

May 12, 2016

Con-Con Bullet Points

- There are many good reasons why America hasn't had a new national constitutional convention (Con-Con) for 229 years. Historically, Americans have understood that a Con-Con would set its own rules and agenda, and could even change the ratification process just like they did in 1787. This is how we got our current Constitution. But who would the delegates be today and what special interest agendas would creep in?
- If the existing ratification process is guaranteed to stop bad amendments since it requires 3/4 of the states, how were bad amendments such as the 16th (income tax) and 17th (direct election of senators) amendments ratified?
- The Con-Con proponents' fear-mongering mantra is, "We have to do something before it's too late!" Why not follow the Constitution? It worked well when we did. The proponents don't have a plan for enforcing our current Constitution and they don't have a plan for enforcing their new Constitution.
- State legislators should reject unconstitutional federal programs. This is the proper role of state government and such rejection would largely stop federal overreach into our state.
- It's illogical to think that adding or changing rules will compel chronic rule-breakers to follow the rules. What are we going to say? "We really mean it this time!"
- We all agree the federal government is out of compliance with the Constitution. We disagree that the solution is to change the Constitution.
- The proper solution: When followed, the Constitution provides the mechanism and limitations to stop special interest spending that balloons the budget and attracts special interest electioneering. No risky constitutional convention is necessary!
- An Article V constitutional convention would enable powerful special interests to revise the Constitution in their favor!
- The 17th Amendment removed the state legislatures' check on federal abuses of power. A return is needed to the pre-17th Amendment system where the state legislatures would appoint U.S. Senators who could then rein in federal spending instead of pursuing special interest money.
- Article V gives Congress the power to bypass state legislatures and use special state conventions for ratification of any proposed amendments, giving them and their cronies influence over the process.
- Johnny-come-lately proponents of an Article V constitutional convention pretend they can predict the future and tell us exactly how this process will play out. This naiveté would be comical if it weren't so dangerous. They're making many assertions about state legislators being in control of the process that are simply not supported by Article V and are disputed by the Congressional Research Service, numerous law professors, constitutional scholars, and judges who have warned about the dangers of a modern convention and the damage it could do to our Constitution and Bill of Rights.
- *Black's Law Dictionary* is America's most trusted law dictionary. Its definition of constitutional convention: "A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution." Renaming it a "Convention of States" doesn't change what it is. Furthermore, the 5th edition (1979) of *Black's Law Dictionary* specifically refers to an Article V convention as an example of a "constitutional convention."

- The only precedent for an Article V convention is the 1787 Constitutional Convention in Philadelphia where they changed the existing constitution's rules of ratification as found in Article XIII of the Articles of Confederation: "[T]he Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State." However, the convention lowered the bar for ratification from "the legislatures of every State" to "the conventions of nine States" in Article VII, thus cutting Congress and the state legislators out altogether. They did this to make it easier to ratify the new Constitution.
- Something ignored by Con-Con proponents is the actual text of Article V: the only power guaranteed to state legislatures is to apply; if 2/3 apply for a convention, Congress calls the convention; and the convention proposes amendments (plural). It doesn't say state applications set the convention agenda or even that states will select the delegates, even though proponents claim states will control the whole process. On the contrary, consider the last clause of Article I, Section 8: "[The Congress shall have 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." Based on this "necessary and proper" clause, Congress would have the power to not only call an Article V convention, but to determine other important aspects of a convention, such as time, location, delegate apportionment, immunity, pay, etc. Furthermore, the Congressional Research Service has stated, "while the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states." ("The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Congressional Research Service, March 7, 2014)
- State legislators cannot control what will happen if an Article V constitutional convention is called. In its 2014 report on the dozens of bills introduced in the House and Senate between 1973 and 1992 to establish procedures for Article V conventions, the Congressional Research Service says that typically these bills specified that delegate apportionment would be based on the electoral college model, which would give each state a proportional number of delegates and votes out of 535, based on population. This is in stark contrast to the Con-Con proponents' claim that each state would have one vote in an Article V convention.
- State legislation purporting to set delegate apportionment, pay, penalties, etc., appears to be an unconstitutional usurpation of congressional authority in light of the necessary and proper clause of Article I, Section 8. Will federal courts decide this dispute or will Congress just ignore state legislatures like they do now?
- Without discussing the role of the Federal Reserve and curtailing its ability to simply print money and buy influence, any proposal to address financial issues will fail. The Fed has an uncanny ability to manipulate procedures and move money around to avoid oversight. Why is this never addressed by proponents of a Balanced Budget Amendment (BBA) Article V constitutional convention?

- Why should we take the unnecessary risk of a runaway convention that could rewrite the very Constitution that has enabled a greater amount of freedom and prosperity for a greater number of people than any other system ever devised by man.
- The proposed amendments won't solve problems, they'll just open the door for mutilating our Constitution and Bill of Rights.
- We don't need to change the Constitution. We need to obey the Constitution.