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Republicans and Democrats Working Together to Rewrite the Constitution

Many conservative Americans who support a modern-day constitutional convention, a.k.a. a “Convention of the States,” sincerely believe that the states will be able to control what happens should such a convention be convened and that the agenda would be limited to a predetermined “conservative” agenda, such as balancing the federal budget. Yet the evidence continues to mount that this is mere wishful thinking. As a little-publicized meeting late this spring clearly demonstrated, conservative state legislators who fashion themselves the founding fathers of a new convention recognize that they must make their “tent” big enough to include liberal Democrats in order to succeed.



On June 12-13, 2014, the Indiana State Legislature hosted a meeting of state legislators, composed of both Republicans and progressive Democrats, to prepare for a future Article V “convention of the states.”

This meeting was the product of the Assembly of State Legislatures (ASL), which describes itself as “a bipartisan group of currently serving state legislators from across the country who recognize that the states have a responsibility under federalism to work together to solve problems of national concern.”

Formerly known as the Mount Vernon Assembly and renamed at the June meeting, ASL appears to be the brainchild of Republican State Representative Chris Kapenga of Wisconsin. Both Kapenga’s and ASL’s desired goal is to bring about an amendments convention as provided for in the Constitution’s Article V: “The Congress ... 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.” (Emphasis added.)

Said and Unsaid

The June 12 ASL session opened with prayer and pledge in the House of Representatives Chamber of the Indiana Statehouse, followed by elaboration by Kapenga on some of the background of Article V and how the states can utilize it to amend the Constitution. Asserting that this would be a purely state-led and state-directed process, Kapenga proceeded to quote from Alexander Hamilton’s *The Federalist*, No. 85, which addresses Article V: “The words of this article are peremptory. The Congress ‘shall call a convention.’ Nothing in this particular is left to the discretion of that body.”



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Since “*The Federalist Papers* are not [the] governing documents of our country,” as Democratic State Representative Raymond Dehn of Minnesota pointed out, Kapenga and other pro Article V convention advocates cannot use the above quote from Hamilton to definitively lay to rest any concerns or fears of potential congressional involvement and influence over an actual Article V convention.

Article I, Section 8, Clause 18 of the Constitution, which unlike the *Federalist Papers* is the nation’s primary governing document, specifically states: “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 office thereof.” (Emphasis added.)

Article I, Section 8 of the Constitution lists the various powers specifically granted to Congress, among which are the power to “establish Post Offices and post Roads,” “declare war,” and “provide and maintain a Navy.” Regarding the latter, since Congress has the power to “provide and maintain a Navy,” Article I, Section 8, Clause 18 grants Congress the power to do what is “necessary and proper” to exercise this power — meaning the establishment of naval academies to train officers and sailors; the creation of shipyards to construct, refit, and repair warships; and the hiring and training of engineers to build, design, and operate those vessels. Clause 18 is not limited to only those “foregoing powers” listed in Article I, Section 8, but to “all other powers vested by this Constitution,” including Article V.

This means that under Article I, Section 8, Clause 18 Congress is granted the power to “make all laws which shall be necessary and proper for carrying into execution” Article V’s constitutional mandate that Congress, “on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments.” Constitutionally, Congress has and will execute all the powers it deems necessary for calling a convention. This would likely include choosing the location and date of the convention, allocation of delegates from the states (whether proportional by population, congressional district, one per state, etc.), the method of ratification for any proposed amendments to the Constitution, and all other preliminary rules associated with the convention.

Put simply, the power to establish such rules resides exclusively with Congress. It is not a state-led process as Kapenga and others in the pro-Article V camp maintain.

Of course, once an Article V convention actually convenes, it would then be free to create its own agenda, including possibly even coming up with a new ratification process, as was the case with the Constitutional Convention of 1787. But this historical fact underscores even more the fact that the states cannot bind the work of the convention.

Speaking about the nature and purpose of the two-day Indianapolis meeting during its opening session, Kapenga told the state legislators in attendance that the purpose of their meeting was to continue preparing for the calling of a “Convention of the States,” which would need to be officially called by the passage of joint resolutions by each state authorizing delegates from the various states to serve at the convention for the purpose of writing rules for a future Article V Convention of the States.

Referring to this future Convention of the States that would write rules but not propose amendments, Kapenga emphasized that this convention would “not trigger Article V authority or involvement of Congress, because remember the Article V authority is to amend.” He continued, “We are not touching amendments at *this convention* [referring to the future Convention of the States for writing rules]. *This* [referring to the future Convention of the States for writing rules] *is a write the rules convention.*”



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(Emphasis and Editor's notes added.)

Kapenga and the other state legislators behind the ASL view the future Convention of States as being a "new legislative body," the same legislative body as an Article V Convention of the States.

Page three of the ASL's "Committee Responsibility Form," which was distributed at the Indianapolis meeting, states:

It should also be clearly stated that we see a Convention of the States as the same legislative body, no matter if convened for the purpose of an Article V Convention for Proposing Amendments, or for any other purpose. It is the same precedent as if the Indiana House, for example, was in regular or special session; it is still the same body even though it is convened under a different purpose.

Thus, according to Kapenga and ASL documents, the Convention of the States is a continuous legislative body just as the houses of state legislatures or the two houses of Congress are as they go from one session to another. However, where in Article V of the Constitution does it say that the "Convention for proposing Amendments" is an ongoing "legislative body," one that can convene, meet, and pass resolutions at the discretion of the state legislatures, and only requiring Congress' approval (at the behest of 34 states) before proposing amendments to the Constitution? The short answer is nowhere.

These claims are nowhere to be found in the text of the Constitution. Yet Kapenga is considered to be one of the "conservative" Republicans involved in this process. If this is what reputed conservatives are claiming about an Article V convention, then how much further will pro-Article-V-convention progressive Democratic supporters go?

Democrats in the Digs

What progressive Democratic supporters, you may ask? Wasn't this supposed to be a purely conservative Republican effort from start to finish? That's what the pro-Article-V-convention advocates originally claimed early on in their presentations to numerous Tea Party groups and on popular conservative talk-radio shows. Now, however, their true colors, Red and Blue (Republican and Democrat), are bleeding through as some of those who originally gave the impression that this would be a "conservative" Republican effort are now proudly proposing to work together with the Left and boasting of the Article V movement's "bipartisanship."

Of the 109 state legislator delegates shown in the seating chart for the ASL's Indianapolis "rules convention," 11 were Democrats. At the end of the two-day meeting, Kapenga promised that "we're going to change" the political makeup of the ASL, i.e., attract more Democrats. Missouri State Senator Jason Holsman, a participant in the Indianapolis ASL convention as co-chair of the Rules and Procedures Committee and regarded as the "greenest Democrat" in the Missouri Legislature, stressed the need to bring in and involve more Democrats, minorities, and women. Senator Holsman elaborated on the need to "change the complexion of the room," a goal that "conservative" Republican Kapenga of Wisconsin shares.

What effect would attracting more Democrats have on the outcome of an Article V Convention of the States? Would it still be limited to a single subject or amendment, such as a balanced budget



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amendment? After all, ASL views its recent “rules convention” as constituting the “same legislative body” as an actual congressionally authorized Article V convention.

Whereas most conservative Republican state legislators favor a balanced budget amendment to the Constitution, the inclusion of more liberal Democrats will surely also mean the inclusion of a more liberal progressive agenda. Why else would liberal Democrats participate in an Article V convention unless they expected to make their own desired changes to the Constitution? Would liberal Democratic delegates seek the adoption of President Franklin Delano Roosevelt’s “Second Bill of Rights” that he proposed in his 1944 State of the Union Address? Would they go after the Supreme Court’s 2010 decision in *Citizens United*, in order to proclaim that “money does not equal speech,” that “corporations are not people,” and that all elections must be publicly financed? This type of campaign finance reform amendment is what left-wing Article V convention groups, such as Wolf-PAC, advocate.

Between 2013 and 2014, 16 state legislatures introduced resolutions requesting that Congress call a convention to propose variations of Wolf-PAC’s campaign finance amendment. The legislatures of Vermont and California passed the nation’s first two Wolf-PAC Article V convention applications in 2014 with two more states, Minnesota and Illinois, passing it in their respective state Senates. In fact, one of the Democratic participants at the ASL’s Indianapolis rules convention was Minnesota State Representative Raymond Dehn, who not only cosponsored SF 17, the Minnesota Senate version of the Wolf-PAC application, but also was the lead sponsor of the House version, HB 276. On the first day of ASL’s Indianapolis meeting, Dehn introduced himself as the “most left” leaning legislator present.

Both Minnesota’s SF 17 and HB 276 that Dehn sponsored read in part:

BE IT RESOLVED by the Legislature of the State of Minnesota that it requests that Congress propose an amendment to the Constitution that shall substantially read as follows:

- (1) The rights protected by the Constitution of the United States are the rights of natural persons only.
- (2) Any entity, including any organization or association of one or more persons, established or allowed by the laws of any State, the United States, or any Foreign State shall have no rights under this Constitution and are subject to regulation by the people, through Federal, State, or local law.
- (3) The privileges of any entity, including any organization or association, shall be determined by the people, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.
- (4) Federal, State, and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate’s own contributions and expenditures, to ensure that all citizens, regardless of their economic status, have access to the political process, and that no person gains, as a result of their money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure.
- (5) Federal, State, and local government shall require that any permissible contributions and expenditures be publicly disclosed.
- (6) The judiciary shall not construe the spending of money to influence elections to be



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speech under the 1st Amendment.

Dehn's resolution further affirms itself as an Article V application:

BE IT FURTHER RESOLVED that if Congress does not propose the amendment language or substantially similar amendment language as contained in this resolution, the Legislature of the State of Minnesota applies to the Congress of the United States to *call a constitutional convention* for the purpose of proposing the amendment language or substantially similar amendment language as contained in this resolution as an amendment to the Constitution of the United States. [Emphasis added.]

Despite Kapenga's denial that a "Convention of the States" and a "constitutional convention" are the same thing, the text of this Article V application, cosponsored and introduced by a leading ASL delegate, demonstrates otherwise.

What effect would a constitutional amendment such as the one above sponsored by Dehn ("no rights under this Constitution") have on the legal standing of (say) Hobby Lobby? On June 30, 2010, this Christian-owned corporation won a landmark decision in the Supreme Court over its refusal to participate in the ObamaCare mandate requiring it to provide abortion-inducing contraceptive drugs for its employees. Under Dehn's Wolf-PAC amendment, Hobby Lobby and other corporations like it would have no constitutionally protected rights. Are these the type of architects we want to be amending or rewriting the Constitution?

Despite the inclusion of pro-Wolf-PAC supporters such as Dehn in the ASL's ranks, Representative Chris Kapenga and Senator Jason Holsman are eager to invite even more Democrats to further change the future makeup of the room. Why such a bipartisan eagerness to invite the Left to help make changes to the nation's Constitution? The answer might lie in an e-mail from Michael Farris' Convention of States, a project of Mark Meckler's Citizens for Self Governance (CSG).

In an e-mail from Eric Burk, the Grassroots Coordinator for CSG's Convention of States Project, Burk expressly states: "The plain and simple truth is that unless we can get both support from Republicans and Democrats, we cannot hope to get our application passed in 34 states."

If the Right is making such bipartisan concessions now, before an actual Article V convention has convened, imagine how much further they would be willing to compromise at a second constitutional convention. What exactly would the results of a new, modern-day, "great compromise" be?

Those who love the Constitution should be wary of Article V convention advocates who all too easily give false assurances as to the safety of such a convention. The Constitution need not be amended, but rather should be defended by upholding it. Changing the Constitution will not correct man's failure to properly interpret or willingly obey it. Only through an informed electorate and the educational efforts of grassroots constitutionalist organizations dedicated to the preservation of the Constitution will this latest bipartisan assault on the Constitution be thwarted, assuring the continued blessings of liberty for America's posterity.



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