



Written by [Joe Wolverton, II, J.D.](#) on August 16, 2023

Convention of States: States Must Use Article V or Lose the Constitution

A [recent blog post](#) published by the Convention of States (COS) reports that “only 10 percent of Americans think our democracy is working.” After reassuring his readers that he knows “we’re not a democracy,” the author goes on to insist that “the message is still valid.”

The fact that 10 percent of Americans don’t think our democracy is working is *not* a valid message if your intent is to save the Constitution, a document that creates a union of sovereign republics, and whose chief architect considered democracy to be “incompatible with personal security or the rights of property.”

The problem, as anyone interested in seeing our Constitution restored as the supreme law of the land can see, is not how many Americans believe “our democracy” is working or not, but that even one percent of Americans believe we are a democracy at all!

Next, after assuring his readers that he knows we’re not a democracy (but nonetheless relying on the opinion of Americans who believe we are a democracy), the author goes on to claim that “nine out of ten Americans don’t think our government is representing them. In a country that’s to be ‘of the people, by the people, and for the people,’ that is not good.”

Let’s assume that nine out of 10 Americans don’t think the government is working, since I assume that’s what the author is trying to prove. It must be said, however, that it isn’t very promising for supporters of COS that the group relies on the opinion of people who think the United States are a democracy to make a point about how the government could be improved.

If, however, 90 percent of Americans don’t think the government is functioning as it should, then they are correct. Admittedly, it’s a problem that the government is destroying life, liberty, and property, when its only legitimate function is to protect those things. In fairness, though, an opinion poll isn’t necessary to figure that out.

What is necessary, however, is to identify the problems and the solutions to those problems so that the people’s faith in their government can be restored.

The COS article identifies the Constitution as a culprit, claiming that the Constitution hasn’t “prevented this divergence from our principles.”

The Constitution is a piece of paper and is unable to enforce itself. The limits the Constitution places on the power of government are being ignored, as the COS blog correctly states, by “politicians, bureaucrats, and activist judges.”

That is to be expected. As the Baron Montesquieu wrote in his influential book *The Spirit of Law*,



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“constant experience shows us that every man given power is likely to abuse it, and to carry his authority as far as he can go until he comes up against limits.” There are few thinkers as influential on the Founding Fathers as Montesquieu, and they undoubtedly read and understood Montesquieu’s warning and prepared for it.

They knew that a Constitution, regardless of how well it’s constructed, cannot constrain a person committed to abusing power, or a people who have lost their virtue, an essential quality in a self-governing society. As Samuel Adams explained:

Neither the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt. He therefore is the truest friend of the liberty of his country who tries most to promote its virtue, and who, so far as his power and influence extend, will not suffer a man to be chosen into any office of power and trust who is not a wise and virtuous man.

In other words, the framers of the Constitution were well aware that people in positions of power would be prone to abuse that power, and that there was nothing a constitution could do about it, even a constitution as well crafted as ours.

Knowing this, the framers created a federal union, with the states to serve as a barricade between the people and the tyrants who might someday occupy the positions of federal power. To its credit, the COS blog post recognizes this relationship between the states and the federal government.

To its discredit, however, COS claims that “one of the greatest state powers” is calling for and participating in a convention to propose amendments to the Constitution, in other words, a constitutional convention — and, yes, any convention that is intended to change the constitution is a constitutional convention.

And such a convention is certainly a powerful weapon, a weapon so powerful and so uncontrollable that it could lead to the destruction of the Constitution as we know it. That is the potential of that power. Curiously and notably, COS never admits that fact, even though it is so historically demonstrable as to be beyond debate.

I’ve covered this aspect of the Article V process in [several other articles](#), so for now, let it suffice for me to sum it up by explaining that the original Constitutional Convention of 1787 was [called by Congress](#), and that the “convention of representatives from the said states” was to gather in Philadelphia to propose amendments to the then-existing Constitution — the Articles of Confederation — and that those amendments were to address the “inefficiency of the federal government” and for “the necessity of devising such farther provisions as shall render the same adequate to the exigencies of the Union.”

To any objective, fair, and nonpartisan reader, that original congressional resolution calling for “alterations and amendments of the said Articles of Confederation” for the purpose of addressing issues with the federal government and making the union stronger sounds almost identical to the plan being promoted by the Convention of States organization!

And COS wouldn’t mind so much that we point that out, except that they know as well as we do that the delegates at that first “amendments convention” exceeded their authority, ignored the limits on the convention that were imposed by Congress and the state legislatures, and threw out the existing constitution and replaced it with a new constitution and an entirely new form of government. That is an



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indisputable fact of history, regardless of how hard COS and other Article V convention supporters try and spin it.

So, in light of that possibility, there is no need to try to address the issues plaguing our country by putting the Constitution in harm's way. There is another remedy, a "rightful remedy" as Thomas Jefferson called it: state interposition.

Here's how Jefferson's best friend and writing partner, [James Madison, explained](#) why and how the states could prevent — how the states were *obliged* to prevent — unconstitutional acts of the federal government from being enforced:

This Assembly ... views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

Simple. States created the federal government, and the federal government has no authority beyond that granted to it by the states in the Constitution. Any act of the federal government that exceeds that authority is to be prevented from being enforced by the states, who "interpose," that is to say, prevent the unconstitutional act from being enforced. The states not only have the right to do this; they have the *duty*, Madison says, to do this.

It should be apparent, then, that the wise choice, before we run the risk of having another amendments convention ignore its predetermined rules and limits on its authority and produce an entirely new constitution and an entirely new form of government, is to focus on electing candidates to state office who will be true to their Article VI oath and will do their duty to prevent tyrants from destroying our Constitution and the union it created.





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