



Confusion Over Constitutional Conventions

Florida this year sent to the Congress of the United States its application for a convention for the purpose of proposing a balanced-budget amendment to the U.S. Constitution. Florida is, by some counts at least, the 33rd state to apply. But the legislatures of New Hampshire and South Dakota have recently voted to rescind their applications. So are we now three states away from the 34 needed to require Congress to call a convention? Or one? Or 15 or so (arrived at by subtracting all the states that have rescinded their calls over the past 22 years)?



Confusion still abounds over the portion of Article V of the Constitution that says Congress shall call a convention upon the application of two-thirds of the states. Though the provision is part of the original Constitution and has been the "law of the land" for more than two centuries, no convention to amend the Constitution has ever been called. All 26 amendments to the original charter have been proposed by the other method prescribed in Article V, an affirmative vote by two-thirds of both houses of Congress. Either method requires ratification by three-fourths of the states.

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Two-thirds of the states should be easy enough to figure. Two-thirds of 50, rounded off would give us that magic number of 34. But does a state's application ever expire? When Congress has proposed constitutional amendments it usually sets time limits for passage so that the vote by three-quarters of the states represents a consensus ratified by a super-majority of states considering the measure within the same time frame. But there is no time limit in Article V for a call for a constitutional convention to gain support of two-thirds of the states. Suppose the legislatures of 34 states had over a 50-year period applied for a constitutional convention and the legislators who had voted for the first such application were all dead and gone, and the current voters and their representatives no longer wish to have a convention. Would a convention still be required?

Is a state's decision to withdraw its application binding? Article V says the Congress "on application of two-thirds of the states, shall call a Convention for proposing Amendments." Does that still hold when some of those states have since voted to rescind their applications? Would the Congress still be required to call a convention?

Another question: May the convention be limited as to subject matters? Suppose 20 states apply for a convention for the purpose of proposing a balanced-budget amendment, 11 to make English our official language, and three to ban handguns throughout the country. Since that would reach the two-thirds threshold, would a convention be required? Or may Congress consider and tally these applications by subject matter? If so, once a two-thirds majority of the states is reached for a convention on, say a balanced-budget amendment, may it be limited to only that topic? Article V says "a Convention for proposing amendments," plural, with no hint of any restriction on subject matter either in the



Written by [Jack Kenny](#) on May 27, 2010

applications or at the convention.

Perhaps that's why there is such a disparity in the various numbers given for the number of states that have applications before Congress for a constitutional convention. A posting on the Sweetliberty.org warns that we are only two states away from the needed 34. Shortly before the vote in the Florida legislature, former U.S. Speaker of the House Newt Gingrich and Jeff Atwater, President of the Florida Senate co-authored an opinion piece in *USA Today* in which they said 19 states had applied for an "amendment convention." Gingrich and Atwater argued for a convention to produce a balanced-budget amendment. To read about the massive amount of debt they describe, one might get the impression that Gingrich during his years in Congress had no part in creating it.

Yet if Congress heeded the existing Constitution, there would be no need for a balanced-budget amendment, since much of the federal spending authorized by our Representatives and Senators bears little to no relation to the legislative powers delegated to Congress by the Constitution. That is nowhere more true than in education, where Congress now squanders tens of billions each year on a federal Department of Education, that, come to think of it, Newt Gingrich voted to create.

In both New Hampshire and South Dakota, The John Birch Society mounted a grassroots effort to repeal previous calls for a constitutional convention, using both printed materials and a [DVD](#) called "[Beware of Article V](#)" to warn of the dangers of a potential "runaway convention."

"I actually distributed the DVDs to each Senator's office," said Tim Comerford, a State Representative in New Hampshire who sponsored the resolution. "They're very informative. I was able to make a good presentation to the committee based on the information I found in it."

Comerford said he fears "a runaway convention" that could propose changes to the Constitution that would eliminate or undermine basic freedoms like the freedom of speech and the right to bear arms. Besides, he said, "Congresses and Presidents ignore the Constitution anyway. So what good would an amendment do?"

Several organizations are currently contacting all state legislators in support of calling a constitutional convention. [Click here](#) to send a pre-written, editable email to your state legislators in opposition to any new calls for a constitutional convention and in support of rescinding all previous constitutional convention calls. [Click here](#) to read "Who Needs a New Constitutional Convention?"



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