



Citizens Against an Article V Convention
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Points in Opposition to New Hampshire SCR3

SCR3 is Wolf PAC’s application from New Hampshire for an Article V convention. Its ostensible purpose is to circumvent or repeal the United States Supreme Court’s opinion in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), by obtaining Amendments to our Constitution which permit the federal government to restrict political speech and campaign contributions by those whom they believe “spend excessively in elections” and whom they believe are “powerful economic forces.”

We object both to the specifics of SCR3, and to having an Article V convention.

Major Problem #1: SCR3 Will Curtail Political Speech and Increase the Powers of the Federal government

The federal government does not now have the constitutional authority over the country at large to restrict *any* form of speech, or to restrict campaign contributions. These are not enumerated powers delegated to the federal government. Furthermore, the exercise of such powers is expressly forbidden by the First Amendment.¹

The effect of the amendments suggested by SCR3 would be to increase the powers of the federal government over the people by delegating to the federal government the power to PREVENT or RESTRICT certain groups and combinations of people from speaking in the public square on the critically important area of political speech. And we won’t find out, until the amendments are drafted, which groups or combinations of people will be allowed to speak out on political issues and donate money to the causes or candidates they support; and which groups or combinations of people will be prohibited from doing the same.

¹ To the extent that Congress and the federal courts have in the past restricted such speech and contributions, their acts have been unconstitutional as outside the scope of powers delegated by our Constitution, and as in violation of the First Amendment.

This is an ominous, dangerous and destructive proposal. It is a major step in eliminating free speech in this country. **The ramifications of Amendments which permit the federal government to control political speech are nightmarish.**

Our problem isn't that corporations donate money to political campaigns - our problem is that everyone ignores the Constitution. How many of us know the enumerated powers delegated to the national government? How many know that our Constitution created a national government of enumerated powers only? If "We the People" had demanded that Congress restrict itself to the enumerated powers, no one would want to spend large sums to influence federal legislation. After all, how many times can Congress amend the Bankruptcy Code (Art. I, §8, cl. 4); establish the patent and copyright office (Art. I, §8, cl. 8); and fix the standard of Weights and Measures (Art. I, § 8, cl. 5)?!

Our federal government is corrupt because it exercises thousands of usurped powers – and special interest groups pay large sums to get unconstitutional legislation favorable to them passed; and unconstitutional legislation unfavorable to them killed.

Major Problem #2: State Legislators Cannot Control the Delegate Selection Process

SCR3, Second Resolved states::

“ WHEREAS, the State of New Hampshire desires that the delegates to said convention shall be comprised equally of individuals currently elected to state and local office, or be selected by election, in each congressional district for the purpose of serving as delegates, though all individuals elected or appointed to federal office, now or in the past, be prohibited from serving as delegates to the convention, and intends to retain the ability to restrict or expand the power of its delegates within the limits expressed ... ”

But State Legislatures cannot control the delegates to a convention. The only power State Legislatures have under the Article V convention process is to apply to *Congress* to “call” a convention. Congress must call a convention when they determine 34 states have applied. And despite what Article V convention advocates claim, the Constitution authorizes **only Congress** to set up the rules and organize the convention.

The Constitution was meant for ordinary citizens to understand, and it is quite clear. At Article I, Section 8, last paragraph -- the “Necessary and Proper” clause:

The Congress shall have the Power...: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article V of the Constitution delegates to Congress the power to “call” a convention. The necessary and proper clause delegates to Congress the power to make **all** laws that are “necessary and proper” to carry out its power to “call” a convention. This would include laws pertaining to the time and place of the convention; determining the number and selection process for its delegates; apportionment of convention delegates among the states; how votes will be apportioned among the delegates; etc.

The Congressional Research Service (CRS) [Report issued April 11, 2014](#) confirms that Congress most likely will claim authority over the power to organize and set up an Article V convention. Because of lack of precedent and so many unknowns, the CRS Report suggests on page 27 that they’ll have to call a convention to see what sort of convention they get (general, limited or runaway)!

Major Problem #3: An Article V Convention Puts our Entire Constitution at Risk of Being Replaced.

Those promoting an Article V convention assure you that delegates to a convention can be controlled by State laws. But that is not true. Delegates cannot even be controlled by federal laws!

It is not a matter of mere opinion that delegates to a convention have unlimited sovereign authority. They do! The second paragraph of the Declaration of Independence recognizes the sovereign right of a People to throw off their “Form of Government,” and it was reinforced 11 years later in the preamble to our Constitution with “We the People...”

“To secure (our unalienable rights), Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any form of Government becomes destructive...it is the Right of the People to alter or abolish it, and to institute new Government...”

–Declaration of Independence, 1776, Paragraph 2.

The convention of 1787 was called by the Continental Congress “**for the sole and express purpose of revising the Articles of Confederation.**” But the delegates ignored their instructions and wrote an entirely new Constitution. Furthermore, they changed the mode of ratification. Whereas Article XIII of The Articles of Confederation required **all**

of the then 13 States **and** the Continental Congress to approve Amendments before they became effective; the new Constitution provided at Article VII that it would require only 9 States for ratification. **There is *nothing* that can stop delegates to a convention today from doing the same thing if they propose a new Constitution.**

“Faithful delegate” bills and clauses are marketing gimmicks designed to give Legislators and their constituents a false sense of security and control over a process which will be **totally out of their control.**

The only convention “for proposing amendments” is one called by Congress. And Congress has total power to organize and set it up. But once the delegates assemble, they are the sovereign representatives of the people and can do whatever they want.

Wise Voices Have Warned Against an Article V Convention

Wise voices have warned of the deadly perils of an Article V convention: Here are three:

James Madison, Father of our Constitution, said in his November 2, 1788 [letter to Turberville](#) that he “trembled” at the prospect of a second convention; and that if there were an Article V Convention:

“...the most violent partizans,” and “individuals of insidious views” would strive to be delegates and would have “a dangerous opportunity of sapping the very foundations of the fabric” of our Country.

Throughout [Federalist Paper No. 49](#), Madison warns against an Article V convention to correct breaches of the federal Constitution. He said, among other things, that the legislators who caused the problem would get themselves seats at the convention and would be in a position to control the outcome of a convention.

Former US Supreme Court Justice Arthur Goldberg reminds us in his [Sept. 14, 1986 editorial in The Miami Herald](#) that at the convention of 1787, the delegates *ignored their instructions* from the Continental Congress and instead of proposing amendments to the Articles of Confederation, wrote a new Constitution; and **warns us that “...any attempt at limiting the agenda would almost certainly be unenforceable.”**

Former US Supreme Court Chief Justice Warren Burger said in his [June 1988 letter to Phyllis Schlafly](#):

“...there is no effective way to limit or muzzle the actions of a Constitutional Convention...”

“After a Convention is convened, it will be too late to stop the Convention if we don’t like its agenda...”

“...A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn...”

Conclusion

We oppose SCR3 because it would be a terrible mistake to delegate to the federal government constitutional power to control political speech and campaign donations.

The solution to our political problems is to downsize the federal government and return the reserved powers back to the States.

Delegates to an Article V convention would have the inherent power to propose whatever changes to our Constitution they want, including abolishing our “Form of Government” altogether and rewriting or replacing our Constitution, as well as changing the ratification process. Is that really what the New Hampshire General Court wants to apply for?

The Constitution is not the problem – *ignoring* it is the problem. The *Solution* is to obey the Constitution we already have.

Respectfully Submitted,

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