

## FAQ - Article V Amendments Convention

### Where does the power for the States to call a Convention come from?

Article V of the United States Constitution states “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.”<sup>1</sup>

### Is an Amendment Convention the same thing as a “Constitutional Convention?”

The more usual expression, “Constitutional Convention,” is something of a misnomer. As we have seen, Article V does not suggest a complete re-writing of the Constitution. It allows only a “Convention for proposing Amendments.” It is possible for a proposed Amendment to change certain sections of the Constitution (as has happened throughout U.S. history when Congress has amended the Constitution). However, the intended purpose is not to create a new Constitution. “Amendments Convention” is a more accurate description of the Article V procedure.

### Can the Amendments Convention be limited in scope?

That is up to the States. Historically, States have limited calls for an Amendments Convention to specific purposes.<sup>2</sup> Most recently, States have been calling for an Amendments Convention for the limited purpose of balancing the federal budget. Furthermore, once at the Convention, if a State only wanted to hear the matter of a limited purpose, such as a Balanced Budget Amendment, and at the Convention other States brought up amending anything unorthodox and radical, a state’s legislature could arguably rescind its application to prevent debate on the matter.

### Has the United States held an Amendments Convention since the Constitutions inception?

No, although over 700 applications have been sent to Congress calling for an Amendments Convention to deal with a number of proposed amendments. The closest the States have ever come to realizing a Convention was in the late 70s and 80s, when the nation was just *two states* short of the necessary two-thirds needed to call for a Balanced Budget Amendments Convention. The prospect of a Convention was enough to convince Congress to pass the (ineffective) Gramm–Rudman–Hollings Balanced Budget Act in 1985. Some other examples of Congress acting due to pressure from States filing applications for an Amendments Convention are: (1) The Bill of Rights (Congress proposed The Bill of Rights upon a threat of a second convention.) (2) The 17<sup>th</sup> Amendment – Direct election of Senators. (3) The 22<sup>nd</sup> Amendment – Presidential Term Limits. (4) The 21<sup>st</sup> Amendment – Ending Prohibition (Note: just a handful of applications facilitated this.) (5) The 25<sup>th</sup> Amendment – Presidential Succession (Note: only three applications facilitated this).<sup>3</sup>

### What are the steps in the process of calling and conducting an Amendments Convention?

Applications would need to be received by Congress from two-thirds of the States (34 States). Note: Since 1789 no convention call has overcome this hurdle. Congress would then need to call the Convention. The safeguards in this process are (1) Congress will establish convention procedures that could ensure a Convention would not go beyond its mandate and (2) the Supreme Court can rule on the inevitable legal challenges.<sup>4</sup> Then, States would select delegates to attend the Convention on their behalf. Delegates would almost certainly mirror the current political make-up of the States, thus minimizing the risks posed by radical elements.<sup>5</sup> Then, the Convention itself would take place. The intense focus of the media, coupled with the

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<sup>1</sup> United States Constitution – Article V.

<sup>2</sup> Caplan, Russell L. Constitutional Brinkmanship. Amending the Constitution by National Convention. 1988. Pages 95-107.

<sup>3</sup> Weber, Paul J and Perry, Barbara A. Unfounded Fears. Myths and Realities of a Constitutional Convention. 1989. Page 68 & 75.

<sup>4</sup> Ibid. Page 8.

<sup>5</sup> Ibid. Pages 112-115.

checks and balances provided by Congress, the delegates, and the ratification requirement, would eliminate any realistic prospect of factionalism or radicalism.<sup>6</sup> Finally, the Amendment must be ratified by three-fourths of the States (38).

### **What is a “runaway” Convention? Did the first Convention “run away?”**

A “runaway” Convention is one at which delegates exceed the mandate of their state governments, and propose amendments beyond the original scope of their stated purpose. The Philadelphia Convention did *not* “run away.” Following the War of Independence, the United States was governed by the Articles of Confederation which proved to be ineffective in resolving conflicts between the states due to the lack of a central government. The Founding Fathers called a Convention specifying that the Convention would have “the sole and express purpose of revising the Articles of the Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the federal constitution adequate to the exigencies of government and the preservation of the union.”<sup>7</sup> The Founders may not have originally envisioned the creation of a new Constitution, but the Constitution that ended up being proposed by the Philadelphia Convention was faithful to the letter and spirit of the original mandate, and has served our nation well for over 220 years.

### **Didn’t James Madison argue against ever having another Convention?**

No. James Madison, commonly called the “Father of the Constitution,” helped *write* Article V, which *expressly* makes provision for Amendment Conventions. Critics of Conventions often quote Madison’s words, “Having witnessed the difficulties and dangers experienced by the first Convention . . . I should tremble for the result of a second,” taken from the founder’s personal correspondence in 1788 with one G.L. Turberville.<sup>8</sup> To interpret this private hyperbole as a *carte blanche* condemnation of Amendment Conventions is to ignore important historical and psychological context. Madison naturally was weary at the prospect of a second Convention, so soon after the first one had concluded, and before the States had themselves even ratified the Constitution. Madison was adamant that our union be maintained by the States ratifying the Constitution that was formed at the first Convention. However, the fact remains that Madison, as one of the writers of the Constitution, included Article V in the Constitution which allows for States to call for an Amendments Convention when in the course of human events it becomes necessary.

### **Should we fear a “runaway Convention?”**

No. We have a runaway Congress already! Over the past several years, our elected representatives (of *both* political parties) have proven themselves politically incompetent and fiscally irresponsible. Some have said that the fears of a runaway convention are akin to refusing to extinguish a fire for fear of what harm the chemicals in the extinguisher might cause. Delegates to an Amendments Convention would be selected by the people of their state, and so will almost certainly, in the aggregate, represent the political mainstream. The United States Congress and Supreme Court would also provide the necessary checks and balances against a Convention which exceeded its mandated scope. Finally, in the event some aberrant proposal does pass congressional and/or judicial scrutiny, it would have to be approved by the people of at least 38 states. As we can see, Article V provides the necessary checks and balances, in order to weed out any truly radical proposals.

### **The powers of a Convention are the same powers Congress has *right now* and *always has had*.**

Powers at a convention are *nothing more* than the power that Congress has *every day*. Right now Congress *could* propose an Amendment to the Constitution which would alter or eliminate the Bill of Rights. It could pass an Amendment saying we no longer have a right to free speech or to own a gun. *If* Congress or a Convention ever *did* pass something so radical, it would *still* need to be ratified by three-fourths of the states (38 states), which is why nothing radical has or ever will be part of the United States Constitution.

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<sup>6</sup> Ibid. Page viii and Page 8.

<sup>7</sup> cf. James Madison, *The Federalist* No. 40

<sup>8</sup> Weber, Paul J and Perry, Barbara A. *Unfounded Fears. Myths and Realities of a Constitutional Convention.* 1989. Page 5.

## **Built in Safeguards to Avoid a “Runaway Convention,”<sup>9</sup>**

### **What is the likelihood of a Convention ever being called?**

History teaches us that the likelihood of a Convention is low, but the likelihood of action by Congress in response to the imminent prospects of a Convention is high. Congress will more than likely avert a Convention by proposing the amendment *themselves*, before the number of state-petitions reaches two-thirds.

### **The Convention process is a slow one.**

The many steps and many people needed to actually trigger a Convention would, at several critical junctures, arouse scrutiny by the media, the public, think tanks, politicians, and academics. The proposals would be debated vigorously. Politics would take over – and slow the process down.

### **Congress and the Supreme Court will check and balance any radical excess.**

Congress could check any radical excess by creating procedural safeguards prior to the start of the Amendments Convention to ensure a Convention did not go beyond its mandate. Furthermore, the Supreme Court would almost certainly overturn the proposal of any Convention which exceeded its delegated mandate.

### **The States would have to ratify any proposed amendment.**

Thirty-eight states would have to ratify any amendment which was proposed by an Amendments Convention. This is a monumental hurdle ensuring no radical legislation would be approved by such a broad consensus.

### **The limited purpose proposal.**

Congress will more than likely codify the limited purpose proposed by the States. Even if they do not it could still be possible for States to rescind their application and therefore refuse to go beyond the means of the original mandate (if it was ever proposed).

### **Delegates.**

The number and character of the delegates chosen would make it difficult for any one faction or radical viewpoint to emerge. The process by which delegates are selected by the states would likely be a similar process to the elections we have now. It would be difficult, if near impossible, for a radical or a newcomer to politics to enter as a candidate. An Amendments Convention is unlikely to bring oppression, as the vast majority of American citizens are committed to the principles and values that the United States has stood to protect in every generation.<sup>10</sup>

**In sum:** There are so many procedural safeguards in place and so many political pressures that will bear on the process, that an Amendments Convention is an inherently conservative enterprise. No amendment will survive the process unless it enjoys strong bipartisan support and a broad national consensus. Furthermore, pressure from the States could well press a responsible Congress into action to propose a balanced budget Amendment. This road is not to be taken lightly, nor should an Amendment be proposed for light and transient causes. However, unfunded mandates, insurmountable debt, and unconscionable spending have put our economic future at risk. It is not only the right, but the duty of the several States to use every tool at their disposal to restore the nation’s financial greatness. Applying to Congress for a balanced budget Amendments Convention is the next step to declare our independence from debt and ensure the blessings of liberty for generations to come.

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<sup>9</sup> Ibid. Pages 8, and 115-118.

<sup>10</sup> Ibid. Page 10.