



Points in Opposition to Convention of States Project's Resolution

I. Abstract

Convention of States Project's (COS) legislation is an Application to Congress from your State asking Congress to call a convention under [Article V](#) of the United States Constitution to propose amendments, supposedly to limit the federal government. When Congress determines they have received applications from 34 states, they are to call a convention.

II. The Constitution isn't the problem—so amending it isn't the solution

COS, the sponsors of this legislation, claim there are two Constitutions, the one we all know and love; and the one we are living under, as interpreted by the Supreme Court. They claim we need to amend the Constitution to restore its original intent.

This shows that the problem is not the Constitution; but that the Supreme Court violates it! In [Federalist No 81](#) (8th paragraph), Hamilton says the remedy for federal judges who usurp power is to impeach them and remove them from the bench.

If the existing words are clear but the Supreme Court Opinions are wrong, how exactly would the Delegates to an Article V Convention change those words? Or how would amendments restore the "true" meaning of the Constitution: by expressly overturning the Supreme Court that "got it wrong" in somebody's view? And why would the courts comply with an amended Constitution when they twist definitions to avoid complying with the Constitution we have now?

III. Amendments cannot control the Federal Government—nor were they intended to

Convention proponents have claimed that *our Framers said* the purpose of amendments is to rein in the federal government if it usurps powers not delegated. But our **Framers never said** that!

One delegate at the Convention of 1787, George Mason, objected to Congress's being involved in the amendment process. On the last day of deliberations (Sep. 15, 1787), the convention method of proposing amendments was added; **but since Congress “calls” the convention, and because of the “necessary and proper” clause at Art. I, §8, last clause, Congress has exclusive authority to organize the convention.** [See Part VI].

So George Mason did not get his way and was one of only three delegates who *refused* to sign the Constitution. See Madison's Journal entry for [September 17, 1787](#).

What our Framers – those who signed the Constitution – actually said is:

- amendments remedy *defects* in the Constitution (Hamilton at the federal convention on [Sep. 10, 1787](#));
- useful amendments would address the “organization of the government, not ... the mass of its powers” ([Federalist No. 85](#), 13th paragraph); and
- “...amendment of errors” and “useful alterations” would be suggested by experience ([Federalist No. 43 at 8](#)).

Some people point to the Bill of Rights, ratified in 1791, to show that amendments were meant to control the federal government.

But the Bill of Rights was added after the Constitution was ratified in order to fulfill a promise made to some States that if they ratified the Constitution, a bill of rights would be added later.

Amendments do *not* rein in governments predisposed to usurp. The “free exercise” clause of the First Amendment did not prevent the federal courts from banning prayers and the Ten Commandments in the public schools; the Second Amendment did not prevent the federal government from restricting our right to arms and ammunition; the Fourth Amendment did not prevent the National Security Agency (NSA) from spying on us without a warrant; and the Tenth Amendment did not prevent the federal government from usurping thousands of other powers not delegated.

Our Framers advised us to employ a very different course of action in response to federal usurpations of powers not delegated. [See Part X-B].

IV. Our federal government is already limited by the Enumerated Powers

A typical COS Resolution reads:

Be it resolved: ...that this legislative body does hereby apply to Congress, under the provisions of Article V of the United States Constitution for the calling of a convention of the states limited to proposing amendments to the United States Constitution that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress;

At first glance, the language seems inviting. However, the presupposition underlying the COS Resolution is that the federal government created by our Constitution is one of general and unlimited powers which can be restricted only by amendments.

That claim is totally at odds with our constitutional framework: our Constitution is already one of very limited federal powers. When we ratified the Constitution, we *created* the federal government, and we enumerated the powers we delegated to it, most of which are listed in [Article I, Section 8](#). Congress may lawfully exercise *only* the powers that are enumerated. All other powers are reserved by the States or the People.

We got the crushing federal debt because for 100 years, Congress has been **ignoring** the existing constitutional limits on its spending. Most of Congress's spending is **unconstitutional** as outside the scope of the delegated powers.

As James Madison points out in [Federalist No. 45](#) (9th paragraph):

“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce....The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State.”

You cannot “fix” federal usurpations of non-delegated powers by amending the Constitution to say the federal government cannot do what the Constitution never gave it the power to do in the first place!

Convention advocates have insisted that we need amendments to “clarify” the meanings of the “interstate commerce” and “general welfare” clauses.

Nonsense! We don't need a convention to draft amendments showing what those clauses mean. A quick look in The Federalist Papers shows the original intents! And it's already written up for you: the original intents of the clauses are proved - on one page - [HERE](#) - or in this [Article](#).

So, our Constitution is not the problem. The problem is that the federal and State governments have ignored the Constitution; and the People are ignorant about what it says. The Constitution needs to be understood, defended, and enforced—not amended or rewritten.

V. State Legislators are not being told the Truth by convention advocates

In an effort to get State Legislators to vote **for** their Article V applications, COS and other convention advocates routinely engage in wishful thinking and guesswork. They assure Legislators that the States will determine the convention rules, choose the delegates, control the delegates, limit the subject matter of the convention, etc. For that reason, we will examine the text of Article V and determine which powers State Legislatures are given; which are given to Congress; and which are given to the Delegates.

Article V of the U.S. Constitution is only one paragraph long. Read it carefully to determine who is given power at an Article V convention and who isn't:

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 [mode #1], or by conventions in three fourths thereof [mode #2], as the one or the other mode of ratification may be proposed by the Congress... (Boldface added).

So what's the Truth? WHO has the power to do WHAT?

The Constitution grants only the following powers to four different bodies regarding an Article V convention:

Body	Power (s)
State Legislatures	<ul style="list-style-type: none"> a. Apply to Congress for a convention b. Ratify proposed Amendments, if Congress chooses mode #1
Congress	<ul style="list-style-type: none"> a. Calls the convention b. Makes all laws necessary and proper for calling a convention (per Article I, §8, last clause) c. Selects Ratification mode #1 or #2
Delegates to Article V Convention	Propose Amendments [assuming they don't exercise their plenipotentiary powers and write a new Constitution]
State Ratifying Conventions	Ratify proposed Amendments, if Congress chooses mode #2

But what are convention proponents telling State Legislators?

Myth	Fact
States can bypass Congress in the amendment process	<ul style="list-style-type: none"> a. The only powers granted to State Legislatures are to <i>ask Congress</i> to call a convention, and b. to ratify or reject proposed Amendments [if Congress chooses mode #1]
Congress will play only a ministerial role in setting the time and place of the convention.	<ul style="list-style-type: none"> a. Article I, §8, last clause, delegates to Congress the power to make the laws to organize and set up the Convention. [See Part VI]. b. According to the Congressional Research Service Report dated April 11, 2014, Congress “has traditionally asserted broad and substantive authority over the full range of the Article V Convention’s procedural and institutional aspects from start to finish.” (Page 18).
States make the rules for a convention, by custom.	<ul style="list-style-type: none"> a. There are no customs, as there has never been an Article V convention; proponents cite regional gatherings of a few states on common topics as “custom.” b. The Constitution delegates to Congress the power to make the laws to organize and set up the Convention. But once the convention is convened, the Delegates are the Sovereign Representatives of the People and can make whatever rules they want. At the federal “amendments” convention of 1787, the Delegates made rules on May 29, 1787 to make their proceedings secret.

<p>State voting power will be “one state, one vote.”</p>	<p>a. This will be up to Congress, and Congress has already demonstrated its intent to make those rules:</p> <p>b. In 1983 when we were 2 states away from a convention, 41 congressional bills were introduced and, although none passed, apportionment of convention delegates among the states was generally set by population like the Electoral College; not by one state, one vote.</p>
<p>A “Convention of States” is an “Amendments” convention, not a “Constitutional convention.” So the Constitution is not at risk.</p>	<p>a. All these terms are used interchangeably. The only convention “for proposing amendments” is one called by Congress under Article V.</p> <p>b. Black’s Law Dictionary defines “<u>constitutional convention</u>” as “a duly constituted assembly of Delegates or representatives of the people of a state or nation for the purpose of <i>framing, revising, or amending</i> its constitution.”</p>
<p>An Article V convention can be “limited” to a topic or set of topics.</p>	<p>a. Nothing in Article V or the Constitution limits a convention to a single topic(s). The convention is the deliberative body!</p> <p>b. Under the supremacy clause at Article VI, clause 2, U.S. Constitution, any State Law which contradicts the Constitution is void.</p> <p>c. Delegates to a convention have the inherent right to alter or abolish our Form of Government, as expressed in the Declaration of Independence, paragraph 2. The 1787 constitutional convention is a case in point. [See Part VII].</p> <p>d. Pretended limits are a marketing gimmick by its promoters 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.</p>
<p>State Legislatures can control their delegates.</p>	<p>a. <u>State law cannot control delegates to a convention.</u> [See Part VII]. The convention is the highest authority in our Republic, since it emanates directly from “We the People.”</p> <p>b. If Delegates <u>choose to meet in secret as they did in 1787,</u> State Legislatures wouldn’t know what the Delegates were doing.</p>
<p>The ratification process ensures no bad amendments will be passed.</p>	<p>a. A precedent was set in 1787 when the “amendments” convention which was called “<u>for the sole and express purpose of revising the Articles of Confederation</u>” resulted in a new Constitution with an easier mode of ratification; this could happen today. So much for the ultimate safeguard of 13 legislative bodies being able to stop a bad idea!</p> <p>b. Amendments 16 (Income Tax), 17 (Direct vote for Senate), and 18 (Prohibition) were duly ratified. Were they good ideas?</p>

VI. The limited role of State Legislatures in the convention process

The only power guaranteed to State Legislatures under the Article V convention process is to apply to Congress *for Congress* to “call” a convention. And despite what Article V convention advocates claim, the Constitution authorizes **only Congress** to set up 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.” (Federalist No. 51 uses the word “department” to refer to the 3 branches of government: Congress, the Executive, and the Judiciary).

So 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; and apportionment of convention delegates among the states.

Moreover, State Legislatures will not necessarily play a role in the ratification process, supposedly the ultimate safeguard for preventing a “runaway” convention. Ratification may be by state conventions instead of State legislatures; or the ratification process itself can be changed if a new Constitution is proposed, as happened at the “amendments” convention of 1787. After a convention is convened, the Delegates have the power to do whatever they want. [See Part VII].

Yet Article V proponents mirror former law professor Rob Natelson in denying that Article V is a power granted to Congress! We are linking a paper that will explain the convoluted way Natelson has interpreted the power of the States to control an Article V convention. Please see this [linked article](#).

The Congressional Research Service (CRS), the official research arm for Congress, in a [Report](#) dated April 11, 2014 confirms that Congress most likely will claim authority 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)!

VII. Delegates to a convention have the inherent right to alter or abolish their Form of Government

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 Declaration of Independence recognizes the sovereign right of a People to throw off their "Form of Government":

"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.

And just 11 years later, we did throw off our "Form of Government" and create a new one: 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 **nine** States for ratification. **There is nothing that can stop Delegates to a convention from doing the same thing today.**

VIII. COS and others contemplate rewriting the Constitution!

That the convention COS is applying for might turn "runaway," is almost beside the point, because the COS application isn't limited.

The stated purpose of the COS application, in addition to imposing fiscal restraints, is "to limit the power and jurisdiction of the federal government..." But almost every part of the Constitution is about the power and jurisdiction of the federal government:

Articles I through III of the Constitution set forth, respectively, the powers and jurisdiction of the legislative, executive, and judicial branches of the federal government. Article IV addresses the relative powers of the federal government and the states. Article V, as we have seen, addresses

the amendment process and the relative roles of Congress and the state legislatures respecting amendments. Article VI contains the supremacy clause, which asserts that the Constitution, and treaties and laws of the United States made in pursuance of the Constitution, are the supreme law of the land. And Article VII sets forth the procedures for ratification of our existing Constitution.

An application for an Article V convention that is "limited" to the power and jurisdiction of the federal government encompasses almost everything! In fact, Robert Kelly, staff counsel to COS, admitted during [a debate on March 15, 2014 \(at 1:00\)](#) in Yorktown, VA., that COS changes would encompass the bulk of our Constitution!

And since our Constitution limits the power and jurisdiction of the federal government to its enumerated powers now, chances are any new “limitations” set by a convention will **expand** federal powers. [See Part IV].

Jordan Sillars, Communication Director for “Convention of States” [posted online](#):

“I think the majority of Americans are too lazy to elect honest politicians. But I think some men and women could be found who are morally and intellectually capable of re-writing the Constitution.” [Boldface added]

COS contemplates “re-writing” our Constitution! That suggests a new Constitution with its own mode of ratification. And that new mode of ratification can be whatever the drafters of the “re-written” Constitution want. [See Part VII].

New Constitutions are already drafted or are being prepared; but they can’t replace our current Constitution unless proponents get a convention!

- The [Constitution for the Newstates of America](#) imposes a totalitarian dictatorship. **Article XII, § 1 thereof provides for ratification by a Referendum called by the President.** The States are dissolved and replaced by regional governments answerable to the new national government.
- The [Revolutionary Communist Party USA](#) has a [Constitution for The New Socialist Republic in North America](#).
- George Soros, Marxist law professors all over the Country, Cass Sunstein and Eric Holder want [a Marxist Constitution in place by the year 2020](#).
- The “Convention of States” project (COS) wants a “re-written” Constitution which [legalizes powers the federal government has already usurped](#), and delegates new powers to the federal government. One proposed amendment, written by COS principal

Michael Farris, delegates **total power over children!** Yet they are telling conservatives that they want a convention so they can get amendments “to *limit* the power and jurisdiction of the federal government”!

- Some plan to transform the United States *from* a sovereign nation *to* a member state of the North American Union: Canada, the United States, and Mexico are to merge and surrender their sovereignty to a Parliament which is to be set up over the three countries. The United States will need a new Constitution to bring about this transformation. This is being imposed on us by stealth. Read the Task Force Report of the Council on Foreign Relations **HERE**.

IX. 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...”

X. Solutions

A. Just Say NO!

COS claims we need an Article V convention because the federal government has usurped the legitimate role of the States in the Constitution.

But federal usurpations of powers not delegated by the Constitution to the federal government are often done with the cooperation and connivance of the State governments: they go along with unconstitutional federal programs to get federal funding!

According to the [PEW Report](#), **30.0% of State Revenue for fiscal Year 2013 was from federal funds!** Odds are, the States got much or all of that Revenue to implement unconstitutional federal programs. What percent of your State’s Revenue did your Legislature accept? (Enter your State into the [scroll-down menu](#).)

So the States are not victims of federal tyranny - they are enthusiastic participants! They do it to get federal funds. THAT is a huge reason we have a \$19 Trillion dollar debt: money is borrowed by the federal government to bribe State governments into going along with unconstitutional federal programs!

To start solving the problem, the States must start saying, "NO!" - **Don’t take the money!!!**

B. Nullification

"Where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy." – Thomas Jefferson: Kentucky Resolutions, 1798

What did our Framers really say we must do when the federal government usurps power? They never said, “When the federal government ignores the Constitution, amend the Constitution.”

They never said, “File a lawsuit and let federal judges decide.”

Instead, in addition to electing faithful representatives, they advised Nullification. Please see this linked [article](#).

According to the Tenth Amendment Center, “Nullification is any act, or set of actions, that results in a particular law being rendered null, void or even just unenforceable within a particular area.”

Hamilton, Madison, and Jefferson said nullification is a *natural* right – it is NOT a “constitutional right.” Rights don’t come from the Constitution – they come from God.

When Congress, the President, or the Supreme Court act outside of the enumerated powers delegated in the Constitution, the action is unconstitutional, void and of no force. Nullification applies only to *unconstitutional* acts of the federal government – to usurpations of powers not delegated.

Nullification is being used today more and more against federal usurpations of powers not delegated. The Tenth Amendment Center [reported](#) that less than one month into the 2015 state legislative season, more than 200 bills had been introduced in state capitols to forbid the implementation within their respective borders of federal laws and regulations which usurp powers not delegated to the federal government by the Constitution of the United States.

For example, Utah and New Hampshire have enacted laws against National Security Agency (NSA) spying, and similar legislation has been introduced in nine other states. By utilizing the legal doctrine of [anti-commandeering](#) (a refusal to cooperate), states can have a serious impact on the ability to carry out such surveillance or put it into practical effect.

Kansas, Alaska and Idaho have passed second amendment preservation laws, and similar legislation has been introduced in 12 other states. Because the federal government relies heavily on state and local law enforcement assistance to enforce federal measures, passing a State law banning such assistance will make federal gun control “[nearly impossible to enforce.](#)”

More than half the States are resisting federal laws banning cannabis (marijuana) and affirming the commerce clause. Sixteen states including California, Montana, Arizona, Minnesota, Illinois, Michigan and most of New England have passed laws legalizing the medical use of cannabis; Alaska, Colorado, Oregon and Washington have legalized its recreational use. Twelve other states have introduced similar legislation.

Right to Try” bills allow terminally-ill patients to use treatments that are not currently allowed to them under federal Food and Drug Administration (FDA) regulations. Right to try laws have been introduced in over 85% of the States and are now law in almost half the country.

Other nullification legislation has been introduced and enacted at the State level on issues such as Drones, Automated License Plate Readers (ALPR), police militarization, Common Core, Obamacare, Agenda 21, and the National Defense Authorization Act. You can follow your State's Nullification legislation on the Tenth Amendment Center's website [HERE](#).

The States, in their sovereign capacity, are the parties to the constitutional compact; and are thus the final authority on whether the federal government has violated the Constitution. There can be no tribunal above the authority of the States to decide whether the compact made by them has been violated by the federal government. --[Madison's "Report of 1799-1800](#) on the Virginia Resolutions," p.192, the 3rd Resolution [condensed]

XI. Conclusion

We oppose Convention of States Project's Application because, despite any pretended limitations written into it or into any "unfaithful delegate" bills, any Article V convention would have the inherent right to propose whatever changes to our Constitution the Delegates want; including abolishing our "Form of Government" and rewriting or replacing our Constitution and changing the ratification process. And once called, it will be too late to stop it if we don't like their agenda. Is that really what your Legislature wants to apply for?

And we should ask ourselves, why would the federal government suddenly comply with an amended Constitution when they won't comply with the one we have now?

States already have the power to control within their borders the federal government and insist that it stick to its enumerated powers. And we can use that power to solve our own problems at the state, local or individual level without risking our Constitution. The Constitution is not the problem; let's not fix what isn't broken.

Judi Caler, President
Citizens Against an Article V Convention
judicaler@caavc.net