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Norton, Super: Gambling with our Constitution



By Helen Norton and David Super | Guest Commentary

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Today, no one can deny the disturbing influence of money in politics. We can see it at the federal level; we can see it in the states. We can see it in what gets done and in what does not. Money's influence in politics was pervasive long before the Supreme Court decided *Citizens United*, but that decision opened the door to even greater political power for well-financed special interests.

Recognizing the problems created by free-flowing campaign cash, however, is quite different from having a viable solution. The Colorado legislature is currently considering legislation ([House Joint Resolution 1015](#) and [Senate Joint Memorial 005](#)) to address this problem, but unfortunately this legislation would likely make the problem even worse.

This legislation proposes that Colorado ask Congress to call a convention to propose new amendments to the U.S. Constitution. The legislation's advocates envision a narrow constitutional convention that would consider only an amendment to overrule *Citizens United* and allow Congress to enact more effective campaign finance legislation. We share these proponents' interest in meaningful campaign finance reform, but this is not the way to go about it.

Recall that Article V of the Constitution identifies two methods of enacting constitutional amendments. First, Congress may — by a two-thirds vote in each chamber — propose a specific amendment, and the Constitution is amended if at least three-fourths (38) of the states then ratify that amendment. Alternatively, if at least two-thirds (34) of the states ask Congress to form a constitutional convention to propose and consider amendments, then Congress must call such a convention.

But nothing in the Constitution limits such a convention to the issue or issues for which it was called. In other words, anything and everything could be on the table, including fundamental constitutional rights. Nor are there any guarantees about who would participate or under what rules. Indeed, for these reasons, no constitutional convention has been called since the first in 1787.

First, a convention could write its own rules. Indeed, because the Constitution provides no guidance whatsoever on the ground rules for a constitutional convention, fundamental questions (like how the delegates would be chosen, how many delegates each state would have, and whether a supermajority vote would be required to approve amendments) would be left wide open to political pressures and deal-making. To illustrate the importance of these issues, if those participating in the convention decided that every state will have one vote in the convention and that the convention could approve amendments with a simple majority vote, then the 26 least populous states — which contain less than 18 percent of the nation's people — could approve an amendment for ratification.

Indeed, in such a highly contentious political environment, delegates could cut deals resulting in amendments covering multiple topics. Although most constitutional amendments have addressed only a single issue, nothing in Article V requires this. Provisions considered radical or damaging, at least in some states, could be attached to highly popular proposals in a single amendment, making their passage more likely.

Second, the Constitution does not give anyone outside of the convention any authority to check or regulate it: The Constitution confines Congress's role in this process simply to calling the convention and specifying how states will ratify any resulting amendments, and it does not empower Congress to disband a convention that strays from its mandate. The Supreme Court, in turn, has declared that the process of amending the Constitution is a "political question" into which federal courts may not intervene. There is thus no way to predict what constitutional amendments the delegates to a convention might adopt.

Finally, a convention could set its own agenda, possibly influenced by powerful interest groups. In short, once a convention is called, everything in our Constitution would become immediately vulnerable. Wealthy and powerful interest groups would surely see a constitutional convention as an opportunity to enact major policy changes, and are particularly well-equipped to influence the process and press for changes to the agenda. Indeed, some claim already to have 28 of the 34 state resolutions necessary to force Congress to call a convention.

As former Chief Justice Burger wrote, a "Constitutional Convention today would be a free-for-all for special interest groups." It is precisely because of money's pernicious influence that

Colorado should not call for an Article V constitutional convention. At constitutional roulette, everyone loses — except well-financed special interests.

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