee in the absence of the Chair and in
6 that role not vote save for the case of a tie. The State from which the Vice Chair is a delegate
7 may appoint another representative to the committee when the Vice Chair is serving as
8 Chair.

9 **4.1.5 Sub-Committees**

10 The committee may divide into sub-committees with fewer members than the
11 committee and shall elect a Chair and Vice Chair in the same manner as the committee. The
12 Chair of the committee shall choose to either be a voting member of a sub-committee or be
13 a non-voting ex-officio member of all sub-committees with the Chair's State selecting
14 another delegate to be a voting member of a sub-committee.

15 **4.2 Amendment Committee**

16 After the initial session of the Convention, the Amendment Committee shall organize.

17 **4.2.1 Purpose of the Committee**

18 The committee shall prepare proposed amendment language which shall be transmitted
19 to the Convention for its consideration and debate. Any amendment language to be
20 presented to the Convention by a State for its consideration by the Convention must
21 originate in the committee. After this committee transmits its report (recommended
22 amendment language) to the Convention, the committee shall not meet unless directed by
23 the Convention. The Convention may amend the report of the committee.

24 **4.2.2 Seating and Participation**

25 One delegate has the right to occupy the seat of the State and speak and vote on behalf
26 of the State and the balance of the delegation may be seated in the same location, space
27 provided, and the State may substitute the delegate in the seat of the State at its discretion.

28 **4.2.3 Chair**

1 The committee shall elect a Chair in the same voting manner the Officers are elected.

2 The Chair shall preside over the committee but not vote save for the case of a tie.

3 **4.2.4 Vice Chair**

4 The committee shall elect a Vice Chair in the same voting manner the Officers are
5 elected. The Vice Chair shall preside over the committee in the absence of the Chair and in
6 that role not vote save for the case of a tie. The State from which the Vice Chair is a delegate
7 may appoint another representative to the committee when the Vice Chair is serving as
8 Chair.

9 **4.2.5 Sub-Committees**

10 The committee may divide into sub-committees with fewer members than the
11 committee and shall elect a Chair and Vice Chair in the same manner as the committee. The
12 Chair of the committee shall choose to either be a voting member of a sub-committee or be
13 a non-voting ex-officio member of all sub-committees with the Chair's State selecting
14 another delegate to be a voting member of a sub-committee.

15 **4.2.6 Specific Issues Before the Committee**

16 **4.2.6.1 State Participation**

17 After organizing, the first order of business shall be providing each State attending
18 the Convention equal opportunity and time to present to the committee its opinion,
19 findings, and recommendations regarding the language and content of the amendment
20 subject, including specific amendment language. All presentations are subject to Article 1.

21 **4.2.6.2 Expert Testimony**

22 Expert testimony before the committee by those not a participant of the Convention
23 shall be limited to the subject of the Convention and shall be by invitation. The Chair shall
24 determine the experts and may create a sub-committee to recommend such. The
25 committee, by a majority vote, may include additional experts.

26 **4.3 Credentials Committee**

27 **4.3.1 Purpose of the Committee**

1 The committee shall verify the credentials of the delegations after the Opening Session
2 and settle disputes regarding credentials. The decision of the committee may be appealed to
3 the Convention.

4 **4.3.2 Composition**

5 The committee shall be comprised of the elected officers of the Convention and the
6 Chairs of the Rules and Amendment Committees. Each may appoint a substitute to attend a
7 committee meeting. The committee shall select a member to serve as Chair.

8 **4.3.3 State Resolutions**

9 The primary source of verification of the credentials of a delegation shall be the
10 resolution passed by the legislature of the State determining how the delegation should be
11 chosen.

12 **4.3.4 Recall Authority of the States**

13 The committee shall recognize and respect the authority of a State to recall and
14 reappoint members of its delegation pursuant to the resolution approved by their legislature
15 when it appointed its delegation.

16 **4.4 Additional Committees**

17 Additional committees may be created by a majority vote of the Convention provided the
18 committee's function does not create a new rule for the Convention and if so, approval shall be
19 first received from the committee on Rules. If the committee is comprised of delegates, no
20 committee shall have more than one delegate from the same State.

21 **4.5 Committee Debate**

22 The method of participation in committee debate shall be the same method as used in
23 general session.

24 **ARTICLE 5 – Sessions of the Convention**

25 **5.1. Composition**

26 The Convention shall be composed of the States from which the legislature has sent a
27 delegation. Recognition by the presiding officer shall be the name of the State and may
28 additionally recognize the individual by name.

29 **5.2 Rules and Procedures**

1 Sessions of the Convention shall be governed by the rules of the Convention and when
2 silent, the rules of parliamentary practice as stated in Mason's Manual of Legislative Procedure,
3 current edition at the time of the Convention.

4 **5.3 Seating and Participation**

5 One delegate has the right to occupy the seat of the State and speak and vote on behalf of
6 the State and the balance of the delegation may be seated in the same location, space
7 provided, and the State may substitute the delegate in the seat of the State at its discretion.

8 **5.4 Sessions**

9 **5.4.1 Time of Meeting and Procedure**

10 The Convention shall meet at 9:00 a.m. unless otherwise ordered by the Convention.

11 **5.4.2 Reading of the Journal**

12 Immediately after the President or presiding officer shall have taken the chair and the
13 States in their seats, the journal of the preceding day shall be read by the Secretary unless
14 dispensed with by the consent of the Convention.

15 **5.4.3 Order of Business**

16 At meetings of the Convention, the order of business shall be as follows:

- 17 1. Call Convention to Order
- 18 2. Prayer by an individual approved by the President.
- 19 3. Pledge
- 20 4. Roll Call.
- 21 5. Reading of the Journal.
- 22 6. Presentation of petitions, memorials, and remonstrances.
- 23 7. Reports of committees.
- 24 8. Introduction and first reading of proposals.
- 25 9. Reference of proposals.
- 26 10. Motions and resolutions.
- 27 11. Orders of the day.
- 28 12. Committee notices.

29 **5.4.4 Prohibitions on the actions of the Convention**

1 **5.4.4.1 Amending Convention Rules**

2 The Convention shall not amend the rules of the Convention until after the Rules
3 Committee has submitted its initial recommendation to the Convention.

4 **5.4.4.2 Proposing and Amending Amendment Language**

5 The Convention will not directly propose for debate specific amendment language
6 until after the Amendment Committee has submitted its initial recommendation to the
7 Convention.

8 **5.4.5 Voting Process**

9 **5.4.5.1 Name of the State**

10 Voting shall be in the name of the State without disclosure of the delegation's
11 internal results. After the official tally of the vote, any State may rise and present for the
12 record the internal vote tally of its delegation.

13 **5.4.5.2 Votes Cast**

14 Votes shall be cast as Aye, Nay, Divided, or Pass. If a State passes and does not
15 eventually vote, the State shall not be considered as voting. If a State votes "Divided,"
16 the State indicates that the State's delegation is divided and is unable to cast an Aye or
17 Nay vote.

18 **5.4.5.3 Request for Leave**

19 Prior to any vote, a State may ask for time to consult with its delegation on the issue.
20 The request is not debatable and shall be granted by the presiding officer with the period
21 of the leave determined by the presiding officer.

22 **5.4.6 Additional Rules of Procedure**

23 **5.4.6.1** Every State, rising to speak, shall address the President or presiding officer;
24 and while the State shall be speaking no one shall pass between them.

25 **5.4.6.2** Of two States rising to speak at the same time, the President or presiding
26 officer shall name the one who shall first be heard.

27 **5.4.6.3** A motion made and seconded, shall be repeated; and if written, as it shall be
28 when any member shall so require, shall be read aloud by the Secretary or transmitted to
29 each delegate's pre-designated electronic device before it shall be debated. No motion,

1 other than a procedural motion, shall be in order unless germane to both the subject
2 matter specified in the State applications on which Congress called the Convention and to
3 the subject matter specified in the Convention call.

4 **5.4.6.4** A motion may be withdrawn at any time before the vote upon it shall have
5 commenced.

6 **5.4.6.5** When a debate shall arise upon a question, no motion, other than to amend
7 the question, to commit it, or to postpone the debate, shall be received.

8 **5.4.6.6** A question that consists of one or more propositions shall, at the request of
9 any State, be divided and put separately as to each proposition.

10 **5.4.6.7** A motion to reconsider a matter that has been determined by a majority
11 may be made, with leave unanimously given, on the same day on which the vote passed;
12 but otherwise not without one day's previous notice; in which last case, if the Convention
13 agree to the reconsideration, the Convention or, by the Convention's leave, the President
14 or presiding officer shall assign a future day for the purpose.

15 **5.4.6.8** A delegate may be called to order by another delegate, as well as by the
16 President or presiding officer, and may be allowed to explain his or her conduct or any
17 expressions supposed to be reprehensible.

18 **5.4.6.9** All questions of order shall be decided by the President or presiding officer,
19 subject to appeal to the Convention, but without debate.

20 **5.4.6.10** Upon a question to recess for the day, which may be made at any time, if it
21 be seconded, the question shall be put without debate.

22 **5.4.6.11** No delegate shall be absent from the Convention, so as to interrupt the
23 representation of his or her State, without leave.

24 **ARTICLE 6 – General and Miscellaneous Provisions**

25 **6.1 Costs of the Convention**

26 The costs related to the Convention shall be divided equally among the States attending
27 the Convention and the costs related to the travel, maintenance and provisioning of each
28 State's delegation and staff shall be borne entirely by the State.

29 **6.2 Open Meetings**

1 Every official session of the Convention including committee and sub-committee meetings
2 shall be held in full view of the public. Every official session of the Convention, including
3 committee and subcommittee meetings, shall be streamed live via a website provided by the
4 Convention and shall be recorded and archived under the direction of the Secretary.

5 **6.3 Adjournment**

6 The Convention shall adjourn promptly after completion of the business contained within
7 the call of the Convention.

The Mount Vernon Statement

Constitutional Conservatism: A Statement for the 21st Century

We recommit ourselves to the ideas of the American Founding. Through the Constitution, the Founders created an enduring framework of limited government based on the rule of law. They sought to secure national independence, provide for economic opportunity, establish true religious liberty and maintain a flourishing society of republican self-government.

These principles define us as a country and inspire us as a people. They are responsible for a prosperous, just nation unlike any other in the world. They are our highest achievements, serving not only as powerful beacons to all who strive for freedom and seek self-government, but as warnings to tyrants and despots everywhere.

Each one of these founding ideas is presently under sustained attack. In recent decades, America's principles have been undermined and redefined in our culture, our universities and our politics. The self-evident truths of 1776 have been supplanted by the notion that no such truths exist. The federal government today ignores the limits of the Constitution, which is increasingly dismissed as obsolete and irrelevant.

Some insist that America must change, cast off the old and put on the new. But where would this lead — forward or backward, up or down? Isn't this idea of change an empty promise or even a dangerous deception?

The change we urgently need, a change consistent with the American ideal, is not movement away from but toward our founding principles. At this important time, we need a restatement of Constitutional conservatism grounded in the priceless principle of ordered liberty articulated in the Declaration of Independence and the Constitution.

The conservatism of the Declaration asserts self-evident truths based on the laws of nature and nature's God. It defends life, liberty and the pursuit of happiness. It traces authority to the consent of the governed. It recognizes man's self-interest but also his capacity for virtue.

The conservatism of the Constitution limits government's powers but ensures that government performs its proper job effectively. It refines popular will through the filter of representation. It provides checks and balances through the several branches of government and a federal republic.

A Constitutional conservatism unites all conservatives through the natural fusion provided by American principles. It reminds economic conservatives that morality is essential to limited government, social conservatives that unlimited government is a threat to moral self-government, and national security conservatives that energetic but responsible government is the key to America's safety and leadership role in the world.

A Constitutional conservatism based on first principles provides the framework for a consistent and meaningful policy agenda.

- It applies the principle of limited government based on the rule of law to every proposal.
- It honors the central place of individual liberty in American politics and life.
- It encourages free enterprise, the individual entrepreneur, and economic reforms grounded in market solutions.
- It supports America's national interest in advancing freedom and opposing tyranny in the world and prudently considers what we can and should do to that end.
- It informs conservatism's firm defense of family, neighborhood, community, and faith.

If we are to succeed in the critical political and policy battles ahead, we must be certain of our purpose.

We must begin by retaking and resolutely defending the high ground of America's founding principles.

February 17, 2010

August 2016

A Brief Assessment of the Proposed Convention Rules Adopted by the Assembly of State Legislatures

By Robert G. Natelson*

1. Introduction

In June 2016 the Assembly of State Legislatures (ASL) issued its “Rules for an Article V Convention for Proposing Amendment(s).” The document is a recommended set of rules for a future amendments convention under Article V of the U.S. Constitution. It can be found on The Heartland Institute’s website.¹

The ASL rules fall into nine Articles: (1) Officers of the Convention and Rules, (2) Delegates, (3) Sessions of the Convention, (4) Voting and Quorum Calls, (5) Resolutions and Proposals, (6) Decorum and Debate, (7) Committee of the Whole, (8) Committees of the Convention, and (9) Miscellaneous. There is also a preamble.

Table of Contents

1. Introduction
2. The Constitutional Context
3. Background of the ASL
4. Commentary by Theme
 - A. Source of Default Rules
 - B. Length
 - C. Voting
 - D. Presidential Power
 - E. *Ultra Vires* Provisions
 - F. Mandated Bipartisanship
 - G. Technical Defects
5. A Final Recommendation

* Robert G. Natelson is senior fellow in constitutional jurisprudence at The Heartland Institute. For a more complete bio, see page 13.

¹ See [https://www.heartland.org/_template-assets/documents/policy-documents/ASL Rules for an Article V Convention.pdf](https://www.heartland.org/_template-assets/documents/policy-documents/ASL%20Rules%20for%20an%20Article%20V%20Convention.pdf).

For the sake of brevity, this *Policy Brief* does not summarize or discuss much in the ASL rules that is of a secondary or uncontroversial nature. Rather than make repeated references to previous works by the author, those sources appear once at the bottom of this page.² For the sake of efficiency, the discussion below proceeds by theme rather than by rule by rule.

2. The Constitutional Context

The U.S. Constitution lays out its amendment procedure in Article V.³ This procedure is clarified further by political practices contemporaneous with the Constitution's adoption.

The U.S. Constitution lays out its amendment procedure in Article V.

To become part of the Constitution, a proposed amendment must be ratified. Congress decides whether ratification is by state legislatures or state conventions, but in either event approval by three-fourths

(currently 38) of the states is required. Furthermore, before a measure may be ratified, it must be validly proposed. This may be done either by two-thirds of each house of Congress or by a gathering Article V calls a "Convention for proposing Amendments." After two-thirds of the state legislatures (currently 34) make "Application" to Congress for a convention on particular subject matter, Congress "shall call" one.⁴

² The following works by Robert Natelson may be accessed at articlevinfocenter.com/researchresources/.
State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters (4th ed., 2016)

Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments," 65 Fla. L. Rev. 615 (2013)
Proposing Constitutional Amendments by Convention: Rules Governing the Process, 78 Tenn. L. Rev. 693 (2011)

Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers (2012)
Amending The Constitution by Convention: Lessons for Today from the Constitution's First Century (2011)

Amending the Constitution by Convention: A More Complete View of the Founders' Plan (2010)

Additional information appears at <http://articlevinfocenter.com/>.

³ Article V provides as follows:

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.

⁴ *Ibid.*

The convention for proposing amendments was to be a species of a familiar political device commonly labeled a “convention of the states.”⁵ A convention of the states was a diplomatic-style meeting among state committees (delegations). Each committee was chosen in a manner determined by its state legislature. The individuals who comprised the committees were commissioners because each was empowered by a document called a commission.

Pursuant to advance directives, the commissioners convened in an agreed location to address pre-designated common problems. Conventions of states might be regional or “partial” (limited to one part of the country) or “general” (from all regions). A convention for proposing amendments to the Constitution was to be general rather than regional. Convention subject matter varied in scope but always was confined to some pre-set limits.

During the two centuries leading up to the Civil War, the states (and, before them, the colonies) met in convention an average of more than once every five years. There were at least 20 intercolonial conventions between 1677 and Independence in 1776, and at least 11 interstate conventions between 1776 and the ratification of the U.S. Constitution.

During the two centuries leading up to the Civil War, the states (and, before them, the colonies) met in convention an average of more than once every five years.

The best known of these 11 was the Constitutional Convention of 1787. After the Constitution’s ratification and before the Civil War, there were at least five more, most notably the general gathering of 1861 formally called the Washington Conference Convention and nicknamed the “Washington Peace Conference.” There has been only one subsequent convention of states: the regional Colorado River Commission of 1922.

By the time the Constitution was adopted, participants had established universal convention protocols. Since a convention of states is a gathering of semi-sovereignties, each state committee had one vote on all significant questions. Voting by states, the commissioners initially elected officers and adopted rules. They next proceeded to the convention business and perhaps issued one or more recommendations or proposals. Then they adjourned *sine die* – that is, with no appointed date for reconvening.

The Constitution’s framers and ratifiers contemplated that this pattern would govern any convention for proposing amendments. We know this because the “convention of states” pattern represented the universal practice for interstate conventions and because contemporaneous legislative and legal documents refer to a convention for proposing amendments as a “convention of the states.”⁶

⁵ *Smith v. Union Bank*, 30 U.S. 518, 528 (1831). See also the sources set forth in note 1.

⁶ *Supra* note 2. In addition, see “How Do We Know an Article V Amendments Convention is a ‘Convention of the States?’ Because Both the Founders and the Supreme Court Said So,” <http://www.artclevinfocenter.com/how-do-we-know-an-article-v-amendments-convention-is-a-convention-of-the-states-because-both-the-founders-and-the-supreme-court-said-so/> and “Still More Evidence That An Amendments Convention is a ‘Convention of States,’” <http://www.artclevinfocenter.com/still-more-evidence-that-an-amendments-convention-is-a-convention-of-states/>.

3. Background of the Assembly of State Legislatures

Because conventions of the states were so common before the twentieth century, many of the attendees had served in one or more previous gatherings of the same type. Commissioners who had not done so usually were familiar with the process from experience in state government or in Congress. Thus, convention protocols were very widely understood and were transmitted from generation to generation, gradually improving with time. The rules of the 1861 Washington Conference Convention, for example, were based on two centuries of experience. They effectively controlled proceedings that, while highly contentious, successfully met the convention goal of drafting and recommending a constitutional amendment designed to stave off the Civil War.⁷

During the twentieth century lawmakers and commentators lost their knowledge of interstate convention practice.

During the twentieth century lawmakers and commentators lost their knowledge of interstate convention practice. Accordingly, author Robert Berry suggested in his 2012 book, *Amendments Without Congress: A Timely Gift From the Founders*, that state lawmakers prepare for a convention by first

attending a “conference for proposing amendments” (COPA). COPA would enable lawmakers to collect information from experts, review amendment proposals, and consider possible convention rules.

Berry was (and is) a member of Colorado’s First Committee of Correspondence, a group of lawmakers, scholars, and activists that has been central to disseminating Article V information nationwide. Another member of the First Committee was Colorado state Sen. Kevin Lundberg, also a co-founder of the State Legislators Article V Caucus. Lundberg liked the COPA idea and suggested it to lawmakers from other states. Several Midwestern lawmakers thereupon formed the Assembly of State Legislatures (ASL). From December 2013 through June 2016 ASL met five times in locations around the country. At its latest meeting, held in Philadelphia, it produced the rules treated in this paper.

ASL should not be confused with an actual convention. It is a planning group. Its composition differs from that of an amendments convention. One difference is that many states have not participated in ASL – but that distinction is much less important than several others.

Among the important differences are the following:

- Convention commissioners usually have come from various walks of life. Many have been state lawmakers, but many others have not. By contrast, all ASL delegates are required to be sitting state legislators.
- Conventions of states generally have been decentralized and freewheeling in nature, drawing

⁷ The Washington Convention did not have Article V powers so instead of its proposal being transmitted to the states, it was sent to Congress, which buried it. The Washington gathering served as a dress rehearsal for a proposing convention with Article V powers, but the latter still has not occurred.

upon a range of expertise and inputs. ASL has been more centralized and self-contained, with limited outside input and much of the impetus emanating from the executive committee.

- Interstate conventions are non-partisan. Commissioners are not identified by party, and the assembly's political balance is dictated by the state legislative political balance at the time of convening. ASL is consciously bipartisan (there are, for example, Democratic and Republican co-presidents) and implicitly grants a veto to whichever party happens to be in the minority.

The differences in composition between ASL and a convention proved important. The ASL rules contain much of value. However, some of the discrepancies between the ASL rules and rules likely to be adopted by an actual interstate convention derive from ways in which ASL's composition and mission differ from those of an interstate convention.

Some of the discrepancies between the ASL rules and rules likely to be adopted by an actual interstate convention derive from ways in which ASL's composition and mission differ from those of an interstate convention.

4. Commentary by Theme

For the sake of efficiency, the commentary below proceeds by theme rather than rule-by-rule.

A. Source of Default Rules

Each set of rules should specify a source of law to cover issues not mentioned in the rules themselves. ASL Rule 9.1 does this by specifying “the latest edition of Mason’s Manual of Legislative Procedure.” Since *Mason’s* currently is used by 70 of the 99 American state legislative chambers – and is kept up-to-date and is fully annotated – this seems to be a wise choice.

B. Length

Deciding on the amount of specificity in a document – and therefore its length – may require careful exercise of professional drafting discretion. By providing authoritative guidance, specificity may forestall future arguments. But specificity also may create fodder for disagreement, thereby reducing the odds the document will be adopted. If a provision is poorly drafted, it may spark arguments over interpretation. Even well-drafted specificity may purchase certainty at the cost of flexibility.

The ASL rules are more than ten times longer than the longest set adopted by any previous convention – nearly 6,500 words compared with fewer than 600 words in the rules of the 1861 Washington Convention. One can argue that modern conditions require regulations more

extensive than those adopted at prior conventions.⁸ Thus, modern laws governing political contributions suggest a formal administrative apparatus such as that outlined in ASL Rule 9.4. The existence of modern technology suggests provisions to address it, such as Rules 4.1.1 and 6.2. There can be educational value in restating insufficiently understood premises that previous conventions took for granted, such as the power of state officials to recall their commissioners recited in Rule 2.6.1 and the convention's subject-matter limit recited in Rule 5.6.1.

It is difficult to justify a document as long as the one ASL has produced. This volume of detail could be a source of argument at the convention and a consequent loss of valuable time.

Still, it remains difficult to justify a document as long as the one ASL has produced. This volume of detail could be a source of argument at the convention and a consequent loss of valuable time. The volume of detail also seems superfluous in light of the extent of the material in *Mason's Manual*, ASL's selected default source.

C. Voting

ASL Rules 1.3.1 and 4.1.1 properly follow the historic norm of "one state/one vote." There have been efforts before and during prior conventions to change the one state/one vote standard, but all have failed,⁹ at least partly because there is no alternative widely perceived as legitimate. Even if such an effort were initially successful, it likely would induce some states to walk out and many activists to withdraw support.

The one state/one vote pattern is incorporated into the constitutional structure: To borrow James Madison's terminology, the convention procedure is the "federal" alternative to the "national" (congressional) method of proposing amendments.

ASL's sound judgment on this question is offset by alteration of the traditional convention rules whereby a majority of participating states represents a quorum and a majority of those present and voting renders most decisions. ASL Rule 4.5 requires a majority of all states, not only of participating states, to form a quorum. Rule 4.1 defines a "Qualified Super Majority" as 34 states, even if all 50 do not attend. It defines a "Qualified Simple Majority" as 26 states, even if all do not attend. The rules then require those margins for reaching critical decisions.¹⁰ Rule 4.4 goes even further, requiring 36 states to propose an amendment – the towering hurdle of a 72 percent majority. Rule 9.5.1 requires a two-thirds vote of attending states even to adjourn.

⁸ My own draft of model rules is nearly twice as long as those adopted in Washington. See <https://www.i2i.org/wp-content/uploads/2015/01/proposed-rules-2015-1206.pdf/>.

⁹ The details are set out at <http://articlevinfocenter.com/trying-to-alter-the-traditional-amendments-convention-voting-rule-is-a-mistake/>.

¹⁰ Rules requiring these special majorities are sprinkled throughout the document. See, e.g., Rule 1.1 ("qualified majority" to elect officers) and Rule 1.3.3 (qualified supermajority to amend or suspend rules).

These quorum and voting prescriptions represent the most serious deficiencies in the ASL rules. Here is why:

First, the same history that records the failure of efforts to alter the one state/one vote standard suggests the impracticality of imposing vote margins different from the traditional rule of decision by the majority of states present.¹¹

These quorum and voting prescriptions represent the most serious deficiencies in the ASL rules. Here is why.

Second, while the Constitution's framers recognized that supermajorities have their place – Article V provides for them in some instances – they presumed other decisions would be made by traditional majorities. The result is a careful balance. Thus, in the proposal process, a mere congressional majority may require Congress to consider amendments, but a congressional proposal must muster two-thirds on the final vote. By contrast, the states must obtain two-thirds for a convention to consider (the application procedure), but the convention needs only a majority to propose. This is why the Founders could say that in proposing amendments, Congress and the states were on equal footing.¹² However, imposing a two-thirds requirement on the states at both consideration and final vote stages leaves them in an inferior position to Congress.

Another entry into the “balance” issue is to recall that the convention process was designed to provide a way to bypass Congress. It makes no sense to impose restrictions on the convention that replicate problems in Congress. After all, opponents of amendments already enjoy a disproportionate advantage at the ratification stage. They do not need one at the proposal stage as well.

It is important to note the two principal political arguments for supermajorities are flawed. The first is that a supermajority at the convention is necessary to obtain a supermajority at ratification. But proposal and ratification are fundamentally different procedures: Proposal is a short process conducted primarily by politicians. Ratification is extended over a period of years with elections intervening. An amendment garnering only a bare majority among convention commissioners may prove overwhelmingly popular with the general public. Consider the difference in the favorability ratings of term limits among politicians and among the general public.

The second argument for convention supermajorities is that they prevent a bare majority of thinly populated states from proposing amendments opposed by a majority of the national population. In the real world, however, the chance of a convention majority consisting only of small states is virtually nil. The political configuration of America is such that any majority will consist of both large and small states: Sparsely populated red state Wyoming will vote with big red states like Florida and Texas, not with little blue states like Vermont. Moreover, as the

¹¹ *Supra* note 8.

¹² E.g., The Federalist No. 43 (Madison).

representatives of their respective state legislatures, most commissioners will be seasoned politicians unlikely to waste their time and political reputations promoting obvious losers. Even if it did happen that a bare majority of thinly populated states proposed an unpopular amendment, it would be merely a proposal. The possibility of ratification by 38 states would be vanishingly small.

The ASL rules grant to absentee states the power to destroy or cripple the convention or to subject it to political extortion by a small minority.

not receive the approval of the Founders.¹³ It grants to absentees the power to destroy or cripple the convention or to subject it to political extortion by a small minority.

For example, under the ASL rules 36 states – present or not – must agree to any proposed amendment. It is bad enough that if all are present only 15 (30 percent) can block any proposal. What is worse is that if some states are absent, the veto is awarded to even fewer dissenters. Thus, if eight states are absent, only seven of the 42 present (less than 17 percent) can block any proposed amendment.

In this scenario, the only alternative to gridlock may be acceding to minority extortion.

Finally, changing the majority-decides rule, like changing the one state/one vote rule, is not politically feasible. If a convention is called, the principal reason will be the dedication of innumerable state lawmakers and grassroots activists. Almost without exception, these citizens have acted in the belief that the convention will follow traditional protocols.¹⁴ If leaders try to change those protocols after the fact, the convention's popular support will evaporate.

Such factors render it improbable that any foreseeable convention will adopt ASL's supermajority rules.

¹³ At the Constitutional Convention, for example, decisions were reached by a majority of states voting "aye" or "nay," not by a majority or supermajority of all states. Similarly, the Supreme Court has held that even when the Constitution prescribes a two-thirds majority for congressional proposal, in the absence of language to the contrary it means "two-thirds of the members present – assuming the presence of a quorum – and not a vote of two-thirds of the entire membership, present and absent." *Rhode Island v. Palmer*, 253 U. S. 350, 386 (1920).

¹⁴ Current Article V campaigns assure their adherents that the traditional "convention of states" model will be adhered to and provide videos explaining the process. See, e.g., <http://bba4usa.org/resources/> (balanced budget amendment campaign); <http://www.conventionofstates.com/> ("convention of states" movement for reductions in the size of the federal government); <https://www.termlimits.org/articlev/> (term limits). The process is explained for state legislators in this author's widely used *Article V Handbook*, published by a leading state legislators' trade organization and available at <https://www.alec.org/publication/article-v-a-handbook-for-state-lawmakers/>.

D. Presidential Power

The proposed rules confer power on the convention president to an extent likely to be unacceptable to most commissioners or to the general public. Specifically:

- ASL Rule 8.1 provides “The President shall appoint all committees, unless otherwise ordered by the Convention.” One consequence is disproportionate presidential influence on amendments. This is because after the fifth day of the convention, any proposed amendment lacking unanimous consent requires approval by a committee (Rule 5.7), which in turn will consist entirely of presidential appointees. ASL should have adopted the practice of most prior conventions, providing for election of the members of major committees by a plurality vote of states present.
- Under Rules 1.1 and 1.8.1, the parliamentarian is appointed by the president and under Rule 1.4.7 he acts under the president’s supervision. One or the other function should have been freed from the president.
- Under Rule 7.2 the president designates the chairman of the committee of the whole, rather than the committee electing its presiding officer.

E. *Ultra Vires* Provisions

In law, a person or organization’s act is *ultra vires* (“beyond powers”) if it goes beyond the scope of what the person or entity is authorized to do. Several of the ASL rules are *ultra vires* for an amendments convention.

The ASL rules contain provisions that purport to extend convention control both before and after its lifetime.

A convention of states is, by definition, an *ad hoc* body with only temporary proposal power. The convention and its evanescent authority disappear upon adjournment *sine die*. The ASL rules contain provisions that purport to extend convention control both before and after its lifetime. Specifically, the subdivisions of Rule 9.6 (i.e., 9.6.2.2, 9.6.2.3, 9.6.2.4 and 9.6.3) all purport to apply to the counting of applications before the convention is called. Rule 1.3.2 attempts to regulate conduct after the assembly is adjourned by imposing ASL rules on any future convention until that convention formally rescinds them.

These rules are constitutionally problematic for another reason. Extensive judicial precedent holds that an assembly acting under Article V (legislature or convention) may not be coerced.¹⁵ Rule 1.3.2 and Rule 9.6 and its subdivisions all attempt to do just that by regulating state legislatures, Congress, and a future federal convention. Although there is nothing wrong with ASL issuing a series of understandings or recommendations on the subject, placing them among convention rules was legally inappropriate.

¹⁵ See *Bramberg v. Jones*, 978 P.2d 1240 (Cal. 1999) for a summary of the case law.

F. Mandated Bipartisanship

Prior conventions have been non-partisan. The ASL rules contemplate a convention that is bipartisan.

Prior conventions have been non-partisan. The ASL rules contemplate a convention that is bipartisan. This is one reason for the supermajority requirements discussed earlier. Bipartisanship also appears in Rule 1.1, which requires that the president and vice president be from different political parties

and in Rule 8.3, which limits any party to six of ten committee members, even if the political condition in the state legislatures dictates a different balance.

Although bipartisanship in the abstract is popular with the general public, significant political change often occurs only when the voters have rewarded one party, or at least one political ideology, with strong majorities. If the minority party had been granted a veto (as the ASL rules essentially do), the Civil War amendments abolishing slavery and protecting minority rights never would have been proposed, much less ratified. If voters opt to give a decisive majority of state legislatures to one political party, it would conflict with values of both democracy and federalism to prevent such a majority from even proposing a constitutional amendment.

G. Technical Defects

There are a few technical defects in the ASL rules. By “technical defects,” I mean problems beyond mere grammatical errors such as the one in Rule 9.4.4 (which reads “Expenses ... is”) or the questionable use of the word “verbiage” in Rule 9.6.22.¹⁶ The technical defects treated here are not necessarily inclusive, but they exemplify imperfections rendering language misleading, unclear, contradictory, or impractical.

We begin with two illustrations in the “misleading” category:

- The term “delegate” to denote a convention commissioner is likely to mislead the modern American because in contemporary conventions “delegates” sometimes are people who represent no one but themselves. Under the circumstances, it is best to adhere to the more correct term, commissioner, which better communicates lines of responsibility between an attendee and his or her state legislature. The misleading nature of “delegate” is compounded by Rule 8.10, which employs the phrase “member delegate.” Technically, the “members” of a convention of states are not individuals but the several state committees.
- Also misleading is Rule 1.3.1, which provides, “Each state shall be granted one vote.” The one state/one vote rule comes from the Constitution and from background rules of sovereignty. It does not derive from the convention’s “grant.” When drafting Rule 4.1.1,

¹⁶ Verbiage usually has the sense of prolixity or an overabundance of words. This rule uses it as a mere synonym for “words.”

ASL got the wording right: “In determining all questions in the Convention, all votes shall be taken by State, and each State shall have one vote.”

Among technical defects rendering the rules unclear is one in Rule 1.5.1, which reads in part:

In the event of the temporary absence or inability to preside as a President, not to exceed two Convention days, the Vice-President shall assume the duties of the President, and the Convention shall ... vote to elect a new Vice President.

This language seems to say that if the president is absent or incapacitated *for less than* two days, the vice president shall assume the president’s duties permanently and the convention shall elect a new vice president. The intention may have been for these things to happen only if the president was absent or incapacitated *for more than* two days.

The technical defect of contradiction appears in the interplay of Rule 5.6.1 and Rule 9.6.2.4. The former states that convention subject matter shall be limited to those “whose subject(s) were specifically included in the resolutions of at least two-thirds of the several States. This Convention has no authority to consider any other subject. ...”

Rule 1.8.2 seems to restrict the pool of personnel to serve as parliamentarian needlessly and unduly, and raises the suspicion that the rules’ drafters had a specific person in mind.

Yet Rule 9.6.2.4 permits the convention to be called on the aggregation of both applications specifying subjects and applications that are unlimited. (Rule 9.6.2.4 refers to unlimited applications as “Open Applications.”) Thus, if a convention were to be called under Rule 9.6.2.4 pursuant to 31 single-subject applications and three “open” applications, then under Rule 5.6.1 there would be no one subject that was “specifically included in the resolutions of at least two-thirds of the several States.” The convention, therefore, could consider no subject at all!

Here are three technical defects resulting in impracticality:

- During convention proceedings it sometimes becomes necessary to amend the rules. Traditionally conventions retain full power to reverse any amendments they deem ill-advised. Rule 1.3.3 states that a motion to amend cannot be reconsidered. The implication is that the convention is stuck with any ill-advised amendment it adopts.
- Rule 1.8.2 requires the parliamentarian to be “a current or former member of the Mason’s Manual Commission” and to have “previously served as the chief or head parliamentarian of a state legislative body.” This seems to restrict the pool of personnel needlessly and unduly, and raises the suspicion, however unfounded, that the rules’ drafters had a specific person in mind.
- Rule 2.5 limits the number of “delegates” on the floor from any state to ten. In a 50-state convention imposing a floor limit is both appropriate and wise: Historically, interstate proposing conventions have state delegations averaging in number between three and five. The limit of ten is too high. It may encourage states to magnify their voices by sending large delegations, resulting in a very populous convention – perhaps more populous than any state

or federal legislative chamber in America. Five commissioners on the floor from any state at any time are sufficient.

5. A Final Recommendation

The ASL rules contain much that is useful and valuable, and a great deal of ASL's time has been spent well. When the first convention for proposing amendments adopts its own rules, it should consult the ASL recommendations for ideas and insights.

The ASL rules contain much that is useful and valuable, and a great deal of ASL's time has been spent well. But they seem to have been drafted almost on a blank slate, with insufficient attention to the solid experience of prior conventions.

Unfortunately, the ASL rules seem to have been drafted almost on a blank slate, with insufficient attention to the solid experience of prior conventions. Future rule drafters should, therefore, employ the ASL rules as a source of ideas rather than as a model or starting point for actual convention rules. Beginning with the ASL rules and then modifying them sufficiently to serve actual convention needs would be too daunting and contentious a task, and likely would consume

too much convention time and energy. A better approach would be to begin with prior convention rules and amend them with accumulated legislative wisdom, ASL ideas, and responses to modern conditions.

#

© 2016 The Heartland Institute. Distributed by **The Heartland Institute**, a nonprofit and nonpartisan public policy research organization. Nothing in this report should be construed as reflecting the views of The Heartland Institute, nor as an attempt to aid or hinder the passage of legislation. Additional copies of this *Policy Brief* are available for \$5.95 from The Heartland Institute, phone 312/377-4000; fax 312/277-4122; email think@heartland.org; Web <http://www.heartland.org>.

About the Author

Robert G. Natelson is senior fellow in constitutional jurisprudence at The Heartland Institute. He has the same title at the Montana Policy Institute in Bozeman, Montana and at the Independence Institute in Denver, Colorado, where he heads the Article V Information Center. He was a professor of law for 25 years, serving at three universities. He taught constitutional law, advanced constitutional law, First Amendment, and constitutional history, among other courses.

Natelson is well-known as a leading scholar of the American founding era. He is the author of *The Original Constitution: What It Actually Said and Meant* (3rd ed. Apis Books, 2014), co-author of *The Origins of the Necessary and Proper Clause* (Cambridge Univ. Press, 2010), and author of numerous scholarly and popular articles. His research is regularly cited in the U.S. Supreme Court, both by parties and by the justices.

Natelson also has experience in the business, broadcasting, and political world. In 2000 he was runner-up among five candidates in the open party primary for governor of Montana.

About The Heartland Institute

The Heartland Institute is a national nonprofit research and education organization based in Arlington Heights, Illinois. It is a publicly supported charitable organization and tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

Heartland is approximately 6,000 men and women devoted to discovering, developing, and promoting free-market solutions to social and economic problems. They believe ideas matter, and the most important idea in human history is freedom.

Heartland has a full-time staff of 39. Joseph Bast is cofounder, president, and CEO. Dr. Herbert Walberg is chairman of the 10-member Board of Directors. Approximately 250 academics participate in the peer review of its publications and more than 220 elected officials pay annual dues to serve on its Legislative Forum.

Heartland has a long and distinguished history of defending freedom. It is widely regarded as a leading voice in national and international debates over budgets and taxes, environmental protection, health care, school reform, and constitutional reform.

Five centers at The Heartland Institute – including the Center for Constitutional Reform, through which this *Policy Brief* is published – conduct original research to find new ways to solve problems, turn good ideas into practical proposals for policy change, and effectively promote those proposals to policymakers and the public.

For more information, visit The Heartland Institute's website at www.heartland.org, call 312/377-4000, or visit 3939 North Wilke Road, Arlington Heights, Illinois.

**Rules for an Article V
Convention for Proposing Amendment(s)**

Table of Contents

PREAMBLE

ARTICLE 1 Officers of the Convention and Rules

- 1.1 List of Officers
- 1.2 Election of the President
- 1.3 Adoption of the Rules
 - 1.3.1 Rules Adoption
 - 1.3.2 Rules Continuity
 - 1.3.3 Amend or Suspend Rules
- 1.4 The President
 - 1.4.1 Calling the Convention to Order
 - 1.4.2 Duty to Preserve Decorum
 - 1.4.3 Points of Order
 - 1.4.4 Committee Membership
 - 1.4.5 Appointment of Committees
 - 1.4.6 Certification of Official Acts
 - 1.4.7 General Supervision of Appointees
 - 1.4.8 Vacancy in Office
- 1.5 The Vice President
 - 1.5.1 Absence of President or Inability to Preside
 - 1.5.2 Vacancy in Office
- 1.6 The Secretary of the Convention
 - 1.6.1 Journal Record of Proceedings
 - 1.6.2 Duties of the Secretary
 - 1.6.3 Numbering of Proposals
 - 1.6.4 Preparation of Calendar
 - 1.6.5 Preservation of Records
- 1.7 The Sergeant-At-Arms
- 1.8 Parliamentarian
 - 1.8.1 Duties
 - 1.8.2 Credentials and Experience

ARTICLE 2 Delegates

- 2.1 Presentation of Credentials or Commissions
- 2.2 Questions of Privilege
- 2.3 Contest of Credentials or Commissions
- 2.4 Absence of Members
- 2.5 Floor Access and Speaking Privileges
- 2.6 Recall Action of Delegate

- 2.6.1 Recall Authority
- 2.6.2 Suspension of Credentials

ARTICLE 3 Sessions of the Convention

- 3.1 Time of Meeting and Procedure
- 3.2 Reading of the Journal
- 3.3 Order of Business

ARTICLE 4 Voting and Quorum Calls

- 4.1 Voting
 - 4.1.1 Voting by State
 - 4.1.2 Qualified Super Majority
 - 4.1.3 Qualified Simple Majority
 - 4.1.4 Simple Majority
- 4.2 Call of the Roll
- 4.3 Vote Tellers
- 4.4 Third Reading and Final Passage
- 4.5 Call of the Convention and Quorum
- 4.6 Quorum in Committee of the Whole
- 4.7 Quorum for all other Committees

ARTICLE 5 Resolutions and Proposals

- 5.1 Action on Resolutions
- 5.2 Time for Consideration
- 5.3 Expenditures
- 5.4 Introduction of Proposals
- 5.5 Form of Proposals
- 5.6 Subject of Proposals
 - 5.6.1 Introduction of Proposals
- 5.7 Limitation on Introduction of Proposals
- 5.8 Reading on Two Different Days
- 5.9 Regular Order for Proposals

ARTICLE 6 Decorum and Debate

- 6.1 Recognition of Delegates and Right to the Floor
- 6.2 Disrupting Debate
- 6.3 Motion to Adjourn or Recess
- 6.4 Limits on Debate
 - 6.4.1 Right of Delegate to Debate
 - 6.4.2 Closing Debate

- 6.5 Calling Another Delegate to Order
- 6.6 Closing Debate

ARTICLE 7 Committee of the Whole

- 7.1 Standing Order of the Day
- 7.2 Chairman
- 7.3 Method of Acting on Proposals
- 7.4 Rules in Committee of the Whole
- 7.5 Motion to Rise
- 7.6 Powers of the Committee of the Whole

ARTICLE 8 Committees of the Convention

- 8.1 Number and Appointment of Committees
- 8.2 Standing Committees of the Convention and Duties
 - 8.2.1 Committee on Administration and Accounts
 - 8.2.2 Committee on Convention Research
 - 8.2.3 Committee on Credentials and Privileges
 - 8.2.4 Committee on Information, Submission and Address to the States and Congress
 - 8.2.5 Committee on Printing and Publications
 - 8.2.6 Committee on Rules and Procedures
 - 8.2.7 Committee on Style
- 8.3 Composition of Committees
- 8.4 Administration and Accounts
- 8.5 Reference to Committees
- 8.6 Time of Sitting
- 8.7 Committee Quorum
- 8.8 Committee Hearings
- 8.9 Committee Reports
- 8.10 Discharge of Proposal
- 8.11 Rules of the Convention

ARTICLE 9 Miscellaneous

- 9.1 Guide on Parliamentary Practice
- 9.2 Communication with Congress and the States
- 9.3 Openness of the Convention Sessions
- 9.4 Funding of the Convention
- 9.5 Close of the Convention
 - 9.5.1 Adjournment
- 9.6 Article V Applications
 - 9.6.1 Application Lifespan
 - 9.6.2 Counting of Applications
 - 9.6.3 Call of a Convention

PREAMBLE

Pursuant to Article V of the United States Constitution, we the delegates of the several sovereign States, grateful to Almighty God, do assemble in this convention of the States, called by Congress, for the purpose of proposing amendments to the Constitution. We pledge to conduct the people's business in a fair, collegial, and impartial manner, to work in good faith, and to honor both the letter and spirit of the Constitution and these rules.

ARTICLE 1 Officers of the Convention and Rules

1.1 List of Officers

Temporary: A temporary presiding President shall be a delegate selected by the State delegation from the State randomly drawn from the first 34 States that passed a resolution calling for a Convention for proposing amendments under the authority of Article V of the United States Constitution.

Permanent: The officers of the Convention shall be a President, a Vice President, a Secretary, a Sergeant-at-Arms, and a Parliamentarian. The President and Vice-President shall be elected by “qualified simple majority” vote of the Convention by secret ballot and shall not be from the same political party. The Secretary, Sergeant-at Arms, and the Parliamentarian shall be appointed by the President, in consultation with the Vice-President. No more than one officer shall be selected from the same State.

1.2 Election of President

The election of President shall be conducted by the temporary presiding President.

1.3 Adoption of Rules

1.3.1 Rules Adoption

Immediately following the election of President the delegates recognized with credentials shall determine the rules which will govern the proceedings of the Convention. Adoption shall be by “qualified simple majority.” Each State is granted one vote.

1.3.2 Rules Continuity

The rules of the Convention remain in effect until amended or rescinded by the Convention. Upon the convening of a new Convention, the rules of the Convention in effect at the conclusion of the preceding Convention remain in force until superseded by Convention rules adopted in the new Convention.

1.3.3 Amend or Suspend Rules

A motion to suspend or amend the rules may be made at any time when no question is pending; provided the motion pertains to the question before the body. The motion must be seconded, is non-debatable, and sustained by a vote of a “qualified super majority”. It yields to all the privileged motions, except a call for the orders of the day and to incidental motions arising out of itself. It cannot be amended or have any other subsidiary motion

applied to it, nor can a vote on it be reconsidered, nor can a motion to suspend the rules for the same purpose be renewed at the same meeting except by unanimous consent, though it may be renewed after an adjournment, even if the next meeting is held the same day. The provision of this section shall not apply to Section 5.6., which shall not be amended or suspended.

1.4 The President

1.4.1 Calling the Convention to Order

The President shall take the chair each day at the hour to which the Convention shall have previously adjourned. The President shall call the Convention to order, and, except in the absence of a quorum, as prescribed by these rules, shall proceed to business in the manner prescribed by these rules.

1.4.2 Duty to Preserve Decorum

The President shall preserve order and decorum, and during debate, the President shall confine delegates to the question under discussion. The President shall have general control of the Convention chamber, unless otherwise ordered by the Convention, and in cases of disturbance or disorderly conduct on the floor or in the public areas outside the bar of the Convention, has the power to order the same cleared.

1.4.3 Points of Order

All questions of order shall be decided by the President, subject to appeal of the Convention. On every appeal, the President shall have the right to assign the reason for the decision. In case of such appeal, no delegate shall speak more than once. All questions and points of order shall be noted by the Secretary with the decision thereon.

1.4.4 Committee Membership

The President shall be an ex officio member of all committees of the Convention to which he or she shall not have been specifically appointed, for the purpose of a quorum and discussion, but shall have no vote unless a duly appointed member of such committee.

1.4.5 Appointments of Committees

The President shall appoint all committees, unless otherwise ordered by the Convention.

1.4.6 Certification of Official Acts

When necessary or required, all official acts of the Convention shall be certified by the President and Vice President and attested by the Secretary, with the date thereof.

1.4.7 General Supervision of Appointees

In the performance of their duties, the Secretary, the Sergeant-at-Arms, the Parliamentarian and all employees shall be under the general supervision of the President.

1.4.8 Vacancy in Office

In the event of a vacancy in the office of President by death, resignation or otherwise, the Convention, by a “qualified simple majority” vote, shall elect a new President.

1.5 The Vice President

1.5.1 Absence of President or Inability to Preside

In the event of the temporary absence or inability to preside as a President, not to exceed two Convention days, the Vice-President shall assume the duties of the President, and the Convention shall, by “qualified simple majority” vote to elect a new Vice President.

1.5.2 Vacancy in Office

In the event of a vacancy in the office of Vice President by death, resignation or otherwise, the Convention, by a “qualified simple majority” vote shall elect a new Vice President.

1.6 The Secretary of the Convention

1.6.1 Journal Record of Proceedings

The Secretary shall keep a journal of the proceedings of the Convention and shall provide to each delegate a copy of the proceedings of the previous day.

1.6.2 Duties of the Secretary

Subject to the control of the President, the Secretary shall be custodian of the records of the Convention. Under the direction of the President, the Secretary shall perform the customary duties of clerks or secretaries of deliberative assemblies, and such other duties as shall be ordered by the Convention or the President.

1.6.3 Numbering of Proposals

The Secretary shall give to every proposal when introduced a number, and the numbers shall be in sequential order.

1.6.4 Preparation of Calendar

The Secretary shall prepare and provide to each delegate each day a calendar of the business of the convention, as provided by these Rules.

1.6.5 Preservation of Records

As soon as possible after the final adjournment of the Convention, the Secretary shall file with the Archivist of the United States for keeping in the manner provided by law the records, books, documents, and other papers of the Convention.

1.7 The Sergeant-at-Arms

Subject to the direction of the President, the Sergeant-at-Arms shall enforce the rules of the Convention. The Sergeant-at-Arms shall be charged with enforcing the rules as to admission of the Convention floor. The Sergeant-at-Arms shall not be required to be a delegate.

1.8 Parliamentarian

1.8.1 Duties

A Parliamentarian shall be appointed by the President and shall be responsible for assisting the President and any other presiding officers and the standing committees in the making of parliamentary rulings.

1.8.2 Credentials and Experience

The parliamentarian shall be a current or former member of the Mason's Manual Commission. The Parliamentarian shall have previously served as the chief or head parliamentarian of a state legislative body. The Parliamentarian does not have to be a delegate.

ARTICLE 2 Delegates

2.1 Presentation of Credentials or Commissions

Each delegate shall present a certified copy of a document announcing his or her credentials or commission to the Secretary who shall promptly inform the Chairperson of the Committee on Credentials and enter the delegate's name in the Journal. The Chairperson of the Committee on Credentials shall confirm each delegate's credentials or commission. Unless challenged as provided under Section 2.3, the delegate shall be deemed qualified to serve as a delegate in the Convention. Each State Legislature is responsible for determining the delegate selection process and number of delegates to be sent to the Convention by the respective State.

2.2 Questions of Privilege

The presentation of credentials or commissions of delegates to the Convention and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Convention is voting or ascertaining the presence of a quorum; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed.

2.3 Contest of Credentials or Commissions

No protest or petition concerning the credentials or commissions of any delegate shall be received or considered unless filed with the Secretary within five (5) convention days of the delegate's name being made public through the publication of the Journal. All protests or petitions shall be referred to the Committee on Credentials and Privileges for consideration. The President or Vice President may at any time petition the Committee on Credentials and Privileges to reconsider the credentials or commission of any delegate.

2.4 Absence of Members

No delegate shall absent himself or herself from the sessions of the Convention unless he or she has leave, is ill, or his or her absence is otherwise unavoidable.

2.5 Floor Access and Speaking Privilege

Each state delegation is limited to 10 delegates at any one time to have access to the floor and have speaking privileges.

2.6 Recall Action of Delegate

2.6.1 Recall Authority

The Convention shall recognize the recall authority of each State Legislature to recall the credentials of the delegates from that respective state, and to suspend such delegate's authority attend the Convention. The recall instructions shall be provided to the Convention Secretary in writing in order to be recognized and shall identify the persons, committee, commission or office having recall authority. Upon reception of a recall order originating from a proper recall authority, the Chairpersons of the Committee on Credentials and Privileges shall confirm the recall order, notify the delegate of the recall order who may within three (3) days of such notice request and receive a hearing before the Committee on Credentials and Privileges regarding the recall order of the delegate which may be rebutted but shall otherwise be presumed valid. If no challenge is filed, the name of the recalled delegate shall be entered into the Journal. Upon receipt of a recall order, the delegate in question shall have his or her convention credentials suspended and floor access revoked unless the delegate's authority is restored.

2.6.2 Suspension of Credentials

The Convention may, by action of its member delegates, vote to suspend the credentials of any delegate. A motion for suspension shall be approved by a three-fourths majority of the state delegations seated pursuant to Article 2.1.

ARTICLE 3 Sessions of the Convention

3.1 Time of Meeting and Procedure

The Convention shall meet at 8:00 a.m. unless otherwise ordered by the Convention.

3.2 Reading of the Journal

Immediately after the President shall have taken the roll call vote, the Journal of the preceding day shall be read by the Secretary, unless dispensed with by the consent of the Convention, and published to the public.

3.3 Order of Business

At meetings of the Convention, the order of business shall be as follows:

1. Call Convention to Order.
2. Prayer.
3. Pledge.
4. Roll Call.
5. Reading of the Journal.
6. Presentation of petitions, memorials and remonstrances.
7. Reports of committees.
8. Introduction and first reading of proposals.

9. Reference of proposals.
10. Motions and resolutions.
11. Orders of the day.
12. Committee notices.

ARTICLE 4 Voting and Quorum Calls

4.1 Voting

4.1.1 Voting by State

In determining all questions in the Convention, all votes shall be taken by State, and each State shall have one vote. Votes may be taken by voice, call of the roll, or by use of an electronic voting system under the supervision of the President at his or her direction. The decision shall be entered in the journal. Any delegation can request a division of the Convention and any delegation has the authority to request a roll call vote.

4.1.2 Qualified Super Majority

In matters requiring a “qualified super majority”, this shall be defined as two-thirds of the eligible membership, which at this time is 34 States. Qualified is defined as those States that have met the requirements of Article 2.1.

4.1.3 Qualified Simple Majority

In matters requiring a “qualified simple majority”, this shall be defined as greater than one-half of the eligible membership, which at this time is 26 States. Qualified is defined as those States that have meet the requirements of Article 2.1.

4.1.4 Simple Majority

Unless otherwise directed, all other votes and procedural questions shall be decided by the affirmative vote of a “simple majority”, defined as greater than one-half of the voting members present.

4.2 Call of the Roll

In determining questions or upon a call of the Convention, the following mode shall be observed: The Secretary shall call the names of the States alphabetically, and the absentees noted, after which the names of the absent States shall again be called.

4.3 Vote Tellers

Each State delegation shall name one person to be the teller for the delegation. The designated teller of that delegation shall report the vote for that state. The delegation of each State shall be the sole judge of determining the vote of the State. In case the vote of the State delegation cannot be resolved for submission, the teller shall declare the vote as an “abstention”.

4.4 Third Reading and Final Passage

Final action on any proposed amendment shall be decided by an affirmative vote of at least 36 States. No State shall be allowed to cast or change its vote after the Convention's action on said question is announced by the President.

4.5 Call of the Convention and Quorum

A call of the Convention may be made for the purpose of obtaining a quorum or for the purpose of securing the attendance of absent delegates, even though a quorum be present. A "qualified simple majority", as defined in Article 4.1.3, shall be a quorum to conduct business, but a smaller number may adjourn from day to day and compel the attendance of absent delegates.

4.6 Quorum in Committee of the Whole

A "qualified simple majority", as defined in Article 4.1.3, shall be a quorum for the Committee of the Whole to do business, and if the committee finds itself without a quorum, the chair shall cause the roll of the Convention to be called and thereupon the committee shall rise, the President resume the chair and the chair report the cause of the rising of the Convention and the names of the absentee States to the Convention shall be entered in the Journal.

4.7 Quorum for all other Committees

A "simple majority", as defined in Article 4.1.4, constitutes a quorum. No committee shall take final action on a proposal unless a quorum is present.

ARTICLE 5 Resolutions and Proposals

5.1 Action on Resolutions

Resolutions shall be referred to the proper committee for consideration immediately upon introduction, except those resolutions which relate to the disposition of business immediately before the Convention or adjournments or recesses, and except those that, in the opinion of the President, should be considered at the time of their introduction.

5.2 Time for Consideration

Resolutions reported by a committee shall lay over one (1) day for consideration, after which they may be called up under the appropriate order of business.

5.3 Expenditures

All resolutions authorizing or contemplating the expenditure of money shall be referred to the standing committee on Administration and Accounts, for its report thereon before final action by the Convention.

5.4 Introduction of Proposals

All proposals for an amendment of the present Constitution of the United States of America shall be introduced by one or more state delegations, or by a committee of the Convention either by a proposal or committee substitute for a proposal or a report.

The President may, with unanimous consent, refer Proposals that are of a substantially similar nature to the appropriate committee as a “Consolidated” Proposal. A Consolidated Proposal shall be assigned a new number, shall contain the bundle of Proposals, shall be considered and debated by the assigned committee as a single proposal and the introducers of the individual Proposals shall be listed as introducers on the new Proposal. The original individual Proposals shall be tabled indefinitely.

5.5 Form of Proposals

Each Constitutional amendment proposal shall be printed, endorsed with the signatures of all State delegates introducing it, or by the Chair of the committee introducing it or reporting it. The caption of all proposals shall be:

“Proposal No. ____ in the (year)____ Amendment Convention of the United States of America.” Introduced by ____ (a listing of the State(s), delegate(s), or committee.”

Following the caption there shall be a short title concisely stating the general nature of its subject matter, followed by the words: “BE IT RESOLVED THAT THE FOLLOWING PROPOSED AMENDMENT BE SUBMITTED TO THE SEVERAL STATES FOR RATIFICATION AS AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA.”

5.6 Subject of Proposals

5.6.1 Introduction of Proposals

The Convention derives its authority by way of the resolutions to call for a convention pursuant to Article V of the Constitution of the United States passed by at least two-thirds of the Legislatures of the several States. Each State with delegates in attendance may introduce any proposed amendment to the Constitution both consistent with the subject(s) contained in its State’s application and subject to this rule. The Convention is limited to proposing only an amendment or amendments to the Constitution of the United States whose subject(s) were specifically included in the resolutions of at least two-thirds of the several States. This Convention has no authority to consider any other subject or entertain any motion to consider any other subjects. Any motion not within the scope authorized by each and every one of the resolutions passed by at least two-thirds of the Legislatures of the several States shall be ruled out of order. Such a ruling shall only be appealed as to whether the motion is germane to the subject of the call.

5.7 Limitation on Introduction of Proposals

After the fifth (5th) day of the Convention, no Constitutional amendment proposal shall be introduced, except on the report or recommendation of a standing or select committee, or by unanimous consent. No delegation is required to submit a proposal.

5.8 Reading on Two Different Days

Every proposal shall be read in its entirety on two (2) different Convention days.

5.9 Regular Order for Proposals

The regular order to be taken by proposals shall be as follows:

1. Introduction, first reading, reference to a committee by the President, and printing of copies of each proposal.
2. Report of committee of the proposal with amendments or a committee substitute, printing of copies, and placing on general orders.
3. Consideration by Convention and action on amendments offered by delegations.
4. Second Reading.
5. Reference to the Committee on Style.
6. Report of the Committee on Style, and printing of copies.
7. Action on report of Style.
8. Reference to the Committee on Style for arrangement of sections, and for form of engrossment.
9. Report of Committee on Style for arrangement of sections, and printing of copies.
10. Order for engrossment and printing. The engrossed copy of the proposal shall be printed in a form designated by the Convention Body.
11. Third reading and final passage without amendment.

ARTICLE 6 Decorum and Debate

6.1 Recognition of Delegates and Right to the Floor

Every delegate rising to speak shall address the President, and no delegate shall proceed until he or she shall have been recognized by the President as entitled to the floor. Two delegates rising at the same time, the President shall name the member who shall be first heard, the other seeking recognition having preference next to speak.

6.2 Disrupting Debate

While a delegate shall be speaking, none shall pass between the delegate and President, or entertain disruptive private discourse with another delegate on the floor with the exception of silent electronic communication.

6.3 Motion to Adjourn or Recess

When a motion to adjourn, or for recess, shall have carried, no delegate shall leave his or her place until adjournment or recess shall be declared by the President.

6.4 Limits on Debate

6.4.1 Right of Delegate to Debate

No delegate shall speak more often than once upon the same question, without special leave of the Convention, and not a second time, until every other state delegation shall have an opportunity to speak on the question. No delegate shall speak for more than twelve minutes upon the same question, and no State delegation shall speak for more than forty-eight minutes total upon the same question. No delegate shall impeach or impugn motives of any other's argument or vote. No delegate shall be permitted to indulge in personalities, use language personally offensive, or charge deliberate misrepresentation of another delegate.

6.4.2 Closing Debate

So that no member shall abuse his or her privileges, the previous question may be used to close debate on any debatable question. The previous question shall be in the form: “Shall the main question now be put?” It shall only be admitted on written demand of 13 States, and sustained by a vote of a “qualified simple majority”, as defined in Article 4.1.3.

6.5 Calling another Delegate to Order

Any delegate, as well as the President, may call to order any other delegate, subject to appeal to the Convention, and the delegate called to order may be allowed to explain his or her conduct or expressions supposed to be objectionable. If there is no appeal, the decision of the President shall prevail. If the decision of the President favors the delegate called to order, he or she shall be at liberty to proceed.

6.6 Closing Debate

So that no member shall abuse his or her privileges, the previous question may be used to close debate on any debatable question. The previous question shall be in the form: “Shall the main question now be put?” It shall only be admitted on written demand of 13 States, and sustained by a vote of a “qualified simple majority”, as defined in Article 4.1.3.

ARTICLE 7 Committee of the Whole

7.1 Standing Order of the Day

Upon a motion supported by a “qualified simple majority”, the Convention may resolve itself into a Committee of the Whole for consideration of proposals. It shall be a standing order of the day for the Convention to resolve itself into a Committee of the Whole.

7.2 Chairman

When the Convention shall resolve itself into a Committee of the Whole, the President shall name a Chair to preside in the committee

7.3 Method of Acting on Proposals

Upon a proposal being committed to the Committee of the Whole, it shall be read by the Secretary and then read and debated by clauses or sections, as determined by the committee. After the report, the bill shall be subject to be debated and amended by clauses or sections on the floor of the Convention before a vote on the question to perfect and print is taken.

7.4 Rules in Committee of the Whole

The rules of the Convention shall be observed in the Committee of the Whole as far as may be applicable.

7.5 Motion to Rise

A motion for the rising of the Committee of the Whole shall always be in order unless a member of the committee is speaking or a vote is being taken, and shall be decided without debate.

7.6 Powers of the Committee of the Whole

The Committee of the Whole shall have the same powers as the Convention to enforce the attendance of members; and the Secretary and Sergeant-at-Arms of the Convention shall be the Secretary and Sergeant-at-Arms of the Committee of the Whole.

ARTICLE 8 Committees of the Convention

8.1 Number and Appointment of Committees

The standing committees of the Convention shall be seven in number. The President shall appoint all committees, unless otherwise ordered by the Convention. Each standing committee shall be chaired by a Chair, appointed by the President pursuant to Article 1.4.6.

8.2 Standing Committees of the Convention and Duties

8.2.1 Committee on Administration and Accounts

The Committee on Administration and Accounts shall consider matters relating to Convention expenditures; set up such safeguards and procedures as may be necessary to protect the Convention and its members in all expenditures which may be made; to provide methods by which all expenditures can be checked and audited; and recommend to the Convention the methods to be used for that purpose. The committee shall further have supervision of the general staff of the Convention and be authorized to prescribe, in addition to those already provided, rules and regulations in regard to their activities and duties. The committee shall prepare and submit to the Convention from time to time appropriation resolutions for the appropriation of funds from the State Assessment Account to the Operations Account, as noted in section 9.4.1, for the operation of the Convention.

In submitting said resolutions, the committee shall accompany the proposal with estimates of the Convention requirements, represented in the proposed appropriations. Subject to the approval of the Convention, the committee shall be authorized to contract for, and purchase such supplies and services as the Convention may require and provide for the proper distribution of the same. It shall be further the duty of the committee to report to the Convention, from time to time, as it may deem desirable, giving the Convention information about the expenditures of the Convention and methods established to protect the same.

8.2.2 Committee on Convention Research

The committee on Convention Research shall assemble, at a conducive location for the purpose of information gathering and research in order to address problems under consideration. This location should have internet access, as well as a private meeting space to preserve confidentiality. From time to time, the committee may recommend the purchase or acquisition of such materials as may be needed by the Convention.

8.2.3 Committee on Credentials and Privileges

The Committee on Credentials and Privileges shall examine the commissions, credentials, and instructions of all delegates to the Convention and report a list of all the delegates who

are entitled to serve as members of the Convention. The committee shall further consider matters relating to the floor privileges of members of the convention.

8.2.4 Committee on Information, Submission, and Address to the States and Congress

The Committee on Information, Submission, and Address to the States and Congress shall present information to the public in a timely manner concerning the proceedings of the Convention. The committee shall also consider and make recommendations to the Convention and Congress as to the method of submission of the proposal(s) of the Convention to the various States after the adjournment of the Convention. The committee shall further prepare and present to the Convention, for its approval, an address to the States and Congress outlining the results of the Convention's work.

8.2.5 Committee on Printing and Publications

The Committee on Printing and Publications shall consider all matters having to do with Convention printing, reporting of the proceedings, and the publications which may be incidental to those proceedings. The committee shall be charged with the responsibility of determining the amount of printing to be done, the nature and character of publications to be made, and, in general, recommend any and all measures which it may deem useful for the economical and proper management of the printing, reporting, and publications of the Convention.

8.2.6 Committee on Rules and Procedures

The Committee on Rules and Procedures shall consider all matters relating to the rules for the Convention.

8.2.7 Committee on Style

The Committee on Style shall examine and correct the proposals which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine the order in which the proposals shall be directed by the Convention to be engrossed for third reading, all proposals so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time. The committee shall not have authority to change the sense or purpose of any proposal referred to it, and if any thirteen (13) State delegations shall object in a timely manner to any report of said committee on the ground that said report has changed the sense or purpose of any such proposal, the proposal shall be referred to a select committee consisting of fifteen (15) delegates, which shall include not less than seven (7) of the thirteen (13) State delegations objecting to the report.

8.3 Composition of Committees

The membership of all standing committees and of all other committees, unless otherwise provided by these rules or by the resolution creating them, shall be composed of ten members. No major political party shall be represented on the committee by more than six members, nor shall more than one member be from any one State.

8.4 Administration and Accounts

The Committee on Administration and Accounts shall be composed of two members; the President and the Vice President.

8.5 Reference to Committees

When motions are made to refer any proposal or matter, and different committees are proposed, the question of reference shall be in the following order: a Standing Committee, a Select Committee, the Committee of the Whole.

8.6 Time of Sitting

No committee shall sit during the sessions of the Convention without leave of the Convention.

8.7 Committee Quorum

A majority of the members of a committee constitutes a quorum. No committee shall take final action on a proposal unless a quorum is present.

8.8 Committee Hearings

When any proposal is about to be considered by a committee, the introducers of such proposal shall be notified of the time and place where such proposal shall be considered by such committee. Each committee shall keep a record of the members present when a proposal is finally considered; and this record and the record of the votes cast shall be filed by the Committee Chair with its report.

8.9 Committee Reports

No proposal shall be reported from a committee unless such action is approved by affirmative vote by a “simple majority”. The committee report must be signed by the Chair. In the event any committee is evenly divided on any matter pending before it, the Chair shall refer such matter back to the Convention without recommendation.

8.10 Discharge of Proposal

In the event any committee considering proposals shall fail or refuse to report to the Convention on the same within the period of time fixed by these rules, any member delegate may file a request in open convention for a report upon the specified proposal to the floor of the Convention, and in the event the committee shall fail to make a report within three convention days thereafter, the proposal shall be placed on the calendar for consideration.

8.11 Rules of the Convention

The rules of the Convention shall be observed in all committees as far as may be applicable, and each committee shall keep a record of its proceedings.

ARTICLE 9 Miscellaneous

9.1 Guide on Parliamentary Practice

The rules of parliamentary practice laid down in the latest edition of Mason's Manual of Legislative Procedure shall govern in all cases in which they are not inconsistent with the rules and orders of the Convention.

9.2 Communication with Congress and the States

When it is appropriate the Secretary of the Convention shall provide communication with the United States Congress and the States.

9.3 Openness of the Convention Sessions

All general sessions and Committee meetings of the Convention shall be open to the public.

9.4 Funding of the Convention

- 9.4.1** A State assessment account shall be established and managed by the Committee on Administration and Accounts. An initial assessment of equal shares shall be required of each State for whom delegates are seated pursuant to Article 2.1. Subsequent assessments of equal shares may be requested when deemed necessary by the Committee on Administration and Accounts and approved by the Convention by a simple majority vote.
- 9.4.2** An Operations Account shall be established to utilize for reimbursement of all expenses of the Convention, and shall be funded from time to time, as deemed necessary.
- 9.4.3** All accounts are to be managed by the Committee on Administration and Accounts, as specified in Article 8.2.1.
- 9.4.4** Expenses related to the transportation, housing, and meals of delegates is the responsibility of the sending State.
- 9.4.5** Any accrued assets of the Convention shall be distributed to a qualified 501(c) (3) non-profit organization after any remaining debts are resolved.

9.5 Close of the Convention

9.5.1 Adjournment

The Convention shall adjourn Sine Die upon either: Communication of a proposed amendment to Congress and the States per Article 9.2. or passage of a motion to adjourn Sine Die by two-thirds of the attending State delegations.

9.6 Article V Applications

9.6.1 Application Lifespan

An individual State's Application shall be considered active until such time as either an amendment is ratified under authority of Article V of the United States Constitution that is the result of a Convention called by Congress on the respective Application, or the

Application is rescinded by the respective State Legislature prior to the call of the Convention by Congress.

9.6.2 Counting of Applications

9.6.2.1 The counting of active Applications is the responsibility of the State Legislatures.

9.6.2.2 An Application shall be counted towards the two-thirds of the States requirement under Article V of the United States Constitution that triggers a Call by Congress if it is of the same subject matter as other Resolutions. As each State is sovereign and independent, the verbiage of an Application does not need to be similar nor can an Application be disqualified from being counted with those of similar subject matter because the verbiage is different, unless the Application is so limited.

9.6.2.3 An Application may specify a single, or multiple, subject matters. The Application can also be considered an Open Application if it calls for a Convention for Proposing Amendments and does not name any subject matter for an amendment.

9.6.2.4 When counting Applications towards the required two-thirds number specified in Article V of the United States Constitution, an Open Application shall qualify towards the count of Applications for both Open Applications that have been filed among the States and toward the count of Applications for specific subject matters, as it is the intent of a State in filing an Open Application to convene a Convention under any and all subject matters.

9.6.3 Call of a Convention

Upon reaching the required two-thirds of the States having filed Applications on the same subject matter, as defined above as a combination of specific subject Applications and Open Applications, the State Legislatures having filed these Applications shall deliver to Congress a document of notification for a Call. This document shall include all information necessary for Congress to make the call in a timely and informed manner, consistent with the intentions of the founders per Federalist 85 which states that nothing be left to the discretion of Congress. This includes:

1. The subject matter, if any, authorized in the Applications
2. A list of the States that have filed the qualifying Applications with a copy of each of the respective Applications attached
3. The proposed date and location of convening
4. Any other information the Convention deems necessary

INDIANA STATEHOUSE | DECEMBER 7, 2013 | THE ASSEMBLY OF STATE LEGISLATURES

Resolution of The Assembly of State Legislatures - June 12-13, 2014

WHEREAS, it is proper to recognize the role the 1785 meeting between Virginia and Maryland at Mount Vernon and the gathering of New York, New Jersey, Pennsylvania, Delaware, and Virginia at Annapolis in 1786 in beginning to address the weaknesses of the Articles of Confederation and “devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union;” and

WHEREAS, it is equally proper to recognize the role meetings at Mount Vernon on December 7, 2013 and Indianapolis on June 12-13, 2014 have on the process of addressing procedures for calling a Convention for proposing amendments under Article V of the United States Constitution; and

WHEREAS, the Constitution created a system of Federalism, with a division of power between States and Federal Government, but that the resulting balance of power has been called into question in recent years; and

WHEREAS, pursuant to the provisions of Article V of the Constitution of the United States, State Legislatures have equal standing with Congress to propose amendments; and

WHEREAS, the States, through their appointed delegates, are united in their desire to act on the authority, duty and responsibility to define the rules and procedures of any Article V amendment proposing Convention; and

WHEREAS, the attendees of The Mount Vernon Assembly, a bipartisan group of more than 100 currently elected State Legislators from 33 States, gathered for a meeting convened on June 12, 2014, at the Indiana Statehouse in Indianapolis, Indiana.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY:

Section 1: That “The Mount Vernon Assembly” shall hereafter be known as “The Assembly of State Legislatures.”

Section 2: That the focus of The Assembly of State Legislatures’ efforts moving forward is to draft proposed rules and procedures or any provisions as shall appear to them necessary, being a power not delegated to Congress but reserved to the States, under which an Article V Convention for proposing amendments would function.

Section 3: That the work product of The Assembly of State Legislatures will serve as recommendations for a Convention for proposing amendments called by Congress, thus allowing the amending convention to focus on drafting language of an amendment(s) instead of the administrative process; and

Section 4: That the Executive Committee of The Assembly of State Legislatures is hereby instructed to transmit a formal invitation to the legislative leaders of the fifty States, requesting a bi-partisan delegation of at least three currently serving members of their respective legislative bodies to be present from each State at the next planning meeting in early December 2014. (The date and site to be determined by the Executive Committee based on the input from the planning subcommittee.)

BYLAWS OF THE ASSEMBLY OF STATE LEGISLATURES, INC.

A NOT FOR PROFIT CORPORATION

ARTICLE I.

ORGANIZATION AND PURPOSE

SECTION 1 Name: The name of the organization shall be The Assembly of State Legislatures, Inc. (hereinafter "The Assembly").

SECTION 2 Purpose: The purpose of The Assembly shall be to draft and recommend rules and procedures for a convention of the states for the purpose of proposing amendments pursuant to Article V of The Constitution of the United States of America and to consider and act upon all other matters of relevance for such a convention.

SECTION 3 Organization: The Assembly is a member organization organized under Internal Revenue Code Section 501(c)(6) as a professional association of State Legislatures and shall operate under its requirements and restrictions. The Assembly is not organized for profit, and no part of any income in excess of expenses will inure to any private shareholder or individual. Compensation of any employee of The Assembly shall be limited to the value of services rendered to the organization. In the event of dissolution, the Executive Committee shall wind up the affairs of the organization, pay all remaining obligations, and remit any funds remaining thereafter to an organization designated by the Internal Revenue service as a charity under I.R.S. Code Section 501(c)(3).

ARTICLE II.

MEMBERSHIP

SECTION 1 Membership: Membership shall consist of each of the 50 State Legislatures of The United States of America. The State Legislature as a body is the member for each state.

SECTION 2 Delegation: Each state legislature shall be represented by its duly appointed delegation consisting only of currently sitting state legislators.

SECTION 3 Delegate Limitation: Each delegation from each state legislature shall consist of a maximum of six voting delegates and such other delegates as the state shall designate.

SECTION 4 Delegate Appointment: Voting delegates of each delegation shall consist of two delegates appointed by the highest ranking member of the majority party of each of the two legislative bodies in each state and one delegate appointed by the highest ranking member of the largest minority party in each of the two legislative bodies in each state.

SECTION 5 Alternative Delegate Appointment: In a State with one legislative chamber, the legislative leader shall designate all six voting delegates of a State's delegation.

SECTION 6 Political Parties: In no event shall more than four voting members of a State's delegation be members of the same political party.

SECTION 7 Delegate Openings: In the event that a State legislature designates one or more voting delegates but less than six, the voting delegate or delegates so designated and attending the meetings of The Assembly shall serve as that State's delegation.

SECTION 8 Board Appointment of Delegates: If the State legislative leaders of a State fail to designate a voting delegate or delegates, the Co-Presidents acting jointly may seat currently sitting members of that State legislature as acting delegates with full rights of voting and participation upon approval of a majority of a quorum of the Assembly.

ARTICLE III.

GOVERNANCE

SECTION 1 Quorum: A quorum of the Assembly shall be required to conduct a meeting of the Assembly. A quorum shall consist of 26 or more members of the Assembly. Voting shall be by state, and each state shall vote by polling its voting delegates.

SECTION 2 Annual Meeting: At the first annual meeting of the Assembly after each general election, voting delegates of the two largest political parties shall meet and choose one member of its party to serve as its Co-President of The Assembly. The Co-Presidents of the Assembly shall serve for a term of two years. The executive board may call a special meeting at any time during the year, provided they give members at least 90 days advance notice. The executive board may call an emergency meeting, provided they provide at least 14 days written notice to the board members.

SECTION 3 The Co-Presidents of The Assembly shall jointly establish, make appointments to, and co-chair the Executive Committee which shall function as the governance entity of The Assembly. The Executive Committee shall draft a Code of Regulations which shall be approved by the majority of the quorum of the Assembly. The Code shall include rules and regulations for meetings, voting, election, rules and procedures, creation of committees, and all other functions of The Assembly. The executive committee may delegate this duty to an appropriate sub-committee or newly formed committee.

SECTION 4 Executive Committee: The Executive Committee shall consist of the Co-Presidents, the Treasurer, the Secretary, and any other positions the Co-Presidents may jointly appoint.

Co-President: the two elected Co-Presidents shall convene regularly scheduled Executive Committee meetings and shall preside or arrange for other members of the Executive Committee to preside at each meeting. Each Co-President shall appoint a Co-Vice President who shall serve in the absence of the appointing Co-President.

Secretary: shall be responsible for keeping records of all Assembly actions including overseeing the taking of minutes at all Executive Committee meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each Executive Committee, member and assuring that corporate records are maintained.

Treasurer: shall make a report at each Executive Committee meeting. The treasurer shall chair the finance committee, assist in the preparation of the budget, help develop fundraising plans, and maintain and make financial information available to Executive Committee members and the public. The Executive Committee shall determine the method of maintaining financial data of the Assembly. Checks shall require the signature of a Co-President and the Treasurer.

An Executive Committee member can be removed due to misconduct or impropriety by a majority of the Assembly.

An Executive Committee member shall notify the board in writing of his/her intent of resignation.

A vacancy is created when an Executive Committee member is removed or resigns. The Executive Committee shall notify the membership of the vacancy.

SECTION 5 Committees: The Executive Committee may create committees to support the operation of the Assembly. Committee Chairs shall be appointed, and/or removed, by the Executive Committee. Committees may be dissolved by a majority vote of the Executive Committee. These committees may include, but are not limited to the following:

- Rules Committee
- Judiciary Committee
- Finances, Communications, & Logistics

SECTION 6 Any decision of the Co-Presidents or the Executive Committee may be voided by a vote of a majority of a quorum of the members.

SECTION 7 These By-Laws may be amended by a vote of a majority of the members.

Found 5/17/2019 from Heartland website / <https://archive.org/about/>
<https://web.archive.org/web/20151110055246/http://www.assemblystatelegislatures.com/bylaws.htm>
!

<https://web.archive.org/web/20160209211704/http://www.assemblystatelegislatures.com/executive-committee.html>



ARTICLE V AGGREGATION AND PROGRESS TOWARD A BALANCED BUDGET AMENDMENT CONVENTION:

- COUNTING TO TWO-THIRDS BY ROBERT NATELSON
- MODEL ARTICLE V BALANCED BUDGET AMENDMENT CONVENTION APPLICATION
- LIST OF ACTIVE ARTICLE V BBA APPLICATIONS
- U.S. REPRESENTATIVE YVETTE HERRELL: PRESS RELEASE
- 34 STATES V. CONGRESS

Tab 4

Federalism & Separation of Powers

COUNTING TO TWO THIRDS: HOW CLOSE ARE WE TO A CONVENTION FOR PROPOSING AMENDMENTS TO THE CONSTITUTION?

By Robert G. Natelson

Note from the Editor:

This article argues that, in aggregating applications from states to call a convention for proposing amendments under Article V of the U.S. Constitution, Congress should count plenary (unlimited) applications toward a limited-subject convention.

The Federalist Society takes no positions on particular legal and public policy matters. Any expressions of opinion are those of the author. Whenever we publish an article that advocates for a particular position, as here, we offer links to other perspectives on the issue, including ones opposed to the position taken in the article. We also invite responses from our readers. To join the debate, please email us at info@fedsoc.org.

- Laurence H. Tribe, *Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment*, 10 PAC. L.J. 627, 632 (1979), <http://heinonline.org/HOL/LandingPage?handle=hein.journals/mcglr10&div=44&id=&page=>.
- Michael Stokes Paulsen, *A General Theory of Article V: The Constitutional Lessons of the Twenty-Seventh Amendment*, 103 YALE L.J. 677 (1993), http://heinonline.org/HOL/Page?handle=hein.journals/ylr103&div=33&g_sent=1&casa_token=.
- RUSSELL CAPLAN, CONSTITUTIONAL BRINKSMANSHIP: AMENDING THE CONSTITUTION BY NATIONAL CONVENTION (1988), <https://www.amazon.com/Constitutional-Brinksmanship-Amending-Constitution-Convention/dp/019505573X>.
- Grover Joseph Rees, III, *The Amendment Process and Limited Constitutional Conventions*, 2 BENCHMARK 66 (1986), <http://articleinfocenter.com/wp-content/uploads/2018/03/Rees-Benchmark-1986-ocr.pdf>.

About the Author:

Rob Natelson is Professor of Law at The University of Montana (ret.), Senior Fellow in Constitutional Jurisprudence at the Independence Institute in Denver, Colorado, and Director of the Independence Institute's Article V Information Center. His work has been relied on repeatedly by U.S. Supreme Court justices and parties and has been cited by the highest courts of 15 states.

Article V of the United States Constitution provides that when two thirds (currently 34) of the state legislatures apply, "Congress . . . shall call a Convention for proposing Amendments."¹ To determine whether its duty to call a convention has been triggered, Congress must count applications from states; this practice sometimes is referred to as "aggregating" applications. This paper addresses the almost unexamined² question of whether applications for a convention unlimited as to topic ("plenary applications") should be aggregated with those for a convention limited to one or more subjects.

Congress may face this issue very soon. At least 27 state legislatures have valid applications outstanding for a convention to propose a balanced budget amendment (BBA). At least six states without BBA applications have outstanding applications calling for a plenary convention. Thus, if aggregation is called for, 33 of the 34 applications needed for Congress to call a convention likely exist.

After consideration of the language of Article V, case law, historical practice, and other factors, this paper concludes that Congress should add existing plenary applications to the BBA

¹ U.S. CONST. art. V provides as follows:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Convention in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no 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.

² Not only is the precise topic of this paper unexamined in the scholarly literature, there has been very little discussion of aggregation issues in general, although they are treated to some extent in, e.g., Michael Stokes Paulsen, *A General Theory of Article V: The Constitutional Lessons of the Twenty-Seventh Amendment*, 103 YALE L.J. 677 (1993) [hereinafter Paulsen]; RUSSELL CAPLAN, CONSTITUTIONAL BRINKSMANSHIP: AMENDING THE CONSTITUTION BY NATIONAL CONVENTION (1988) [hereinafter CAPLAN]; Grover Joseph Rees, III, *The Amendment Process and Limited Constitutional Conventions*, 2 BENCHMARK 66 (1986).

Given this paucity, I necessarily have had to rely heavily on my own previous publications. See, e.g., Robert G. Natelson, *Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments,"* 65 FLA. L. REV. 615 (2013) [hereinafter Founding-Era Conventions]; STATE INITIATION OF CONSTITUTIONAL AMENDMENTS: A GUIDE FOR LAWYERS AND LEGISLATIVE DRAFTERS (4th ed. 2016), <https://i2i.org/wp-content/uploads/2015/01/Compendium-4.0-plain.pdf> [hereinafter GUIDE]; *Why the Constitution's "Convention for Proposing Amendments" is a Convention of the States* (Heartland Institute 2017) (hereinafter Convention of the States).

total, and that it should call a BBA convention if and when the aggregated total reaches 34.

I. BASIC PRINCIPLES

Article V provides that, to become part of the Constitution, an amendment must be ratified either by (1) three fourths of the state legislatures or (2) conventions in three fourths of the states. Congress chooses between the legislative and convention ratification methods. However, before an amendment may be ratified, it first must be duly *proposed*.³ Article V itemizes two permissible methods of proposal: (1) by a two thirds vote of both houses of Congress or (2) by “a Convention for proposing Amendments.” This paper focuses on the latter method, which the framers designed as a way of proposing amendments without the consent of Congress.

Article V does not delineate expressly the composition and nature of a convention for proposing amendments, and such a convention has never been held. For this reason, commentators, particularly those who oppose a convention, have long complained that Article V provides insufficient guidance on the subject.⁴ But the brevity of Article V is consistent with the drafting of the Constitution generally. The Framers sought to keep the document short by outlining the basics and leaving to readers the task of supplementing the text from contemporaneous law and circumstances. For example, Article I, Section 9, Clause 2 states that “The privilege of the writ of habeas corpus shall not be suspended” It does not explain what a writ of habeas corpus is, what it contains, how it is issued, or the traditional rules regarding suspension.⁵ Readers are expected to identify those facts for themselves. In this respect, Article V is no different.

Recent scholarly investigations into Article V have placed in the public domain the information necessary for understanding the Article V convention process.⁶ For example, both Founding-Era evidence⁷ and the Supreme Court⁸ inform us that a convention for proposing amendments is a kind of “convention of the states”—also called a “convention of states.” This characterization has the effect of clarifying basic convention protocols, because the protocols of such conventions were standardized long before the Constitution was drafted: The Constitutional Convention of 1787

³ U.S. CONST. art. V.

⁴ E.g., Laurence H. Tribe, *Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment*, 10 PAC. L.J. 627, 632 (1979) (calling the Constitution’s convention wording “strikingly vague”).

⁵ U.S. CONST. art. I, § 9, cl. 2. The guidelines for suspension are outlined in ROBERT G. NATELSON, THE ORIGINAL CONSTITUTION: WHAT IT ACTUALLY SAID AND MEANT 122-23 (3d ed. 2014).

⁶ In addition to sources cited in this paper, see Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, 28 CONST. COMMENT. 53 (2012); Michael Stern, *Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention*, 78 TENN. L. REV. 765 (2011); JOHN VILE, CONVENTIONAL WISDOM: THE ALTERNATE ARTICLE V MECHANISM FOR PROPOSING AMENDMENTS TO THE U.S. CONSTITUTION (2016).

⁷ *Convention of the States*, *supra* note 2.

⁸ Smith v. Union Bank, 30 U.S. 518, 528 (1831) (referring to a convention for proposing amendments as a “convention of the states”).

was a convention of the states, and it had over thirty predecessors.⁹ In fact, many of the delegates at the Constitutional Convention were veterans of one or more previous interstate gatherings.¹⁰

Moreover, the protocols have not changed significantly since the Founding. Conventions of states met in Hartford, Connecticut (1814); Nashville, Tennessee (1850); Washington, D.C. (1861), Montgomery, Alabama (1861) St. Louis, Missouri (1889); Santa Fe, New Mexico and three other cities (1922); in various locations from 1946 to 1949; and in Phoenix, Arizona (2017).¹¹ Although the specific rules for each meeting differed somewhat, the basic protocols remained roughly similar.¹² Most interstate conventions, both before and after the ratification of the U.S. Constitution, have been regional or “partial” conventions to which colonies or states from only a single region of the country were invited. At least eight have been general conventions—that is, gatherings to which colonies or states from all regions were invited.¹³ An Article V convention for proposing amendments would be general, but there are no significant protocol differences between partial and general conventions.¹⁴ Those protocols determine such matters as the scope of a convention call, how commissioners are instructed, and how rules are adopted.¹⁵

Article V does not outline these details because they were so well known to the founding generation that there was no need to repeat them. Article V is more specific only in a few instances where clarification was necessary.¹⁶ In view of the wealth of history surrounding Article V, the courts appropriately defer to that history. The Supreme Court and other judicial tribunals have decided nearly fifty reported Article V cases,¹⁷ and they

⁹ The constitutional term “convention” is probably the most common designation, but at various times, they also have been known as interstate congresses, committees, and commissions. See generally *Founding-Era Conventions*, *supra* note 2; Robert G. Natelson, *List of Conventions of States in American History*, <http://articleinfocenter.com/list-conventions-states-colonies-american-history/>.

¹⁰ *Founding-Era Conventions*, *supra* note 2, at 691-710 (identifying attendees at the Constitutional Convention and prior Founding-Era conventions, initially listed by alphabetical order for each attendee, and then grouped by state).

¹¹ Robert G. Natelson, *List of Conventions of States in American History*, <http://articleinfocenter.com/list-conventions-states-colonies-american-history/>.

¹² For example, at all of these conclaves states enjoyed equal voting power. Specifically, at every convention except St. Louis (1889), each state had one vote. At St. Louis, each state had eight votes. Robert G. Natelson, *Newly Rediscovered: The 1889 St. Louis Convention of States*, <http://articleinfocenter.com/newly-rediscovered-1889-st-louis-convention-states/>.

¹³ *Id.* The general conventions were Albany (1754), New York City (1765 and 1774), Annapolis (1786), Philadelphia (1780 and 1787), Washington, D.C. (1861), and Phoenix (2017). *Id.*

¹⁴ The standard protocols originally were based on international practice. CAPLAN, *supra* note 2, at 95-96.

¹⁵ *Founding-Era Conventions*, *supra* note 2, at 686-90.

¹⁶ *Id.* at 689-90.

¹⁷ See GUIDE, *supra* note 2, at 12-13 for a table of cases.

~~~~~

have repeatedly consulted history to clarify the article's words and procedures.<sup>18</sup>

## II. DEFINITIONS OF TERMS

When the Constitution was adopted, an *application* was an address from one person or entity to another.<sup>19</sup> It was thus a very broad term, and it could include communications among equals or between superiors and inferiors. An application could be an invitation, a request, a delegation, or an order.

One kind of application was a convention *call*.<sup>20</sup> This was an official invitation, often called a "circular letter," sent to all or some states to meet at a particular time and initial place to discuss topics itemized in the call. Most calls were issued by individual states; others came from Congress or prior conventions.<sup>21</sup> Calls were limited to time, initial place, and topic. Additional material, on the rare occasions when it was included, was precatory.<sup>22</sup>

Another kind of application, which might also be communicated by circular letter, encouraged the recipient to call or support a convention. Thus, a 1783 request from the Massachusetts legislature to the Confederation Congress asking it to call a convention was styled an "application."<sup>23</sup> To similar effect was the report of the 1786 Annapolis convention suggesting to the states that they meet in Philadelphia the following year,<sup>24</sup> and the circular letter of July 26, 1788 issued by the New York ratifying convention urging another convention to consider amendments to the 1787 Constitution.<sup>25</sup>

Calls and other convention applications almost invariably informed the recipients of the subjects for which the convention was sought. They almost never said merely, "let's meet." Rather, they said, "let's meet to discuss trade issues"—or defense issues, or financial issues, or some specified combination.<sup>26</sup> Calls and applications specifying different topics were understood to require different conventions. In 1786, one convention call invited all states to discuss trade issues while another invited some states to

discuss navigation issues.<sup>27</sup> There was no move to aggregate the two into a single meeting to discuss both.

Another class of applications not mentioned in Article V but inherent in any convention of states are those directed by principals to their agents—that is, from state legislatures to their representatives. In this class are *commissions* (also called credentials) whereby legislatures designate their commissioners. A commission is much like a power of attorney in that it names and empowers one or more agents and defines the scope of their authority.<sup>28</sup> Each commissioner presents his or her commission to the convention before he or she may be seated. Closely related are *instructions*. As their name indicates, they contain more detailed directions from the appointing authority. Historically, commissions usually have been public documents while separate instructions often have been secret.<sup>29</sup>

Article V refines to a certain extent how calls and other initial applications operate in the amendment context: Article V provides that state legislatures may apply to Congress, and when two thirds of them have done so, Congress must call an amendments convention. This enables state legislatures to promote amendments in a way that forestalls congressional veto. The congressional role in the convention process is mandatory and limited—ministerial rather than discretionary.<sup>30</sup> Congress acts as a convenient common agent for the state legislatures.<sup>31</sup> It follows necessarily that Congress's function as the calling agent does not entitle it to alter traditional rules. Nothing in the Constitution supports the notion that Congress can expand its role to include, for example, dictating how commissioners are selected or what convention rules must be.<sup>32</sup>

One last point pertains to terminology: Some commentators have referred to an unlimited convention as a "general convention." This usage is incorrect.<sup>33</sup> A general convention is a conclave to which states from all regions of the country are invited—as

18 *Id.* at 26, n.54 (collecting cases relying on history).

19 Robert G. Natelson, *What is an Amendments Convention "Application?" What is a "Call?"* <http://articleinfocenter.com/what-is-an-amendments-convention-application-what-is-a-call/>.

20 *Id.* Thus, a call sometimes was labeled an application. *E.g.*, 1 PUBLIC RECORDS OF THE STATE OF CONNECTICUT 589 (Charley Hoadley ed., 1894).

21 *Founding-Era Conventions*, *supra* note 2 (identifying the calling entities for major conventions held before 1788).

22 See generally *id.*

23 *Id.* at 667.

24 *Proceedings of Commissioners to Remedy Defects of the Federal Government: 1786*, Yale Law School's Avalon Project, available at [http://avalon.law.yale.edu/18th\\_century/annapoli.asp](http://avalon.law.yale.edu/18th_century/annapoli.asp).

25 2 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 413-44 (1836) (communicating with the governors of other states and urging them to support another convention).

26 See generally *Founding-Era Conventions*, *supra* note 2.

27 *Id.* at 668-72 (discussing the Annapolis Convention of 1786 and a proposed "Navigation Convention").

28 See, e.g., THE FEDERALIST No. 40 (James Madison) ("The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents."); see also CAPLAN, *supra* note 2, at 97.

29 For a convenient collection of the calls, credentials, and instructions of a Founding-Era convention, see C.A. WESLAKER, THE STAMP ACT CONGRESS 181-97 (1976).

30 THE FEDERALIST No. 85 (Alexander Hamilton) ("The Congress 'shall call a convention.' Nothing in this particular is left to the discretion of that body."); Remarks of Rep. James Madison, 1 ANNALS OF CONGRESS 260 (May 5, 1789).

31 CAPLAN, *supra* note 2, at 94.

32 Professor Charles Black of Yale Law School may have originated the notion that Congress can control convention protocols. Charles L. Black, Jr., *The Proposed Amendment of Article V: A Threatened Disaster*, 72 YALE L.J. 958, 964-65 (1963). To support this view, he relied on the Necessary and Proper Clause. However, that Clause does not apply to the amendment process. See GUIDE, *supra* note 2, at 48-52. As the title suggests, Black's article was polemical rather than scholarly in nature.

33 Professor Black seems responsible for this error as well, Charles L. Black, Jr., *Amending the Constitution: A Letter to a Congressman*, 82 YALE L.J. 189, 198 (1972), although others have repeated it.

~~~~~

opposed to a partial or regional gathering. A convention for proposing amendments is necessarily general, but may be limited or unlimited as to topic. If unlimited as to topic, it should be referred to as *unlimited*, *open*, or *plenary*.³⁴

III. ARTICLE V APPLICATIONS MUST BE AGGREGATED BY SUBJECT MATTER

Only about twenty state legislative applications under Article V have been plenary—that is, seeking an unlimited or plenary convention.³⁵ The other applications have sought conventions to consider amendments on one or more designated subjects. Article V does not provide expressly that the required two thirds of applications must address the same or overlapping subjects. This has led some to argue that because there have been far more than 34 applications, a call for a plenary convention is already mandatory.³⁶ In other words, all valid applications must be aggregated with all other valid applications to yield a plenary result.

Three aspects of this argument render it unlikely of congressional or judicial acceptance. Most fundamentally, perhaps, it conflicts with the dictates of common sense: If 12 legislatures seek a convention to consider term limits, 12 seek a convention to consider a BBA, and 12 apply for a convention to consider campaign finance reform, it does not follow that 36 legislatures want a convention to consider everything, or all three topics, or any one of them. Further, this argument conflicts with Article V's background history. In the Founders' experience, convention calls and pre-call requests almost invariably designated one or more subjects and promoted a convention to address those subjects. Without prior agreement, states did not combine unrelated applications in a single convention.³⁷

Third, the argument conflicts with post-constitutional understanding. Consider by way of illustration the situation

³⁴ Another possible kind of convention is “plenipotentiary.” This term is best reserved for conclaves meeting outside constitutional restraints—i.e., those that James Madison described as reverting to “first principles.” James Madison to G.L. Turberville, Nov. 2, 1788, 5 THE WRITINGS OF JAMES MADISON 298-300 (Gaillard Hunt ed., 1904). By contrast, a convention for proposing amendments, even a plenary one, is limited to proposing amendments to the existing Constitution, and is subject to “the forms of the Constitution.” *Id.* As explained below, states sometimes have sent commissioners with plenipotentiary powers to more limited conventions.

³⁵ See The Article V Library, article5library.org. As of this writing, the Article V Library is the best and most reliable source for applications. There is at least one other website devoted to applications (<http://foavc.org/>), but it contains notable errors, including aggregating applications that do not overlap as to topic. A list of applications and rescissions kept by the Clerk of the U.S. House of Representatives at <http://clerk.house.gov/legislative/memorials.aspx> is incomplete and dates back only to 1960.

³⁶ The most distinguished writer to urge this position is Michael Stokes Paulsen. *See Paulsen, supra* note 2, at 746-47. Professor Paulsen argued that an application conditioned on set topics was void, but that listing a particular change as its purpose should count toward a plenary convention. Professor Paulsen wrote in 1993, well before most of Article V's defining history was recovered, although five years earlier Russell Caplan had documented the Founding-Era expectation that most applications would be limited. *Caplan, supra* note 2, at 95-99.

³⁷ *Founding-Era Conventions, supra* note 2, at 668-72 (discussing the Annapolis Convention of 1786 and a proposed “Navigation

in the year 1911. At that time, there were 46 states, so 31 were needed to call a convention. Twenty-nine states had issued applications for a convention to propose direct election of U.S. Senators. Thirteen states had outstanding applications for a convention to propose a ban on polygamy.³⁸ Subtracting states with applications on both subjects leaves 32—one state more than the required two thirds. Yet there is no evidence of widespread (or, indeed, any) contentions that direct election applications should be aggregated with anti-polygamy applications to force a convention. Not surprisingly, therefore, most commentators have concluded, or at least assumed, that for applications to aggregate they should overlap to some extent.³⁹ This certainly has been the tacit assumption of Congress.

But to what extent must they overlap? Surely they need not be exact copies of each other.⁴⁰ Founding-Era conventions met even though applications and instructions differed. In my 2016 treatise on the convention process, I addressed the question of how much coincidence is required. I listed four aggregation scenarios, as follows:

1. All applications seem to address the same subject, but restrictive wording in some renders them inherently inconsistent with others.
2. Some applications prescribe a convention addressing Subject A (e.g., a balanced budget amendment) while others prescribe a convention addressing both Subject A and unrelated Subject B (e.g., term limits).
3. Some applications prescribe a convention addressing Subject A (e.g., a balanced budget amendment) while others demand one addressing Subject X, where Subject X encompasses Subject A (e.g., fiscal restraints on the federal government).
4. Some applications prescribe a convention addressing Subject A and others call for a convention unlimited as to topic.⁴¹

The treatise examined the first three scenarios in light of history, including the Founders' own interpretive methods, and concluded that applications in the first two situations did not aggregate, but those in the third situation did.⁴² Because a full analysis of #4 would have consumed a disproportionate share of the treatise, I merely listed some arguments for both conclusions and suggested

Convention,” with no suggestion that the two be aggregated).

³⁸ For lists of applications by date and subject matter, see the Article V Library, article5library.org.

³⁹ E.g., CAPLAN, *supra* note 2, at 105 (“Twenty-four applications for a balanced-budget convention, and ten for a convention to consider school busing, will impose no duty on Congress”); *See also Rees, supra* note 2, at 89 (“It seems obvious that if seventeen States apply for a convention to consider anti-abortion amendments, for instance, and seventeen others apply for a convention on a balanced budget amendment, the requisite consensus does not exist.”).

⁴⁰ *Cf. id.* at 107 & 108.

⁴¹ GUIDE, *supra* note 2, at 55.

⁴² *Id.* at 56-58.

~~~~~

that an application's specific wording might be helpful in weighing whether the application should be aggregated.<sup>43</sup> The present paper examines the question more thoroughly. In doing so, we need not refer to hypothetical Subjects A, B, and X, because current events provide us with a real-life situation. Should BBA and plenary applications be aggregated together?

#### IV. WHY OLDER UNRESCINDED APPLICATIONS ARE STILL VALID

Before proceeding further, I should explain why the extant (unrescinded) BBA and plenary applications remain valid even though several BBA applications are over 40 years old and the plenary applications are even older. Why have they not lapsed with passage of time?

During the 20th century, there was considerable discussion of this "staleness" question.<sup>44</sup> Even the Supreme Court speculated on the staleness question as it pertains to ratifications of amendments,<sup>45</sup> although no court has ever ruled on it. The intervening years have fairly well resolved the question for us: Unless expressly time-limited, applications remain in effect until formally rescinded. There are at least five reasons for so concluding.

First: Legislative actions normally do not lapse due to the mere passage of time. If their text does not limit their duration, they remain in effect until repealed, even if they become outdated. Nothing in constitutional history or usage suggests that Article V legislative resolutions comprise an idiosyncratic exception.

Second: The Twenty-Seventh Amendment was first proposed by Congress in 1789, and several states ratified shortly thereafter. However, the amendment did not collect sufficient states for ratification until a new campaign ensued two centuries later. The necessary 38 states finally ratified, and the Twenty-Seventh Amendment became effective in 1992. Ensuing universal recognition of the validity of this amendment is inconsistent with the view that Article V resolutions lapse with the passage of time.<sup>46</sup>

Third: Recognition of the durability of Article V legislative resolutions is implied by the practice of inserting specific time limits in congressional amendment proposals and in state legislative applications. Some states have supplemented this with explicit recitals to the effect that unrescinded applications are unlimited as to time unless otherwise so providing.<sup>47</sup>

Fourth: Formulating and applying a staleness rule consistently with the purposes of Article V would be impractical.

<sup>43</sup> *Id.* at 58-60.

<sup>44</sup> *E.g.*, CAPLAN, *supra* note 2, at 114 (arguing that applications do not expire); Tribe, *supra* note 4, at 638 ("When, if ever, does a state's application lapse?"); Rees, *supra* note 2, at 99 (arguing that Congress may limit the life of an application); Douglas G. Voegler, *Amending the Constitution by the Article V Convention Method*, 55 N.D. L. REV. 355, 369-71 (1979) (arguing that applications must be reasonably contemporaneous). Perhaps the most complete discussion is in Paulsen, *supra* note 2 (arguing that applications do not expire).

<sup>45</sup> Dillon v. Gloss, 256 U.S. 368 (1921).

<sup>46</sup> Cf. Paulsen, *supra* note 2 (exploring the practical effects of recognizing the validity of the Twenty-Seventh Amendment).

<sup>47</sup> An example is a partial rescission adopted by the Texas legislature in 2017, SJR 38 (2017), available at <http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/SJ00038F.pdf#navpanes=0> ("WHEREAS, Regardless of their

There are no judicial or legal standards sufficient to guide a court in this regard. (Is five years too long? Too short? What about 15 years?) Leaving the question to Congress would undercut the convention procedure's fundamental purpose as a mechanism for bypassing Congress. During the 1960s, Senator Sam Ervin pointed out that some senators and academics wanted to disregard any applications more than two years old.<sup>48</sup> This, of course, would destroy the process, since some state legislatures meet only biennially. Allowing Congress to fix a maximum life span on applications would fit the proverbial case of the fox guarding the hen-house.

Fifth: Rescission is a common procedure.<sup>49</sup> Legislatures, or at least lobbyists, now monitor applications and do not assume that mere duration vitiates outdated ones. Legislatures becoming dissatisfied with applications can, and do, regularly rescind them.

For these reasons, we are justified in concluding that unrescinded applications do not lapse with the mere passage of time.

#### V. THE UNRESCINDED BBA AND PLENARY APPLICATIONS

The *Article V Library*, which operates a website at <http://article5library.org/>,<sup>50</sup> currently lists 28 states with unrescinded BBA applications.<sup>51</sup> Yet as a matter of prudence, the Mississippi application should not be counted. It may be invalid because it improperly purports to dictate to the convention an up-or-down vote on prescribed language.<sup>52</sup> Even if it is valid, its prescribed

---

age, such past applications from Texas lawmakers remain alive and valid until such time as they are later formally rescinded.").

<sup>48</sup> Sam J. Ervin, Jr., *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 MICH. L. REV. 875, 891 (1968).

<sup>49</sup> The Article V Library reports 22 rescissions of balanced budget applications since 1988 alone. See Article V Convention Application Analysis, <http://article5library.org/analyze.php>. There have been, of course, other rescissions.

<sup>50</sup> See *supra* note 35 for my reasons for relying on the Article V Library rather than other sources.

<sup>51</sup> Article V Convention Application Analysis, *Balanced Budget*, <http://article5library.org/analyze.php?topic=Balanced+budget&res=1&gen=0&ylimit=0>.

<sup>52</sup> The Mississippi application, adopted in 1979, is available at <http://article5library.org/gettext.php?doc=1184>. It reads in part as follows:

Now Therefore, Be it Resolved by the House of Representatives of the State of Mississippi, the Senate Concurring Therein. That we do hereby, pursuant to Article V of the Constitution of the United States, make application to the Congress of the United States to call a convention of the several states for the proposing of the following amendment to the Constitution of the United States: [proposed amendment language]

Modern scholarly opinion is split on whether prescribed language applications are valid; I am inclined to believe they are not, based both on Founding-Era practice and on subsequent case law. GUIDE, *supra* note 2, at 38-39. Cf. CAPLAN, *supra* note 2, at 107 (pointing out that there is no Founding-Era precedent for applications that "recite the text of an amendment and require the convention to adopt that language only"). Two commentaries arguing to the contrary are Rappaport, *supra* note 6, and Stern, *supra* note 6.

~~~~~

language seems to render it inconsistent with the other 27. Those 27 differ in various ways, but none of them is really crucial. Pre-convention documents issued by separate states always have varied somewhat, but that has not prevented conventions from meeting successfully.⁵³

The *Article V Library* lists 16 states with unrecinded plenary applications.⁵⁴ Nine of those states⁵⁵ have BBA applications as well, so only 7 states have plenary applications but no BBA applications: Illinois, Kentucky, New Jersey, New York, Oregon, South Carolina, and Washington. But just as we eliminated Mississippi from the BBA list, we must scratch South Carolina from the plenary list. The operative resolution of its legislature's 1832 resolution is as follows:

Resolved, That it is expedient that a Convention of the States be called as early as practicable, to consider and determine such questions of disputed power as have arisen between the States of this confederacy and the General Government.

Resolved, That the Governor be requested to transmit copies of this preamble and resolutions to the Governors of the several States, with a request that the same may be laid before the Legislatures of their respective States, and also to our Senator's [sic] and Representatives in Congress, to be by them laid before Congress for consideration.⁵⁶

Although this resolution qualifies as a call for a convention of the states, it does not qualify as an Article V application. It is not addressed to Congress, and it does not call for a convention for proposing amendments. Moreover, it is not plenary. The convention subject matter is identified as "such questions of disputed power as have arisen between the States of this confederacy and the General Government." A balanced budget amendment is not within the scope of that topic; nor are term limits nor several other subjects of modern interest. This leaves six plenary applications from states that have no BBA application outstanding, each of which is addressed below.

A. Illinois

Illinois has two valid plenary applications extant. The first dates from 1861. Its relevant language reads:

WHEREAS, although the people of the State of Illinois do not desire any change in our Federal constitution, yet as several of our sister States have indicated that they deem it necessary that some amendment should be made thereto; and whereas, in and by the fifth article of the constitution of the United States, provision is made for proposing amendments to that instrument, either by congress or by a convention; and whereas a desire has been expressed,

in various parts of the United States, for a convention to propose amendments to the constitution; therefore,

Be it resolved by the General Assembly of the State of Illinois, That if application shall be made to Congress, by any of the States deeming themselves aggrieved, to call a convention, in accordance with the constitutional provision aforesaid, to propose amendments to the constitution of the United States, that the Legislature of the State of Illinois will and does hereby concur in making such application.

Essentially, this resolution expresses the Illinois state legislature's decision to join other states' applications, either in 1861 or in the future. It authorizes Congress to add Illinois to any other application lists.

The other extant Illinois application was adopted in 1903, during the campaign for direct election of Senators. Its relevant language is:

Whereas by direct vote of the people of the State of Illinois at a general election held in said State on the 4th day of November, A.D. 1902, it was voted that this general assembly take the necessary steps under Article V of the Constitution of the United States to bring about the election of United States Senators by direct vote of the people; and

Whereas Article V of the Constitution of the United States provides that on the application of the legislatures of two-thirds of the several States the Congress of the United States shall call a convention for proposing amendments:

Now, therefore, in obedience to the expressed will of the people as expressed at the said election, be it

Resolved by the senate (the house of representatives concurring herein), That application be, and is hereby, made to the Congress of the United States to call a convention for proposing amendments to the Constitution of the United States, as provided for in said Article V . . .

The preamble explains the motivating force for the resolution, but the operative words apply for a plenary convention. It is a basic rule of legal interpretation that when there are apparent inconsistencies between a preamble and operative words, if the operative words are clear (as they are here), they prevail. In this case, moreover, there really is no inconsistency because a legislative body may be motivated by an issue without necessarily limiting its response to that issue. Significantly, the Illinois legislature left this resolution in effect after adoption of the Seventeenth Amendment and has retained it to this day. Congress can therefore count Illinois among those states applying for a convention on any topic.

B. Kentucky

Kentucky adopted its application in 1861. The *Article V Library* contains only an announcement of the application from the Senate's presiding officer. It indicates that the application is not limited, but merely asks for a convention for proposing amendments. William Pullen's 1951 study of the application process reproduces the actual wording:

Whereas the people of some states feel themselves deeply aggrieved by the policy and measures which have been

⁵³ See generally *Founding-Era Conventions*, *supra* note 2.

⁵⁴ The Article V Library uses the misnomer "general" for plenary. See *supra* note 33 and accompanying text.

⁵⁵ Indiana, Ohio, Texas, Colorado, Iowa, Kansas, Missouri, Nebraska, and Wisconsin.

⁵⁶ This and the plenary applications discussed below are available at <http://article5library.org/analyze.php?topic=General&res=1&gen=1&ylimit=0>.

~~~~~

adopted by the people of some other states; and whereas an amendment of the Constitution of the United States is deemed indispensably necessary to secure them against similar grievances in the future: therefore—

Resolved, . . . That application to Congress to call a convention for proposing amendments to the Constitution of the United States, pursuant to the fifth article, thereof, be, and the same is hereby now made by this general assembly of Kentucky; and we hereby invite our sister States to unite with us without delay, in similar application to Congress.

\* \* \*

Resolved, If the convention be called in accordance with the provisions of the foregoing resolutions, the legislature of the Commonwealth of Kentucky suggests for the consideration of that convention, as a basis for settling existing difficulties, the adoption, by way of amendments to the Constitution, of the resolutions offered in the Senate of the United States by the Hon. John J. Crittenden.<sup>57</sup>

This language is plenary. It recites its motivation (resolution of present and future grievances) and adds a suggested amendment, but its operative words are unlimited. Because of the recital of future grievances, the Kentucky application, like that of Illinois, looks forward to consideration of future topics.

#### C. New Jersey

The 1861 New Jersey application was motivated by impending civil war, as its lengthy text makes clear. However, the operative language of the resolution applies for a plenary convention:

And be it resolved, That as the Union of these States is in imminent danger unless the remedies before suggested be speedily adopted, then, as a last resort, the State of New Jersey hereby makes application, according to the terms of the Constitution, of the Congress of the United States, to call a convention (of the States) to propose amendments to said Constitution.

As in the case of Illinois and Kentucky, New Jersey's grant of authority to Congress has never been rescinded.

#### D. New York

The operative language of New York's 1789 application seeks a convention:

[W]ith full powers to take the said Constitution into their consideration, and propose such amendments thereto, as they shall find best calculated to promote our common interests, and secure to ourselves and our latest [i.e.,

ultimate] posterity, the great and inalienable rights of mankind.<sup>58</sup>

This application is clearly plenary.

#### E. Oregon

Oregon's 1901 application, like the 1903 application of Illinois, arose out of the campaign for direct election of Senators. The preamble recites direct election as its motivation, but the operative language is unlimited:

Whereas, under the present method of the election of United States Senators by the legislatures of the several states, protracted contests frequently result in no election at all, and in all cases interfering with needed state legislation; and

Whereas, Oregon in common with many of the other states has asked congress to adopt an amendment to the Constitution of the United States providing for the election of United States Senators by direct vote of the people, and said amendment has passed the House of Representatives on several occasions, but the Senate of the United States has continually refused to adopt said amendment; therefore be it

Resolved by the House of Representatives of the State of Oregon, the Senate concurring:

That the Congress of the United States is hereby asked, and urgently requested, to call a constitutional convention for proposing amendments to the Constitution of the United States, as provided in Article V of the said Constitution of the United States.

Resolved, That we hereby ask, and urgently request, that the legislative assembly of each of the other states in the union unite with us in asking and urgently requesting the Congress of the United States to call a constitutional convention for the purpose of proposing amendments to the Constitution of the United States.

#### F. Washington

Two Washington State applications remain in effect, both dating from the direct election of Senators campaign. The 1901 application contains no preamble or other recitals. Aside from transmittal directions, it states merely:

That application be and the same is hereby made to the Congress of the United States of America to call a convention for proposing amendments to the constitution

<sup>57</sup> WILLIAM RUSSELL PULLEN, THE APPLICATION CLAUSE OF THE AMENDING PROVISION OF THE CONSTITUTION 79-80 (Univ. of NC Ph.D. thesis, 1951).

<sup>58</sup> 1 ANNALS OF CONGRESS 29-30 (May 5, 1789). The application was dated Feb. 5, 1789.

~~~~~

of the United States of America as authorized by Article V
of the Constitution of the United States of America.

The 1903 application is similar, except that it recites a motivation:

Whereas the present method of electing a United States Senators is expensive and conducive of unnecessary delay in the passage of useful legislation; and

Whereas the will of the people can best be ascertained by direct vote of the people: Therefore,

Be it enacted by the legislature of the State of Washington,

That application be, and the same is hereby, made to the Congress of the United States of America to call a convention for proposing amendments to the Constitution of the United States of America.

The language of each is plenary.

VI. AGGREGATING PLENARY WITH LIMITED APPLICATIONS

We now arrive at the issue of whether a plenary application may be aggregated with narrower applications. There are two questions here. The first is, “May applications limited to one or more subjects be aggregated with plenary applications to authorize a plenary convention?” The second is “May plenary applications be aggregated with those limited to one or more subjects to authorize a limited convention?”

The first question need not detain us, for the answer is a straightforward “no.” There is no historical precedent for such a result, and as Russell Caplan observes, “a state desiring a federal balanced budget may not, and likely does not, want the Constitution changed in any other respect.”⁵⁹ Today, in fact, while there is widespread current interest in a limited convention, there is little desire for a plenary one. For Congress as the agent for the state legislatures to call a plenary convention in these circumstances would violate its fiduciary duties to legislatures seeking to limit the convention’s scope.

At initial inspection, answering the question of whether plenary applications may be aggregated toward a limited convention appears difficult because obvious precedent seems lacking. In pre-constitutional practice, states almost never issued plenary applications or calls. They almost universally specified the subjects a proposed convention was to consider, although those subjects sometimes were very broad. Hence there was no occasion when states aggregated plenary calls with more limited ones. Even the post-constitutional years have seen relatively few plenary applications. The first was issued in 1789 by New York⁶⁰ and the last in 1929 by Wisconsin, and in the intervening centuries

there were fewer than twenty.⁶¹ A closer look at historical practice, however, reveals some promising clues.

A. Founding-Era Practice

The Founders’ understanding of the word “application,” as we have seen, included requests for conventions (as in Article V), calls, commissions, and instructions.⁶² An Article V application is essentially a conditional commission and instruction: It directs Congress to call a convention on the topics listed in the application once a sufficient number of other legislatures agree, and it necessarily grants Congress authority to do so.⁶³ Like other Founding-Era applications, commissions and instructions could be narrow, wider but still limited, or plenary. Consistently with the legal maxim, “The greater includes the lesser,”⁶⁴ a commissioner with wider authority could participate fully in meetings restricted to subjects narrower than, but included within, the scope of his wider authority.

One relevant instance arose out of the convention known to history as the First Continental Congress (1774). The convention call appeared in a circular letter drafted by John Jay on behalf of the New York Committee of Correspondence. It read in part as follows:

Upon these reasons we conclude, that a Congress of Deputies from the colonies in general is of the utmost moment; that it ought to be assembled without delay, and some unanimous resolutions formed in this fatal emergency, not only respecting your [Boston’s] deplorable circumstances, but for the security of our common rights.⁶⁵

This charge is very broad⁶⁶—perhaps as close to a plenary call as any convention of states or colonies has come. Yet it is not quite plenary, because it focuses on Boston’s “deplorable circumstances” and “the security of our common rights” against Great Britain. It does not authorize discussion of, for example, colonial religious establishments or local business licensing. In response, several colonies sent commissioners to the First Continental Congress who enjoyed plenipotentiary authority—that is, they were empowered to discuss, and even to agree to, anything.⁶⁷ The record reveals no doubt that the grant of plenipotentiary

61 The Article V Library lists 21 plenary (which it calls “general”) applications from 1788 to 1929. The first—Virginia’s 1788 application—probably does not qualify. Although it is very broad, it is limited to amendments proposed by the state ratifying conventions. Also listed is South Carolina’s 1832 resolution, but as explained above that was not an Article V application.

62 *Supra* notes 19-29 and accompanying text.

63 Cf. CAPLAN, *supra* note 2, at 97 (“The applications submitted under article V, therefore, are the descendants of the pre-1787 convention commissions.”).

64 The original form is *Omne majus continet in se minus*, Duhaime’s Law Dictionary, <http://www.duhaime.org/LegalDictionary/O/OmneMajusContinetInSeMinus.aspx>.

65 *First Continental Congress*, United States History, <http://www.u-s-history.com/pages/h650.html>.

66 Cf. *Founding-Era Conventions*, *supra* note 2, at 637.

67 *Id.* at 638.

59 CAPLAN, *supra* note 2, at 108.

60 See *infra* notes 72 & 73 and accompanying text for discussion.

authority authorized commissioners to participate in a more limited convention.

Another illustration arose from the assembly in 1777 at Springfield, Massachusetts. The scope of the call included paper money, laws to prevent monopoly and economic oppression, interstate trade barriers, and “such other matters as particularly [c]oncern the immediate [w]elfare” of the participating states, but it was restricted to matters “not repugnant to or interfering with the powers and authorities of the Continental Congress.”⁶⁸ Connecticut, however, granted its commissioners plenipotentiary authority, omitting the restriction in the call.⁶⁹ No one seems to have doubted the right of the Connecticut commissioners to participate in the convention despite their broader authority.

Similarly, the documents leading up to the 1780 Boston Convention show that it was targeted at immediate war needs. Yet New Hampshire empowered its commissioners with plenipotentiary authority to consult “on any other matters that may be thought advisable for the public good,” and they participated fully.⁷⁰

Even more on point are the first two Article V applications ever issued. The 1788 Virginia application petitioned Congress to call a convention “to take into their consideration the defects of this Constitution *that have been suggested by the State Conventions.*”⁷¹ This application was therefore limited. On the other hand, the 1789 New York application was plenary: It sought a convention “with full powers to take the said Constitution into their consideration, and propose such amendments thereto, as they shall find best calculated to promote our common interests, and secure to ourselves and our latest [i.e., ultimate] posterity, the great and inalienable rights of mankind.”⁷² The New York assembly surely intended its plenary application to aggregate with Virginia’s limited one, for the two applications were part of the same campaign for a second general convention.⁷³ Moreover, the New York legislature was justified in so intending. When a state legislature applies to Congress for a limited convention, it grants Congress its authorization to call a convention on that topic. When a state legislature applies for a plenary convention, it grants Congress authority to call a convention to consider any amendments to the current Constitution. The plenary application says, in effect, “We’ll meet with commissioners from the other states any time to talk about whatever amendments the commissioners might think helpful.” Thus, Founding-Era practice

supports the conclusion that a state issuing a plenary application thereby adds to the count for a more limited one.

B. Post-Constitutional Practice

Post-constitutional practice impels one to the same conclusion. The 1861 Washington Conference Convention was a close analogue of an Article V convention for proposing amendments: Virginia called it to propose amendments that might avert civil war. The call fixed the convention’s wide, but still limited, scope this way:

[T]o adjust the present unhappy controversies, in the spirit in which the Constitution was originally formed, and consistently with its principles, so as to afford the people of the slaveholding States adequate guarantees for the security of their rights . . . to consider, and if practicable, agree upon some suitable adjustment.⁷⁴

Thus, the call provided that the subject was to (1) “adjust present . . . controversies,” *provided that* (2) the result was consistent with guaranteeing the “rights” of slaveholders.

The convention proceedings do not contain all of the commissioners’ credentials, but they do reproduce those issued by twelve states.⁷⁵ At least ten of the twelve granted authority in excess of the scope of the call.⁷⁶ Ohio, Indiana, Delaware, Pennsylvania, Rhode Island, and Missouri all authorized their commissioners to agree to “adjustments,” but without limiting their representatives to the call’s pro-slavery proviso. The four remaining states granted their commissioners authority to confer on anything:

- Illinois empowered its commissioners “to confer and consult with the Commissioners of other States who shall meet at Washington.”⁷⁷
- New Jersey ordered its delegates “to confer with Congress and our sister states and urge upon them the importance of carrying into effect” certain additional statements of principle.⁷⁸
- New York authorized its delegates to “confer” with those from other states “upon the complaints of any part of

68 *Id.* at 647.

69 1 PUBLIC RECORDS OF THE STATE OF CONNECTICUT 601-02 (Charley Hoadley ed., 1894).

70 3 PUBLIC RECORDS OF THE STATE OF CONNECTICUT 560-61 (Charles Hoadley, ed. 1922).

71 1 ANNALS OF CONGRESS 28 (May 5, 1789). The application was dated Nov. 14, 1788.

72 *Id.* at 29-30. The application was dated Feb. 5, 1789.

73 See CAPLAN, *supra* note 2, at 32-40.

74 A REPORT OF THE DEBATES AND PROCEEDINGS IN THE SECRET SESSIONS OF THE CONFERENCE CONVENTION FOR PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES 9 (L.E. Chittenden ed., 1864).

75 *Id.* at 454-64.

76 Kentucky’s credentials granted authority equal to the scope of the call. *Id.* at 457. Tennessee’s credentials technically authorized only participation in a convention of the slaveholding states. *Id.* at 454-56.

77 *Id.* at 459.

78 *Id.* at 461.

~~~~~

the country, and to suggest such remedies therefor as to them shall seem fit and proper.”<sup>79</sup>

- Massachusetts authorized its agents to “confer with the General Government, or with the separate States, or with any association of delegates from such States . . . ”<sup>80</sup>

These grants of broader power clearly were designed to commit the states to participating in a convention whose subject matter was contained within their broad grants of authority.

Still another illustration arises from the state legislatures’ campaign for direct election of U.S. Senators. The campaign ran from 1899 to 1913. During that period, many legislatures adopted applications limited to the single subject of a direct election amendment.<sup>81</sup> Others passed plenary applications while reciting in preambles that their motivation was to obtain a direct election amendment. Three examples of such applications were discussed above in section V—those of Oregon (1901), Illinois (1903), and Washington State (1903). As in the case of the 1789 New York application, the legislatures apparently assumed that plenary applications could be aggregated with those limited to a single subject, since they issued plenary applications as vehicles for addressing a particular issue.

## VII. THREE OBJECTIONS ANSWERED

Article V provides that “The Congress . . . on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments.” As the text indicates, this duty is ministerial and mandatory.<sup>82</sup> Yet even ministerial duties may have some discretionary component.<sup>83</sup> Accordingly, some may object to Congress exercising its discretion to call a convention. The first possible objection may be stated in this way:

*When a legislature applies for a plenary convention, it is not announcing its willingness to discuss only narrower issues. Rather, it is asserting, “We’ll attend a convention, but only if all constitutional amendments may be considered.” Thus, a plenary application should not be taken as an application for a narrower subject.*

The problem with this objection is a lack of precedent to support it. In all the history of conventions of states, I am unaware of any state that ever took this “all or nothing” position. Certainly no Article V application has ever expressed it. On the contrary, the 1789 plenary New York application and the plenary applications promoting direct election of Senators argue for the contrary.<sup>84</sup> A legislature certainly has the prerogative of taking an

79 *Id.* at 462.

80 *Id.* at 463-64.

81 Article V Convention Application Analysis, *Direct Election of Senators*, <http://article5library.org/analyze.php?topic=Direct+election+of+Senators&res=1&gen=0&ylimit=0>.

82 *Supra* note 30.

83 *Roberts v. United States*, 176 U.S. 222, 231 (1900) (holding that a duty can be ministerial even though its performance requires statutory construction by the officer charged with performing it).

84 See *supra* notes 71-73 & 81 and accompanying text.

“all-or-nothing” position. In view of the lack of precedent, though, a legislature wishing to do so should express its position in clear language.

The second objection to aggregation may be summarized as follows:

*Plenary resolutions should be scrutinized before aggregating them to see if their language is sufficiently inclusive to justify aggregation with BBA applications. If not sufficiently inclusive, they should be deemed a separate category. Thus, a plenary application that, like the 1861 Illinois resolution, looks to the future perhaps should be aggregated; but others should not be. Similarly, if an application recites a motivation other than desire for a BBA, such as direct election of Senators, then it should not be aggregated with BBA applications.*

Congress (and, if need be, the courts) should reject this contention for several reasons. The initial reason involves the text and associated history. Article V provides that Congress shall call a convention “on the Application of the Legislatures of two thirds of the several States.” Running separate lists by subject is inferred from Founding-Era convention practice, not from the constitutional text. In this instance, however, there is no Founding-Era practice suggesting that the text should be read otherwise than in the most straightforward manner; an inferred exception should not be wider than the custom that implies it. This conclusion is reinforced by the Constitution’s use of the imperative: “Congress . . . shall call” and by the Founding-Era practice of treating applications in a forgiving manner.

Another reason for restraining Congress’s discretion as to which plenary applications to aggregate is the nature of Congress’ role in the convention process. When aggregating applications and issuing the call, Congress acts as an executive agent for the state legislatures. Because a primary purpose of the convention procedure is to check Congress, when it aggregates applications it does so in a conflict of interest situation. Fiduciary principles argue against allowing Congress to avoid a convention by interpretive logic chopping.

Still another reason for rejecting this second objection arises from the purpose of the convention procedure. The Founders inserted it as an important safeguard for constitutional government and for personal liberty<sup>85</sup>—much like the Bill of Rights and other important constitutional checks. Just as the courts enforce most of the Bill of Rights rigorously through the use of “heightened scrutiny,” so Congress and the courts should apply heightened scrutiny to efforts to block a convention.

The third objection to aggregating plenary applications with limited applications may be stated this way:

*Plenary applications should be aggregated with limited applications that already existed before the plenary applications, but not with future ones. A legislature issuing a plenary application may be on notice of previous limited applications.*

85 Advocates of the Constitution relied heavily on the availability of the amendments convention process as a way of inducing the public to support the Constitution. *Founding-Era Conventions*, *supra* note 2, at 622-24.

~~~~~

But it is unreasonable to assume a legislature intended to seek a convention on unknown future subjects.

This argument is stronger than the second because it offers less opportunity for Congress to block a convention by sophistic word-parsing. However, a rule that a plenary application aggregates with some limited applications but not others would insert in the plenary application a condition the legislature could have added, but chose not to. Such a rule would render plenary applications relevant for issues long past—such as a convention to address state nullification⁸⁶—but irrelevant for constitutional crises that might arise in the future.

The third objection also suffers from the same lack of justification from text or precedent that attended the previous two objections. Indeed, the precedent of the Constitutional Convention cuts in the opposite direction. The Constitutional Convention was called by the Virginia general assembly in late 1786, not by Congress in February 1787 as is often claimed.⁸⁷ The call recited as the subject matter a general overhaul of the political system.⁸⁸ Over the next few months, state after state granted their commissioners authority to match the scope of the call.⁸⁹ After seven states—a majority—had done so, the New York legislature restricted its commissioners to considering only amendments to the Articles of Confederation. Massachusetts imposed a similar limit even later in the process. Yet as far as we know, no one suggested the later narrow commissions abrogated the earlier broad ones. Even if the last seven states had adopted such restrictions, thereby imposing them on the convention, the earlier states' wider grants of authority (if not formally rescinded) would have continued those states' commitment to the convention. The gathering would have been constrained to the narrower limits, it is true; but the commissioners with wider authority still would have been empowered and expected to participate to the extent of the convention's scope.

A final point: In assessing all three of these objections, one must remember that if a legislature with a plenary application is

dissatisfied with having that application aggregate toward a limited convention, it has several remedies:

- It may rescind or amend its application before the thirty-four state threshold is reached;
- It may join at the convention with the non-applying states in voting against any proposal; and
- It may join with non-applying states in refusing to ratify.⁹⁰

VIII. CONCLUSION

When counting applications toward a convention for proposing a balanced budget amendment—or, indeed, toward a convention for proposing any other kind of amendment—Congress should add to the count any extant plenary applications. Currently, this count gives us 33 applications for a convention to propose a balanced budget amendment—only one short of the 34 needed to require Congress to call a convention.

86 Cf the 1832 Georgia application.

87 See generally Michael Farris, *Defying Conventional Wisdom: The Constitution Was Not the Product of a Runaway Convention*, 40 HARVARD J. L. PUB. POL. 61 (2017).

88 *Id.*

89 For the credentials of the delegates to the 1787 convention, see 3 RECORDS OF THE FEDERAL CONVENTION 559-86 (Max Farrand ed., 1937).

90 GUIDE, *supra* note 2, at 58.



Section 1.

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

Section 2.

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

Section 3.

This application is to be considered as covering the same subject matter as the presently-outstanding balanced budget and unlimited-subject applications from other states, including but not limited to previously-adopted and unrescinded applications from Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Washington, Utah, West Virginia, Wyoming and Wisconsin; and this application shall be aggregated with same for the purpose of attaining the two-thirds of states necessary to require the calling of a convention, but shall not be aggregated with any applications on any other subject.

Section 4.

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



33 Active Article V Applications

	State	Year Passed	Resolution Number			State	Year Passed	Resolution Number
1	Alabama	2011	SJR 100		12	Louisiana	2014	HCR 70
2	Alaska	1982	HJR 17		13	Michigan	2014	SJR V
3	Arizona	2017	HCR 2013		14	Mississippi	1975 2019	HCR 51 SCR 596
4	Arkansas	1979	HJR1		15	Missouri	1983	SCR 3
5	Florida	2010 2014	SCR 10 SM 658		16	Nebraska	1979 2010	LR 106 LR 538
6	Georgia	2014	SR 736		17	New Hampshire	2012	HCR 40
7	Illinois	1861	Joint Resolutions on Federal Relations		18	New Jersey	1861	Joint Resolutions on the state of the Union
8	Indiana	1957 1976	HECR 9 SEJR 8		19	New York	1789	House of Representatives J. 36
9	Iowa	1979	SJR 1		20	North Carolina	1979	SJR 1
10	Kansas	1979	SCR 1661		21	North Dakota	2015	HCR 3015
11	Kentucky	1861	HR1		22	Ohio	2013	SJR 5

	State	Year Passed	Resolution Number			State	Year Passed	Resolution Number
23	Oklahoma	2016	<u>SJR 4</u>		29	Washington	1901	<u>HB 90</u>
24	Oregon	1901	<u>HJR 4</u>		30	Utah	2015	<u>HJR 7</u>
25	Pennsylvania	1976	<u>R 236</u>		31	West Virginia	2016	<u>HCR 36</u>
26	South Dakota	2015	<u>HJR 1001</u>		32	Wyoming	2017	<u>HEJR 2</u>
27	Tennessee	2014	<u>HJR 548</u>		33	Wisconsin	2017	<u>AJR 21</u>
28	Texas	1979	<u>HCR 31</u>					

Congressional Candidate Yvette Herrell Pledges to “Let Us Vote for a U.S. Balanced Budget Amendment”



September 5, 2019 | News Release

New Mexico’s U.S. House, second district candidate Yvette Herrell has pledged support for her constituents’ right to vote for a Balanced Budget Amendment. Whether an amendment is proposed by Congress or through a convention of the states, Ms. Herrell believes “The American People should be empowered by Congress to vote yes or no on the ratification of a BBA, as they were when Prohibition was repealed with the 21st Amendment in 1933.”

In her support of this issue, Ms. Herrell agrees with former Democratic Senate Majority Leader Harry Reid, who observed that “We are driving ourselves into bankruptcy. We’ve got to do something.” Her position also aligns with that of former Republican House Speaker Paul Ryan

who believes ““if we get the [biggest national issue of] debt right, we will have a great 21st century.”

Specifically, Yvette Herrell has pledged to “support a congressionally proposed BBA that would prohibit total federal spending from increasing faster than inflation (up to 2%) plus population growth, with exceptions for Social Security and national emergencies.” Employment of a similar spending growth limit was [projected by the CBO](#) to result in the paying off of the national debt and the quadrupling of real GDP/capita from \$40,000 to over \$160,000 in 75 years.

Under the U.S. Constitution’s Article V, either two-thirds of both Houses of Congress may propose an amendment, or a convention of states for proposing amendments shall be called upon the application of two-thirds (34) of the states. According to constitutional scholar [Robert Natelson](#), 33 of the necessary 34 applications for a single-subject BBA convention already exist.

Should Congress be unable to achieve the two-thirds vote necessary to propose a BBA and one additional state BBA Application be received, Ms. Herrell pledges support for the Let Us Vote for a Balanced Budget Amendment Resolution. The LUVBBA Resolution would 1) set the time and place for the states to meet and draft a BBA, 2) require ratification by state convention (a vote of the people) and 3) void any convention-proposed amendment unrelated to balancing the federal budget.

In a national survey of 8,671 registered voters, a [bi-partisan 83%](#) wanted “a vote of the people” to ratify a BBA. With her pledge, Yvette Herrell affirms her support of the right of New Mexicans and all Americans to vote for a Balanced Budget Amendment that could both prevent national bankruptcy and pass on the American Dream for generations.

###

Budget Hawks Hatch Plan to Force Constitutional Convention

By MICHAEL BIESECKER

July 31, 2020

<https://apnews.com/article/wisconsin-constitutions-scott-walker-politics-business-0079f922a810f82336a64b4ac6a3a214>



WASHINGTON (AP) — GOP activists want to trigger a constitutional convention with the goal of enacting a federal balanced budget amendment, potentially requiring massive cuts to government spending.

Critics warned a convention could decide to take on topics beyond a balanced budget and propose other big constitutional changes, though 38 states still would have to ratify any proposed amendments.

Former Wisconsin Gov. Scott Walker outlined a legal strategy to a gathering of state lawmakers and corporate lobbyists earlier this month designed to force a convention to consider the amendment even though only 28 states have still-pending resolutions calling for one, well short of the 34 required.

The event was part of the annual meeting of the American Legislative Exchange Council, a corporate-backed group that facilitates conservative and pro-business legislation, which was held online due to the risk posed by COVID-19.

In a [video](#) of the July 21 session led by Walker and posted by ALEC, Walker lamented the ballooning federal debt of more than \$26.5 trillion, conceding the figure has continued to grow under both Democratic and Republican administrations.

“It’s just more and more spending,” said Walker, who unsuccessfully sought the GOP nomination for president in 2016. “We’ve got to do something about that. That’s why we need a balanced budget amendment. We need it now more than ever, and we need it before it’s too late.”

It’s unclear how many state legislators listened to Walker’s presentation or support the idea. But Ohio Senate Majority Leader Matt Huffman, a Republican who participated in the discussion, said he would work to build support in his state for a lawsuit seeking to convene a constitutional convention.

Walker is the latest in a long line of Republicans pressing for a constitutional amendment requiring the federal budget be in balance. In 2018, the GOP-controlled House of Representatives [voted](#) 233 to 184 in favor of it, but failed to reach the two-thirds margin required to send an amendment for potential ratification by three-quarters of the states.

“What we see is that politicians in Washington are incapable, regardless of party, of ultimately getting the job done when it comes to a balanced budget amendment,” Walker said. “So, thankfully, our founders presented another way to do this, and that is through the states.”

The new plan, presented during the ALEC workshop with a [PowerPoint presentation](#) from conservative activist David Biddulph, is to take the 28 state resolutions seeking a balanced budget amendment and combine them with six state resolutions passed over the last two centuries generally seeking a constitutional convention. The oldest of those was a resolution passed by New York in 1789, according to a [2018 article](#) on the conservative Federalist Society’s website by constitutional scholar Robert G. Natelson.

Biddulph proposed recruiting state attorneys general to file a legal order demanding that Congress recognize the 34 state resolutions and convene a constitutional convention. If Congress refuses, the AGs would sue in federal court.

Walker declined an interview request from AP, referring questions to Biddulph.

Biddulph, co-founder of a [Florida-based group](#) called Let Us Vote for a Balanced Budget Amendment, said Wednesday the lawsuit to trigger a constitutional convention could be the best shot of advancing his signature issue.

“We think that the shortest path to actually getting a date for an Article V convention is through the Supreme Court,” he said. “That is definitely not through Congress.”

David Super, a Georgetown University Law professor who has [studied efforts](#) to convene a constitutional convention, said it would overturn decades of legal precedents on the separation of powers for the federal judiciary to order the Congress to convene a convention. But he said it was not outside the realm of possibility, given the pace at which President Donald Trump and Senate Majority Leader Mitch McConnell have been putting conservative judges on the federal bench.

“I think we’re going to be seeing more and more lawsuits of this kind that in normal times would be laughed out of court and perhaps the lawyers fined for bringing them,” Super said in an interview. “But given who is now sitting, there’s a fair chance that they will win, at least at the trial stage and very possibly at the court of appeals.”

Every U.S. state but Vermont has a form of balanced budget requirement, but state governments typically rely on federal financial assistance during hard times, such as the current fiscal crisis caused by COVID-19. If enacted, critics contend that a federal balanced budget amendment would necessitate draconian spending cuts, steep tax increases, or both – potentially causing a prolonged national recession.

Super said Walker, in his presentation, ignored the role the \$2 trillion tax cut passed by a GOP-controlled Congress at the end of 2017 played in deepening federal deficits.

He also warned that convening a constitutional convention could have unintended consequences. He pointed to the 1787 convention that was called to amend the Articles of Confederation but resulted in a whole new national constitution.

“Once you have the convention, it is subject to nobody’s control,” Super said. “It makes its own agenda. It makes its own voting rules that decides how long it lasts and how far it goes.”

Arn Pearson, executive director of the progressive watchdog group Center for Media and Democracy, also warned that a so-called runaway convention could be called to consider one subject but then decide to make other big constitutional changes.

Republicans control 60 percent of the state legislative chambers, potentially giving them a numerical advantage in selecting who would be delegates.

“If their ploy succeeds, the field will be thrown wide open for constitutional rewrites,” Pearson said. “Right-wing mega donors will spend millions to advance a sweeping agenda to limit federal powers. It’s not going to be an exercise in popular democracy.”

Follow Associated Press Investigative Reporter Michael Biesecker
at <https://twitter.com/mbieseck>.



AP Article: “Budget Hawks Hatch Plan to Force Constitutional Convention”

Q & A

1. Does the U.S. Constitution provide for a “constitutional convention” as suggested by the title of the Article?

Ans: NO; Article V of the U.S. Constitution does not provide for a “constitutional convention.” Rather, it authorizes a “Convention for proposing Amendments.” The 1787 conclave was the only meeting that can be accurately described as a “Constitutional Convention.”

2. Is the following statement accurate? “The 1787 convention was called to amend the Articles of Confederation but resulted in a whole new national constitution.”

Ans: NO; as an examination of the state delegate instructions to the 1787 Constitutional Convention shows, 11 of the 12 state delegations voted in accordance with their state’s instructions: “to render the Federal Constitution (meaning, at that time, “Federal government”) adequate to the exigencies of the Union.” Only the Massachusetts delegation voted contrary to their state’s instructions that: “the convention be limited only to amending the Articles.”

3. Are the “critics” of an Article V Convention for proposing Amendment(s) correct when they suggest that “a convention could decide to take on topics beyond a balanced budget and propose other big constitutional changes”?

Ans: YES; but only if State Convention Delegates are willing to:

1. Violate their oath of office,
2. Disobey state legislature’s recall orders and
3. Successfully challenge in federal court the state laws prohibiting Article V Convention Delegates from proposing amendments unrelated to the subject of the state’s application and instructions. (Note: The Supreme Court recently upheld state recall and vote nullification laws in a unanimous decision, prohibiting “faithless” Presidential Electors from violating their oath of office.)

4. Would a Supreme Court decision to “call” an Article V Convention for Proposing Amendments: “overturn decades of legal precedents on the separation of powers for the federal judiciary”?



Ans: NO; quite the contrary. It is The Supreme Court's responsibility protect the U.S. Constitution's ultimate "separation of powers" in Article V which mandates that: "Congress shall call the Convention for proposing Amendments...upon the Application of two-thirds (34) of the states." (Note: In contrast to the law counting State Amendment Ratification Resolutions as old as 202 years, Congress has unconstitutionally avoided counting any of the 700+ Article V Applications passed by the states since 1789.)

5. Would "a federal balanced budget amendment necessitate," as critics contend, "draconian spending cuts, steep tax increases, or both – potentially causing a prolonged national recession"?

Ans: YES; if Congress were constitutionally mandated to spend no more than annual projected revenues, as has been debated (but never proposed) by Congress. Ans: NO; if the Balanced Budget Amendment Convention were to propose a spending growth-limit similar to the Swiss Debt Break, which was approved by 85% of Swiss voters in 2001. With the Debt Brake in place for almost two decades, Switzerland's record shows no spending cuts, tax increases or man-made national recession. Quite the contrary, Switzerland boasts the world's fourth highest GDP/capita and has been ranked the most credit worthy country in the world, able to pay down their national debt most years since 2003.

6. Is the following statement correct? "Once you have the convention, it is subject to nobody's control.?"

Ans: NO; State Article V Convention Commissioners will be controlled by their oath, legislative instructions and state laws.

7. Is the statement that the Article V Convention "makes its own agenda" correct? Ans: NO; the Article V Convention's "agenda" is determined by a majority of state delegations who are limited by their oath, the state's Article V Application and state legislature's instructions on the federal problem(s) which need a proposed constitutional solution.
8. Are the following statements regarding an Article V Convention accurate? "...the field will be thrown wide open for constitutional rewrites...it's not going to be an exercise in popular democracy"?

Ans: NO; a "Convention for proposing Amendments" cannot ratify an amendment. However, "an exercise in popular democracy" can! The 21st Amendment, repealing Prohibition, was ratified by a majority vote of the people in three-quarters of the states via "Yes-Pledged" Delegates to State Ratification Conventions.



FISCAL RULES TO GUIDE A BALANCED BUDGET/FISCAL RESPONSIBILITY AMENDMENT:

- FORMER U.S. COMPTROLLER GENERAL DAVID WALKER: DEBT TO GDP
- DR. BARRY POULSON: BBA WITH EXPENDITURES LIMITATION ACT
- DAVID BIDDULPH: MAXIMIZING AMERICANS' PROSPERITY AMENDMENT
- AMAC PRESIDENT, BOB CARLSTROM: THE BILL OF FINANCIAL RESPONSIBILITIES

Tab 5

Summaries of Fiscal Rules Proposals to Guide a Balanced Budget Amendment

The Public Debt/GDP Constitutional Amendment

Presented by David M. Walker

While Congress has proven ineffective at establishing fiscal restraint via statute and many state budgets are balanced in name only, this proposal would utilize two public debt/GDP goals as metrics for its constitutional mandate. First, the amendment would set a limit on the amount of debt/GDP (e.g., 125%) that may be incurred absent a Declaration of War or super-majority vote by both houses of Congress (e.g., 60%). It would also require a gradual reduction in public debt/DGP to a stated level (e.g., 90%) by a date certain (e.g., 2030) with targets, triggers, and automatic enforcement mechanisms to ensure compliance. With broad-based consensus among economists and concerned politicians, this pro-growth amendment would allow Congress the flexibility to determine the specific spending and/or revenue adjustments necessary to achieve the public debt/GDP goals.

The Balanced Budget Amendment with Expenditures Limitation Act

Presented by Dr. Barry Poulson

Based on the world's most effective enacted fiscal rules, this proposal offers both a Balanced Budget Amendment to the U.S. Constitution and enabling statutory legislation with explicit fiscal targets and the measures required to meet them. The Balanced Budget Amendment mandates that expenditures and revenues be brought into equilibrium in the near term with countercyclical allowances for limited deficits during recessions and required surpluses during periods of economic growth. The Expenditures Limitation Act establishes that the Balanced Budget Amendment's constitutional mandate will be achieved through an annually adjusted limit on total expenditures. The Act also provides for emergency and capital investment funds as well as amortization and compensation accounts to manage deficits and surpluses in bringing the budget to balance. To ensure greater transparency in the budget process and the effectiveness of its fiscal rules, this proposal also creates an Advisory Fiscal Council to monitor and assist with compliance.

The Maximizing Americans' Prosperity and Security Amendment

Presented by David Biddulph

The Maximizing Americans' Prosperity and Security Amendment to the U.S. Constitution limits the growth of federal spending to the prosperity of American families by establishing an annual federal spending limit corresponding to average percentage changes in household income and inflation with provisions for national emergencies, enforcement and future amendment(s) approved by a vote of the people.

The Bill of Financial Responsibilities (BOFR)

Presented by Bob Carlstrom

The Bill of Financial Responsibilities would apply a comprehensive approach to federal financial management through a package of five interrelated proposals, each with its own required actions and sanctions for non-compliance. The BOFR would address the reduction of deficits and debt; the simplification and limitation of the federal tax system; the repayment of \$3.5 trillion of funds misappropriated from Social Security and Medicare requiring proper investment and safeguarding; the establishment of generally accepted accounting principles and auditing standards overseen by the independent Financial Accounting Foundation; and the requirement that federal regulations be more closely tied to law, with the establishment of impartial, fast-track administrative courts to resolve disputes.

ALEC Meeting
Public Debt/GDP Constitutional Amendment Option
June 2021

Proposal:

Establish a Constitutional Amendment that does two things:

- Sets a stated limit on the amount of public debt/GDP (e.g., 125%) that may be incurred absent a formal Declaration of War or a super-majority vote (e.g., 60%) by both houses of Congress to allow an annual waiver based on other specified and unexpected events (e.g., major economic decline, public health emergency, major natural disaster) with sanctions for non-compliance (e.g., members of both Houses would not be able to stand for re-election); and,
- Requires a gradual reduction in public debt/GDP to a stated level (e.g., 90%) by a date certain (e.g., 2030) with targets, triggers and automatic enforcement mechanisms (e.g., suspension of indexing for all tax brackets and all benefit programs, freezing of other federal spending, 50% revenue surcharge and 50% spending cuts for any balance) if the annual targets are not met, and sanctions for non-compliance (e.g., members of both Houses would not be able to stand for re-election).

Reasoning:

Past statutory fiscal sustainability approaches have not worked (e.g., Debt ceiling limit, Graham/Rudman/Hollings). In addition, Balanced Budget approaches can be gamed and have not worked in many states. While additional statutory changes are needed, only a Constitutional Amendment is likely to be effective over time.

There is general agreement that the two most important fiscal sustainability metrics are public debt/GDP and interest expense as a percentage of the budget. While both are important, public debt/GDP is the metric that is more controllable through fiscal policy (i.e., taxes and spending).

Pros and Cons:

There is a broad-based consensus among economists and concerned politicians that a debt/GDP approach is probably the best and most politically feasible way to proceed.

The public debt/GDP metric is a pro-growth metric since if you can grow the economy faster than the debt you can still make progress toward achieving the stated goal. This is what happened between 1945 and the early 1980s.

Unlike the Swiss Debt Break, the public debt/GDP metric does not dictate how best to achieve fiscal sustainability. Specifically, it provides the Congress with the flexibility to determine how much spending should be reduced and/or how much in additional revenues are needed to achieve the desired public debt/GDP goal.

Other countries and multilateral groups use the debt/GDP approach as part of their fiscal sustainability efforts (e.g., Sweden, European Union).

Incorporating Fiscal Rules in the Constitution

The Economic Rationale for Constitutional Fiscal Rules

To understand the economic rationale for constitutional fiscal rules we begin with some assumptions in neoclassical economics. The basic assumption is the Coase Theorem (Coase 1960). The theorem holds that the political process will yield an equilibrium in transactions such that no exchange that can benefit some group of people without hurting others goes unconsummated. The literature of political economy explores why a political process might fail to achieve this Pareto optimum outcome. Political institutions encounter problems of time inconsistency, asymmetric information, and other transactions costs.

The fact that Congress cannot reach agreement on a concurrent budget resolution suggests that all of these flaws are inherent in the budget process. Enforceability of a budget agreement is complicated when legislators have an incentive to renege on the agreement, and when they have less incentive to reach agreement in the first place.

The economic shocks experienced over the past two decades have magnified the problem of agreeing on a budget. A robust response to these economic shocks required emergency expenditures. Once budget constraints were relaxed in response to economic shocks, it has proven difficult to return to a rules based budget process. The major economic shocks experienced over the last two decades introduced greater uncertainty and risk in the budget process compared to that during the ‘Great Moderation’. The enforcement powers of the fiscal rules enacted during the ‘Great Moderation’ have proven to be less effective in recent years.

The budgets negotiated in recent years are best described as an incomplete contract, using the terminology of the new economic theory of the firm. A contract is complete when it incorporates provisions covering every circumstance considered relevant to the transaction. That assumes that every future circumstance is knowable, and contractual obligations can be made contingent on future events. Economic shocks in recent years have made it more difficult for elected officials to predict future circumstances, or draft a budget providing for future contingencies. The outcome of this budget process is not a budget, but rather a document that requires continuous negotiation. Legislators are reluctant to abide by fiscal rules that a future legislature might weaken or suspend. The constitutional fiscal rules enacted in other countries are designed to overcome these problems and restore a rules based budget process.

The Balanced Budget Amendment that we propose is modeled after the amendment incorporated into the Swiss Constitution through a referendum approved by 85 percent of Swiss citizens. The proposed Amendment requires the federal government to bring expenditures into equilibrium with revenues in the near term. The Balanced Budget Amendment to the Constitution would impose a more binding constraint on the fiscal policies of the federal government. Unlike statutory fiscal rules, a Constitutional rule could only be superseded by another Constitutional amendment. Elected officials who choose to disregard the proposed Balanced Budget Amendment to the Constitution would be perceived by citizens as having betrayed the public trust. These elected officials would then face the wrath of citizens in the political process (Merrifield and Poulson 2017; Hanke et al. 2021).

The Balanced Budget Amendment that we propose is based on our own Constitutional history. A balanced budget amendment submitted to the voters for ratification should be simple, straightforward, and easily understood by citizens in the ratification process. This would follow the precedent set in the original U.S Constitution, and in amendments to the Constitution. In the federal Constitution a premium is placed on parsimonious language. The result is a relatively short document, compared to state Constitutions, laying out broad principles, and leaving it up to Congress to enact enabling legislation consistent with these broad principles. This precedent should be a guide in designing and enacting new fiscal rules.

Critics often cite the difficulties of enforcement as a reason to oppose a Balanced Budget Amendment to the Constitution. It is true that in other OECD countries a balanced budget amendment to the Constitution has not always been enforced. That is why many of these countries, such as Switzerland, have enacted new fiscal rules to include both constitutional and statutory provisions, to impose the fiscal discipline required for expenditures to match revenues in the near term. Indeed, the European Union now mandates that all member countries enact such fiscal rules (Merrifield and Poulson 2017; Hanke et al. 2021).

We propose the Expenditures Limitation Act as enabling legislation to fulfill the Constitutional mandate to bring expenditures into equilibrium with revenues in the near term. This legislation is also modeled after the Swiss debt brake. The Act is proposed as a statutory measure with explicit fiscal targets that must be met, and includes measures required to meet these targets spelled out in some detail. Experience with this type of fiscal rule in Switzerland and other OECD countries reveals that reliance on explicit targets is required to balance the budget in the near term. The fiscal rules must provide transparency and accountability to assure that constraints on fiscal policies are effective. With these fiscal rules in place, it is clear when the balanced budget requirement is violated, and who is responsible for the violation, e.g. an overreaching executive branch, a profligate legislature, or an activist judicial branch of government.

In this study we introduce model legislation for both the proposed Balanced Budget Amendment and the Expenditures Limitation Act. This is followed by a discussion of the proposed fiscal rules and how they would be implemented.

Model Legislation

Balanced Budget Amendment

Summary

The Balanced Budget Amendment is designed to address the federal debt crisis. In recent decades the federal government has incurred debt at an unsustainable rate, and is projected to continue to do so in coming years. This Amendment requires that total expenditure be brought into equilibrium with total revenues in the near term. It also provides for countercyclical fiscal policy by permitting limited deficits during periods of recession and requiring surpluses in periods of economic expansion. Thus, the Amendment achieves both sustainability of public finances in the near term, and more stable public finances over the business cycle.

Section (1). The federal government shall hold its expenditures and revenues in near term equilibrium.

Section (2). The federal government shall set the maximum amount of expenditures each year required to hold expenditures and revenue in equilibrium in the near term.

Section (3). The maximum amount of expenditures in (2) may be exceeded for emergency expenditures with a two thirds vote of approval in both houses of Congress.

Section (4). If actual expenditures in any year exceed the maximum allowable expenditures in paragraphs (2) and (3), the excess expenditures shall be compensated in the following years.

Section (5). Details are determined by statutory law.

Explanation

Section (1)

Total government expenditures must be brought into equilibrium with total revenues in the near term. The flaw in the budget process is unconstrained growth in federal expenditures. The formal and informal rules that constrained expenditures historically are no longer effective. This constitutional provision makes explicit the mandate to constrain total expenditures to equal total revenues in the near term.

Section (2)

In order to bring total expenditures into equilibrium total with revenues in the near term, this provision impose an expenditures limit each year. The design of the expenditures limit is left to statutory law. But the expenditures limit must be designed to equate total expenditures with total revenues in the near term.

Section (3)

This section provides for emergency expenditures conditional upon a supermajority vote of both houses of the legislature. Emergencies are unexpected developments beyond the control of government. They include, but are not limited to, natural disasters, military emergencies, fiscal crises, and pandemics. Congress must budget for emergencies and equate total expenditures and total revenues in the near term.

Section (4)

This provision makes clear how Congress must satisfy both provisions (2) and (3). If total expenditures, including emergency expenditures, exceed total revenues in any year, those excess expenditures must be offset by surplus revenue in subsequent years.

Section (5)

This Balanced Budget Amendment requires enabling legislation. The Amendment sets constitutional parameters for that statutory law. Ultimately the Supreme Court must hold the

other branches of government responsible for upholding these constitutional parameters in statutory law.

Discussion

The proposed Balanced Budget Amendment addresses the problem of time inconsistency in fiscal policy. The problem with current law is that if Congress reaches agreement on a budget that equates total expenditures with total revenues in the near term, there is nothing to prevent a future Congress from pursuing fiscal policies that violate the balanced budget principle. While fiscal policies during the ‘Great Moderation’ of the 1980s and 1990s were constrained by fiscal rules consistent with the balanced budget principle that has not been true over the past two decades.

There is no foolproof way to guarantee that Congress will pursue fiscal policies consistent with the balanced budget principle, but incorporating this principle in Constitutional law will further this objective. Evidence at both the subnational and national level supports the thesis that when the balanced budget principle is incorporated as constitutional law, elected officials are more likely to uphold the principle.

Support for the balanced budget principle is furthered by the procedure of incorporating it as constitutional law. Enacting the Balanced Budget Amendment will be a learning experience involving citizens as well as elected officials in discussion and debate regarding the balanced budget principle, and the laws required to satisfy this principle. Article V of the Constitution provides two amendment procedures. Congress with a two thirds vote of approval for a resolution, may propose an amendment. The states may also propose an amendment, with two thirds of the states approving the resolution. Thus far, amendments have only been approved through the Congressional amendment process; the states have failed to achieve the two thirds supermajority requirement to submit a resolution for approval.

However, the debt crisis has set the stage for approval of a Balanced Budget Amendment proposed by the states. The debt crisis is precisely why Article V was incorporated into the Constitution. Anticipating that elected officials would find it hard to impose constraints on themselves, especially when it comes to fiscal issues, the founding fathers incorporated the provision that citizens and their elected representatives in the states can also propose an amendment.

Elected officials at the state and local level have centuries of experience in living with the balanced budget principle. Every state, but one has a balanced budget provisions in their state constitution. Most states also have constitutional provisions limiting debt. Many states have also incorporated new fiscal rules, such as tax and expenditure limits, in their constitution. A Balanced Budget Amendment in the federal Constitution should be informed by this learning experience of citizen and their elected representatives with the balance budget principle at the state and local level.

Elected officials at the federal level will also gain from the experience of enacting a Balanced Budget Amendment to the U.S. Constitution. A citizen led effort should motivate Congress to take a critical look at the flaws in current fiscal rules and budget procedures. It should also motivate Congress to seek the bipartisan support required for Congress to propose such an amendment. As in the past, when it appeared that a citizen led efforts to enact an amendment to the constitution appeared be successful, Congress was motivated to act in order to preserve its prerogatives in proposing amendments to the Constitution.

Expenditures Limitation Act

Summary

The Expenditures Limitation Act is enabling legislation required for the federal government to bring total expenditures into equilibrium with total revenues in the near term. The Act imposes a limit on annual total expenditures. The expenditures limit is adjusted when deficits and/or debt approach tolerance levels. The Act also provides for an emergency fund and a capital investment fund. An amortization fund and compensation account are created to assure that total expenditures are brought into equilibrium with total revenues in the near term. An Advisory Fiscal Council is created to help implement the Balanced Budget Amendment and the Expenditures Limitation Act

Section (1) Expenditures Limit

The maximum annual growth in total expenditures, herein referred to as the Expenditures Limit, shall be determined by Congress consistent with the Balanced Budget Amendment. The Expenditures Limit is the product of the sum of inflation plus population growth, adjusted to reflect long run trends in federal revenues and expenditures. Congress shall take the Adjusted Expenditures Limit into account in dealing with all legislation with a financial impact.

Section (2) Adjusted Expenditures Limit

The Adjusted Expenditures Limit is the Expenditures Limit after adjustment for the Deficit Brake and Debt Brake. In no case shall the Adjusted Expenditures Limit fall below 0.

(A) Deficit Brake

To ensure that equilibrium is maintained between total expenditures and total revenues in the near term, Congress shall impose a Deficit Brake. A Deficit Brake shall be imposed in any year when the actual deficit/GDP ratio approaches a deficit/GDP tolerance level equal to (3) percent of GDP). The Deficit Brake reduces the Expenditures Limit proportional to the distance between the actual deficit/GDP level and the deficit/GDP tolerance level.

(B) Debt Brake

To ensure that equilibrium is maintained between total expenditures and total revenues in the near term, Congress shall impose a Debt Brake. The Debt Brake shall be imposed in any year when the actual debt/GDP ratio approaches a debt/GDP tolerance level equal to (100) percent of GDP). The Debt Brake reduces the Expenditures Limit proportional to the distance between the actual debt/GDP ratio and the debt/GDP tolerance level.

(C) Emergency Fund

The actual expenditures in a given year may exceed the Adjusted Expenditures Limit in the event of an emergency. An emergency is an extraordinary development that cannot be controlled by the federal government, including but not limited to natural disasters, military emergency, and financial crises. Congress shall annually appropriate an Emergency Fund deposit that is the lesser of the Emergency Fund limit (10) percent of total expenditures, or the Emergency Fund limit minus the Emergency Fund balance. Emergency Fund expenditures require a declaration of emergency by Congress, and a two thirds vote of approval for the emergency expenditures in both houses of Congress.

(D) Capital Investment Fund

The actual expenditures in a given year may exceed the Adjusted Expenditures Limit to fund capital investment. Congress shall appropriate a Capital Investment Fund deposit in any year when the actual rate of growth in GDP exceeds the trend rate of growth in GDP. The trend rate of growth in GDP is calculated as the average annual rate of growth in GDP over the prior ten years. Debits to the Capital Investment Fund can only occur in years when the actual rate of growth in GDP is below the average annual rate of growth in GDP. Funds can be expended from the Capital Investment Fund for investment projects approved by a majority vote of both houses of Congress.

(E) Amortization Account

Receipts and expenditures reported in the Emergency Fund and Capital Investment Fund shall be credited or debited to an Amortization Account managed outside the ordinary budget. A deficit in the Amortization Account in the previous budget year shall be offset within the next six budget years through a reduction in the Adjusted Expenditures Limit. If the deficit in the amortization Account increases by more than (0.5) percent of total expenditures, the offsetting period may be reset by Congress with two thirds approval in both houses. The obligation to balance the Amortization Account shall be deferred until any deficit in the Compensation Account is eliminated. The magnitude of the savings required to balance the Amortization Account and Compensation Account shall be decided by Congress on an annual basis when approving the ordinary budget.

(F) Compensation Account

At the end of each budget year, when financial statements have been approved, the actual total expenditures shall be compared to allowable total expenditures for that year. If the actual total expenditures are higher or lower than the allowable total expenditures for that year the deviation shall be debited or credited to a Compensation Account managed outside the ordinary budget. A deficit in the Compensation Account shall be offset over the course of several years through a reduction in the Adjusted Expenditures Limit. If the deficit exceeds (6 percent) of total expenditures in the prior year, the excess shall be eliminated within the next three budget years.

Section (3) Advisory Fiscal Council

An Advisory Fiscal Council, herein referred to as the Council, shall be appointed to help implement the Balanced Budget Amendment and Expenditures Limitation Act. The Council is appointed by the President but reports to the Congress. Subject to Senate approval, the President shall appoint one of the eight Council members for a non-renewable 3 year term every two years.

The Council is responsible for assessing the extent to which the Balanced Budget Amendment and Expenditures Limitation Act are implemented. The Council has the responsibility to monitor fiscal policy and legislation that has a financial impact to assure that total expenditure and total revenue are in equilibrium in the near term. In addition to monitoring fiscal policy and legislation with a financial impact, the Council has a broader mandate to assess the macroeconomic conditions and macroeconomic policy.

Section (A) Setting Fiscal Targets

The Council is charged with setting the different fiscal targets imposed by these laws and determining the extent to which those targets are met. The targets include long term as well as short term fiscal targets over multiple budget years. When fiscal targets are not met the Council is charged with recommending remedial fiscal measures that will bring fiscal policy in line with the targets. The Council is also charged with measuring the impact of legislation on these targets.

Section (B) Assessing Current Macroeconomic Conditions

The Council is charged with assessing current macroeconomic conditions, including the coordination of fiscal and monetary policy. The Council shall provide reports to Congress on a timely basis over the budget year. Of primary importance is the mandate that near term expenditures be brought into equilibrium with long term revenues; the Council shall provide an Annual report to Congress on this mandate.

Section (C) Budget Process Reform

The Council is charged with recommending budget process reforms that will enable the country to address the debt crisis. A Federal Accounting Standards Board (FASB) shall be appointed. The FASB is charged with recommendations for improved transparency and accountability in measuring the full cost of government programs. Of major importance are comprehensive measures of total government debt including off budget debt such as unfunded liabilities in entitlement programs.

Section (D) Intergenerational Accounting

The magnitude of debt incurred in recent decades will impose a heavy burden on future generations of Americans. Addressing the debt crisis by reforming entitlement programs will impose different burdens on current and future generations. The Council is charged with implementing intergenerational accounting, including the analysis of the potential impact of entitlement reforms on different cohorts of the population.

Section (E) Assessing the Impact of Fiscal Policies on Long term Economic Growth

Long term fiscal sustainability will require high and sustained rates of economic growth. The Council is charged with assessing the impact of tax and expenditure policies on long term economic growth. The Council will recommend to Congress investments to promote high rates of economic growth, including but not limited to investments in research and development, infrastructure, and human capital.

Explanation

The Expenditures Limit

The key component of the Expenditures Limitation Act is a limit on the annual rate of growth in federal expenditures. The Expenditures Limit is equal to the product of the sum of inflation plus population growth and the Expenditures Limit multiplier. Congress shall adjust the Expenditures Limit based on long term trends in federal revenues and expenditures. The objective is to bring total expenditures into equilibrium with total revenues in the near term. For example, federal finances will be impacted by a demographic shock as the baby boom generation enters retirement and demands Social Security and Medicare benefits. Based on these long term projections Congress will need to maintain a lower Expenditures Limit in the near term and adjust the Expenditure Limit upward in the long term. Congress will also need to reform these entitlement program; but even with reforms, the Expenditures Limit will need to reflect these trends in the demand for government services. Interest on the public debt is also projected to increase in the long term. The Expenditures Limit also needs to be adjusted to reflect the impact of these interest costs on the public debt.

The Deficit/Debt Brake

The flaw in current fiscal rules is that they fail to prevent deficits and the accumulation of debt from one business cycle to the next. The Deficit Brake and Debt Brake are designed to prevent this accumulation of debt. When deficits approach the deficit/GDP tolerance level the Deficit Brake is triggered. When debt approaches the debt/GDP tolerance level the Debt Brake is triggered. The Adjusted Expenditures Limit reflects the constraints imposed on expenditures by the Deficit Brake and Debt Brake.

The Emergency Fund

In periods of economic expansion when revenue growth exceeds the Expenditures Limit, surplus revenue is generated. A portion of the surplus revenue is allocated to the Emergency Fund. The Emergency Fund is available to finance emergency expenditures, such as natural disasters, military emergencies, and financial crises. In periods of recession and revenue shortfall the Emergency Fund are used to offset revenue shortfalls. Surplus revenue in periods of expansion can offset deficits in periods of recession, providing for more stable growth in expenditures over the business cycle.

The Capital Investment Fund

In periods when economic growth exceeds the long term trend in growth a portion of the surplus revenue is allocated to the Capital Investment Fund. In periods of slower growth the Capital Investment Fund is used to finance investment expenditures. In this way fuller utilization is achieved in the capital goods industry, and the federal government benefits from greater

efficiency and bargains in capital investment. Capital investments also help to sustain federal expenditures in periods of recession.

The Amortization Account

The Emergency Fund and the Capital Investment Fund are accounted for separate from the ordinary budget. The Amortization Account serves as a control parameter for these Funds, recording expenditures and receipts. If either of these Funds incur deficits, the deficits must be paid off over the course of the subsequent six budget years by means of surpluses in the ordinary budget. If the deficits are foreseeable, the necessary savings can be made in advance.

The Compensation Account

At the end of the budget year the total expenditures and total revenue are calculated. Surplus revenue is first allocated to the Emergency Fund and the Capital Investment Fund. Any additional surplus revenue is credited to the Compensation Account, separate from the ordinary budget. If total expenditures exceed total revenue the excess is charged to the Compensation Account. Compensation Account deficits must be eliminated in subsequent years. Additional Surplus in the Compensation Account are used to reduce the public debt.

The Advisory Fiscal Council (AFC)

The Advisory Fiscal Council (AFC) is responsible for assessing the extent to which the Balanced Budget Amendment and Expenditures Limitation Act are implemented. The Council is appointed by the President but reports to the Congress. The Council is charged with setting the different fiscal targets imposed by these laws and determining the extent to which those targets are met. The targets include long term as well as short term fiscal targets over multiple budget years. When fiscal targets are not met the Council is charged with recommending remedial fiscal measures that will bring fiscal policy in line with the targets. The Council is also charged with measuring the impact of legislation on these targets. Finally, the Council is charged with assessing current macroeconomic conditions, including the coordination of fiscal and monetary policy. The Council shall provide reports to Congress on a timely basis over the budget year. Of primary importance is the mandate that long term expenditures be brought into equilibrium with long term revenues; the Council shall provide an Annual report to Congress on this mandate.

Discussion

There is an extensive literature exploring fiscal rules in other countries. In recent years many of these studies have focused on the Swiss debt brake, arguably the most effective fiscal rules enacted in any country. The Swiss debt brake combines a constitutional balanced budget rule with a statutory expenditures limit. The fiscal rules that we propose are modeled after the Swiss debt brake (Merrifield and Poulson 2017; Hanke et al. 2021).

Fiscal rules must be designed to resolve tradeoffs in credibility, flexibility, and simplicity. Current fiscal rules lack effective enforcement mechanisms; new fiscal rules must provide for more effective enforcement. Other countries have introduced Councils to monitor and help enforce their fiscal rules. The U.S. should introduce an Advisory Fiscal Council to provide greater transparency and accountability in the budget process. The challenge in the design of fiscal rules is not only to satisfy the balanced budget principle, but also to prepare for future emergencies, and major economic shocks such those experienced over the past few decades.

Finally, the fiscal rules must enable the country to address long term challenges, investing in research and development, infrastructure, and human capital. Elected officials must prepare for long term demographic changes and the impact of an aging population on pension and health plans. They must meet these long term changes while pursuing fiscal policies with intergenerational fairness.

References

- Coase, R. 1960. “The Problem of Social Cost”, *Journal of Law and Economics* 3(1) 1-44.
- Merrifield, J., and B. Poulson. 2017. *Restoring America’s Fiscal Constitution*, Lexington Press, Lanham, Maryland.
- Hanke, S., J. Merrifield, and B. Poulson, editors. Forthcoming 2021. *Debt Sustainability: International Perspectives*. Lexington Press, Lanham, Maryland.

Maximizing Americans' Prosperity Amendment

Summary

For years, the Congressional Budget Office has warned that the trajectory of federal spending under current law is unsustainable. Today, the national debt exceeds 100% of annual GDP, threatening Social Security, national security and the prosperity of the American family.

Economists predict that the acceleration of debt financed through central banks will continue to fuel rising inflation, with potentially broad and devastating effect. Admiral Mullens, Chairman of Joint Chiefs of Staff (Ret.) advises: "The most significant threat to our national security is our debt," The Amendment is designed to prohibit federal spending from growing faster than household income so as to maximize Americans' prosperity and security for generations.

Maximizing American's Prosperity Amendment to the U.S. Constitution

Section (1). The federal government shall limit total annual spending, except for Social Security benefits under laws in effect upon ratification, to the independently audited total cash expenditures in the full fiscal year following ratification adjusted annually for percentage changes in consumer prices up to 2.0% plus population change. Total spending percentage change for any 5- year period may not exceed the total percentage change in average after-tax household income.

Section (2). National emergency spending in excess of the annual spending limit may be approved by Congress and the President. National emergency spending shall be fully funded by National Emergency Bonds which are paid back with interest and equal annual principal

payments within 10 years or up to 50 years for congressionally declared wars. Emergency Bond payments are deducted from the total annual spending limit.

Section (3). In any year the federal government is debt free, the annual spending limit may increase at the greater of the total annual spending limit in Section (1) or the 5-year average annual change in after-tax family income.

Section (4). Enforcement: An annual independent audit of total spending shall report if a Congress has exceeded their annual spending limit. No member of a Congress in violation of the annual spending limit shall be eligible for reelection.

Section (5) Amendments may made to the **Maximizing American's Prosperity Amendment** when proposed by a majority vote of both chambers of congress or by a majority vote of the state legislatures and ratified by a majority vote of the people in three-quarters of the states.

THE BILL OF FINANCIAL RESPONSIBILITIES

Proposed Amendments to the U.S. Constitution

The federal government's tax and spending behavior is out of control and the Congress consistently demonstrates an inherent inability to manage the federal government's fiscal affairs and accountability. The federal Legislative and Executive Branches are in critical need of Constitutional bounds, the absence of which will result an eventual "bankruptcy" of the United States caused by the enormity of the National Debt and inevitably will cause the imposition of increased and onerous taxes upon Americans and business to the detriment of the States.

The *Bill of Financial Responsibilities* includes the following elements, all of which are essential to build a fiscal "Constitutional box" around the federal legislative and executive branches.

Simplify Federal Taxation. The sole purpose of federal taxation is to finance the legitimate operations of the Federal government, not to influence taxpayer's behavior. Congress would be prohibited from including inducements, credits, exemptions, deductions, incentives, or preferential rates in any tax law. Taxes would be a simple gross income tax rate.

Balance Revenues and Expenses.

- Eliminate deficit spending.
- Presidential line-item veto
- National emergency deficit spending requires 2/3 votes
- Deficit outlays to be repaid in future fiscal years

Fairly Manage the Regulatory Process – Regulations Are In Effect Taxes Upon the Economy

- Establish Administrative Courts in the Judicial Branch to adjudicate regulatory disputes; decisions could be appealed to federal courts of appeals.
- All regulations must specifically cite and strictly follow a legislative authority.

Professionally Manage Federal Trust Funds

- Each trust fund to be separately and independently managed by boards of trustees and deposited in Federal Reserve accounts and audited annually to assure compliance with federal law and fiduciary responsibilities applicable to private trust and public sector pension funds.
- Trust funds invested and diversified in the market and could include Treasury securities.
- Trustees, not Congress, determine the payable benefits.
- Congress may appropriate funds to the Trust Funds, but it cannot withdraw funds.
- Treasury debt to the trust funds must be repaid before any general debt reduction is undertaken.

Utilize Proper Accounting

- All federal agencies must comply with generally accepted accounting principles published by the Federal Accounting Standards Board (FASB) and include accrual accounting.
- Be audited annually.
- Publish the annual audits on the internet for transparency.
- Unsatisfactory audit reports trigger a 10% appropriations reduction in the first year and 25% in the second year (and subsequent years) for those accounts continuing to be unsatisfactory.

In each of those five years following ratification, Congress is to pass legislation including a budget and the specific steps to be taken the ensuing year and in years remaining in that five-year period to fully implement provisions of each ratified Amendment.

July 17, 2017

A Proposed Balanced Budget Amendment

By Robert G. Natelson*

Introduction

As the debt of the United States government has mounted, there have been recurrent calls for adding a balanced budget amendment (BBA) to the U.S. Constitution.

However, drafting an acceptable BBA is difficult. One cannot merely copy balanced budget requirements from state constitutions because of the complexity of the federal financial system and because deficit financing is so ingrained in Washington, DC that conventional language likely would be evaded.

Moreover, the amendment must be politically salable and consistent with the overall constitutional design. When measured against such criteria, existing drafts suffer from significant, and sometimes crippling, defects.

Cognizant of political and constitutional obstacles that may face proposed balanced budget amendments to the U.S. Constitution, Professor Natelson offers here a new draft BBA for discussion.

In this paper, the author seeks to restart the process by offering a new draft for discussion.

1. Background and the Federal Debt Crisis

During the first half of the nineteenth century, state government overspending resulted in several states defaulting on their debt—that is, those states effectively declared bankruptcy.¹ In response, Americans inserted in nearly all state constitutions requirements that the state annual or biennial budget be balanced.² These provisions forbid states from financing current expenses by incurring debt extending beyond the budget period.

* Robert G. Natelson is senior fellow in constitutional jurisprudence at The Heartland Institute. For a more complete biography, see page 10 or <http://robnatelson.com/about-rob-natelson/>.

This paper owes much to the author's long-time study of fiscal limitations placed in state constitutions. His most important publication on that subject is Robert G. Natelson, *The Colorado Taxpayer's Bill of Rights* (2016).

Critics of these provisions sometimes point to fiscal problems in some states as evidence that balanced budget requirements have no effect. The truth is more nuanced. Balanced budget requirements differ from state to state: Some requirements are stronger than others. In Illinois, for example, which is sometimes cited as a state in financial trouble, the balanced budget rule is notably weak.³ On the other hand, empirical studies of all states over time have shown balanced budget rules, especially stronger ones, do make a difference.⁴ Perhaps the best evidence, though, is the overall experience of two centuries: Before state balanced budget requirements became common in the nineteenth century, there were multiple state debt defaults. Since state constitutional balanced budget rules became common, individual states sometimes have run into financial difficulties, but there have been no mass defaults of the kind that afflicted America during the 1840s.

Empirical studies of all states over time have shown balanced budget rules, especially stronger ones, make a difference.

In any event, fiscal problems at the state level pale in comparison with the financial disaster many observers believe is looming at the federal level.

ceased to enforce the Constitution's principal limits on spending.⁵ This decision was applauded by Keynesians, who argued governments should incur deficits in years of economic slowdown or in other emergencies and run surpluses in years of prosperity.

Whatever the merits of that argument as a matter of economic theory, the political reality has been Congress incurs deficits regardless of economic conditions. In the 78 federal fiscal years beginning in 1940, Congress has run a deficit 67 times and a surplus only 11 times. The deficits routinely have far exceeded even the largest surpluses.⁶ In fact, the budget has not been balanced even once since 2001,⁷ which is why the debt now amounts to nearly \$20 trillion. Efforts in Congress to address the problem for the long term have failed repeatedly.

Because the federal government can create money to cover current deficits, it has been able to postpone a nineteenth century-style debt crisis. However, almost everyone agrees the current trajectory is not sustainable. Debate tends to focus on whether continuing to add debt is more likely to provoke inflation, a currency crash, or merely a lower standard of living.

As a result, a supermajority of the American public believes a balanced budget amendment should be added to the U.S. Constitution.⁸

2. A Balanced Budget Amendment

Adopting amendments requires following the procedures laid out in Article V of the Constitution. To become effective, an amendment must be ratified by three-fourths (38) of the state legislatures or of state conventions. To be considered for ratification, however, the amendment must first be *proposed*. All previous amendments have been proposed by Congress, and the same dysfunctions that impede Congress from balancing the federal budget also prevent it from proposing a BBA.

Moreover, experience at the state level teaches fiscal limitations proposed by legislatures tend not to have much “bite.” In other words, their restrictions are weak and easily evaded. This suggests even if Congress were to propose a BBA, it probably would have little practical effect.

Therefore, the most promising vehicle for proposing a BBA is the “Convention for proposing Amendments” authorized in Article V. Historical and legal sources, as well as an 1831 Supreme Court opinion,⁹ tell us it is merely one kind of “convention of the states.” That fact renders convention protocols and composition rather clear, because

conventions of the states have been common throughout American history.¹⁰ Indeed, some conventions of states have met specifically to recommend constitutional amendments, although outside the formal structure of Article V.

Even if Congress were to propose a BBA, it probably would have little practical effect. The most promising vehicle for proposing a BBA is the “Convention for proposing Amendments” authorized in Article V.

To trigger a convention for proposing amendments on any particular topic, Article V provides two-thirds of the state legislatures (34 of 50) must adopt resolutions (“applications”) demanding Congress issue a call. A majority of state legislatures have adopted BBA applications,¹¹ rendering it likely a proposing convention on that topic will meet in the next few years.

Some critics of both left and right fear such a convention will be open-ended and will allow for changes in the very nature of the American regime. But there is almost no legal or historical basis for that fear.¹² A convention serving a governmental purpose is legally restricted to the scope of its call. Thus, a convention for proposing a BBA will be limited to considering whether to propose such an amendment and, if so, to drafting the proposal. The convention will not draft on a blank slate. Precedents include the balanced budget provisions in state constitutions and numerous suggested drafts for a federal amendment. This *Policy Brief* suggests ways to build on the precedents.

3. Criteria for Drafting a Balanced Budget Amendment

Drafting a constitutional amendment is never easy, and state-level experience demonstrates fiscal limits can be particularly difficult to write.¹³ Some of the difficulties are political. Others are practical or semantic. Overcoming them requires adherence to at least the following criteria:

- The proposal should be written in a manner consistent with the Constitution’s text as currently understood. One should not draft as if one were writing a new, free-standing document.
- The Constitution is fairly concise, so complying with its style requires the amendment not be too long. Moreover, lengthy amendments face obstacles to ratification by feeding public suspicion and offering more targets for attack.
- To the extent possible, the amendment’s central terms should consist of words and phrases appearing elsewhere in the Constitution.

- The language should minimize opportunities for manipulation to evade the limits or otherwise thwart the intent behind them.
- Thus, the wording of exceptions (e.g., “emergencies”) should not be such as to allow exceptions to become the norm.
- Although all parts of the Constitution may come under judicial scrutiny, the amendment should minimize the chances of judicial intervention. In a democratic republic, budgeting is a quintessential *legislative* function.
- The amendment should not prejudice the outcome of unrelated constitutional controversies.
- The amendment should not contain ineffective or counterproductive provisions.
- The amendment should not include baggage that impedes creation of the coalition necessary to ratify.

4. The Text of the Amendment

The draft proposed here is set out below. The wording is necessarily technical, but a short “translation” follows it.

Section 1. Every measure that shall increase the total of either the public debt of the United States or the contingent public debt of the United States shall, after complying with the requirements of the seventh section of the first article of this Constitution, be presented to the legislatures of the several states; and before the same shall take effect, it shall be approved by a majority of legislatures in states containing a majority of the population of the United States as determined by the most recently completed decennial enumeration pursuant to the third clause of the second section of the first article. Each state legislature shall have power to determine its own rules for considering such measures.

Section 2. “Contingent public debt” means the secondary public liabilities of the United States. Any measure to increase total contingent public debt shall be presented to the state legislatures separately from any measure to increase total public debt.

Section 3. Any purported increase in total public debt or contingent public debt after the effective date of this article not approved in compliance with this article shall not be deemed money borrowed on the credit of the United States pursuant to the second clause of the eighth section of the first article nor valid public debt under the fourth section of the fourteenth article of amendment.

Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution within seven years from the date of its submission to the state legislatures or conventions in accordance with the fifth article of this Constitution.

This article shall become effective six months after ratification as an amendment to the Constitution.

In simple modern English, this means Congress must obtain approval of a majority of the state legislatures, representing a majority of the U.S. population, before it increases the federal debt. It also must obtain approval of the same majority before it commits the federal government to paying debts others have promised to pay but fail to do so.

Controlling increases in debt in this manner has the necessary effect of forcing Congress to balance its budget unless the state legislatures agree running a deficit is necessary.

5. How the Draft Meets the Criteria

A. Consistency with the Constitution's text

The proposal generally meshes with the Constitution's style and language. For example, it uses the future, future perfect, and future imperative tenses in a way not common in drafting today, but as the Constitution uses them. The proposal's key terms appear elsewhere in the existing document. The device of empowering state legislatures to perform a federal function also appears in the existing document; consistently with established case law,¹⁴ the state legislatures employ their own procedures for this purpose. The amendment thereby preserves the rule that fiscal powers are legislative in nature.

The BBA proposed here generally meshes with the Constitution's style and language. The proposal's device of empowering state legislatures to perform a federal function also appears in the existing document.

Like the existing Constitution,¹⁵ the proposal provides cross-references to other parts of the instrument. The specific cross-references in the amendment are located in the footnote below.¹⁶

B. Brevity

The length of the draft is well within historical norms for an amendment to the U.S. Constitution. The following list compares the word count of this draft and the five longest amendments previously adopted:

Fourteenth Amendment: 423 words

Twelfth Amendment: 399 words

Twenty-Fifth Amendment: 388 words

Twentieth Amendment: 341 words

BBA Draft (including section tabs): 281 words

Twenty-Second Amendment: 162 words

Of course, legislation represents a way to carry out constitutional provisions, and legislation need not be as brief as constitutional provisions should be. In a recent Heartland Institute *Policy Brief*, for example, economists John Merrifield and Barry Poulson suggested adoption of a deficit/debt brake to limit federal deficits.¹⁷ Although their braking mechanism is too complicated to insert in the Constitution, a variation of it could be enacted as an implementing statute.

C. Use of constitutional and previously defined terms

Most BBA drafts rely heavily on terms without constitutional precedent, including, for example, “outlays,” “estimated revenue,” “single subject,” “gross national product,” and “emergency.”

If drafters of an amendment use terms not otherwise appearing in the Constitution, they may add definitions, increasing the amendment’s length. Or they may leave them undefined, increasing the risk of uncertainty, litigation, and official manipulation.

If the drafters use terms not otherwise appearing in the Constitution, they may add definitions or leave them undefined. If they define the terms, they increase the amendment’s length. If they do not define them, they increase the risk of uncertainty, litigation, and official manipulation.

Although the Constitution does not speak of “outlays” or “estimated revenue,” it does speak of borrowing and debt,¹⁸ and a BBA can be expressed in those terms. If the government does not add to its debt during a given period, it has balanced its budget. Thus, one can achieve the same result by preventing debt increases as by mandating that outlays not exceed revenue.

This draft takes the debt-limitation approach. By doing so, it assures all central terms except one are terms that already appear in the Constitution. Those terms are: *presented* (derived from presentation of bills to the president),¹⁹ *public debt* (appearing in the Fourteenth Amendment),²⁰ state *legislatures* (appearing throughout the Constitution),²¹ *enumeration* (referring to the census),²² legislative rules,²³ and money borrowed *on the credit of the United States*.²⁴

The sole significant exception is “contingent public debt.” Because this term is new, the amendment defines it as “the secondary liabilities of the United States.”

This definition should offer no serious difficulties because secondary liability is a basic legal concept taught in all law schools. Essentially, one is secondarily liable if one becomes liable only if the principal debtor fails to pay.²⁵ Examples of federal secondary liability are loan guarantees such as those by the Small Business Administration and Department of Veterans Affairs, and mortgage insurance by the Federal Housing Administration.²⁶ Secondary liability also can arise

from treaties or executive agreements by which the U.S. government serves as a surety for payments by a foreign government.

The federal government's secondary liabilities far exceed its direct primary liabilities; by one estimate they are six times as large.²⁷ This is a matter of great concern to many people, and this proposed amendment provides for a way to check their rise. If, however, it becomes practically or politically necessary to limit the BBA measure only to primary debt, this draft can be adjusted with minimal effort. The result appears in the footnote.²⁸

D. Minimize opportunities for manipulation

Experience at the state level shows politicians and judges often manipulate fiscal restraints so as to impair their effect.²⁹ Although no constitutional language is foolproof, it is possible to draft a balanced budget amendment relatively less vulnerable to manipulation.

One way this BBA draft minimizes opportunities for manipulation is by employing existing constitutional terms rather than introducing phrases without established meaning. In addition to increasing legal clarity, appropriate use of known terminology can create positive incentives for enforcement. This is the effect of the draft's denial of "public debt" status to federal borrowing not duly approved under the amendment.

Although no constitutional language is foolproof, it is possible to draft a balanced budget amendment relatively less vulnerable to manipulation.

To explain: One way a government may avoid financial restrictions is to enact a revenue-raising device and label it with a title different from those mentioned in the restriction. For example, a *de facto* tax may be labeled a "fee" to avoid a tax-limitation measure. Under this draft, if Congress labels a device anything other than "public debt," then Congress renders the transaction outside the constitutional power to borrow "on the credit of the United States" and admits the obligation might be "questioned" (challenged) under the Fourteenth Amendment.

Moreover, unlike manipulable designations of "outlays" and "expected revenue," the federal debt limit is a concept established by practice³⁰ and, more importantly, relied on by financial markets. Raising the federal debt limit is usually a conspicuous public event and can lead to lower credit ratings and higher borrowing costs. This draft BBA enlists the financial markets as an enforcement mechanism by focusing additional attention and debate on raising the debt limit.

Finally, the requirement of presentment to, and approval by, state legislatures enlists those legislatures as agents of oversight. Of course, Congress may attempt to influence state legislative decision-making with bribes of grants in aid or warnings that in the absence of approval state funding will be cut. On balance, however, state legislatures retain some incentives to limit federal growth, simply because the more programs the federal government finances, the more likely it impinges on the prerogatives of the states.

E. Provide for exceptions without permitting exceptions to become the norm

One lesson of state fiscal restraints is that exemptions from the general rule should be provided for procedurally rather than by attempting to define words such as “emergency.” Such words may be difficult to define sufficiently, and they are subject to official manipulation.

In this draft amendment, the procedural mechanism for creating an exception is presentment to the state legislatures and approval by a majority of them, in states representing a majority of the American population. The approval mechanism was inspired by the proposed National Debt Relief Amendment (NDRA),³¹ which has been endorsed by the state legislatures of Louisiana and North Dakota.

In this draft amendment, the procedural mechanism for creating an exception is presentment to the state legislatures and approval by a majority of them, in states representing a majority of the American population.

NDRA, however, is open to the objection the states approving an increase in the debt might represent only a minority of the U.S. population. Accordingly, this draft adds the requirement the approving state legislatures contain a majority of the U.S. population. To avoid manipulation of population figures, those figures are

fixed by the latest decennial census rather than by interim estimates.

State legislatures serve as the approval mechanism for several reasons. They include the following:

- An alternative is to require a supermajority of both chambers of Congress, but the Senate and House are of very different sizes and optimal supermajorities differ with the size of the body polled.³² Obtaining optimal figures for each chamber would involve detailed statistical work, and the results might change if either body changed in size.
- Under our system of government, borrowing is a legislative function, and one familiar to state lawmakers.
- State lawmakers have some incentive to scrutinize expansions of federal power, including fiscal power.
- Requiring congressional and state legislative action accords with the Constitution’s character as, in James Madison’s words, partly national and partly federal.³³

F. Minimize judicial involvement

Some state constitutions contain open-ended funding provisions that invite judicial intervention. Thus, provisions mandating “adequate” or “equal” school funding have afforded judges pretexts to take control over a considerable portion of the state budget.³⁴

Similarly, attempts to define words such as “estimated revenue” unwittingly invite the courts to intervene. (Estimated by whom? Using what assumptions?) By contrast, an increase in the federal debt limit is a relatively straightforward concept, monitored by financial markets. Under this BBA draft, the determination of whether an increase in the debt limit is warranted is lodged in the federal and state legislatures, not in the courts.

G. Avoid prejudicing unrelated constitutional controversies

A BBA should not decide more than the issue at hand. For example, the amendment should not prejudice future constitutional challenges to particular spending programs.

Some BBA proposals concede a portion of the economy to the federal government—say, 19 percent of gross domestic product (GDP). One objection to that approach is that it gives federal judges a reason for construing the BBA as a constitutional validation of those federal spending programs in force when expenditures were at or below that proportion of GDP. Colorable constitutional challenges should be decided on their merits after a full hearing, not as the inadvertent result of bad drafting.

A BBA should not decide more than the issue at hand. For example, the amendment should not prejudice future constitutional challenges to particular spending programs.

H. Avoid ineffective or counterproductive provisions

Over many years, we have learned a great deal from states’ experiences with fiscal limitations. That experience demonstrates some provisions to be useless or even counterproductive. Examples include revenue caps based on economic performance, untested substantive terms such as “emergency,” and supermajority thresholds inappropriate for the assembly making a decision. In particular, we have learned a supermajority that proves effective in a smaller body may become counterproductive in a larger one.

This proposed draft avoids those defects by avoiding economic formulae, relying on language with established meaning and on majority, rather than supermajority, decision-making.

I. Avoid provisions that, while attractive to some passionate conservatives or passionate liberals, will prevent the coalition necessary for ratification

Conservatives drafting their ideal BBAs often suggest add-ons pleasing to them, such as restrictions on taxes. Liberals have proposed balanced budget amendments with clauses that exempt entitlement spending.

Such “bells and whistles” appeal to the conservative or liberal base, but they render impossible the wide consensus necessary to obtain ratification by 38 states. That is why the draft amendment proposed here is a “clean BBA”—that is, one without additional provisions. It also does not require any supermajority consent.

6. Conclusion

This draft balanced budget amendment is designed to renew and improve discussion, not to end it. This draft assists the process of developing an acceptable BBA by identifying criteria for drafting and suggesting ways to meet those criteria.

This draft balanced budget amendment is designed to renew and improve discussion, not to end it. This draft assists the process of developing an acceptable BBA by identifying criteria for drafting and suggesting ways to meet those criteria.

The difficulties in preparing an effective and acceptable BBA trigger an additional parting thought: Conventions of states during and before the nineteenth century consisted primarily of state delegations of multiple commissioners, acting without significant technical support. Twentieth century conventions of states were composed somewhat differently.

Because they addressed some highly technical issues of law and engineering, they generally were composed of only one commissioner per state, with each commissioner—and the convention as a whole—enjoying the assistance of technical staff.³⁵

Shortly before or after the call for a BBA convention, states might consider learning from the conventions of the twentieth century. That is, they might send relatively small delegations, but assist those delegations with expertise in legal drafting and state and federal government finance. Additionally or alternatively, the convention might create relevant support committees for itself. As in the twentieth century conventions, however, actual decisions would be made only by the duly authorized commissioners, operating on the usual rule of one state/one vote.

#

About the Author

Robert G. Natelson is a nationally known constitutional scholar and author whose research into the history and legal meaning of the Constitution has been cited repeatedly at the U.S. Supreme Court, both by parties and by justices. For example, justices have cited his works 17 times in five cases since 2013. During the Supreme Court term ending in June 2016, parties referenced his work in 12 briefs and petitions for *certiorari*. He is widely acknowledged to be the country's leading scholar on the Constitution's amendment procedure and among the leaders on several other topics.

Natelson was a law professor for 25 years, serving at three universities, where among other subjects he taught Constitutional Law, Constitutional History, Advanced Constitutional Law, and First Amendment. Natelson is currently senior fellow in constitutional jurisprudence at The Heartland Institute, Independence Institute, and Montana Policy Institute. He heads the Independence Institute's Article V Information Center.

Natelson's articles and books span many parts of the Constitution, including groundbreaking studies of the Necessary and Proper Clause, federalism, Founding-era interpretation, regulation

of elections, and the amendment process of Article V. In addition to his authorship of law journal articles and legal books, he has written the highly influential *Article V Handbook* for state lawmakers; the popular book *The Original Constitution: What It Actually Said and Meant*; and numerous shorter pieces for media outlets. Recent contributions have been published by the *Washington Post*, *Washington Times*, *Denver Post*, *American Spectator*, *The Hill*, *Barron's*, *Townhall*, *American Thinker*, *CNS News*, and *Daily Caller*, among others.

About The Heartland Institute

The Heartland Institute is a national nonprofit research and education organization. Founded in Chicago, Illinois in 1984, Heartland's mission is to discover, develop, and promote free-market solutions to social and economic problems. Its activities are tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

Heartland is headquartered in Arlington Heights, Illinois and has a full-time staff of 39 and a budget of \$6 million. It is supported by the voluntary contributions of approximately 5,300 supporters. For more information, please visit our website at www.heartland.org, call 312/377-4000, or write to The Heartland Institute, 3939 North Wilke Road, Arlington Heights, IL, 60004.

Endnotes

¹ John Joseph Wallis, "Constitutions, Corporations, and Corruption: American States and Constitutional Change, 1842 to 1852," *Journal of Economic History* **65** (211) (2005).

² E.g., Colorado Constitution, Art X, § 16:

No appropriation shall be made, nor any expenditure authorized by the general assembly, whereby the expenditure of the state, during any fiscal year, shall exceed the total tax then provided for by law and applicable for such appropriation or expenditure, unless the general assembly making such appropriation shall provide for levying a sufficient tax ... to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war.

³ Katherine Barrett and Richard Greene, "Do States Really Balance Their Budgets?" *Governing Magazine* (October 2011), available at <http://www.governing.com/columns/smart-mgmt/do-states-really-balance-their-budgets.html>. Quoting from that article: "Consider Illinois. According to John Tillman, CEO of the Illinois Policy Institute, the provision in the constitution, which was drafted in 1970, was written purposely with loopholes so that the state could call it a balanced budget requirement without actually balancing the budget."

⁴ Robert Krol, "A Survey of the Impact of Budget Rules on State Taxation, Spending, and Debt," *Cato Journal* **16** (295) (1997): 301–03 (collecting the studies).

⁵ The principal limits were the Constitution's scheme of enumerated powers, reinforced by the General Welfare Clause, U.S. Constitution, Article I, Section 8, Clause 1. The General Welfare Clause originally was intended as a limitation on the taxing power, Robert G. Natelson, "The General Welfare Clause and the Public Trust: An Essay in Original Understanding," *University of Kansas Law Review* **52** (1) (2003). However, in *Helvering v. Davis*, 301 U.S. 619 (1937), relying on dicta in *United States v. Butler*, 297 U.S. 1 (1936), the court converted it into a new enumerated power of Congress: a license to spend for any purpose deemed consistent with the general welfare.

⁶ *Federal Receipt and Outlay Summary: 1940 to 2021*, Tax Policy Center, Urban Institute and Brookings Institution, <http://www.taxpolicycenter.org/statistics/federal-receipt-and-outlay-summary>.

⁷ *Ibid.*

⁸ The precise numbers vary over time, but 74 percent in favor is typical. E.g., “CNN Poll: Americans like Balanced Budget Amendment,” Accuracy in Media, <http://www.aim.org/on-target-blog/cnn-poll-americans-like-balanced-budget-amendment/>.

⁹ *Smith v. Union Bank*, 30 U.S. 518, 528 (1831).

¹⁰ Robert G. Natelson, “The Convention of States in American History,” Article V Information Center, <http://articlevinfocenter.com/convention-states-american-history/>.

¹¹ The leading BBA advocacy group claims 27, <http://bba4usa.org/>, but the precise number of valid applications depends on unresolved legal questions. For example, if applications cannot be rescinded, the number outstanding is more than 27. If applications may not be limited to an amendment with precise wording, then the current application of Mississippi is void and the number is fewer. On issues of aggregation, see Robert G. Natelson, “State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters” (4th ed., 2016), § 3.9.6, available at <https://www.i2i.org/wp-content/uploads/2015/01/Compendium-4.0-plain.pdf>.

¹² Robert G. Natelson, “A Response to the Runaway Scenario,” Article V Information Center, <http://articlevinfocenter.com/a-response-to-the-runaway-scenario/>.

¹³ Robert G. Natelson, *The Colorado Taxpayer’s Bill of Rights* (Denver, CO: Independence Institute, 2016).

¹⁴ E.g., *Dyer v. Blair*, 390 Fed. Supp. 1291 (N.D. Ill. 1975) (Justice Stevens).

¹⁵ For example, Article V cross-references to two other provisions.

¹⁶ There are five cross-references in all. They are as follows:

(1) The “seventh section of the first article”—that is, Article I, Section 7. This is the federal legislative enactment procedure, together with the Presentment Clause. Here are the relevant excerpts from the existing Constitution:

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections [followed by the veto procedure].

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

(2) “the third clause of the second section of the first article”—that is, Article I, Section 2, Clause 3—the Census Clause:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers ... The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years in such Manner as they shall by Law direct.

(3) “the second clause of the eighth section of the first article”—that is, Article I, Section 8, Clause 2 (Debt Clause):

The Congress shall have Power ... To borrow money on the credit of the United States . .

(4) "the fourth section of the fourteenth article of amendment"—that is, the Fourteenth Amendment, Section 4:

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

(5) "the fifth article of this Constitution"—that is, Article V, the amendment article. This refers to the power of Congress to determine whether ratification is to be by state legislatures or state conventions:

... 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.

¹⁷ John Merrifield and Barry Poulson, "Stopping the National Debt Spiral: A Better Rule for Solving the Federal Fiscal Crisis," *Policy Brief*, The Heartland Institute, 2016, <https://www.heartland.org/publications-resources/publications/stopping-the-national-debt-spiral-a-better-rule-for-solving-the-federal-fiscal-crisis>.

¹⁸ U.S. Constitution, Article 1, Section 8, Clauses 1 and 2; Article 1, Section 10, Clause 1.

¹⁹ U.S. Constitution, Article 1, Section 7, Clause 2.

²⁰ U.S. Constitution, Amendment XIV, Section 4.

²¹ E.g., U.S. Constitution, Article 1, Section 2.

²² U.S. Constitution, Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4.

²³ U.S. Constitution, Article 1, Section 5, Clause 2.

²⁴ U.S. Constitution, Article 1, Section 8, Clause 2.

²⁵ E.g., Legal Information Institute, Cornell University, *Secondary Liability* at https://www.law.cornell.edu/wex/secondary_liability.

²⁶ These and other examples are discussed in James D. Hamilton, "Off-Balance-Sheet Federal Liabilities," *Cato Papers on Public Policy* 7-37, Cato Institute, 2014, available at <https://object.cato.org/sites/cato.org/files/serials/files/cato-papers-public-policy/2014/6/cppp-3-1.pdf>. Professor Hamilton calculated contingent federal liabilities in 2012 as amounting to about six times primary liabilities.

²⁷ *Ibid.*, p. 4.

²⁸ The following are necessary changes:

Section 1. Every measure that shall increase the total of either the public debt of the United States or the contingent public debt of the United States shall, after complying with the requirements of the seventh section of the first article of this Constitution, be presented to the legislatures of the several states; and before the same shall take effect, it shall be approved by a majority of legislatures in states containing a majority of the population of the United States as determined by the most recently completed decennial enumeration pursuant to the third clause of the second section of the first article. Each state legislature shall have power to determine its own rules for considering such measures.

~~Section 2. "Contingent public debt" means the secondary public liabilities of the United States. Any measure to increase total contingent public debt shall be presented to the state legislatures separately from any measure to increase total public debt.~~

Section 3²⁹ 2. Any purported increase in total public debt ~~or contingent public debt~~ after the effective date of this article not approved in compliance with this article shall not be deemed money borrowed on the credit of the United States pursuant to the second clause of the eighth section of the first article nor valid public debt under the fourth section of the fourteenth article of amendment.

Section 4³⁰ 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution within seven years from the date of its submission to the state legislatures or conventions in accordance with the fifth article of this Constitution. This article shall become effective six months after ratification as an amendment to the Constitution.

²⁹ See Robert G. Natelson, *supra* note 13.

³⁰ “Debt Limit,” U.S. Department of the Treasury, <https://www.treasury.gov/initiatives/Pages/debtlimit.aspx>.

The debt limit is the total amount of money that the United States government is authorized to borrow to meet its existing legal obligations, including Social Security and Medicare benefits, military salaries, interest on the national debt, tax refunds, and other payments.

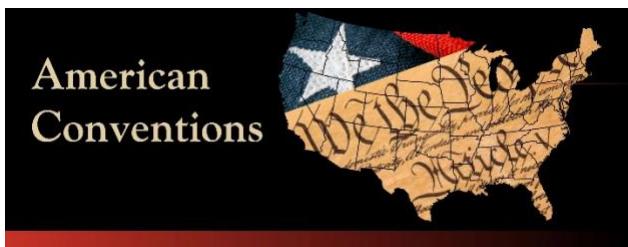
³¹ The National Debt Relief Amendment provides: “An increase in the federal debt requires approval from a majority of the legislatures of the separate States.”

³² Bengt-Arne Wickstrom, “Optimal Majorities for Decisions of Varying Importance,” *Public Choice* **48** (273) (1986), available at <https://link.springer.com/article/10.1007/BF00051625>.

³³ James Madison, *The Federalist* No. 39.

³⁴ Perhaps the most famous of the many cases of this nature is *Abbot v. Burke*, 575 A.2d 359 (N.J. 1990) in which the Supreme Court of New Jersey ordered the state legislature to alter its school financing system and to increase the amount of money spent.

³⁵ E.g., Robert G. Natelson, “The Last Convention of States Ever Held?,” <http://articleinfocenter.com/last-convention-states-ever-held/> (discussing the organization of the Upper Colorado River Basin Compact Commission, the five state convention that negotiated the Upper Colorado River Basin Compact).



Article V Conventions: General Sources - July 2021

Barnett, Randy: *Our Republican Constitution*

Barnett & Blackman: *An Intro to Constitutional Law: 100 SCOTUS Cases*

Birch Society, John: *What is a Constitutional Convention?*

Capland, Russell: *Constitutional Brinksmanship*

Dake, Timothy: *Far From Unworkable*

Dodsworth, Rodney: *Article V Blog.com*

Dwight, Theodore: *History of Hartford Convention*

Farrand, Max: *Records of the Federal Convention of 1787*

Farris, Michael: *Defying Conventional Wisdom: Constitution Was Not Product of a Runaway Convention*

Gunderson, Robert: *Old Gentleman's Convention, The Washington Peace Conference*

Higgs, Robert: *Crisis and Leviathan*

Ivory, Ken: *Where's the Line? How States Protect the Constitution*

Jennings, Thelma: *The Nashville Convention*

Kapic, Michael: *Conventions That Made America: A Brief History of Consensus Building*

Kapic, Michael: *Hunt For Liberty.com*

Levin, Mark: *Liberty Amendments*

Levy & Mellor, Rob & William: *The Dirty Dozen: 12 SCOTUS Cases*

Lundberg, Kevin: *State Legislators Article V Caucus Newsletter.com*

Lyman, Jr. Theodore: *Short Account of the Hartford Convention*

Madison, James: *Journal of the Federal Convention*

Madison, Jay, Hamilton: *The Federalist Papers*

Natelson, Rob: *The Law of Article V*

Natelson, Rob: *The Original Constitution*

Natelson, Rob: *The Convention of States in American History*

Natelson, Rob: *Why the Constitution's "Convention for Proposing Amendments" is a COS*

Natelson, Rob: *Florida Law Review May 2013 Vol 65, Number 3*

Natelson, Rob: *Article V Information Center*

Natelson, Rob: *ALEC Article V Handbook*

Natelson, Rob: *Amending the Constitution*

Romney, Dustin: *The Rule of Law: How and Why We Must Amend the Constitution*

Skousen, Cleon: *The Making of America*

Stetson: *Minutes & Record of Session(s) [two] of the Colorado River Compact*

Walker, Bill: *FOAVC.com (Friends of Article V Convention)*

Wood, Gordon: *The Creation of the American Republic 1776-1787*



Additional Resources:

- America in 2040: Still a Superpower? A Pathway to Success: Walker, David M., Owens, Bill, Knubel, John
Available for purchase [here](#).
- [Listen](#) to the podcast: David Walker reviews the content of the above book.
- Find A Fiscal Cliff, New Perspectives on the U.S. Federal Debt Crisis, Edited by John Merrified and Barry Poulson [here](#).
- The Ratification of the Twenty-First Amendment to the Constitution of the United States, by Everett Somerville Brown is available for purchase [here](#).