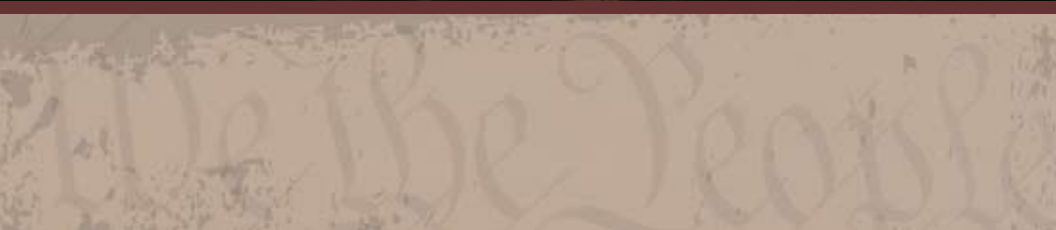




TO PRESERVE THE NATION

Reject A Modern Convention



Regardless of the definitional distinctions advocates of a constitutional convention promote, the risks of a convention in today's political morass are potentially fatal to the marvelous Constitutional Republic which was established as this nation was founded.



As a symbol of our liberty, the Statue of Liberty is used throughout this booklet to consider freedoms potentially lost in calling a constitutional convention.

“Toward the preservation of your Government and the permanency of your present happy state, it is requisite . . . that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what can not be directly overthrown . . . Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian.” (Messages and Papers of the Presidents, George Washington, vol. 1, 210)

“In tendering this homage to the great Author of every public and private good . . . No people can be bound to acknowledge and adore the invisible hand, which conducts the affairs of men, more than the people of the United States. Every step, by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency.” (Messages and Papers of the Presidents, George Washington, “First Inaugural” Address, vol. 1, 44-45)

In Federalist Paper no. 37, James Madison wrote of the hand of the Almighty in the victory of the Revolutionary War and in the bringing forth of the new constitution: “The real wonder is that so many difficulties should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution.”

A Runaway Convention???

Opinions... Opinions...

“Assertions of Convention Advocates:” reflect the general positions and opinions of many who advocate for a modern convention, and are presented in the sequence and wording proposed by the Goldwater Institute

“Other Considerations:” positions are by Scott N. Bradley

1. Assertion of Convention Advocates: Article V does not authorize a constitutional convention; it authorizes a convention for proposing specific amendments.



Other Considerations: The words from Article V of the United States Constitution read: “Congress...on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments...”

When Congress called the Convention of 1787, the convention was called “for the sole and express purpose of revising the Articles of Confederation,” thereby rendering “the federal constitution adequate to the exigencies of government, and the preservation of the Union.”

However, when the delegates gathered in Philadelphia in May of 1787, they recognized that in their role they were legally authorized to set the existing constitution aside and create an entirely new constitution. Could this be used as a precedent by a modern convention as justification for a similar action?

Based upon the actual events that occurred in 1787, is there the slightest possibility that it could happen again? Would wishful thinking and ivory tower debates prevent a modern convention from taking some action that amends the current Constitution out of existence once a convention was called? Would it be possible to leave vestiges of the Constitution untouched while eviscerating the sound principles upon which our liberty has been preserved for the past two hundred plus years, thus technically complying with the requirement that the Constitution be only amended?

2. Assertion of Convention Advocates: When the Founders drafted the U.S. Constitution in 1787, they specifically rejected language for Article V that would have allowed the States to later call for an open convention.



Other Considerations: If the nation’s modern leaders had a whit of care about “original intent” we would not be in the dangerous straits which currently face the nation! If our leaders had honored their oath of office and kept their actions within the scope and bounds established by the United States Constitution we

would not be faced with multiple TRILLIONS of dollars of debt, a debauched monetary system, schemes to redistribute American's wealth through social programs based upon extortion, world-wide military "adventurism," national policies which sanction the killing of babies before they draw their first breath, a plethora of unending violations of individual God-given rights vouched safe by the Bill of Rights, etc., etc., etc. The litany of egregious violations of "original intent" by current politicians is almost unending! And ALL would be corrected without an amendment IF our representatives kept their actions within the simple, plain English words of the United States Constitution.

If a convention is called in our era, will the current crop of politicians limit and bind themselves to debates and discussions which occurred 225 years ago? They seem unwilling to even bind themselves to the actual plain English words of the Constitution they take a sacred oath to support. The effort to destroy the United States Constitution is generational. The effort today is more highly organized, more cleverly disguised, and more powerfully promoted than ever before. Are you willing to risk the foundation principles upon which our liberty is based on the hope that current politicians will refrain from what they have become most adept at: debauching the finely honed principles of liberty we were vouched safe at such great cost?

Those who favor an Article V Convention tout their "experts" who express their opinions that such a convention could be constrained to act within narrowly defined boundaries. Many others, such as the following prominent legal minds, express their concerns about such a convention, offering a contrary opinion for a variety of reasons.

"I doubt too whether any other Convention we can obtain, may be able to make a better Constitution."
- Benjamin Franklin

Rex Lee, former U.S. Solicitor General and Brigham Young University President

Phyllis Schlafly, National Eagle Forum President and an Attorney

Warren Burger, former U.S. Supreme Court Chief Justice

Arthur Goldberg, former U.S. Supreme Court Associate Justice

Robert H. Bork, former Yale law Professor and U.S. Court of Appeals Judge

Charles E. Rice, former Notre Dame Law Professor

Christopher Brown, Professor of the University of Maryland School of Law

Neil H. Cogan, Professor of the Southern Methodist University School of Law

Jefferson B. Fordham of the University of Utah College of Law

Gerald Gunther, Professor of the Stanford School of Law

Charles Alan Wright of the University of Texas at Austin School of Law

And others have gone on record expressing their conviction that it is impossible to assure that such a convention may be limited or constrained once it has been called. Why risk our divinely inspired Constitution to the legal arguments and whims of today as we pit the opinions of one side against the other side? The risks are too high!

3. Assertion of Convention Advocates: Thirty eight (38) States must ratify any proposal from an amendments convention, requiring a broad consensus that makes sure an amendments convention cannot “runaway.”



Other Considerations: As they wrote the new Constitution in 1787, the Founding Fathers also changed the rules of ratification to facilitate its ratification, because the rules that existed under the “old” constitution, The Articles of Confederation, required 100% of the States to agree to changes and were too difficult to succeed under. Consequently, the founders determined that ratification and implementation of the new Constitution they wrote in 1787 would occur with ratification by only nine of the States. That change in the number needed for ratification was put into effect BEFORE any State Legislature ever voted to adopt the Constitution. So without ratification by the States, the ratification process was changed. Could we be absolutely certain that any new constitution brought forth by a modern convention would not include a new ratification process that would virtually guarantee its ratification?

4. Assertion of Convention Advocates: The limited scope of an amendments convention is underscored by the fact that it specifically says amendments cannot alter the equal number of votes for each State in the U.S. Senate without the consent of the affected State. This establishes that an Article V convention couldn’t simply rewrite the entire Constitution.



Other Considerations: The Convention of 1787 modified virtually every aspect of the then-existing constitution, The Articles of Confederation. The legislative branch created under the new United States Constitution only vaguely resembled the legislative branch under the Articles. And how did the executive and judicial branches morph into the new constitution without precedence? The new constitution that was written in 1787 was not bound by the limits and constraints embodied in the Articles of Confederation. No attempt was made to put the new wine in old bottles. Could a modern-day convention do the same thing?

In addition, it is interesting to note that the ONLY thing the founders said

could NOT be amended in the Constitution was equal suffrage of the States in the Senate. Consequently, in spite of the contrary assertion, everything else, including the ratification process is open to amendment by a modern convention.

Besides, due to ignorance and apathy in the national electorate, the original intent of equal representation of the States as political entities with retained jurisdictions and representation at the national level was lost when the Seventeenth Amendment was ratified. The Seventeenth Amendment gives the people additional representation at the national level in the Senate, at the expense of the States losing their representation. This in spite of the Article V stipulation “that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate” (Utah and several other States specifically rejected losing the State’s representation at the national level when the Seventeenth Amendment came before them). The States are no longer represented at the national level. Only the people are represented in both the U.S. House and Senate. Could a similar slight of hand occur which destroys the basis of our Constitution through crafty manipulation if a convention occurred in our day when the modern electorate is even more ignorant and apathetic than they were in 1913?

A slight of hand in a modern-day Constitutional Convention would destroy the basis of our Constitution.

5. Assertion of Convention Advocates: The States define the agenda of an amendments convention through their applications for the convention and through the commission of delegates. Amendments conventions can be limited to specific topics.



Other Considerations: Article V of the United States Constitution reads: “Congress...on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments...”. Is it possible to read that phrase in such a manner as to give the understanding that once the States call for a convention (regardless of the specific purposes the individual States mention as they apply for a convention) they are out of the picture and the Congress assumes all subsequent steps? In light of the unrelenting attacks on the United States Constitution today, and the relentless effort to bring about a new convention, if it is possible to read Article V in a way that assures a new convention, what is the probability it will be read and applied that way, even if it has not been applied in this manner to date?

It is interesting to note that there have been several occasions wherein “Implementation Legislation” attempting to establish rules for an Article V convention has been proposed in the Congress, and it has never been adopted. There simply are no existing rules. Any projection regarding how a conven-

tion would be carried out is simply an expression of SPECULATIVE OPINION by convention advocates regarding how a call for a convention would go forward once called.

6. Assertion of Convention Advocates: The Constitution was sold by the Founders to the ratifying states on the basis that they retained their ultimate authority over the federal government through their Article V amendment powers. James Madison in Federalist No. 43 specifically argued that states should use the power to correct errors in the Constitution. And Alexander Hamilton in the “final argument” of the Federalist Papers, in Federalist No. 85, said the Article V amendment process was the means by which the states would rein in an out-of-control federal government. One cannot take the Constitution seriously and contend that Article V was not meant to be used. It is a critical and “deal closing” element of the balance of power created by the Constitution.



Other Considerations: Remember, Article V defines two ways to change the Constitution: The first way is the ONLY way it has been changed since it was ratified: 2/3's of both Houses of Congress pass a proposed amendment and then forward it to the States for ratification. When 3/4's of the States ratify the amendment, it is part of the Constitution. The other way (which has never been done since the Constitution was ratified, but was the way the old Constitution--The Articles of Confederation--was thrown out) is a convention. That process involves 2/3's of the States applying for (requesting) a convention. When that happens, the Constitution says that Congress SHALL call a convention. Upon reaching that required threshold of 2/3's of the States, the Congress shall call the convention, and the convention will go forward.

We do not even know for certain how the Congress will count the calls. We could have multiple calls on different subjects added together. It will be almost impossible to get “identical” calls from the States, so will they add together “similar” calls? We simply do not know.

At the close of the 1787 Convention, after sitting through the arduous debates which resulted in the new constitution, Benjamin Franklin addressed the delegates, stating: “I doubt too whether any other Convention we can obtain, may be able to make a better Constitution.”

In a letter to George Thurberville dated November 2, 1788, James Madison expressed his concern if another convention should be held, writing:

“If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both

sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America, and under all the disadvantages I have mentioned.”

We do not even know for certain how the Congress will count the numerous and varied state calls for a convention.

An honest assessment of today’s political environment leads to the conclusion that Madison’s concerns must be multiplied by many orders of magnitude to begin to reflect the risks that would be associated with another such convention!

Some will argue that Madison’s term “General Convention” means something different than the type of convention which could be called under Article V of the Constitution, that it means a convention called for the specific purpose of creating a new constitution. However, “general” was often used during the founding era as pertaining to the national government as the general government. If used in that way, the term applies to any national convention to deal with the national constitution. To examine how the Founding Fathers used the term, we may examine how Founding Father Noah Webster defined the term in his 1828 American Dictionary, which defines “general” thus:

“1. Properly, relating to a whole genus or kind; and hence, relating to a whole class or order. 4. Public; common; relating to or comprehending the whole community; as the general interest or safety of a nation.”

Regardless of the exact way he used the term, Madison expresses his concern about how another convention will overstep its charter, become extremely politicized, and become dangerous to the nation. If Madison was concerned about the risks in his day, who would be so foolish to suggest that today we are in a political environment that is better suited to bring forth more sound doctrines of liberty and proper government?

7. Assertion of Convention Advocates: There is zero precedent that any convention of the States has ever “runaway” from its assigned agenda. There have been 12 interstate conventions in the history of our country. All of them stayed within their stated agenda. Even the Constitutional Convention of 1787 was not convened to “amend” the Articles of Confederation, but to “revise” and “alter” the Articles to establish an effective national government. This was fully consistent with the Articles of Confederation because the Articles authorized alterations – a term that had revolutionary significance because it echoed the language of the Declaration of Independence. The broad purpose of the Constitutional Convention of 1787 was specifically mentioned in the call of Congress and in nearly all of the commissions for the delegates for each State. The 1787 convention did not runaway at all; it did what it was charged to do – like all interstate conventions preceding it.



Other Considerations: A modern dictionary defines the word “revise” thus: “to amend or to alter.” Noah Webster’s 1828 American Dictionary defines revise: “1. To review; to re-examine; to look over with care for correction; as, to revise a writing; to revise a proof sheet. 2. To review, alter and amend; as, to revise statutes.” The assignment given to the 1787 Convention was “for the sole and express purpose of revising the Articles of Confederation.” Replacing the word “revising” with the definition in common use during the American founding era, we may understand that their assignment was to “review, alter and amend” the then existing constitution, The Articles of Confederation, not to replace it with a new constitution written from scratch. We may assume from the definitions that the assignment was not given to discard the existing constitution and write another. They were simply to amend it to make it function better. It appears that they were given the exact assignment the promoters of an Article V Convention would have us believe could not possibly result in a “runaway” convention and an entirely new constitution. But it did in 1787. Regardless of how we interpret the definitions, we know the course they took in 1787, and an entirely new constitution resulted.

However we look at it today, Patrick Henry was adamant that in writing a new constitution, under the charter which convened the convention, the 1787 Convention had completely overstepped its bounds and, in today’s vernacular, become a “runaway” convention. Speaking of the 1787 Convention, on June 4, 1788, at the Virginia Ratifying Convention, Patrick Henry said:

“That they exceeded their power is perfectly clear...The federal convention ought to have amended the old system—for this purpose they were solely delegated. The object of their mission extended to no other considerations.”

8. Assertion of Convention Advocates: The procedures for conducting an amendments convention are similar to Congress’ long-established rulemaking powers. Constitutional text, language and custom make clear that Congress calls the convention, setting a time and location; states appoint delegates by way of res-

olutions and commissions (or general state law); delegates initially vote as states at the convention; and majority votes will decide what amendments are proposed for ratification. An amendments convention is simply an interstate task force.



Other Considerations: Since we have never had a convention called under Article V of the United States Constitution, all of the processes mentioned in this assertion are purely speculation. We simply do not know, because there has never been an Article V Convention called. Again, a reasonable reading of Article V could result in the States being left completely without say in the calling, structure, rules, or purpose of the convention (there is reasonable doubt that even the Congress will be able to stipulate binding boundaries upon the convention.)

The assumption of many convention advocates is that the States will control the call to convention, and the naming of delegates. There is little justification for such a position. Read Article V of the U.S. Constitution carefully. Congress calls the convention when 2/3's of the States apply for a convention. Will the time come when any and all applications for a convention are lumped together by Congress as applications counted toward the required 2/3's threshold since the Constitution does not stipulate any nuances in how or why States apply for conventions? Could calls for a convention by different States for various and sundry reasons—a balanced budget amendment, or a term limits amendment, or a line item veto, or a flag burning amendment, for instance—be simply construed by Congress as “Application(s) of the Legislatures,” and therefore meeting the requirement stated within the Constitution for them to make the required call of the convention?

Based upon a plain English reading of Article V is there even the slightest possibility that Congress could decide that States are out of the picture once they make the call? Who of our current crop of political leaders would be named as delegates to a modern convention? Think about it! Would a new convention be operated under the concept of one state, one vote; or will California have 55 delegates and votes and Utah 6 delegate votes? Will special interest groups control or influence the decisions Congress (or even the States) makes in naming the delegates? Will a new constitution be submitted which was written by some elite “progressive” group as a “modern solution” for our government? Will a new constitution be brought forth with a new ratification methodology defined (a mere 50% of States ratify, or a democratic majority vote of the masses, or text messages for votes, or whatever inane process that could come up?)? We do not know the answers to these questions, but I am certain I do not wish to risk it!!!

9. Assertion of Convention Advocates: The limited scope of an amendments convention is similar to that of State ratification conventions that are also authorized in Article V, but no one worries about a ratification convention “running

away,” even though such a convention does make law.



Other Considerations: Article V allows Congress the prerogative of determining whether proposed amendments that have been passed by 2/3's of both houses will be ratified by either the State Legislatures, or by conventions called within the States for the purpose of ratification. The legislative or State ratification processes are not general conventions with overarching nationwide powers. On behalf of their single State they cast the vote for or against the proposed amendment. That is all. They have no power to do anything beyond expressing the State's position on the matter before them. Jurisdictionally, they may not speak on behalf of any other State.

Are you willing to risk our Constitution based upon somebody's opinion that they are right?

10. Assertion of Convention Advocates: An amendments convention, because it only proposes amendments and does not make law, is not an effective vehicle for staging a government takeover.



Other Considerations: The Convention of 1787 did exactly what this position asserts cannot be done. We look at the only true precedent we have, and we see what reality can deliver.

Conclusion:

Opinions...opinions offered on both sides. "Prominent" legal minds argue and pontificate. The risks are incalculable. Debating societies may harmlessly turn these arguments and strain at semantics, but this is the real world, and this nation will live or die based upon the trajectory this movement takes if it is launched. No one (including the most ardent advocates of a convention) can really be certain the arguments made by any who so ardently desire to call a convention will hold water and be absolutely safe. We have OPINIONS of prominent legal minds on both sides of the argument, but once the process is started rolling, there is no way to call it back. On September 13, 1994, W. Cleon Skousen wrote the following to Phyllis Schlafly: "...you were undoubtedly right in sensing a great danger if we tried to apply Article V of the Constitution during a period of the most depraved political corruption in the entire history of our country." Are we so foolish as to assume that today's environment is less politically dangerous than 1994?

There is much evidence that the Convention of 1787 took a much more dramatic step than many anticipated they would in writing an entirely new constitution when they met. Fortunately, those who gathered in Philadelphia in 1787 were honorable men who loved liberty and understood the great Americanist principles of individual God-given rights, that the purpose of government was to preserve those rights, that powers must be limited and enumerated, and that they must be

checked and balanced and divided and subdivided if tyranny was to be prevented.

The men of 1787 were uniquely suited to bring forth the magnificent work they established. And in numerous ways they recognized that the inspiration of God had been upon them as they sat and deliberated the magnificent precepts they incorporated into the United States Constitution.

Statesmen of the caliber of the American Founders are exceptionally rare today, and individuals of infinitely lesser caliber and character and understanding of the eternal principles of liberty will almost assuredly sit in any modern constitutional convention, with infinitely less desirable outcome! Where in the entire world today may we find even one or two statesmen of the character and understanding exhibited by George Washington, Benjamin Franklin, George Mason, James Wilson, James Madison, and the others who, under the inspiration of God, framed our marvelous Charter of Liberty: The United States Constitution? We will search the world in vain for such individuals. Who, today, will sit in the seats occupied by those who brought forth the Constitution of 1787? NONE I would trust!

Are you willing to risk our Constitution based upon somebody's opinion that they are right? There is no reason to approach this issue with what may become a "pull it up by the roots" approach. There are sound constitutional solutions for all of the challenges this nation faces, and none of them require the potential loss of the Constitution.

The solution is a return to the constraints of power on the federal government which exist within the United States Constitution. The problem is not with the Constitution. The Constitution is not flawed. It does not need to be changed. The problem is that we have stopped applying the Constitution. We do not have to amend the Constitution to solve this problem, and we do not have to risk a convention to bring things back into proper order. The solution is to begin again to abide within the constraints so carefully defined within the plain English words of the United States Constitution. James Madison stated that the powers of the national government were "few and well defined." Perhaps, when the people of the nation again understand that fact, the nation's leadership will be compelled to abide by their oath to uphold the Constitution of the United States.

--- Scott N. Bradley

Consider the great danger of trying to apply
an Article V Constitutional Convention during
this period of the most depraved political cor-
ruption in the entire history of our Country!

Prepared by
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To preserve the nation, we **MUST** reject all calls to hold a modern convention and insist that our representatives confine **ALL** of their actions to the few and defined powers established by the simple, straightforward, plain English words of the United States Constitution.



For the preservation of the Republic,
and the continued liberty of all!

Many voices are clamoring for a modern convention to consider changes to our marvelous United States Constitution, the document Gladstone called “The most wonderful work ever struck off at a given time by the brain and purpose of man.”

Some refer to this effort to change the Constitution as a call to a “constitution convention,” or “Con Con,” others refer to the effort as an “Article V Convention,” others call it an “Amendments Convention.” Some go to great lengths to draw distinctions between the terms. The truth of the matter is that regardless of the distinction, the risks of a convention in today’s political morass are potentially fatal to our great liberties and the proper government which was originally established at such great cost in this land.

On many occasions throughout the history of the United States there have been efforts to call a national convention to address potential modifications to the United States Constitution. Recognizing the grave dangers such a convention would pose to the principles embodied within that marvelous document, to date the nation has successfully rejected all such calls. At this perilous time in the nation’s history, the clamor for a national convention is more highly organized, more cleverly disguised, and more powerfully promoted than ever before. Many organizations are expending a great effort to foster another convention. This pamphlet is offered as a counterpoint to the efforts and assessments of any who may seek such a convention.

If any group seeking a convention succeeds in calling a convention for their special purpose, we may confidently predict an immediate explosive proliferation of calls for conventions for a myriad of purposes which are thought to be critically important by other special interest groups. In addition to the potential dangers inherent in a modern convention which are presented herein, logic, reason, and long-established and previously well-understood protocols testify that constitutions are not an appropriate supra-legislative vehicle to address matters better handled via other means which are within the limits and bounds of constitutional principle. Abusing the Constitution as a “big stick” legislative tool will shortly result in a constitution that bears no resemblance to the magnificent document which currently blesses our great nation.

To preserve the nation, we **MUST** reject all calls to hold a modern convention.

—Scott N. Bradley, PhD

