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Natelson's Article V

Robert Natelson (Photo credit: The Original Constitution)

America's Founders felt certain their work would at some future time need amending, so they wrote Article V of the Constitution, which offers two methods of amending said Constitution. The first method provides for amendments to originate in Congress. The second method provides for the states to request a convention for introducing amendments.

Why two methods? The original 1787 draft called for only one method, in which all proposed changes would come through Congress. But one of the delegates, George Mason, expressed concern that Congress might become oppressive and therefore "no amendments of the proper kind would ever be obtained by the people." At that point the delegates moved "to require a convention on the application of 2/3 of the states." This second method was agreed upon, and that's how we got the convention avenue of Article V.

The first method, through Congress, is quite simple. All 27 amendments to our Constitution have come through this avenue. The second method, by convention, is not so simple; it requires applications from two-thirds of the states. Since no Article V Convention has ever been held, and since we know so little about this method, those who promote a modern convention exploit that information gap when calling for a convention.

One promoter of such a convention is former law professor Robert G. Natelson, who heads the Independence Institute's Article V Information Center and is the author of *The Law of Article V*.

Natelson is also the author of the February 25, 2021 *Epoch Times* article "How a Convention of States Really Works." Here, he gets off to a bad start. There is no such thing as a "Convention of States." That definition is nowhere found in the U.S. Constitution. But it's a nice clause for supporting a second myth, one that purports to grant convention-level powers to the state legislatures.

By designating an Article V Convention as a "Convention of States," Natelson can posit a second falsehood, that "the states control the convention." Presumably, those words are meant to assure state legislators that they can safely support a convention while under the false impression that it will be limited by the state resolution calling for it.

Why is this pure poppycock? Because a state legislature is not superior to the convention that created it. Conventions operate under the supreme authority of the people. But Natelson reverses that doctrine

and assures legislators that they can make the changes and control the convention. That idea was repudiated by James Madison during the Convention of 1787. According to the *Record of the Federal Convention*: "Mr. Madison thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads in the State Constitutions, and it would be a novel and dangerous doctrine that a Legislature could change the Constitution under which it held its existence."

In his *The Epoch Times* article, Natelson wrote, "In an earlier, widely shared essay I contended that state legislatures should require Congress to call a 'convention of the states.' Article V of the Constitution empowers such a convention to propose constitutional amendments to correct federal dysfunction."

Again, Natelson applies his misleading title: "Convention of the States." Then he says Article V "empowers such a convention," but Article V grants no power whatsoever. Then he offers a reason for amending the Constitution, "to correct federal dysfunction," but Article V makes no provision for a state application to specify a purpose. Why? Because the state merely applies for the convention, and when called, the convention itself sets its own agenda, makes its own rules, and proposes its own amendments. That's exactly what George Washington did at the outset of the 1787 Convention.

Natelson also wants term limits for Congress, and asks, "Why hasn't it happened?" Then he answers: "Because Congress refuses to propose a term limits amendment, and we haven't had the guts to call a convention to propose one."

Sorry, Mr. Natelson, but that is not the reason. We do not have term limits because we already had term limits under the Articles of Confederation and they did not work. They led to a perpetual lame-duck Congress. Instead of term limits, the Founders gave us frequent elections. Roger Sherman, who was one of the most important members of the 1787 Convention, explained, "Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the Government, by preserving that good behavior, because it ensures their re-election." Limited terms, which were then called "ineligibility for re-appointment," were discussed extensively during the 1787 Convention and rejected unanimously by our Founders.

Claiming Congress doesn't have "the guts to call a convention" shows Natelson's real intent. He sees term limits as a hot button to spur on his quest for a convention. By contrast, Alexander Hamilton understood the spurious notion of term limits and explained, "Nothing appears more plausible at first sight, nor more ill-founded upon close inspection."

State legislators who refuse to support an Article V Convention are often accused of not obeying the Constitution. But, again, it is important to understand that Article V establishes a process. Its choices are 100-percent optional. Only after 34 states have applied for a convention does any rule come into force. At that point, Congress must call the -convention.

Natelson and his cohort don't like us referring to an Article V Convention as a "Constitutional Convention." And why are they so adamant about that? Because they want state legislators to see Article V as something less than the Convention of 1787, something incapable of making major changes in our system of government. Once Natelson establishes that notion, he takes his prey to the next level of absurdity and alleges that "there are really two kinds of conventions."That's right — he wants everyone to think that an "Article V Convention" is one kind and that a "Constitutional Convention" is

another. Amazing. For more than two centuries, no historian ever knew that!

As with his other allegations, Natelson's two-convention ploy does not hold up against the official record. When drafting the text of Article V, Roger Sherman explained that the delegates were "leaving future Conventions to act in this matter, like the present Convention according to circumstances." Our Founders left no doubt that the Article V avenue brings about the same type of Constitutional Convention in which they were currently engaged. It matters not whether an Article V Convention proposes one amendment or 20, the power is inherently there and it has no limits.

The power is in the people: Contrary to the belief of some calling for a new Article V Convention, James Madison did not believe state legislatures could or should control a convention. The wishes of state legislatures would provide no safeguard over such a convention if it is called.

Convention lobbyists like to cozy up to state legislators and tell them that Article V was created just for them, for the day when the federal government would exceed its powers and state legislatures would need the convention avenue for reining in the federal government. Clever line, but it's entirely false — it cannot be found in the official record. Moreover, it makes no sense. Everyone knows overgrown government is not the fault of our Constitution, but comes from reckless violations of it. Only a vigilant electorate can keep our elected officials in line. You cannot amend the Constitution to remove a power that was never granted.

The most incredible claim of Natelson and his convention backers is that conventions of the Article V variety are common, ordinary events that take place all the time. Hundreds of interstate meetings, they say, are tantamount to an Article V Convention. Hey, no big deal — we have such conventions whenever two or more states need to deliberate on boundaries, highways, or bridges, etc. This is utter nonsense. A Constitutional Convention is an exclusive assembly of a free people engaged in the government-making or amending process. It is not an ordinary state-to-state compact.

We hear repeatedly that nothing bad could come out of a convention because if there were anything bad in it, three-fourths of the states would never ratify it. But doesn't everyone know that each convention is sovereign and makes its own rules? Today's convention is no less powerful than yesterday's, and delegates would have the same leeway George Washington, James Madison, and Alexander Hamilton had when they changed the ratification number from 13 states to nine. The language in today's Constitution does not control tomorrow's convention. There are no limits on the sovereignty of the

people, and therefore a new convention could, and likely would, establish a new mode of ratification.

The 21st Amendment — the repeal of prohibition — tells us a lot about "reliance" on the ratification process. Utah, along with many of the southern states, had no intention of legalizing the sale of liquor, so they did not intend to ratify the 21st Amendment. But Congress and the liquor lobby polled the dissenting states and formed ratifying conventions of those who favored repeal. In Utah, for example, they found 27 people willing to ratify, formed them into a convention, and passed the 21st Amendment against the will of the great majority of citizens. Please beware: Do not rely on popular opposition to kill a bad amendment, whether it comes through Congress or a convention.

Absent the caliber of men who founded our country, Article V has lain dormant for over two centuries. That's because the convention avenue raises two serious questions: What, in our constitutional structure, needs to be changed? And who, in a modern convention, could be trusted with such awesome power?

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