An Article V Convention to Propose Amendments: a Perilous Gamble

The U.S. government operates with limited, defined, and separated powers. The Constitution grants broad authority through brief phrases, with the Necessary and Proper Clause allowing Congress to enact laws essential to executing those powers. The Tenth Amendment provides that powers NOT delegated to the federal government belong to the states or the people.

Article V empowers Congress to propose amendments or call a convention for proposing amendments. Congress also has their pick of two ratification options. The convention's scope is broad, equivalent to Congress's power to propose amendments. States can request a convention, but their role is otherwise minimal. Even the opportunity of state legislatures to ratify amendments is subject to the will of Congress.[1]

> **"The Congress**, whenever two thirds of both houses shall deem it necessary, **shall propose amendments to this Constitution**, **or,** on the application of the legislatures of two thirds of the several states, **shall call a convention for proposing amendments,** which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, **or** by conventions in three fourths thereof, as the **one or the other mode of ratification may be proposed by the Congress . . ."**

Proponents of an Article V convention claim state legislatures will select and control delegates, but these assurances—"pie crust promises"—lack constitutional backing. Congress, not the states, holds the "necessary and proper" power to determine delegate numbers, selection methods, and the apportionment of representation.[2] Should a convention be called, delegates may owe their positions to Congress or the voters in a special election, not to state legislatures. Historical precedent suggests delegates could even include sitting members of Congress.

Congress presumes that it will fund the convention, further cementing federal authority; federal agencies are authorized to provide materials and staff to support the convention; and delegates are presumed to be functioning in a federal office. In some Congressional proposals, delegates are, therefore, given federal protection against arrest during the proceedings of the convention.[3]

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[1] The alternate ratification method has been used only once—to repeal Prohibition. Doubting state legislatures' support, Congress opted for ratification by conventions. Notably, Utah, the nation's most anti-liquor state, produced a convention that unanimously voted for repeal, casting the decisive vote. The organizer of this convention is unclear, but given the outcome, legislative involvement seems unlikely. State Ratifying Conventions, and the Twenty-First Amendment

[2] "Congress has not, in general, embraced the theory that its role is purely ministerial or clerical, and that its work is done once a convention has been called. On the contrary, it has traditionally asserted broad and substantive authority over the full range of the Article V Convention's procedural and institutional aspects from start to finish." The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress, page 18

[3] Most convention procedures bills provided that delegates and convention staff would be compensated from, and miscellaneous convention expenses covered by, appropriated funds. Delegates would be provided with immunity from arrest in most instances during the convention. Various federal agencies were authorized to provide a reasonable level of material and staff support for the convention as requested. The Article V Convention to Propose Amendments: Contemporary Issues for Congress, pg 21

Moreover, an Article V convention would arguably derive its legitimacy under the Constitution from "We the People," not the states.[4]

HJR 9 and similar state resolutions offer little assurance to legislators. Under the Supremacy Clause, any conflicting state law is void if Congress asserts its "necessary and proper" authority. The same applies to sunset clauses in Article V resolutions and the idea of using resolutions to pressure Congress into "behaving." This is risky when some interest groups are pushing for general aggregation of applications.[5] The Constitution mandates that Congress "shall" call a convention if ⅔ of states apply, but it is silent on expiration or uniformity of applications, leaving key decisions beyond state influence. Once "called," a convention cannot be "un-called."

Proponents claim the Founders expected states to use Article V, but historical records suggest skepticism. While they recognized the need for amendments, Madison feared procedural difficulties might arise related to the form, quorum, etc of a convention. On the same day, a motion to hold state conventions for review, followed by a second federal convention, was unanimously rejected, with Roger Sherman warning of inevitable confusion and discord.[6]

A convention's outcome is uncertain, but its risks are clear. Calling one could deepen divisions, spark legal battles, and destabilize the nation. Proponents claim states will have equal representation, yet most congressional proposals favor representation by population, not "one state, one vote." This issue alone nearly derailed the 1787 convention. Compounding the risk, groups across the political spectrum support an Article V convention with vastly different goals—from eliminating the Electoral College and gun control to balanced budget amendments and term limits—turning representation and voting distribution into a political flashpoint.

Our Constitution is the foundation of American unity—tampering with it, especially in turbulent times, is a perilous gamble[7] that should be avoided at all costs.[8][9]

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[4]The Articles of Confederation's preamble cited a "perpetual Union between the states." The Constitution intentionally pivoted to "We the People." In a letter to Edward Everett, James Madison emphasized that both state and national governments derive their power from the same people within each state, making state and federal government uniquely separate but equal. Madison to [Edward Everett], 28 August 1830

[5] The "Article V Records Transparency Act of 2017," introduced in the 115th Congress, would require the National Archives to compile all state applications for, and rescissions of applications for, an Article V Convention. The Article V Convention to Propose Amendments: Current Developments

[6]"Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans— And the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated— He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Congress over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the Sword, he should give the plan his support." The Records of the Federal Convention of 1787, Sept 15,1787

[7] A Dangerous Adventure: No Safeguards Would Protect Basic Liberties from an Article V Convention
[8] The Dangerous Hubris of Chile's Constitutional Convention
[9] The Uncertain Future of Constitutional Democracy in the Era of Populism: Chile and Beyond