

The Article V Press Packet & Backgrounder

Recent events suggest that journalists, writers and broadcasters will have increasing occasions to write and/or talk about Article V of the US Constitution.

This packet is intended to assist in such communications.

PLEASE SAVE THIS PACKET AS REFERENCE MATERIALS.

State legislators, radio and TV talk show hosts and recent book writers are talking about using a relatively obscure portion of Article V to initiate Constitutional Amendments without involvement by Congress. The 143-word Article contains 57 words that provide for such Amendments.

“The Congress, ... on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which ... 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”

The US Constitution currently has 27 Amendments... none of which came about through use of this provision. Throughout the history of our nation, state legislatures have often tried to use the provision, but stipulations in the provision have proven to be too high a bar for a “Convention for proposing Amendments” to take place... so far.

Important Words –

Many writers/commentators (including many who should know better) refer to the Article V process as a “Constitutional Convention” or “Con-Con”. The last Constitutional Convention held in this country was in 1787. It produced our cherished US Constitution.

The governing document that established our nation, the Articles of Confederation, did not contain a workable provision for instituting amendments. When the Framers wrote the 1787 US Constitution they recognized that there may come times when their work would need to be amended. They spent a lot of time debating how the amendment process would work. The result of their debates was Article V.

Notice that there is no provision in Article V for a “Constitutional Convention”. They simply provided a way for states to convene for the purpose of “proposing Amendments”. There is a world of difference.

In any article or commentary you prepare, you are encouraged to avoid the phrase “Constitutional Convention”, and replace it with the words actually used in Article V – “Convention for proposing Amendments”.

The History Behind Article V –

Some opponents of the use of Article V suggest that the 57-word provision cannot safely be used because the provision “doesn’t give enough details” on how such conventions are to operate (how many delegates may each state send, how many votes does each state get, what rules will the convention operate under, etc.). Such critics fail to take into consideration the knowledge-base and historical reference the Framers were working with. Many of the Framers had already participated in such conventions. Historical records already provided an abundance of information on how such inter-colonial & interstate Conventions work. To have provided all that detail in the Constitution would have been superfluous.

The Framers included the state-led amendment option for a reason. They wrote it so that the state-led amendment option would be on equal footing with the Congress-led amendment option. It was meant to serve as a check on a runaway federal government.

Today, one of the most common arguments against a state-led Article V Amendments Convention is that it could not be controlled, and would become a “runaway” convention.

Because there hasn’t been an Article V Amendments Convention since the adoption of the Constitution, it is necessary to look at the founding era for precedent about whether conventions can be limited in scope, and not “runaway”.

The founding era record shows that there were many such limited conventions during that time. Some examples:

Inter-colonial & Interstate Conventions, and Their Limited Topics

Annapolis Convention of 1786 - Trade and commerce issues

First Assembly at Providence (1776-1777) - Currency and defense issues

Second Assembly at Providence (1781) - Supplying the Army

New Haven and Philadelphia gatherings (1780) - Price regulation

In 1777, Congress recommended to the states that they sponsor conventions in York Town, PA and Charlestown, SC to consider price-stabilization measures.

Before America’s Independence, representatives from various American colonies met in convention nearly *twenty times* to discuss issues of common interest.

States met in conventions *ten times* between the Declaration of Independence and the Constitutional Convention. Meeting places included Annapolis, Philadelphia, York Town (PA), Providence (RI), Hartford, New Haven, Boston, and Springfield (MA).

The first application for a convention of states for proposing amendments was issued by Virginia in 1788---right after the Constitution was ratified---to promote adoption of a Bill of Rights. That application did not result in an Article V Convention because Congress sent the Bill of Rights proposal to the states for ratification.

States convened again in Washington, D.C. in 1861 to propose a Constitutional Amendment to stave off the Civil War. Unfortunately their efforts were unsuccessful.

The journals of those conventions show that they all remained essentially within the scope of their calls.

Contrary to popular belief, the 1787 Philadelphia Constitutional Convention had very broad power to suggest a new form of government. It was not a runaway convention.

How Article V Works –

Two thirds of state legislatures (34 of 50) pass resolutions called "applications". They direct Congress to call a convention of the states to propose one or more corrective amendments. Most applications call for a specific kind of amendment, such as a balanced budget amendment. For instance, as of December 2016, 28 states have adopted balanced budget applications. When 34 legislatures apply, Congress is required to call the meeting.

Congress specifies the time and place. Article V also gives Congress the power to determine whether proposed amendments are to be ratified by state legislatures or state conventions in a minimum of 3/4 of the states. That's all.

All 50 state legislatures choose delegates to attend (historically, delegates are called "commissioners"). History tells us that at the convention the commissioners adopt their own operational rules with each state having one vote. The commissioners debate and decide whether to propose one or more amendments within their assigned topic. If they propose an amendment, then 3/4 of the states (38 of 50) must ratify it before it becomes law.

Over the years states have adopted more than 700 Article V applications (see <http://foa5c.org/file.php/1/Articles/AmendmentsTables.htm>). They have varied in subject matter, some have been rescinded, and some are duplicates of earlier adopted applications. Depending upon how they are counted, as of December 2016 there are 28 active Article V applications to propose a Balanced Budget Amendment, 8 applications for the multiple-subject Convention of States Project, 5 applications for the Wolf-PAC (repeal of the Supreme Court's Citizens United decision) amendment proposal, 4 applications for the Compact for America BBA-related proposal, and 1 each for the US Term Limits, Countermand and Single Subject Amendment proposals.

Resources –

Books of Interest:

1988 – *“Constitutional Brinkmanship: Amending the Constitution by National Convention”* by Russell L. Caplan

1989 – *“Setting Limits”* by Lewis K. Uhler

2010 – *“10 Amendments for Freedom”* by William Fruth

2011 – *“The Original Constitution – What it Actually Said and Meant”* by Robert G. Natelson

2013 – *“Originalism and the Good Constitution”* by John O. McGinnis and Michael B. Rappaport

2013 – *“Balance – The Economics of Great Powers from Ancient Rome to Modern America”* by Glenn Hubbard and Tim Kane

2013 – *“The Freedom Amendments, Restoring the American Republic”* by Mark Levin.

Scholarly Research Papers:

Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments," 65 Florida Law Review 615 (2013) by Rob Natelson

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2044296

Article V and the "Runaway Convention" by Michael Stern

<http://www.pointoforder.com/2011/09/21/article-v-and-the-runaway-convention/>

The Constitutionality of a Limited Convention: An Originalist Analysis, Constitutional Commentary (2012) by Michael B. Rappaport, University of San Diego School of Law

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2035638

Quotes –

The Declaration of Independence: Adopted by the 13 colonies on July 4, 1776 includes the affirmation that governments are constituted to secure natural, individual rights and that they "*deriv[e] their just powers from the consent of the governed.*" And that -
"whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government."

James Madison: Known as the "Father of the Constitution," Madison was instrumental in devising its brilliant system of checks and balances. In Federalist No. 43, Madison made clear that the state-led amendment option was intended to be just as valid as the Congress-led option, saying:

"That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

Alexander Hamilton: Writing extensively about the amendment process in Federalist No. 85, Hamilton makes clear that Article V allows the States to hold the federal government accountable by allowing them to call an amending convention and propose specific amendments. Key excerpts from Hamilton's Federalist No. 85 follow:

"But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly... There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."

"We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."

President Abraham Lincoln in his first inaugural address, March 4, 1861 said:

"Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself..."

"This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their constitutional right of amending

it or their revolutionary right to dismember or overthrow it. I can not be ignorant of the fact that many worthy and patriotic citizens are desirous to have the National Constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself; and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to either accept or refuse."

President Dwight D. Eisenhower: talking about an Article V Convention on May 26, 1963:

"Through their state legislatures and without regard to the federal government, the people can demand a convention to propose amendments that can and will reverse any trends they see as fatal to true representative government."

President Ronald Reagan in his May 23, 1987 radio address said:

"I'm one of those Americans who has always believed a constitutional amendment mandating that Congress balance the budget is the answer to what ails us. And we've tried to get such an amendment through the Congress so that the State legislatures could vote on it."

"This reluctance by the Congress has inspired a number of Americans to try another method provided for in the Constitution: a constitutional convention, one with delegates from each State who could propose a balanced budget amendment and then send it on to the State legislatures for approval."

Roger Pilon, then the director of the Cato Institute's Center for Constitutional Studies, published January 31, 1997 in the *Wall Street Journal*.

"It is not for nothing that Article V was put in the Constitution. It was meant to be used--but not for light and transient reasons. By overwhelming majorities, averaging 75 percent, Americans of every creed and color have come to understand that there is something fundamentally wrong with a system that has resulted, under modern conditions, in our being ruled year in and year out by a class of professional politicians. That situation is neither healthy nor right in a limited, constitutional democracy. Fortunately, the Framers provided a way to do something about it, a way to make substantial change while ensuring that our fundamental principles remain in place."

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The 143-word Fifth Article of the US 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, 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.

Content of this packet may be quoted in whole or in part.

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