

Why SD should **NOT** ask Congress to call an Article V convention, a/k/a “constitutional convention,” or in [Newspeak](#), a “convention of states.”



## Why South Dakota Legislators should vote “Yes” on HJR 1003 (Rescission of the BBA), “No!” on SJR 3, and any other Resolutions asking Congress to call an Article V Convention

1. Article V provides that if two thirds of the states apply for it, *Congress shall call a convention* for proposing Amendments to the US Constitution.<sup>1</sup> However, **Delegates would have the right, as recognized in the 2<sup>nd</sup> paragraph of our Declaration of Independence (DOI), to throw off the Constitution we have and write a new constitution which creates a new government.**

- Our only precedent for an “amendments convention” is the Federal Convention of 1787 which was [called by the Continental Congress “for the sole and express purpose of revising the Articles of Confederation”](#) (AOC). But the Delegates ignored Congress’s limiting instructions (and the limiting [instructions from their States](#)) and wrote a new Constitution – the one we have now.
- Furthermore, the new Constitution had a new and easier mode of ratification. Whereas [Amendments to the AOC](#) had to be approved by the Continental Congress and *all* of the then 13 States, the new Constitution provided at Article VII that it would be ratified by only 9 States. A third constitution could provide for ratification by national referendum instead of  $\frac{3}{4}$  of the States!
- In [Federalist No. 40](#) (15th para), James Madison invoked the Delegates’ right to alter or abolish our form of government, as recognized in the DOI, to justify ignoring their instructions and drafting a new Constitution which created a new government.
- James Madison and Alexander Hamilton were Delegates to the “amendments convention” of 1787, and had *personal knowledge* that Delegates can’t be controlled. That’s why Madison [trembled](#) at the prospect of an Article V convention; Hamilton [dreaded](#) one; and future Chief Justice John Jay said another convention would run “[extravagant risques](#).”<sup>2</sup>

2. The Convention of States Project (COSP) *implicitly acknowledges the danger of a convention* when they say state legislatures should pass “unfaithful delegate” laws which *they claim* will control Delegates. But such [laws can’t control Delegates](#) because:

- The DOI recognizes that a People have the self-evident right to throw off their form of government and set up a new one. We can’t stop Delegates from exercising self-evident rights!
- *Since Congress* “calls” the convention, they have traditionally claimed the *power to determine the number and selection process for Delegates*. See the [April 11, 2014 Report of the CRS](#) (p.4). Congress may appoint themselves as Delegates.

- Delegates wouldn't be under state control because the Delegates wouldn't be performing a state function. The convention would be *a federal convention called by Congress to perform the federal function of addressing a federal constitution.*
- As Sovereign Representatives of The People, Delegates would have sovereign immunity for what they do at a convention. Art. I, § 6, cl.1 of the US Constitution, and state constitutions recognize that legislators, which are merely “creatures” of their Constitutions, have immunity. Pg. 37 of the [CRS Report](#) shows that Delegates to an Article V convention will have immunity.
- James Madison's Journal of the Federal Convention of 1787 shows that on [May 29, 1787](#), the Delegates voted to make the proceedings secret. If Delegates today decide to meet in secret or vote by secret ballot, the states would never know who did what. The American Legislative Exchange Council (ALEC) writes model Art. V convention legislation and is experienced at holding [secret meetings with state legislators](#) from which the Press is barred by armed guards.
- Delegates, as Sovereign Representatives *of the People*, are not answerable to state legislatures (which are “mere creatures” of the state constitutions) or to Congress (which is a “mere creature” of the federal Constitution). ***The Delegates have the power to eliminate the federal and state governments – and that is precisely what the proposed [Constitution for the Newstates of America](#) does.*** The Newstates Constitution is ratified by a national referendum at Art. XII, §1.

3. COSP says **SJR3** doesn't ask Congress to call a “constitutional convention,” but rather, a “*convention of states*” which falsely implies it is controlled by the states. COSP has fooled some legislators into believing they can be against a “constitutional convention” (where our existing Constitution can be replaced); and yet support an “Article V convention” which COSP markets as a “convention of states.” [COSP made up its own definition](#) for “Article V convention” as a “convention of states” which is controlled by state legislators! *But there's no such thing in the Constitution!*

4. The Constitution we have [delegates only a few powers to the fed. gov't](#). But for 100 years, everyone has ignored the existing limitations. We can't fix federal usurpations of non-delegated powers with Amendments, because Amendments can't take away powers the Constitution doesn't grant!

5. The convention lobby has another agenda which can be implemented only at an Article V convention.<sup>3</sup>

#### Endnotes:

<sup>1</sup> The convention method was added to Art. V *as a compromise*. **None of the Delegates said the purpose of an Art. V convention was to enable states to make Amendments to the Constitution in order to rein in abuse of power by the fed. gov't.** [COS fabricated that claim.](#)

<sup>2</sup> [Supreme Court Justices Warren Burger, Arthur Goldberg, Antonin Scalia, and other luminaries](#) have warned that Delegates can't be controlled.

<sup>3</sup> George Soros wants [a Marxist constitution](#) in place by 2020. Globalists want us in [the North American Union](#). The Newstates Constitution sets up a dictatorship and is *easily ratified* via national referendum.