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Article V Convention: To Convene or Not?

■ Allen Porter Mendenhall ■ Constitution

by [Allen Porter Mendenhall](#)

There are two ways to propose amendments to the Constitution: by a supermajority vote of the U.S. Senate and the U.S. House of Representatives, or by a convention called by at least two-thirds of the state legislatures. The second option is not, strictly speaking, a constitutional convention, but a convention for proposing amendments to the Constitution; the distinction *is* important.

My boss, Chief Justice Roy Moore of the Supreme Court of Alabama, recently sent letters to the governors of all 50 states, encouraging them to rally their state legislators to support an amendment to the Constitution to prohibit federal and state laws from defining marriage as anything besides the union of one man and one woman. Other conservatives, most notably Mark Levin, have trumpeted Article 5 as a mechanism for minimizing the power of the federal government through an array of amendments.

If the legislatures of 34 states were to demand such a convention, then, pursuant to Article 5, the Congress would be required to assemble one, and any amendment ratified at the convention by 38 states would become law.

The process sounds simple, but it isn't. There's no agreement about how the convention would be carried out. Do the state legislatures apply to Congress, which convenes to consider the states' demands, draft amendments, and then relay the amendments back to the states for ratification? Or do the state legislatures play a greater role in the convention itself, including drafting the amendments to circumvent the power of Congress?

The prospect of an Article V convention is not without conservative critics who worry about runaway assemblies dominated by liberal elites in Congress. Another fear is that the convention might undertake so many amendments that it would spiral out of control and result in a complete makeover of the Constitution. Still another objection is that nullification is a better alternative, one that has been tried with limited success.

Although an Article V convention has never been used, hundreds of state applications calling for a convention have been filed during our nation's history. The very possibility of a convention has even compelled members of Congress to adopt an amendment (the deplorable Seventeenth is an example, one that does little to assuage conservative fear of Article V) before the state legislatures could force Congress to convene.

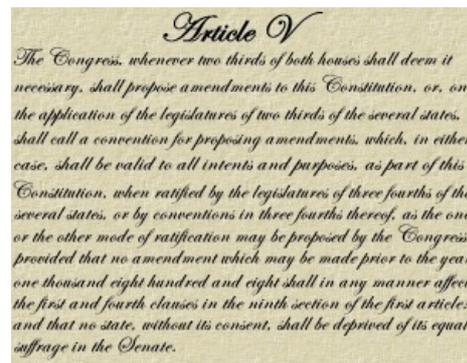
Because an Article V convention has not been tried, there is no evidence that Congress would dominate the process; however, in light of the supremacy that all three branches of the federal government purport to have, concerns about a liberal takeover are justified, especially because no Democrats and only a handful of Republicans are actually conservative.

It remains unclear whether states applying for a convention are entitled to limit the convention to a particular amendment. Constitutional scholar Robert G. Natelson has suggested that the framers of Article V were writing and thinking in a historical time and place in which conventions were mostly state affairs, but that larger conventions, such as the Springfield Convention of 1777, did occur. This is evidence that an original understanding of conventions confined their scope and agenda to particular issues defined by the states. Whether an Article V convention today would be so limited is, of course, unknown, but Mark Levin has proposed ten amendments, and there is little doubt that the left would counter such a number with all the strength it could muster.

A case can be made that an Article V convention affords states the opportunity to go around Congress or at least to limit federal control over the scope of the convention. Even if the states retain the power to organize and direct the convention, however, no guiding principles tell us who will vote, how to establish rules and procedures, and whether and how much state legislators will interact with Congressional leaders to reach any form of consensus.

The bottom line is this: whatever amendments come out of an Article V convention would have to be ratified by three-fourths of the states before becoming effective. The states that applied for the convention would not likely ratify a proposed amendment that differed radically from what the states expected to accomplish by convening.

In an age when the president of the United States touts the power to use **executive orders** in contravention of the other branches of government, to kill Americans with **drone strikes**, and to meddle in the relationships between doctors and patients and mandate that individuals purchase health insurance or pay penalties; when he pushes the country to **increase the national debt** to an amount higher than the total sum of the debt incurred in



the first 227 years of the nation's existence; when the National Security Agency spies on citizens using mass surveillance technology; when **the Federal Communications Commission seeks to control what stories newsrooms may run**; when the Internal Revenue Service targets particular groups because of their political beliefs; when the **Department of Defense seeks to indoctrinate soldiers** to accept that people who extol the virtues of the Founding Fathers, or **who believe in the fundamental teachings of biblical Christianity**, are extremists and potential terrorists; when the Supreme Court invents doctrines that subvert the Constitution from which they supposedly derive—when, in short, the federal government has run amuck, is it not time to at least try an Article V convention? All things considered, doesn't the ominous size and scope of the current federal order suggest that it's more dangerous not to attempt an Article V convention?

It's time to drive state legislators for hope and change we can believe in, not hope and change that seek to destroy our beliefs. An Article V convention might just help us to recover our country.

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Publius Huldah

Mar 4, 2014 at 7:18 pm Reply

Have we gone mad?

Many of those calling for an Art. V convention have no idea what they are asking for. They have blinded themselves to the fact that there is no way to stop a new constitution with its own new method of ratification from being imposed on the American People.

Only amendments require ratification by $\frac{3}{4}$ of the States (see Art. V). But a new constitution would have its own new method of ratification – it can be whatever the drafters want. For example, the proposed Constitution for the Newstates of America is ratified by a referendum called by the President (See Art. XII, section 1).

Once the delegates are duly appointed & assembled, they are acting under the inherent authority of A People to alter or abolish their form of government [Declaration of Independence, 2nd para]; and have the sovereign power to do whatever they want at the convention.

This is what happened at the Federal Convention of 1787. Pursuant to Article XIII of The Articles of Confederation, the Continental Congress resolved on February 21, 1787 to call a convention to be held at Philadelphia “for the sole and express purpose of revising the Articles of Confederation”. But the delegates ignored this limitation and wrote a new Constitution. Because of this inherent authority of delegates, it is impossible to stop it from happening at another convention. And George Washington, James Madison, Ben Franklin, and Alexander Hamilton won't be there to protect you.

The Articles of Confederation required the approval of all 13 States for amendments to the Articles to be ratified. But the new Constitution provided it would become effective if only 9 of the 13 States ratified it (Art. VII, cl. 1, U.S. Constitution).

So at the Federal Convention of 1787, the drafters provided for a mode of ratification which was likely to result in ratification.

At the Article V convention Judge Moore is clamoring for, the delegates can come up with a new Constitution which does not require $\frac{3}{4}$ of the States to ratify. Scholars have warned of the Constitution for the Newstates of America which is ratified by a referendum called by the President. Once a convention proposes it, it is taken away from the States altogether and turned over to the President to call a Referendum.

There is no way to stop this from happening. And the Blood will be on the hands of all who clamored for this Convention.

Here is the constitution for the newstates of America:

<http://www.sweetliberty.org/issues/concon/newstates.htm>

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The conservative is concerned, first of all, with the regeneration of the spirit and character—with the perennial problem of the inner order of the soul, the restoration of the ethical understanding, and the religious sanction upon which any life worth living is founded. This is conservatism at its highest. - Russell Kirk

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