



Convention of States: Misreading the Constitution or Misleading the People?

Let's read Article V of the U.S. Constitution together, and I want you to pay attention to which groups are empowered to call for a Constitutional Convention and the purpose of the Convention, and what roles the groups play:



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The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, 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; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Let's answer the questions I posed above.

First, which groups may call for a Convention? Congress and the state legislatures.

Next, what is the purpose of the Convention? To propose amendments to the Constitution.

Finally, what roles do the different groups play in bringing to pass such a convention? Congress *may* propose a Convention, but it *must* call the Convention. Read the language closely. Congress, if it deems necessary, can call a Convention. However, if enough of the state legislatures apply for a Convention, then Congress shall call for it. Then, any amendment drafted at that Convention shall become a part of the Constitution if the requisite number of state legislatures OR conventions in those states ratify the amendments.



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Who decides which process to use to decide ratification? Congress! Again, read the language closely. *Congress* decides which road to ratification is followed.

So, when COS claims that the union will be saved only if “the American people utilized Article V,” they are either misreading Article V or misleading the American people.

In fact, does Article V provide any role for “the American people” in the amending of the Constitution? No!

It is true, of course, that the American people can have some influence by electing state legislators and governors who favor a Constitutional Convention or amendments convention, but that’s hardly what I would call a “safety valve,” one that Meckler has suggested is the only way to prevent a Civil War.

The bottom line on the COS theory that “the people” can rein in the federal government via the process set out in Article V is that it is wrong. It is wrong historically, constitutionally, and pragmatically. Article V grants to Congress a significant role in the amendments process, and the people are nowhere mentioned. This is simply the same old demagoguery that Meckler and his cohorts have used (unsuccessfully) for years. It is shameful.

It is shameful particularly when there is a way that the people can have a hand in forcing the federal beast back inside its constitutional cage. It is a weapon that James Madison described as “powerful and at hand,” that Thomas Jefferson called “the rightful remedy,” but that the Convention of States derides as ineffectual and unconstitutional.

Maybe the copy of the Constitution that the people at COS read doesn’t contain the 10th Amendment. Since that might be the case, here’s the text of 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.

You see, if a power is not granted to the federal government in the Constitution, then the federal government cannot exercise that power. Simple as that. Furthermore, any such power is not only beyond the boundaries of federal authority, but it that power remains with the states and the people.

Nullification, or interposition, or “refusal to cooperate with the officers of the union” (as James Madison described it in Federalist 46), or whatever you want to call it, is the surest and safest way to restore the states to their rightful role as the creator of the federal government, not its creation.

The people, using the threat of nullification, can exert substantial influence on the trajectory and the tyranny of the federal government. There’s a much simpler road than trying to convince their own state legislators to call for a Convention and then hope that the people in 37 other states can convince their state legislators do likewise and then wait for Congress to interpret its role in the process and then wait for the role to be “ruled” on by the Supreme Court (which is almost certainly what would happen).

The people can take a much more direct route toward restoration of state sovereignty and self-government by electing candidates who are committed to upholding the oath they take under Article VI to support the Constitution by refusing to enact or in any way support any unconstitutional program, policy, order, or act of the federal government.

Nullification is quicker, nullification is explicitly supported by the 10th Amendment, the people have much greater influence over the election of their state lawmakers than those in D.C., there’s no



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necessary delay in interpretation and initiation as there would be with a call for an Article V Convention, and there is no need to run the risk inherent in a convention of states where the representatives may or may not have the virtue, wisdom, foresight, and devotion to liberty as those who wrote the Constitution in 1787.

With its claim that “the people” are the “safety valve” that can prevent another Civil War, one wonders if the Convention of States misrepresents the historical record, perhaps hoping people would not take the time to research the subject for themselves.

And, if an Article V convention is such a good idea — one as safe and supported by history as the COS leaders say — why would they need to misrepresent the historical record, ignore the role of Congress in a call for a Convention, and deny that the 10th Amendment recognizes the right of states to refuse to enforce unconstitutional acts of the federal government?

Finally, it seems unwise and unsafe to trust the care of something as potentially powerful as a Constitutional Convention to a group whose leadership seems not to understand basic facts of American history and who choose to ignore the plain text of the Constitution.





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