



Written by [Larry Greenley](#) on March 9, 2015

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The Solution Is the Constitution, Not Article V

With a surge of pressure being put on state legislators this year to apply for an Article V convention, this article provides three reasons to oppose all such constitutional convention applications.

“The federal government ... can do most anything in this country.”

— Representative Fortney Hillman “Pete” Stark (D-Calif.), July 24, 2010



Back in the tumultuous days of ObamaCare town hall meetings in the summer of 2010, a constitutionally astute attendee at a Hayward, California, town hall asked her congressman, Pete Stark, a very pointed question: “If this [ObamaCare] legislation is constitutional, what limitations are there on the federal government’s ability to tell us how to run our private lives?”

After a long pause, the congressman haltingly answered, “I think that there are very few constitutional limits that would prevent the federal government from rules that could affect your private life.”

His questioner interrupted, saying, “The Constitution specifically enumerates certain powers to the federal government and leaves all other authority to the states or the people.... So my question is, how can this law be constitutional? But more importantly than that, if they can do this, what can’t they?”

At this point, the audience burst into enthusiastic applause.

After the applause died down, Stark answered her with this now-famous response: “The federal government, yes, can do most anything in this country.”

Then, speaking over the numerous disapproving catcalls of the audience, the intrepid questioner summed up: “You sir, and people who think like you, are destroying this nation!”

Once more, the audience burst into vigorous applause.

A four-minute video of this exchange was posted on YouTube where it quickly went viral.

Limiting the Government With Enumerated Powers

Stark’s questioner deftly summed up an important aspect of how the Constitution limits government: “The Constitution specifically enumerates certain powers to the federal government and leaves all other authority to the states or the people.”

Thomas Jefferson clearly stated this principle in a letter to Albert Gallatin, June 16, 1817: “Congress [has] not unlimited powers to provide for the general welfare, but [is] restrained to those specifically enumerated.”

Or, as James Madison put it in *The Federalist*, No. 45:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.



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Although powers are delegated to the several branches of the federal government throughout the Constitution, when we speak of the enumerated powers of the government, we're usually thinking of Article I, Section 8, where most of the powers delegated to Congress are listed one by one in 18 clauses. Some examples of these powers are: "To lay and collect taxes ... To regulate commerce with foreign nations ... To establish a uniform rule of naturalization ... To coin money, regulate the value thereof ... To constitute tribunals inferior to the Supreme Court ... To declare war ... To raise and support armies ... To provide and maintain a navy."

What's more interesting than what's in the list of enumerated powers is what's not in the list. For example, Congress is not granted the power to set up a quasi-governmental agency, such as the Federal Reserve (established by Congress in 1913), that prints paper money. The Founders were very familiar with the evils of paper money from the disastrous experiences of the various independent American states (ex-colonies) and the Continental Congress with issuing paper money. The expression "not worth a Continental" dates from those days and refers to paper money issued by the Continental Congress during the War for Independence. Congress is only given the power to "coin money, regulate the value thereof," not print unbacked paper money; therefore, the Federal Reserve should be abolished on the grounds that Congress had no constitutional authority to create such an institution.

Examples of other government agencies and programs created by Congress without being authorized by the Constitution are ObamaCare, the U.S. Department of Education, the U.S. Environmental Protection Agency, the U.S. Department of Energy, foreign aid, membership in the United Nations, etc. Eliminating all such unconstitutional agencies and programs would go a long way toward reining in the federal government.

Clearly, the Founders gave us a Constitution that limited the federal government by only delegating specific enumerated powers to it and reserving all powers not so delegated to the states or the people, as stated so emphatically in the 10th Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Therefore, the Constitution provided for very strict limitations on the federal government by only granting it specific, enumerated powers, and reserving all other powers to the states or the people. It's even been estimated that 80 percent of federal spending has no constitutional basis.

As you can see, Representative Stark's persistent questioner was very faithful to the Constitution and its enumerated powers' limitations on the government. On the other hand, Stark represented the current state of mind of most of our elected officials that "the federal government ... can do most anything in this country."

After a century or more of increasing disregard for the Constitution's limitations on government, this is where we are. The majority of public officials, and very regrettably, the majority of voters, now act as though the government's power is essentially unlimited. Stark is actually mainstream, but ever so untactful in expressing himself. Yes, there are some notable exceptions, such as the widespread support for the right to keep and bear arms; however, these exceptions serve to prove the rule.



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The Article V Convention Movement

There's a very important issue that is becoming more and more prominent in state legislatures in recent years. It goes by several names, such as an Article V convention, a constitutional convention (often abbreviated as a Con-Con), a convention of the states, or a convention for proposing amendments. All of these terms refer to a provision in Article V of the U.S. Constitution whereby if two-thirds of the states apply to Congress for a national convention for proposing amendments, then Congress shall call such a convention.

The stakes are very high with this Article V convention issue! Will we preserve and restore the Constitution that has secured our rights for over two centuries? Or, will we subject it to the Article V convention process and risk harmful changes that very well could end our heritage of freedom and prosperity?

An Article V convention is the second method provided in the Constitution for proposing amendments. The first method is for both houses of Congress to approve a proposed amendment by at least a two-thirds majority vote. Once an amendment is proposed by either method, Article V prescribes that such a proposed amendment be sent to the states for ratification, with Congress having the option to mandate ratification by either the state legislatures or by special state conventions. In either case, three-fourths of the states must ratify a proposed amendment before it can be added to the Constitution.

Twenty-seven amendments have been added to the Constitution since 1787. All of them have been added via the first method (congressional proposal), and none have been added by the second method (convention proposal).

Although there have been sporadic applications from states for an Article V constitutional convention ever since the early days of our constitutional Republic, there was a real flurry of applications to hold a convention for proposing a balanced budget amendment (BBA) in the 1970s and early 1980s. By the time that there were 32 state BBA convention applications (two short of the required two-thirds), a reaction occurred in the 1980s that first stalled the BBA convention movement at 32 states, then began influencing states to rescind (take back) their BBA convention applications, based on a well-founded fear that such a convention could become a "runaway convention" that could lead to harmful changes in the Constitution.

By 2011, 16 states had rescinded their BBA convention applications, leaving only 16 states with "live" BBA convention applications. However, in recent years some states that had rescinded their applications have reapplied for a BBA convention, and some new states have approved BBA convention applications, giving us a current total of 25 states with "live" BBA convention applications.

There are also other initiatives to apply for an Article V convention, such as for proposing amendments to limit the power and jurisdiction of the federal government, or to limit the terms of congressmen, or to reverse the Supreme Court's *Citizens United* decision concerning corporate campaign donations, etc.

One, Two, Three

Although any specific initiative (BBA, term limits, limiting corporate political donations, etc.) should be subjected to great deliberation and scrutiny, our focus in this article will be on three reasons why we believe we must oppose all Article V convention applications at this time in our nation's history.



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1. The Constitution Is Not the Problem.

Constitutional convention proponents appear to be very concerned about upholding the Constitution. They emphasize how they want to preserve the Constitution by utilizing one of its articles to amend the Constitution. Nonetheless, it's revealing that they utter barely a peep about restoring the limitations on government provided by the Constitution's enumerated powers. They imagine that we can continue to allow the great bulk of unconstitutional government programs to continue on pretty much as before.

For example, the BBA Article V convention proponents only want to tweak the system by adding a balanced budget amendment to the Constitution. They think they can fix the present state of constitutional anarchy by imposing fiscal responsibility without restoring the enumerated powers. This notion is akin to expecting to see water run uphill. How can you "rein in" the government when you're unwilling to make it follow the rules (i.e., the Constitution)?

We must correct all those Article V convention proponents who constantly refer to the need to rein in our "out-of-control" government without addressing the root cause. What we are actually facing is an "out-of-compliance-with-the-Constitution" government. Therefore, the Constitution is not the problem, and changing the Constitution with an Article V convention is not the solution.

The only true solution, as daunting as it may appear, is a large-scale, grassroots, constitutional education program that would inform the electorate sufficiently to demand adherence to the Constitution from their representatives. Without such an informed electorate, no form of constitution, whether our current Constitution, a revised constitution, or a completely rewritten constitution, will work.

As James Madison stated in a speech at the Virginia Ratifying Convention on June 20, 1788:

But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks — no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea.

Or, as Thomas Jefferson said in a similar vein in a letter to Colonel Charles Yancey on January 6, 1816: "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."

What Madison and Jefferson are emphasizing in these quotes is that an informed electorate is essential for preserving our freedom under any form of government with elected officials.

2. All Article V Conventions Would Have the Inherent Power to Be Runaway Conventions.

To their great credit, most state legislators have voted down most Article V convention applications over the past 30 years, based on their belief that such a convention could easily become a "runaway convention" that could make harmful changes to the Constitution. In truth, all Article V conventions would have the inherent power to be "runaway conventions" that could propose harmful revisions to the Constitution, as well as provide for new methods for ratification (based on the precedent of the 1787 Convention) that would increase the likelihood that the harmful revisions would be adopted.

As an example of providing for new methods of ratification to increase the chances of success, Article V of the Constitution of 1787 stipulates that three-fourths of the states are required to ratify a proposed amendment before it can be added to the Constitution. This replaced the much higher bar of requiring



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unanimous agreement of the states for amending the Articles of Confederation. However, the Founders departed from the three-fourths requirement with the Constitution itself, requiring only nine states out of 13 for ratification, which is even less than the three-fourths requirement of Article V. A new Article V constitutional convention could change the ratification requirement from three-fourths of the states to a simple majority of the states, or even to a simple majority in a national referendum of U.S. citizens. Moreover, even if the current ratification requirements were not changed, Congress could still opt for special state ratifying conventions for the purpose of doing an end-run around the state legislatures.

Such constitutional conventions would consolidate the inherent powers of a free people, whose right “to alter or abolish” our government is enshrined in the Preamble of the Declaration of Independence:

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The Founders acted on the basis of this right when they declared independence from England in 1776 and went on to establish a new government under the Articles of Confederation, and again at the Constitutional Convention of 1787 (and subsequent state ratifying conventions) when they established a new government under the Constitution. Based on the right of the people to “alter or abolish” our government and the precedents of 1776 and 1787, an Article V convention would therefore be empowered to rewrite the Constitution without any limit on its action. In this sense such a convention would be superior to Congress, the executive branch, and Supreme Court, or any state legislature as well.

In *The Federalist*, No. 78, Madison justified the legitimacy of the 1787 Constitutional Convention by referring to the “fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, *whenever they find it inconsistent with their happiness.*” (Emphasis added.)

Therefore, on the one hand, we acknowledge the transcendent blessings we’ve received from the “altering and abolishing” of previous forms of government represented by the Declaration of Independence of 1776 and the Constitution of 1787. However, on the other hand, we must warn against the great dangers to our freedoms and rights that would be posed by an inherently unlimited Article V convention at this time in our nation’s history when there is insufficient support among the people for enforcing even our present Constitution. In short, we’ve got no business creating an open-ended constitutional convention process when we have way too many Pete Starks among our federal and state legislators and way too few constitutionally astute voters like Stark’s questioner!

3. An Article V Convention Would Enable Powerful Special Interests to Revise the Constitution in Their Favor.

In 1996, the Institute for Advanced Studies in Culture at the University of Virginia published “The State of Disunion — 1996,” a survey of the American public’s attitudes toward government, politics, morality, etc., based on 2,000 face-to-face, in-depth interviews. One striking finding from this survey was that 81 percent of Americans agree with the statement: “Our country is run by a close network of special interests, public officials, and the media.” This attitude was up from just 60 percent of the population in 1976. It is likely that the percent would be even higher today.



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So it would be pretty safe to say that 80 percent or so of Americans today believe that our government is run by powerful special interest groups. This intuitive belief by a large majority of Americans faithfully reflects the underlying reality, as documented in the pages of this magazine over the years, that our government is extensively influenced by powerful special interest groups such as Big Business, Big Labor, Big News Media, the Education Establishment, Foundations, Internationalist Foreign Policy Organizations, Big Political Donors, etc. As just one example, the article, “Council on Foreign Relations” (available online at [TheNewAmerican.com](#)), published in the August 3, 2009 issue of this magazine, characterized the amazing degree of influence exercised by just this one internationalist foreign policy organization over our government as follows:

Chief among these groups is the Council on Foreign Relations (CFR), the most visible manifestation of what some have called the American establishment. Members of the council have dominated the administrations of every president since Franklin D. Roosevelt, at the cabinet and sub-cabinet level. It does not matter whether the president is a Democrat or Republican.

It is these special interest groups that over the last century or so have influenced public officials to usurp powers not granted in the Constitution, and simultaneously have influenced huge numbers of voters to accept those usurpations.

Proponents of an Article V convention assure us that delegates appointed by state legislatures can propose amendments, the amendments can be ratified by the states, and the resulting amendments will miraculously rein in our “out-of-control” federal government. This starry-eyed scenario is a major fairy tale — a fairy tale that could destroy our Constitution. Not only do special interests have extensive control over the federal government, they also have powerful influence over state legislatures. The power elites mentioned above learned how to elect and influence large numbers of federal and state legislators a very long time ago. You don’t believe it? Just try working with other grassroots activists to stop the special interests’ Common Core education standards juggernaut in your state, and see how far you get!

As another striking example of just how pervasive special interests’ influence is over state legislatures, consider the current campaign by multinational corporations and internationalist foreign policy organizations in cooperation with the Obama administration and Republican leaders in Congress to merge the United States into a trans-Pacific union and a trans-Atlantic union via the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) agreements. Such mergers would mean the end of our national independence and personal freedoms as secured by the Constitution. See the cover story, “Trading Away Their Oaths,” in the February 16 issue of this magazine ([available online at TheNewAmerican.com](#)) for more information on this topic.

Nevertheless, the American Legislative Exchange Council (ALEC), which boasts of nearly 300 corporate and private foundation members (including many leading multinational corporations) and nearly 2,000 state legislator members (out of the national total of about 7,000), officially supports both the TPP and TTIP agreements on its website. Furthermore, ALEC is a major supporter of Article V conventions and has been for several decades. For further information read, “The Not-so-smart ALEC” by William F. Jasper, published in the May 5, 2014 issue of *The New American* ([available online at TheNewAmerican.com](#)).

As another example of just how much the special interests are dedicated to changing the Constitution to



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suit their purposes, we have “The Bicentennial Plot” by Gary Benoit, published by *The New American*, February 10, 1986 ([available online at TheNewAmerican.com](#)). These “Powers That Be” stepped out of the shadows in the years leading up to the bicentennial of the Constitutional Convention of 1787 and revealed their aggressive plans to change the Constitution as described in this quote from the article:

The founding principles of the Republic may be cast aside because there are powerful forces at work bent on changing our form of government. For many decades these same forces have helped to move America away from constitutional limitations toward an all-powerful state. They now hope to formalize radical changes that have already been taking place by rewriting the Constitution.

These entrenched powers are planning to use the occasion of the Constitution’s bicentennial for a “reappraisal” of our nation’s governmental system. And the radical changes that they recommend, as their “tribute” to the Founders, will be portrayed as reforms needed to modernize the Constitution and make government more efficient.

This article went on to focus on a powerful establishment special interest group, the Committee on the Constitutional System (CCS), which was leading the charge to “formalize radical changes that have already been taking place by rewriting the Constitution.”

The CCS was a perfect model of an establishment special interest group, with two out of three of its co-chairs belonging to the preeminent internationalist foreign policy special interest group the Council on Foreign Relations (CFR). Fifteen of the 41 members of the CCS board of directors were also CFR members. To round out this picture of an elite special interest group, the CCS received financial support from the Ford Foundation, the Brookings Institution, and the Rockefeller Foundation.

Benoit’s powerful and revealing article was distributed far and wide in the late 1980s. It played a leading role in preventing the CCS and other special interest groups from piggybacking their plans to completely rewrite the Constitution on the bicentennial celebrations.

Fast forwarding to the present time, the elite special interest groups are generally staying in the background of today’s constitutional convention movement. However, the cooperation of a large number of left- and right-wing groups in an open coalition to rewrite the Constitution via an Article V convention raises the specter of a new push by the establishment special interests to rewrite the Constitution in their favor. For more information on this Left-Right coalition, see “Working Together to Rewrite the Constitution” by Christian Gomez in the June 9, 2014 issue of *The New American* ([available online at TheNewAmerican.com](#)).

In his article, Gomez shines a spotlight on Professor Lawrence Lessig of Harvard Law School, the unofficial godfather of the present-day Left-Right coalition to bring about an Article V constitutional convention. Lessig has leveraged his professorship at an academically elite law school to promote the movement for a constitutional convention in many ways, such as his co-hosting of the Harvard Conference on the Constitutional Convention (Harvard Con-Con-Con) in 2011 along with Mark Meckler, currently heading up the Citizens for Self-Governance group with its Convention of States Project that is working for an Article V convention. Lessig and Meckler’s Harvard Con-Con-Con did much to promote the development of the present-day Left-Right coalition to work for an Article V convention.

In “Working Together to Rewrite the Constitution,” Lessig is quoted from an article he wrote in the May 1993 *Texas Law Review*: “Perhaps, that is, it is time to rewrite our Constitution.” This is just one of many pieces of evidence that indicates just how dedicated Lessig is to extensively changing the



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Constitution.

However, since powerful special interest groups have such extensive influence over the federal and state levels of government, the most likely result of one or more Article V convention rewrites of the Constitution would be changes that legitimize the myriad usurpations of power that have already taken place in the service of the special interests. This would make it all the harder for We the People to ever regain control of the government from the special interests and restore the security of our God-given rights.

The Solution to Our Out-of-compliance-with-the-Constitution Government

What is absolutely necessary to turn this situation around is a large-scale, grassroots education campaign on the practical aspects of how the Constitution already limits the power of the federal government. In order to restore our freedom, an informed electorate must be created that will roll back the power of the special interests by electing federal and state representatives who will enforce the Constitution as originally intended.

Although this sounds incredibly hard to achieve, there is no easy way. When the basic problem stems from widespread lack of understanding about the Constitution (and corresponding lack of determination to enforce it) among the voters, there is no Article V convention silver bullet that will solve the problem.

We need many more voters who fully understand what Representative Stark's questioner understood: "The Constitution specifically enumerates certain powers to the federal government and leaves all other authority to the states or the people."

The solution is the Constitution, not Article V.



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