



Written by [Christian Gomez](#) on January 23, 2018

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## The Left Wants a Con-Con Too

Twenty-eight states have “live” applications to Congress to call a convention to propose a Balanced Budget Amendment (BBA) to the U.S. Constitution, as of January 2018. Although such a convention has never before been convened to propose any of the existing amendments to the Constitution, Article V of the Constitution states that it can be done “on the application of the legislatures of two thirds of the several states” (that is, 34 states). And when that threshold is reached, Article V stipulates that Congress “shall call a convention for proposing amendments.”



The most recent of these 28 applications for a BBA constitutional convention (Con-Con) to pass was from the legislature of Wisconsin. The Wisconsin BBA Con-Con application — [Assembly Joint Resolution 21](#) — passed along strongly partisan lines without a single vote from a Democratic legislator. In fact, the Article V convention movement is primarily regarded as a conservative Republican initiative by both its supporters, who promise it is the solution to curb liberal big government, and by detractors on the Left, who fear a Republican rewrite of the Constitution.

In some cases the mostly liberal opposition from left-wing groups such as Common Cause have incidentally helped convince Republican legislators that a Con-Con or convention of states is a good idea. However, most conservative and even self-proclaimed constitutionalist supporters of a convention may be surprised to learn that there are also liberal and progressive Democrats gunning for an opportunity to get their hands on the Constitution and make their own changes to it at a convention — even one initiated by Republicans with ostensibly “conservative” objectives. Regardless if one believes it or not, the Left wants a Con-Con too!

### Same Old Lies

Liberal Democratic opposition to a BBA should not be conflated with opposition to a Con-Con. While it is true that the George Soros-backed Common Cause opposes a BBA Con-Con and rightfully even warns how such a convention could be analogous to opening Pandora’s Box — putting the entire Constitution and Bill of Rights on the table — they were supporters of a Con-Con just a few years ago. Prior to 2015, Common Cause supported resolutions in state legislatures, such as Maryland’s Democracy Amendment in 2014, which included provisions calling on Congress to call a constitutional convention to propose the amendment. Instead of being for the BBA, Common Cause supported a Con-Con to reverse the Supreme Court’s 2010 decision in *Citizens United v. FEC* in order to “get money out of politics” and instead have public-financed elections.

In fact, some left-wing organizations remain committed to a Con-Con for the very same reason that Common Cause was. Among these left-wing organizations are Get Money Out-Maryland, Move to



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Amend, Wolf-PAC, and Wyoming Promise. The most prominent of the four is Wolf-PAC, founded by producer and host of *The Young Turks* Cenk Uygur.

Like groups on the Right pushing for a convention, Wolf-PAC makes a pitch that their convention would be limited to a single-subject amendment. Likewise, Wolf-PAC brushes aside the real concerns of a “runaway convention,” going so far as to deny the historical fact that the delegates to the original 1787 Philadelphia Convention exceeded their mandates to revise the then-governing Articles of Confederation (which fortunately turned out well for us, giving birth to the present Constitution). They also perpetuate the false-assurance narrative that any amendments produced at the convention would require the ratification of three-fourths of the several states.

Facts are stubborn, especially those cemented in history. The truth is that the same “safeguards” used to assuage the concerns of legislators today about a “runaway convention” also existed in Article XIII of the Articles of Confederation (AoC) during the Philadelphia Convention. Like today’s ratification requirements in Article V of the Constitution, stipulating that proposed amendments only become part of the Constitution when “ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof,” Article XIII of the AoC specifically stated that “any alterations” had to “be agreed to in a Congress of the United States, and be afterwards confirmed by the *legislatures of every state.*” (Emphasis added.)

The AoC had an even higher standard for safeguarding itself from alteration than the Constitution does today. However, even with that safeguard in place, the delegates to the Philadelphia Convention did more than simply make alterations or revise the AoC. Not only did they scrap this mode of ratification, in favor of a lower threshold, they also ratified the Constitution under it. In other words, the Constitution was ratified by its own mode of ratification *prior* to the ratification of that mode. On September 13, 1788, with only 11 of the 13 states having ratified the new Constitution, the Continental Congress passed a resolution declaring that it “had been ratified.”

Ever since the 1787 convention, historical precedent has been on the side of a runaway convention, rather than a totally safeguarded one, meaning that a modern-day convention could propose bad amendments or even a totally new constitution and force it on the American people by way of creating and utilizing a new mode of ratification. There goes the three-fourths ratification requirement and safeguard.

Nevertheless, Wolf-PAC, just like the Convention of States Project (COS) on the Right, says that can’t happen, despite the fact that it already did. In fact, Cenk Uygur often belittles those who suggest that this could happen again. However, in 2011 while attending the Harvard University Constitutional Convention Conference (ConConCon), in which both the Left and Right were invited to discuss how they could use a constitutional convention to their own benefits, Uygur briefly interviewed Harvard Law Professor Lawrence Lessig, one of the leftist Con-Con enthusiasts who spearheaded the gathering. When Uygur noted that the original convention was a “runaway convention” and that it produced the current Constitution, Lessig gleefully responded, “Let’s get some more runaway conventions going.” To which, Uygur cheerfully replied, “exactly.”

A video of this exchange is presently available on *The Young Turks* YouTube channel. The video, entitled “[Professor Lawrence Lessig at ConConCon](#),” runs for a total of three minutes and 24 seconds.

On the one hand, Uygur says that a “runaway convention” can’t happen, but on the other hand, he



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agrees with someone who says that more are needed. So which is it? Well, if reversing *Citizens United* to have publicly funded elections was all that the Left wanted to change in the Constitution, they might have a leg of credibility to stand on.

Getting money out of politics, reversing *Citizens United*, and having publicly funded elections is just the *beginning* of what the Left wants to change in the Constitution.

## ***The Nation's Progressive Angle***

To see a litany of proposed amendments the Left would like to see added to the Constitution, one need look no further than the weekly archliberal *The Nation* magazine. The über-leftist publication for progressive and Marxian ideas recently came out in favor of a constitutional convention under Article V, in its September 20-27, 2017 issue.

Richard Kreitner, who is on *The Nation* magazine's editorial staff, wrote the article entitled "[The US Constitution Is Over 2 Centuries Old and Showing Its Age](#)," followed with the subtitle, "To fix our broken system, we need a new constitutional convention." The article states that because most constitutional amendments proposed by Congress don't get ratified, "A convention of states, therefore, is the best remaining option for sorely needed constitutional reforms."

Like Uygur, *The Nation* also reached out to Lessig. Not only did Lessig perpetuate the same dishonest talking point as Wolf-PAC and COS that a truly "crazy" amendment, as he put it, would not make it past three-fourths of the states for ratification, he was also quoted as saying, "I don't fear a so-called runaway convention." Later in the article, author Kreitner admitted, "The left shouldn't be afraid of a 'runaway convention.' It should welcome one."

Just how far does *The Nation* want a convention to run away? In addition to the aforementioned amendment to overturn *Citizens United*, the article advocates for an amendment to do away with the Electoral College, relying instead entirely on the national popular vote to elect the president and vice president.

"It's difficult to imagine a new convention producing a political system more skewed toward rural states than the one we have now," *The Nation* writes about the prospect of abolishing the Electoral College at a convention.

The anti-republican tendencies of progressives pushing for "democracy" would further make the states superfluous, adding to the 17th Amendment, which took away the power of the state legislatures to choose their state's own U.S. senators and changed the system to one where senators are elected by popular vote, meaning the states no longer had any legislators safeguarding their powers. Likewise, the direct election of the president and vice-president threatens to erode what little remaining influence the states have on the federal government. Instead of keeping the United States as a republic, it would be transformed into a united *people's* democracy.

Under a national popular vote amendment, future presidential candidates would only need to campaign in large metropolitan cities such as L.A., New York City, and Chicago, while skipping whole states such as Wyoming and Oklahoma, where votes would be irrelevant to the outcome.

"Throughout American history, there have been hundreds of attempts to abolish the Electoral College. All began in Congress, and all failed. It's time to try another way," *The Nation* writes, implying a Con-



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Con as that other way.

Like COS, the Left would also like to have term limits on Supreme Court justices. As for doing away with presidential life appointments of justices, *The Nation* supports the suggestion of some liberal constitutional scholars for nonrenewable 18-year terms, which would allow for every president to nominate two justices per term.

Channeling FDR and Universal Declaration of Human Rights architect Eleanor Roosevelt's "freedom from want," aka "second generation rights," *The Nation* further envisions: "Other issues now pressed by the left — the right to health care, education, housing, the vote, even a basic income — could also be raised in a convention of states."

In fact, if one thinks that *The Nation* magazine's Con-Con demands are far-fetched and not to be taken seriously, note that the overwhelmingly liberal Democratic-majority state legislature of Hawaii has already tried to implement some of these ideas.

In Hawaii's 2012 legislative session, liberal Democratic state legislators introduced [House Concurrent Resolution 114](#), a radical leftist Con-Con application that sought to repeal the Second Amendment, declare ObamaCare to be constitutional, and abolish the Electoral College.

The key excerpts of Hawaii's H.C.R. 114 (2012) read:

Whereas, the Legislature supports the proposal and ratification of the following amendments to the United States Constitution:

- (1) The repeal or modification of the Second Amendment to strengthen firearms restrictions;
- (2) A declaration of the constitutionality of the federal Patient Protection and Affordable Care Act, including the individual mandate requiring the purchase of health insurance;
- (3) An amendment to Article I, Section 5, to prohibit the supermajority cloture requirement under Rule 22 of the United States Senate for ending floor debates and filibusters, to facilitate a more reasonable voting standard for cloture;
- (4) An amendment abolishing the electoral college established under Article II, Section 1, and providing for the direct election of the United States President and Vice President by voters; and
- (5) An amendment to Article II, Section 2, Clause 2, to require that Senate confirmations of appointments of officers of the United States be made by a simple majority vote within sixty days of the nomination.

BE IT FURTHER RESOLVED that this Concurrent Resolution constitutes a continuing application in accordance with Article V of the United States Constitution until at least two-thirds of the legislatures of the several states have made application for a constitutional convention that is limited to consideration of the amendments to the United States Constitution enumerated in this Concurrent Resolution.

Fortunately, the resolution failed to pass and was left in committee, where it ultimately died; however, it reveals just how far some on the Left are willing to go for an Article V convention. Don't expect the Left, progressives, and Democrats to sit idly by at a convention as Republicans make changes to the law of the land. Both *The Nation's* Con-Con article and Hawaii's H.C.R. 114 from 2012 demonstrate the type of Con-Con the Left wants.



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## Gunning for the Second Amendment

In addition to Hawaii's H.C.R. 114 (2012), others on the Left also want to take aim at the Second Amendment. One of the other participants at the Harvard ConConCon was then-Texas Wesleyan Law School Professor Mary Penrose, who currently teaches at Texas A&M University School of Law. While speaking at the 2013 UConn School of Law Second Amendment Symposium, Penrose said gun violence required "drastic measures" and affirmed that "there is not a single amendment that is absolute.... No constitutional right is sacred." She continued, "It's time today, in our drastic measures, to repeal and replace that Second Amendment." As for her method of choice for repealing and replacing the Second Amendment, Penrose said, "My solution goes through the Article V process ... through the states model."

Replace it with what? In the May 2014 issue of the Connecticut Law Review, Penrose wrote an article entitled "[A Return to the States' Rights Model: Amending the Constitution's Most Controversial and Misunderstood Provision](#)," in which she calls for repealing and replacing the Second Amendment via an Article V constitutional convention.

In her article Penrose writes, "I feel compelled to put forth a modest proposal to amend the Second Amendment so as to strengthen its presumed protections." Penrose continues, "Article V permits us to amend the Second Amendment to replace it with something much more applicable to our modern times." To see just how "modest" Penrose's proposal is, read it here, as it appears in her article:

### PROPOSAL: Twenty-Eighth Amendment to the United States Constitution

Sec. 1: The Second Amendment to the Constitution of the United States is hereby replaced immediately with this new Amendment.

Sec. 2: Congress shall make no law regulating or otherwise restricting the use, ownership or transfer of guns and weaponry. Congress retains, however, the sole power to regulate and restrict all weaponry intended for military use, including tanks, drones, bombs, and fully automatic guns and weaponry. No such restriction or regulation may be made on the basis of race, sex, national origin, or religious heritage.

Sec. 3: Existing federal gun control laws regulating felons in possession or persons under indictment for domestic violence are not affected by this Amendment. Such existing laws remain valid, but no new regulations may be initiated at the federal level except as provided in Section 2 of this Amendment.

Sec. 4: Each State has the power to regulate or restrict the use, ownership, and transfer of all non-military style weaponry, including all semi-automatic guns, within its borders. No such restriction or regulation may be made on the basis of race, sex, national origin, or religious heritage.

Sec. 5: This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by Congress.

Space does not permit a thorough examination of Penrose's proposed 28th Amendment; however, you can judge for yourself whether it meets your satisfaction.

In his book *Six Amendments: How and Why We Should Change the Constitution* (2014), former Supreme Court Associate Justice John Paul Stevens also took a shot at the Second Amendment,



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proposing that it be changed to read as follows: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms *when serving in the militia* shall not be infringed.” (Emphasis added.) The addition of these five words would essentially allow for the criminalization and disarming of law-abiding citizens unless they are serving in the “militia,” by which liberals such as Justice Stevens mean the National Guard rather than the historical definition simply referring to the average citizen.

## The Article V-less Convention?

Another law-school professor who wants to use an Article V convention is Boston University School of Law Professor Jack Beermann, who is also a contributor for the liberal online HuffPost (formerly the Huffington Post). In a piece for HuffPost, entitled “[Can We Abolish The Electoral College?](#)” posted on December 12, 2016, Beermann uses no subtlety when expressing his disdain for the Electoral College. “The Electoral College is a by-product of slavery and a close cousin of the anti-democratic instincts of the Framers of the Constitution,” the law professor writes.

Admittedly upset by how “the majority of Americans who voted for Hillary Clinton are not up in arms over the Electoral College,” Beermann writes that the “Electoral College may be amenable to a legislative fix, but a constitutional amendment is the only way to ensure change.”

“The real cure for the Electoral College,” according to Beermann, “is a constitutional amendment abolishing it and awarding the presidency to the winner of the popular vote.”

Inspired by how the Framers of the Constitution “originally set out in the late 1780s to amend the Articles [of Confederation],” but instead “quickly turned to a complete re-write and replacement,” and also by how they ignored the required unanimity provisions of its Article XIII in order to ratify the new Constitution with only nine states, Beermann asks, “Why couldn’t we do the same?”

To eradicate the Electoral College, Beermann prescribes that a “group of populous states could convene a constitutional convention, invite representatives of all fifty states, and adopt a new Constitution *without abiding by Article V’s process.*” (Emphasis added.) In other words, never mind the arduous and tedious task of having to convince enough state legislatures to make the required applications to Congress to call a convention to propose this amendment, just convene it anyway!

And as if that wasn’t enough, Beermann further suggests utilizing that illicit convention to draft an entirely new constitution, supposedly based on the current Constitution, just minus the Electoral College *and* eliminating the equal suffrage of states in the Senate! In his own words, Beermann boldly elaborates:

The twenty most populous states contain about two-thirds of the population of the United States. They could *draft a new Constitution*, based on the current Constitution but without the Electoral College *and perhaps with a revamped Senate with larger states having three Senators and smaller states having one.* And they could provide that *the new Constitution would go into effect if ratified by fifteen of those twenty states, or by states representing a specified percentage (say, sixty percent) of the population.* [Emphasis added.]

Wow, where does one even begin to unravel that? Under Beermann’s “new Constitution,” states such as California and New York would have *three* U.S. senators compared to states like Wyoming, Nebraska, or Kentucky’s *one*. One wonders which Kentucky senator Beermann would prefer to see gone, Mitch

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McConnell or Rand Paul? Regardless of who, the surviving senator from the Blue Grass state would still be outnumbered by California's Kamala Harris, Dianne Feinstein, *and* perhaps Barbara Boxer *redux*. And as *The New American* has previously warned about a potential Article V convention, the threshold for the mode of ratification in Beermann's Con-Con would be further lowered from the currently required "three fourths of the several states" to as low as just 15 of the 20 most populous states, to say nothing of the other 30 lesser-populated states. And this, ladies and gentlemen, is what we mean when we say a "runaway convention."

Like both Lawrence Lessig and *The Nation* magazine, Professor Beermann wants not only a constitutional convention but a "runaway convention" too. Read Beermann's article — it truly speaks for itself.

## Recap the Reality

The Left wants a Con-Con, too, so let us recap and tally what new proposed amendments we have accumulated thus far:

- Getting money out of politics/overturning *Citizens United* (Get Money Out -Maryland, Move to Amend, Wolf-PAC, and Wyoming Promise);
- Abolishing the Electoral College, providing for the direct election of the president and vice-president (*The Nation*, Hawaii's 2012 H.C.R. 114, and Professor Beermann);
- The right to healthcare, education, housing, and a basic income (*The Nation*);
- Repealing (and replacing) the Second Amendment (Hawaii's 2012 H.C.R. 114, former Justice Stevens, and Professor Penrose);
- Making ObamaCare and the individual mandate constitutional (Hawaii's 2012 H.C.R. 114);
- Prohibiting supermajority cloture in the Senate (Hawaii's 2012 H.C.R. 114);
- Simple majority vote for Senate confirmations (Hawaii's 2012 H.C.R. 114); and
- Providing more-populous states with three U.S. senators and less-populous states with only one senator (Professor Beermann).

To the conservative grassroots activist, we ask, "Do you still want that convention of states?" The ramifications of just some of these proposed amendments by the Left — let alone all of them — are far-reaching and would fundamentally alter the fabric of our Constitution and country. In his book *Republic, Lost: The Corruption of Equality and the Steps to End It* (2015), Lawrence Lessig writes, "The key is a simple compromise. We get to consider our proposals if you get to consider yours." The Left's demands may be ambitious, but they may consider a trade-off with those on the Right who are desperate for a balanced budget amendment or any other Republican-desired amendments.

Recognizing this threat to the Constitution from both the Left and the Right, The John Birch Society has been at the forefront in educating voters about the potential risks of a Con-Con. The John Birch Society has been a leader in encouraging constituents to contact their state legislators to oppose Article V convention application resolutions and to instead support the passage of resolutions rescinding past applications. Art Thompson, CEO of The John Birch Society, told *The New American*, a JBS affiliate:

If you are confused about the entire process of a Con-Con, just remember one thing: The federal



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government at all levels ignores the Constitution. That is why we have the problems that we do. They will continue to ignore it and any new amendments until the American people force them to obey the Constitution through the ballot box.

If lawmakers are circumventing the Constitution now, there is no reason to believe that any new amendments intended to curb out-of-control big government would be adhered to. Instead, amendments such as those proposed by the Left could reshape our government from a republic into a progressive leftist democracy.

Thompson continued, “The emphasis should be on their oath of office being upheld, not changing the Constitution — after all, it isn’t the Constitution that is defective, it is they who are implementing it. They are the ones who have to be changed.” Rather than Article V, The John Birch Society advocates the use of Article VI — that is the oath of office to support the Constitution and the Supremacy Clause that only recognizes those laws that are made in “pursuance thereof,” i.e., in support of the Constitution as the law of the land.

Those laws that are not made in “pursuance thereof” (such as ObamaCare, for example) are therefore invalid, and elected officials have a moral obligation under their Article VI oath not to implement or abide by such legislation, but rather to interpose or nullify such actions at the state level.

However, if the Left gets the Con-Con that it wants, such as the one we’ve outlined above from *The Nation* magazine or Hawaii’s H.C.R. 114, laws such as ObamaCare and federal gun-control legislation *will be* in pursuance of the Constitution.

Therefore, for the sake of protecting individual liberty and republican government as enshrined in the Constitution, it would behoove conservatives and constitutionalists to recognize that the Left wants a Con-Con, too. To prevent a left-wing constitutional convention, take action through involvement in educational-action grassroots organizations such as The John Birch Society to stop all types of constitutional conventions. Otherwise, when future generations of students look back and study the Constitution’s Framers they’ll see names like Uygur, Lessig, and Beermann.

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