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Is a Con Con Hidden in Term Limits?

One of the most popular, successful, and genuine grassroots movements of the last decade has been the movement for Term Limits. All polls show that more than 70 percent of Americans support Term Limits for Members of Congress.

This majority is based on the voters' exasperation with how the current system is rigged for incumbents. PACs contribute 10 times more to incumbents than to challengers and, even in the stunning election of 1994, the reelection rate for incumbents was over 90 percent. The advocates of Term Limits believe that our country would be better served by a Congress of citizens who serve for a few years only, rather than by career politicians.

As a result of the popular demand for Term Limits, 23 states passed laws to limit the number of terms their own Members of Congress may serve. (And 21 states limited terms for their own state legislators).

The Term Limits movement was stopped in its tracks on May 22, 1995 by the outrageous act of judicial dictatorship called *U.S. Term Limits v. Thornton*. In that 5-to-4 decision (despite a brilliant 89-page dissent by Justice Clarence Thomas), the Supreme Court struck down the laws of those 23 states that imposed limits on the terms of their own Members of Congress.

Meanwhile, the effort to pass a constitutional amendment to impose Term Limits failed to get the needed two-thirds majority in either House of Congress. Term Limits advocates, who played a big role in the election of the new Republican Congress in November 1994, felt betrayed.

When the organization called "U.S. Term Limits" gathered in late 1995 to plan its new strategy, they unfortunately took a wrong turn.

They adopted a plan to plunge America into a Constitutional Convention. Article V of the U.S. Constitution requires that "on the Application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing Amendments." This method has never been used; all 27 Amendments now in the Constitution were adopted in the traditional way (passage

by a two-thirds majority in each House of Congress followed by ratification by three-fourths of the states).

U.S. Term Limits predicts that it can get the necessary two-thirds (34) of the states by direct lobbying of the legislatures in some states and by using the Initiative/Referendum method in other states. U.S. Term Limits has budgeted \$10 million to carry out this plan.

The plan to put initiatives on the ballot to instruct state legislators to vote for a Constitutional Convention (Con Con) for Term Limits is well under way. U.S. Term Limits has targeted 18 states: Alaska, Arizona, Arkansas, California, Colorado, Idaho, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Washington, and Wyoming.

Have you ever asked people to sign a petition? The circulator says, "Will you sign our petition for (fill in the blank)?" If the respondent supports the goal, he usually signs promptly and seldom, if ever, reads the petition.

But the devil is in the details. The petitions circulated by U.S. Term Limits have a 14-line title followed by three solid pages of single-spaced, small-type text on legal-length paper. If you read the text, you won't sign the petition.

Those who do will be surprised to find that they have signed a petition to amend their state constitution to require state legislators to pass a resolution requesting Congress "to call a convention for proposing amendments to the Constitution." Furthermore, they will have signed a requirement that anyone who does not so vote will have printed adjacent to his name on the ballot in future elections: "Disregarded voters' instruction on term limits."

But the "voters' instruction" to state legislators is **not** for "term limits"! The voters' instruction is to vote for a Constitutional Convention, and that is a horse of another color! Most voters who sign the Term Limits petition will have no idea that they are requiring their state legislature to make application to Congress to convene a Constitutional Convention. U.S. Term Limits call this the "instruct and inform method." It certainly instructs state legislators and candidates, but it is downright dishonest in the way that petition signers are "informed".

Don't Risk a Constitutional Convention

Most of us have watched a Republican National Convention or a Democratic National Convention on television. We've seen the bedlam of people milling up and down the aisles. We've watched how the emotions of the crowd can be stirred, and we've felt the tension when thousands of people make group decisions in a huge auditorium.

Now imagine holding the Republican and Democratic National Conventions together — at the same time and in the same hall. Imagine the confrontations of partisan politicians and pressure groups, the clash of liberals and conservatives, and the tirades of the activists — all demanding that **their** view of constitutional issues prevail. Imagine the gridlock as the Jesse Helms caucus tries to work out constitutional change with the Jesse Jackson caucus! No wonder Rush Limbaugh said that a Con Con would be the worst thing that could happen to America and that it might signal time to “move to Australia.”

That's what it would be like if the United States calls a new Constitutional Convention (Con Con) for the first time in 209 years. It would be a self-inflicted wound that could do permanent damage to our nation, to our process of self-government, and possibly even to our liberty.

A Con Con would throw confusion, uncertainty, and court cases around our governmental process by opening up our entire Constitution to be picked apart by special-interest groups that want various changes. It would make America look foolish in the eyes of the world, unsettle our financial markets, and force all of us to re-fight the same battles that the Founding Fathers so brilliantly won in the Constitutional Convention of 1787. George Washington and James Madison both called our Constitution a “miracle”. We can't count on a miracle happening again.

The most influential players in a new Constitutional Convention would be Big Media (such as Dan Rather and Sam Donaldson) giving on-the-spot interviews and predictions of what they are trying to *make* happen. The media elite have made themselves players in the political process, not just observers, and a Constitutional Convention would be the biggest media event of our time. It would be an irresistible opportunity for Big Media to guide (if not actually dictate) the result.

Under the presidency of George Washington, the original Constitutional Convention of 1787 deliberated in complete secrecy and there were no leaks to the press. That is obviously impossible today. The ratio at the 1988 and 1992 national party conventions was eight reporters per delegate.

Demonstrators would hold court outside the convention hall, with the TV cameras giving us daily, live, on-the-spot coverage of pressure groups and radicals demanding constitutional changes. We would have round-the-clock coverage by CNN and C-Span. Demonstrations would be staged by the pro-abortionists and the pro-lifers, the gay activists and their opponents, the radical feminists (Bella Abzug would take time off from her United Nations projects), the environmentalists, the gun control activists,

the animal rights extremists, the D.C. Statehood agitators, those who want to relax immigration and those who would restrict it, the homeless, and the unions — all demanding that their perceived “rights” be recognized in the Constitution. A Constitutional Convention would be confrontational, divisive, and ruled by 20-second television sound-bites.

Nobody can predict what the rules or the agenda of a new Constitutional Convention would be. There is nothing in the Constitution or in any law to guide us. The Con Con advocates try to reassure us with talk of a Procedures bill introduced many years ago by the late Senator Sam Ervin — but Congress has consistently refused to pass any Procedures bill. The shenanigans involved in changing the text of the Procedures bill each time it has been reintroduced prove how political the procedures process is bound to be.

The Con Con advocates try to tell us that there are “safeguards” that will prevent bad things from happening at a Constitutional Convention. In fact, there are no safeguards at all, and the alleged “safeguards” are just political campaign promises. None of them is backed up by any statute or court decision. The Constitution tells us nothing except that, if 34 states pass a resolution requesting a Constitutional Convention, Congress “shall” call a Con Con for the purpose of considering “amendments” (in the plural).

Con Con advocates try to assure us that a Con Con would be a dignified assembly of thoughtful people who will responsibly consider and vote out just one important amendment. They are dreaming (or dissembling). The most prestigious constitutional authorities in the country, both conservative and liberal, say it is impossible for Congress or anyone else to limit the agenda.

The highest authority who has ever spoken out on this subject is the late Chief Justice Warren Burger, who said: “There is no effective way to limit or muzzle the actions of a Constitutional Convention. . . . After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda.” Other distinguished professors of constitutional law, both Republicans and Democrats, who say it is impossible to restrict the agenda of a Constitutional Convention to consideration of one issue, include Charles Alan Wright of the University of Texas, Gerald Gunther of Stanford, Charles Black of Yale, and Walter Dellinger of Duke. They all say that, even if Congress orders a Constitutional Convention to consider only one issue, the Convention delegates can ignore that instruction and set their own agenda.

Nearly all those who advocate a Constitutional Convention are supporting at least two amendments on very different issues, and some have a large agenda calling for major changes in our Constitution. Politically powerful pressure groups from both the left and the right continue to promote a Constitutional Convention as the route to achieve significant constitutional changes.

In addition to Term Limits, these goals include a

Balanced Budget Amendment, prayer in public schools, and a prohibition against unfunded mandates. Eliminating our Separation of Powers (which they call "gridlock") has been advocated for years by the Committee on the Constitutional System (which boasts such prominent directors as Democratic presidential adviser Lloyd Cutler and former World Bank President Robert S. McNamara). Ross Perot says he wants three amendments. John Sununu is on record as wanting four amendments.

It simply is not credible that these politically active groups would pass up the chance to pressure a Constitutional Convention to vote out their special amendment. It's not credible, for example, that the powerful forces working to take away our right to own guns would pass up such a golden opportunity to get rid of the Second Amendment.

Since 29 states are on record as calling for a Constitutional Convention to pass a Balanced Budget Amendment, and some 18 states are on record as calling for a Con Con to pass a Human Life Amendment, it is impossible to believe that these issues could be kept off the table of a Con Con called to pass Term Limits.

Con Con More Dangerous than Congress

The advocates of a Constitutional Convention assert that a Convention couldn't do any more mischief than our mischievous Congress. This is false for many reasons.

(1) Delegates to a Constitutional Convention do not have to swear to uphold and defend the U.S. Constitution, and would therefore be free (like the 1787 Convention Delegates) to throw out our existing Constitution and start from scratch with a completely new document. Congress, on the other hand, is bound by Article VI of our present Constitution, which requires every Member to take an oath to support our present Constitution.

(2) Congress must muster a two-thirds majority in both the House and the Senate in order to propose any constitutional change. No one knows whether or not a Con Con would have a two-thirds (or simple majority) rule, and we can't know until the Convention is actually convened and adopts its own rules of procedure.

(3) Any action by Congress must pass two Houses. Since a Constitutional Convention would **not** have two Houses, the big-population states would control the Convention and the small-population states would be irrelevant.

(4) Delegates to a Constitutional Convention will never run for re-election, so they would be as free from accountability to the voters as the life-tenured federal judges.

(5) We know for sure that any constitutional change voted out by Congress will not become part of the U.S. Constitution unless it is ratified by 38 of the 50 states. No one knows for sure whether or not this requirement would be true for actions taken by a Constitutional Convention. If a Con Con can change other portions of the Constitution, what is to prevent it from reducing the Article V

requirement that ratification requires three-fourths of the states (just as the 1787 Convention reduced the ratification requirement from 100% to 75%)?

History of Con Con Resolutions

University of Minnesota professor Michael S. Paulsen reported in the *Wall Street Journal* (5-3-95) that, since 1787, states have submitted 399 applications for a Constitutional Convention covering many different issues. He concluded that 45 states have valid applications now pending and Congress is already obligated to call a Constitutional Convention to consider many different amendments.

Other lawyers stoutly assert that we should only count state applications that refer to a single issue. The fact is that nothing in our Constitution, federal statutes or court decisions gives any answers to such fundamental questions about a Constitutional Convention.

In the 1970s, a couple of conservative groups started campaigning for a Balanced Budget Amendment to the U.S. Constitution. When this failed to win the support of enough Americans, its sponsors went around to state legislatures and introduced resolutions calling for a Constitutional Convention to consider a Balanced Budget Amendment. Some states passed those resolutions without any hearings or debate, some without realizing that a Con Con was in the fine print. Usually, the arguments and advertising in behalf of these resolutions featured the need for a Balanced Budget Amendment and concealed the fact that the fine print called for a Constitutional Convention.

In 1983, Missouri became the 32nd state to pass a resolution calling for a Balanced Budget Amendment Con Con, and Eagle Forum took up the battle to defeat this destructive plan. Not one other state passed a Con Con resolution after that, although there were heated battles about Con Con in many states, especially Michigan, Kentucky, Montana, and New Jersey. Three state legislatures rescinded their earlier Con Con resolutions: Alabama, Florida and Louisiana. Nearly all the 29 states that are on record as having passed a Con Con resolution for a Balanced Budget Amendment did so back during the Carter Administration. No resolution requesting a Constitutional Convention for a Balanced Budget Amendment has passed any State Legislature since 1983 — thirteen years ago! There is **no** public support across America for a Constitutional Convention.

In 1995, resolutions calling for a "Conference of the States" (COS) suddenly appeared in nearly 50 state legislatures. COS presented itself as a plan to restore balance in the federal system, but it soon was perceived as a backdoor attempt to take us into a Constitutional Convention. COS's agenda called for "fundamental" and "structural" changes in our form of government and for changing Article V to make it easier to amend the Constitution.

The Conference of the States plan had the support of so many prestigious public officials and organizations that

COS resolutions passed quickly in 14 state legislatures. After Eagle Forum exposed the COS agenda, based on its own publications, 29 states defeated the COS resolution or adjourned without passing it, and COS resolutions died on the vine in the remaining states.

Now, the drive for a Constitutional Convention has been taken up by U.S. Term Limits, and the methods are just as dishonest as those used in the previous campaigns. They conceal the fact that the fine print of the initiative petitions and the state legislative resolutions call for a Constitutional Convention, while wrapping the project in the immensely popular rhetoric for Term Limits. It's a classic bait-and-switch act.

U.S. Term Limits says it is modeling its campaign on the history of the 17th Amendment, which mandated the direct election of Senators. After nearly two-thirds of the states had passed resolutions calling for a Constitutional Convention on this issue, Congress gave in to public demand and passed the 17th Amendment in 1913.

It's hard to take seriously U.S. Term Limits' argument that a similar strategy will force Congress to vote out a constitutional amendment requiring Term Limits in the face of the fact that this strategy completely failed when it was tried more recently in the 1960s. Then, 33 states passed resolutions requesting a Constitutional Convention to overturn the Supreme Court's "one man one vote" decision, but Congress simply thumbed its nose at the states, and nothing happened.

If It Ain't Broke, Don't Fix It

The miracle of our great United States Constitution is that it has lasted for two centuries, accommodating our great geographic and economic expansion, while preserving individual liberties. How could we possibly allow our great Constitution to be jeopardized by calling a national Convention at a time when so many special-interest groups want to rewrite it in different ways!

Our nation has many problems in the 1990s, but we don't need the problems that would be caused by special-interest groups making a plaything of our Constitution. State Legislatures can start a constitutional conflagration by precipitating a Constitutional Convention, but State Legislatures cannot put out the fire once ignited, cannot control its spread, and cannot control the winds that will fan this fire in ways we cannot now foresee.

We should reject all proposals for a Constitutional Convention, no matter how worthy the issue. Our great United States Constitution (including the Tenth Amendment) gives us all the tools we need to survive in freedom and make the legislative and policy changes the American people want.

James Madison, the father of our Constitution, said it best when he wrote: "Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a second." Madison spoke in an era when a second convention could have been chaired

again by George Washington.

We don't see any James Madisons, George Washingtons, Ben Franklins or Alexander Hamiltons around today who could do as good a job as our Founding Fathers did in 1787, but there are a lot of people who *think* they can improve on our Founding Fathers. Whether they come from the left or the right, we should not risk making our Constitution the political plaything of those who *think* they are today's Madisons, Washingtons, Franklins or Hamiltons.

Many national organizations from all across the political spectrum oppose calling a Constitution Convention. These include the American Legion, Veterans of Foreign Wars, Eagle Forum, Daughters of the American Revolution, Sons of the American Revolution, Gun Owners of America, National Rifle Association, The Conservative Caucus, John Birch Society, General Conference of Seventh Day Adventists, AFL-CIO, National Education Association, American Association of University Women, American Civil Liberties Union, People for the American Way, and American Association of Retired Persons. Our great Constitution is for all Americans, regardless of political opinion.

"Resolved, By The American Legion in National Convention assembled in San Antonio, Texas, August 25, 26, 27, 1987, That it states its opposition to efforts to convene a Constitutional Convention for any purpose and specifically opposes the rewriting of the United States Constitution."

"Resolved, by the 85th National Convention of the Veterans of Foreign Wars of the United States, that we oppose any attempt to call a Constitutional Convention, as this would give our enemies from within and without the opportunity to destroy our Nation." Resolution No. 449, Adopted by the 85th National Convention of the Veterans of Foreign Wars of the United States held in Chicago, Illinois, August 17-24, 1984.

"Resolved, That members of the National Society Daughters of the American Revolution oppose efforts to rewrite the Constitution by Constitutional Convention." Adopted by the DAR Continental Congress, April 1986, Washington, D.C.

"Resolved, By the eligible voting members at the 1992 Annual Meeting of the National Rifle Association of America held in Salt Lake City on the 25th of April, 1992, that we oppose any attempt to call for a Constitutional Convention for any purpose whatsoever because it cannot be limited to a single issue and that our right to keep and bear arms can be seriously eroded."

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