

## A new Constitutional Convention.

The “third rail” of Constitutional issuography these days (is that even a word?) is the subject of a new Constitutional Convention (aka, a “Con-Con”). This subject is so volatile, so controversial, that most commentators are forced to hire armed guards once they have spoken or written about it. Wearing body armor 24/7 is not unheard of. No issue can so predictably spoil a wedding or family reunion. So what’s this intrepid writer to do? Well, write about it, of course - duh!

Article 5 of the Constitution reads: *“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; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”*

Over its 225-year history our Constitution has only been amended 27 times. Ignoring the first 10 Amendments, which were proposed and ratified as a group in 1791, that’s an average of one amendment only every 13 years (and one of those amendments was simply to undo a previous amendment. Which one? Look it up!), so some say the Constitution is long overdue for a major overhaul, or at least an oil change. Whole books have been written on the subject and they generally outline what the writer would propose changing if only given the opportunity. Author Christopher Phillips’ *Constitution Café* takes as its premise that the Constitution *“was crafted well over two hundred years ago by a flawed group of elites in a very different country from the one we inhabit today,”* so you can see where he’s going. Larry Sabato’s book *“A More Perfect Constitution”* is subtitled *“Why the Constitution must be revised: ideas to inspire a new generation.”*

According to Wikipedia, every state except Hawaii has applied for an Article V Convention at one time or another and the number of states so applying has nearly reached the required threshold several times. On at least four occasions, Congress, rather than risk a convention taking away control of the amendment process, pre-emptively proposed the amendment then being suggested.

Proponents of a Con-Con, such as [callaconvention.org](http://callaconvention.org), point to a Congress mired in partisan politics and *“unable to move the country forward.”* One prominent supporter of a Con-Con is the American Legislative Exchange Council (ALEC). ALEC hired noted Constitutional scholar Robert Natelson, author of *“The Original Constitution”* (a book I greatly respect) to write *“Proposing Constitutional Amendments by a Convention of the States: A Handbook for State Lawmakers.”* Largely due to pressure from ALEC and allied groups, the Virginia legislature came very close this year to passing a resolution calling for a constitutional convention to propose a Balanced Budget Amendment. Doing so would have left us only one state short of the required 34 states.

Three of the 32 states that have issued calls (for a balanced budget amendment) have subsequently withdrawn (or rescinded) these same calls, and that would seemingly leave us five states not two states short. However, after two more states issue calls, advocates of the Con-Con intend to challenge the rescissions of the three and throw them into the courts while going ahead with a convention. How they intend to *“go-ahead”* with a convention without Congress acting is not clear. However, apparently a [“Proposed Constitution for the Newstates of America”](#) stands ready to be placed on the table at such a convention.

Those opposing a Constitutional Convention contend that our bevy of national problems, particularly our unsustainable national debt, and lack of a balanced budget are not caused by an out-of-date Constitution but rather by a bloated, ineffective government and a Congress without the integrity of self-control. Former California representative Peter King famously observed that “The Federal Government can do most anything in this country.” If so, why worry about so-called “limitations” of an “out-of-date” Constitution? Why bother amending the Constitution when no one seems to pay any attention to it anyway? Even our esteemed Chief Justice John Roberts, when announcing his “Obamacare” decision found that instead of being limited to the purposes of the eighteen enumerated powers in Article 1, as at least some scholars contend, Congress apparently has the authority to tax for any purpose whatsoever, including to fund a healthcare program. Amazing!

The most common objection to a Con-Con is the risk of a “runaway convention” where the delegates end up proposing amendments outside their original charter, the perfect example being the convention of 1787 which was convened to propose changes to the Articles of Confederation and instead proposed an entirely new governmental structure. Article V authorizes the states only to apply for a convention and then Congress must convene it. Once underway, however, the convention makes its own rules and could reject any or all restrictions on its activity and at least try to declare its power supreme by virtue of some direct authority from the Constitution.

In the ALEC paper, Natelson explains it this way: *“In the more extreme versions of the runaway scenario, the convention’s proposed amendments reinstate slavery, abolish the Bill of Rights, or otherwise completely alter the American form of government. To prevent the states from blocking their proposals, the convention also changes the method of ratifying to a method they find more congenial. While the Congress, the President, the courts, and the military all inexplicably sit by and permit this coup d’état to unfold, the convention imposes a new, more authoritarian, government on America.”* As you can surmise, Natelson believes the threat of a runaway convention is unfounded for five reasons:

- State legislatures can correct or recall any delegates attempting to exceed their power,
- Congress would not be obligated to agree to a convention’s radical “Mode of Ratification” since the Constitution explicitly give Congress authority over choosing the mode or ratification,
- The courts could declare void a complicit Congress’s decision to agree with the convention’s radical proposals, and
- The states could refuse to ratify a radical set of proposed amendments. Natelson concludes his analysis with:
- In the unlikely event that the states insisted on ratifying a proposal they (1) did not apply for, and (2) was issued contrary to their instructions, then the courts—or, indeed, any government agency— could treat the “amendment” as void.”

Natelson uses the verb “could” instead of “must” or even “would” to explain the response to this “runaway” convention; I find that less than reassuring. This is not the guarantee I’m looking for that a “runaway” convention’s proposals would die a natural death.

Callaconvention.org states *“From the Right and the Left, citizens are increasingly coming to recognize that our Republic does not work as our Framers intended.”* Absolutely right! But the solution lies not in a Con-Con but in better vetting of the candidates who desire to represent us. Insisting that our Congressmen and women hold to a Founder’s view of the Constitution, and throwing them out of office when they deviate from same will go a long way toward restoring our government to its designed operation. For your reading pleasure, may I suggest: “The Effort to Dismantle our Constitution” found at: <http://www.sweetliberty.org/issues/concon/effort2dismantle.htm>.