



NATIONAL FEDERALISM COMMISSION
STATE LEGISLATURES AT WORK

FAITHFUL DELEGATE MODEL POLICIES

(Approved Version 2.2)

Dear Reader:

The National Federalism Commission (NFC) (formerly known as the Phoenix Correspondence Commission) is a government commission created by the states for the states to promote effective tools for the advancement of federalism within the USA. The NFC serves as a communications hub for all 50 states to communicate and to work collaboratively.

As Article V powers in the United States Constitution is a valid authority for the states, the following document is presented to you from the NFC as a tool to both educate state legislators about Article V and to develop state legislation for a state to exercise its Article V authority.

The purpose of passing **Faithful Delegate** legislation in each state is to ensure that a state's delegate to an Article V Constitutional Amending Convention fulfills his/her role in a healthy, honorable manner.

Furthermore, Faithful Delegate legislation defuses the argument that a "Runaway Convention" would occur if an Article V Amending Convention were called and eliminates its possibility if an Amending Convention were held. While there has never been a convention that acted outside of delegate instructions, the concern continues in some circles. In the model policy, delegates are held accountable to perform their faithful duties in myriad of ways, by oath or affirmation, civil penalties, criminal penalties, and recall. As of this writing, numerous states have this type of legislation in place; and if twenty-five states were to implement such a policy, a "runaway" convention would not be possible for all practical reasons.

These sections are included in the following pages for your consideration:

- A summary version of "Faithful Delegate" Model Policies.
- A detailed version of "Faithful Delegate" Model Policies.
- A spreadsheet, current as of December 15, 2024, listing the Faithful Delegate policies in place in some of the fifty states.

If you have any questions about this document or would like to discuss faithful delegate model policies for an Article V Amending Convention further, please contact the NFC at 916-624-6476 or reach out via this link: <https://nfcommission.gov/contact-us/> .

SUMMARY VERSION OF “FAITHFUL DELEGATE” MODEL POLICIES

Section 1 details the process for selecting your state's delegates to a convention for proposing amendments to the United States Constitution under Article V. Delegate selection can be included in a Faithful Delegate bill or in a separate bill but should be in statute. Your draft should be unique to your state. Legislation for a state that tips heavily toward one party likely will not be the same as a state that changes majorities regularly. Bi-partisan involvement in the delegate selection is encouraged. Your selection process should include a recall mechanism for delegates by the appointing authority.

Section 2 pertains to the oaths your state's delegates will be required to take. Since the oaths for a Convention Proposing Amendments and a State Ratification Convention are so similar, it makes sense to include the oaths for both in the same bill. Requiring an oath to be taken emphasizes the solemnness of the actions the delegate is agreeing to undertake.

Section 3 outlines civil and criminal penalties to which your state's delegates will be subject if they violate their oath and/or the faithful delegate law.

Civil Penalties: These should be strong enough to assuage any misbehavior. You should select a class or level of penalty consistent with the seriousness of the responsibility.

Criminal Penalties: As with civil penalties, the class or level of crime, and possible incarceration times should be in keeping with the gravity of the responsibility.

SIMPLE MODEL POLICY
For Article V Amending Convention
Faithful Delegate Instructions, Recall and Sanctions Legislation

Definitions:

“Article V Convention” means either a “Convention for Proposing Amendments” or a “State Ratification Convention” as expressly provided in Article V of the Constitution of these United States.

“Article V Application” means a [*Joint, Concurrent*] resolution passed by the Legislature of [*State*] requesting Congress to call a convention under Article V of the Constitution of these United States for the purpose of proposing amendments.

“Delegate” means a person selected for a “Convention for Proposing Amendments” or a “State Ratification Convention” by the State Legislature or elected by the people for a state ratification convention respectively.

“Instructions” means instructions given by the state legislature to Delegates before and during a Convention for Proposing Amendments, or given by the voters to Delegates who pledged to vote YES or NO at a ratification convention. [*This is the feature that keeps delegates faithful.*]

“Runaway Amendment” means proposing an amendment that is unrelated to the subject matter of the Convention, counter to any legislative instructions, or violates the people’s vote for or against ratification.

Section 1. Delegates will be selected by a joint process as determined by the State House and Senate leadership if not previously dictated by statute. [*If already in statute, insert statute reference.*]

Section 2.

- A. Every Delegate to a Convention for Proposing Amendments shall be required to take the following oath:

“I do solemnly swear or affirm that to the best of my abilities, I will, as a Delegate to this convention, uphold the Constitution and laws of these United States and the State of [*Insert State*]. I will take no action or vote on any amendment outside of the convention call or the instructions of the [*Insert State*] Legislature. I understand that any action outside of these instructions will be voided, I will be recalled, and subject to [*Criminal/Civil*] penalties.”

- B. Every Delegate to a Convention for Ratifying Amendments shall be required to take the following oath:

“I do solemnly swear or affirm that to the best of my abilities, I will, as a Delegate to this convention, uphold the Constitution and laws of these United States and the State of

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[Insert State]. I will vote in accordance with my pledge when elected by the people of *[Insert State]*. I understand that taking any other action will subject me to *[Criminal/Civil]* penalties.”

Section 3. Penalties: Violation of either Sec 2A or Sec 2B shall be a *[Class/Level]* penalty and subject to *[insert time]* years of incarceration and a *[insert dollar]* fine.

Section 4. This act shall take effect upon signature of the Governor or without the signature of the Governor as provided by the *[Name of State]* State Constitution. *[This applies to bills that will become statute and does not apply to resolutions.]*

A DETAILED VERSION OF “FAITHFUL DELEGATE” MODEL POLICIES

A [*Resolution/Bill*] to Establish a Process for the Selection and Oversight of Delegates to an Article V Convention for Proposing Amendments

SECTION 1. Applicability. This [*resolution/rule*] applies to an Amendment Convention held under Article V of the US Constitution.

SECTION 2. Definitions. As used in this [*resolution/rule*]:

- A. “Advisory committee” means a committee consisting of members selected by each chamber using the process defined in this [*resolution/rule*] to perform the duties defined in this [*resolution/rule*];
- B. “Chamber” means either the Senate or the [*House of Representatives/ House of Delegates/Assembly*] of the [*legislature/general assembly*]; Note - Unicameral Legislatures should use their states’ verbiage, disregarding any reference to a second body.
- C. “Delegate” means a person selected by resolution of the [*legislature/ general assembly*] as provided herein to represent this state at an Article V Convention for Proposing Amendments;
- D. “Commissioning Resolution” means the resolution adopted by the [*House of Representatives/House of Delegates/Assembly*] and Senate of the [*legislature/general assembly*] which sets forth the names of the appointed Delegates and their commissions and instructions;
- E. “Delegation” means the group of Delegates and interim Delegates chosen by the [*legislature/general assembly*] to attend an Article V convention with the powers and duties defined in this [*resolution/ rule*];
- F. “Interim Delegate” means a person selected by the advisory committee pursuant to Section 8 to fill a vacancy in the delegation.

SECTION 3. Qualifications of Delegates. At the time of appointment and throughout the Article V Amending Convention, a Delegate shall meet the following qualifications:

- Must be a United States citizen and have been such for at least 5 years;
- Must be a resident of the state and have been such for at least 5 years;
- Must be at least 25 years old;
- Must be a registered voter in this state;
- Must not be registered or required to be registered as a federal lobbyist at any time within the last 5 years;
- Must not be a federal employee (other than a member of the United States armed forces) or contractor, nor have been such at any time within the last 10 years;
- Must not have held a federal elected or appointed office at any time within the last 10 years;

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- Must not have had any felony convictions for crimes in any jurisdiction within the last 10 years;
- Must not hold a statewide office while performing the duties of Delegate or interim Delegate. For purposes of this section, a position as a state legislator is not deemed a “statewide office.”

SECTION 4. Delegate Selection and Removal.

- *[Number]* Delegates shall be named by a resolution passed by a majority of those present and voting in a joint session of the *[legislature/general assembly]*. All Delegates shall be appointed by this process.
- The *[legislature/general assembly]* shall maintain an odd number of Delegates in the delegation.
- A Delegate or interim Delegate may be recalled and/or removed at any time and for any reason by a joint resolution of the *[legislature/general assembly]* or by a majority of those present and voting in a joint session thereof; and if the *[legislature/general assembly]* is not in session, may be recalled and suspended from their duties by the advisory committee, pending a vote of the legislature.
- A Delegate or interim Delegate shall be recalled and/or suspended by the advisory committee pursuant to a determination under Section 13 that he or she has exceeded the scope of his or her authority.

SECTION 5. Commissioning Resolution.

- A. The resolution naming the Delegates shall include their commission. The commission shall include, but shall not be limited to, the following components:
 - a. A Delegate shall not vote for or otherwise promote any change to the traditional convention rule of decision on the floor and in the committee of the whole, to-wit, that each state has one vote.
 - b. A Delegate shall not vote in favor of any proposed amendment that would alter the text of the specific guarantees of individual liberty established by the Constitution, including the original Constitution, the Bill of Rights, and the following amendments: Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-Third, Twenty-Fourth, and Twenty-Sixth.
- B. The commissioning resolution shall clearly state the scope of the Delegates’ authority, which shall be limited by the following:
 - a. if this state was not one of the two-thirds of the states applying for the Convention, the subject matter enumerated in the 34 state applications that triggered the convention; or
 - b. if this state was one of the two-thirds of the states applying for the Convention, the subject matter in this state’s application; and
 - c. any additional instructions from the *[legislature/general assembly]*, whether in the commissioning resolution or issued thereafter.
- C. The *[legislature/general assembly]* may provide additional instructions at any time via subsequent resolution, a copy of which the Clerk of the *[House of Representatives/House of Delegates/Assembly]* shall provide to each Delegate and to the advisory committee.

SECTION 6. Oath.

- A. Each Delegate shall, before exercising any function of the position, execute the following oath in writing: "I do solemnly swear (or affirm) that I accept and will act according to the limits of authority specified in my commission and any present or subsequent instructions. I understand that violating this oath may subject me to penalties provided by law. I understand that I may be recalled or suspended from my duties by the [*legislature/general assembly*] or the advisory committee."
- B. A Delegate's executed oath shall be filed with the Secretary of State.

SECTION 7. Credentials. After a Delegate's executed oath is filed with the Secretary of State, the Clerk of the [*House of Representatives/House of Delegates/ Assembly*] shall provide to the Delegate an official copy of the executed oath and the commissioning resolution, which together shall serve as the Delegate's credentials.

SECTION 8. Vacancies. Any vacancies shall be filled by the advisory committee's selection of an interim Delegate until such time as a vote by a joint session of the legislature shall select a permanent replacement.

SECTION 9. Compensation and Expenses.

- A. A Delegate shall receive the same compensation as a member of the [*House of Representatives/House of Delegates/Assembly*] of this state, prorated for length of time served.
- B. A Delegate is entitled to receive the same allowance for expenses as provided to a member of the [*House of Representatives/House of Delegates/Assembly*] of this [*State*].

SECTION 10. Emolument and Gift Prohibition.

Neither a Delegate nor an interim Delegate shall accept, during his or her time of service, any gifts or benefits with a combined value of more than two hundred dollars (\$200.00), other than from a member of his or her family and of the kind customarily granted by a member of one's family. The term "gift or benefit" shall be construed liberally to include current and future loans, lodging, food, offer of prospective employment, and other actual and prospective benefits. An employer's decision to continue paying a Delegate's current salary shall not be construed to be a gift.

SECTION 11. Quorum, Conduct, and Rule of Decision with the Delegation

- A. The Delegates within the delegation (including any interim Delegates filling a vacancy) shall choose from among them a person who shall chair the delegation, a person who shall cast the state's vote on the convention floor, and a person to speak to the media on behalf of the delegation. If the delegation so decides, the same person may exercise any two or all three functions. The delegation may designate a different Delegate to perform any function at any time.
- B. Each Delegate shall take care to avoid communicating the impression to any person

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outside the delegation that the delegation is divided on a question on which the delegation has taken a formal position, including but not limited to casting a vote.

- C. No Delegate other than the one designated to communicate with the media on behalf of the delegation shall communicate with the media about convention business during the convention or during any temporary recess or temporary adjournment.
- D. A Delegate violating Section 11(B) or 11(C) may be suspended or recalled by the advisory committee or by the [*legislature/general assembly*].
- E. Sections 11(B) and 11(C) shall not be construed to prevent a Delegate from presenting his or her opinions to the convention or debating a matter at the convention on which his or her delegation has not formally taken a position.
- F. The quorum for decision by the delegation – including the designation of Delegates for particular duties and the determination of how the state’s vote shall be cast – shall be a majority present and voting at the time the delegation is polled. No decisions shall be made and no vote shall be cast if less than a majority of the delegation votes in the poll.
- G. The rule of decision for the delegation, a quorum being present, shall be a majority of those present and voting at the time of polling.

12. Article V Delegate Advisory Committee.

- A. The advisory committee consists of the following members:
 - a. A State Senator appointed by the President of the Senate;
 - b. A State [*Representative/Delegate/Assemblyman*] appointed by the Speaker of the [*House of Representatives/House of Delegates/Assembly*];
 - c. A member of the legislature nominated by joint action of the President of the Senate and the Speaker of the [*House of Representatives/House of Delegates/Assembly*] and approved by the majority of those voting in each Chamber.
 - d. The advisory committee shall select one of its members as chair.
- B. A Delegate may request that the advisory committee advise him or her as to whether a prospective action by the Delegate would violate the commissioning resolution or any subsequent instructions.
 - a. The advisory committee shall communicate to the Delegate requesting such advice a determination within 24 hours of receiving the request.
 - b. The advisory committee may communicate such determination by any appropriate medium.
- C. The advisory committee shall have authority to hire staff and develop appropriate procedures and mechanisms for monitoring the convention, its committees, and subcommittees.

SECTION 13. Monitoring the Exercise of Delegate Authority.

- A. Whenever the advisory committee has reason to believe that a Delegate or interim Delegate has exceeded the scope of his or her authority, the chair of the committee shall

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notify the Speaker of the [*House of Representatives/House of Delegates/Assembly*], the President of the Senate, and the Attorney General.

- B. Upon the request for a determination by the Speaker of the [*House of Representatives/House of Delegates/Assembly*], the President of the Senate, or the Attorney General on whether a Delegate or interim Delegate has exceeded the scope of his or her authority, the advisory committee shall issue a determination on whether the Delegate or interim Delegate did exceed his or her authority. The determination shall be expeditiously made and immediately communicated to the person requesting it.
- C. Upon determining that a Delegate or interim Delegate has exceeded the scope of his or her authority pursuant to Section 13(A) or 13(B), the advisory committee shall immediately exercise its authority under Section 4 to remove said Delegate, and shall communicate said action and the reasons therefore to the Speaker of the [*House of Representatives/House of Delegates/Assembly*], the President of the Senate, the Attorney General, and the presiding officers of the convention.

NOTES

Items in italics are decision points in drafting.

Delegate names and credentials should be forwarded to the NFC.