

Convention of States



By Paul Engel

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- A Convention of States has become a perennial topic for many in the constitution community.
- How do we amend the Constitution, and what role would a convention have?
- Would a Convention of States fix the issues so many of us see in America today?

I've written before about the [Convention of States](#) movement, but this is a topic I'm frequently asked about. I know plenty of people both for and against such a convention, and I've written about their concerns as well. However, I've been asked to write not about the movement, but about the convention itself. So once again, let's dive into the Convention of States, look at the pros and cons, and decide for ourselves if this is the solution to America's problems.

Amending the Constitution

Let's start with the term "Convention of States". Some people like to refer to a "Constitutional Convention" or "ConCon", but that's not really accurate. Then again, the term "Convention of States" isn't exactly accurate either. What we are talking about is an "Article V Convention" or a "Convention for Proposing Amendments".

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,

[U.S. Constitution, Article V](#)

Why do I say that the term “Constitutional Convention” is inaccurate? Because under the Constitution, this convention is not to draft a new constitution, but to propose amendments to the existing one. The original Constitutional Convention was called when the convention to modify the Articles of Confederation determined it would be easier to start from scratch, and asked the states to authorize them to draft a new constitution. That is also the reason why I say the “Convention of States” is a more accurate title. Since the States would be sending delegates to the convention, it’s not exactly accurate. It’s not a general convention of states, but a convention to specifically propose amendments to the Constitution.

By the way, it’s important to recognize that neither Congress nor a Convention can amend the Constitution, but only propose amendments to it. Only the states have the power to amend the Constitution.

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;

[U.S. Constitution, Article V](#)

Whether by three fourths of the state legislatures or conventions in three fourths of the states, only the States have the authority to actually change the Constitution. Also, contrary to what many in the legal community have said, any amendment to the Constitution, once legally ratified, is just as much a part of the Constitution and therefore binding as the original seven articles.

Why a Convention?

We also need to remember that the States created the Constitution, which created what we now call the federal government. One of the problems the Founding Fathers had with the Articles of Confederation was the amendment process. There wasn't one, only the requirement that any changes to the Articles had to be unanimously agreed to by all of the states.

nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the united states, and be afterwards con-firmed by the legislatures of every state.

Articles of Confederation, Article XIII

So when they drafted the Constitution, they included a formal amendment process in Article V. This process uses two distinct steps; the proposal of amendments and the ratification of the proposed amendments. The Convention for Proposing Amendments is, as its name suggests, part of the proposal process.

Since the states created the Constitution, it only makes sense that they have a way to propose amendments to it. Since the beginning of the republic, only the representatives of the people (The House) and the states (The Senate) have proposed amendments. The Framers of the Constitution were not fools. They knew that there may be changes to the Constitution needed to protect the people and the republic that those in Congress would not support. For example, you wouldn't expect Congress to propose an amendment to limit their own powers. Sure, Congress proposed an amendment to term-limit the President, but does anyone think they would propose one to term-limit themselves? Hence, the need for the states, as the creators of the Constitution and the federal government, to have a method of proposing their own amendments. This method is the convention process.

There are a lot of people who fear the convention process,

while plenty more think it's the salvation of the republic. So which is correct? Actually, I think it's a little bit of both. I find the fear of the convention process interesting, since it and the congressional process propose amendments. There is no legal difference between the two, and both are capable of destroying the Constitution and the republic. In my mind, the reason to fear the convention process is not the process itself, but its abuse. The Congressional Research Service (CRS) has already published a paper on the subject.

The state legislatures are indispensable actors in the Article V Convention process—nothing can happen unless 34 or more apply for one. Congress is equally indispensable to the process by which a convention is summoned, convened, and defined.

[The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress – Congressional Research Service](#)

Yes, the states are indispensable to the convention process, but what is the indispensable role of Congress the CRS is talking about?

The Constitution, with characteristic economy of phrase, simply directs that “Congress ... on the application of the Legislatures of two thirds of the several States, shall call a Convention for the proposing of Amendments...” Beyond this language, however, observers have identified subsidiary issues for consideration by Congress, of which five may be among the most important:

[The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress – Congressional Research Service](#)

Don't you just love how people take the simple words of the supreme law of the land and then add their own in order to do what they want? The ONLY role Congress has in the convention

process is to call the convention, then determine whether ratification will be done by the individual state's legislature or conventions in each state. Nothing more. Congress, in its own twisted logic, wants to read into the Constitution language to give themselves powers over any convention. They view themselves as the "guardian of the convention", to define the role and responsibility of the convention, and even the power to determine if any amendments proposed by the convention is sent on to the states for ratification. The idea that Congress is to be the "guardian" of the convention is irrational and not supported by the language of the Constitution. The arrogance of assuming Congress gets to decide if the states should get a chance to ratify the amendments they had proposed in the convention would be beyond belief, if it hadn't come out of Washington, D.C.

Does that mean there is no risk should there be a Convention for Proposing Amendments? No, there is risk in everything we do. Sure, a convention could propose the repeal of the Second Amendment or overturn Freedom of Speech or the protections of the right to due process. Then again, Congress can propose the exact same amendments, but people don't seem to be afraid of that. Remember, in 1917 Congress proposed an amendment that infringed on your right to the liberty to manufacture and sell liquor. In short, any amendment a convention can propose, Congress can as well. That's not to say there isn't a good reason to hold a convention.

Personally, if I were a delegate to a Convention for Proposing Amendments, I can think of a few amendments I would propose. Repeal of the Sixteenth and Seventeenth Amendments would be near the top of the list, along with limiting Congress' ability to borrow on the credit of the United States. However, there are plenty of amendments people are calling for that I could not support. Why? Because as much as people believe they would solve our problems, they cannot.

What a Convention Cannot Do

The thing about amendments to the Constitution is they only amend the Constitution. When I look at most of the amendments people are calling for in the proposed convention, I find most of them are already covered by the Constitution.

- Require members of Congress to live under the same laws they pass for the rest of us (Amendment X).
- Impose limits on federal spending and/or taxation (Article I, Section 8, Clause 1).
- Get the federal government out of our healthcare system (Amendment X).
- Get the federal government out of our education system (Amendment X).
- Stop unelected federal bureaucrats from imposing regulations (Article I, Section 1, Clause 1).
- Remove the authority of the federal government over state energy policy (Amendment X).
- Force the federal government to honor its commitment to return federal lands to the states (Article I, Section 8, Clause 17).

Probably the most common request for an amendment I hear involves term-limits for Congress. Members of Congress only serve as long as they get the majority of votes. You can set your own term limits; simply stop voting for someone once they've served as long as you think they should. Yes, you can set your own term limits, but you cannot force others to agree with you. The thing most people don't realize about term-limits is that they don't so much limit how long a person can serve in office, but who the people are allowed to vote for. Besides, if an amendment to set term-limits on Congress were to be ratified, all it would do under our current system is further empower the political parties. Now, rather than having to show yourself worthy to both the party and the people, all a politician would have to do is be a good party member and "wait their turn" for an office.

Conclusion

We come back to the question I'm most frequently asked: Would a Convention of States fix the republic or not? While I cannot see into the future, here's my assessment. First off, should a convention be called, there will be a lot of attention paid to the issues it brings up. There will probably be more spin applied to those issues than a hyperactive top. Everyone will have their own opinion, probably the one that most benefits them. It's just as likely the different sides will spend more time talking past each other than actually debating the amendment. In other words, pretty much politics as usual. If some of the amendments that have been at the center this discussion should be passed by the convention and sent to the states, the whole media circus will simply start over again in an attempt to influence the legislatures or conventions in the Several States.

Let's say that some amendments get proposed, even ratified. Will that make a difference? My best guess is, in the short term it will. After all, the politicians will be watching as much as anyone else. However, in the long term, I don't think such a convention would be much help. Sure, the convention may propose some bad amendments, but that's not where I see the problem. As I pointed out, most of the problems in Washington, D.C. aren't the language of the Constitution, but the fact that we don't follow it. Think of how many regulations come out of the Departments of Education, Energy, Transportation, Labor, Health and Human Services, Housing and Urban Development, not to mention the Environmental Protection Agency and the office of Science and Technology. None of these departments and agencies are authorized by the Constitution, yet they exist and write regulations that are enforced as law, in violation of the Constitution. Then there are those who claim that the Fourteenth Amendment allowed President Biden to effectively raise the debt ceiling in violation of the laws passed by Congress. How would making things "extra

unconstitutional” change that?

That said, what if the convention proposed some good amendments? Not only the ones I mentioned I would propose, but some others we haven’t even thought of yet. What if they get ratified by the states? How long before the politicians and bureaucrats in Washington, D.C. simply start ignoring them as well? I doubt it would take the corporate media and activist groups very long before they demanded that the language of the Constitution shouldn’t stop them from doing what they think is right. If you think the courts would save us, remember the Supreme Court has a history of putting the power of government above their oath to support the Constitution.

Like so many things in life, there is no panacea, no simple fix to all our problems. What we need is a good, close look at what we, individually, are doing. Are we following the Constitution, the supreme law of the land? Are we hiring public servants who are fulfilling their oaths to support the Constitution? Most importantly, when those we hire to represent us fail to fulfill their oaths, do we find better representation? Rather than looking for someone else or some legal maneuver to fix the republic, if we simply took responsibility for our actions, most of those problems could be fixed long before they got large enough for anyone to consider an amendment to the Constitution.

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