



18th Anniversary Year



The Phyllis Schlafly Report

VOL. 18, NO. 5, SECTION 1

BOX 618, ALTON, ILLINOIS 62002

DECEMBER, 1984

CON CON: Playing Russian Roulette with the Constitution

Russian Roulette is a deadly game of risk. You put one bullet in a revolver, leaving five empty chambers, spin it, aim it at your head, and fire. The odds are very favorable; you have five chances out of six of surviving, and only one chance out of six of being dead.

Most people think that it is irrational to play such a risky game with your own life. Society calls it murder if you play it with anyone else's life. Many of us feel it would be just as irrational to play such a risky game with the U.S. Constitution -- our most precious document and the fountainhead of our unparalleled American freedom, independence, and prosperity.

A call for a Federal Constitutional Convention (popularly called Con Con) means playing Russian Roulette with our Constitution. The chances are good, perhaps very good, that our Constitution would survive. But it isn't rational to take such a risk with something so important as our Constitution.

Thirty-two state legislatures have passed resolutions calling for a Constitutional Convention to consider a Balanced Budget Amendment to the U.S. Constitution. A Balanced Budget Amendment is a desirable goal. But a good end does not justify a bad means, and Con Con would be a very bad and dangerous means.

A decade ago, when those supporting a Balanced Budget Amendment began their effort to pass Con Con resolutions in State Legislatures, it seemed a useful educational device. It dramatized the urgency of our horrendous Federal fiscal problems. It made a "Statement" that the American people are very serious about our demand for a Balanced Budget Amendment.

But now that our nation is only two states short of the actual call for a Con Con, it's time to stop dangerous bluffing about the Constitution and talk about risks and realities. If 34 states (2/3rds of the 50 states) pass resolutions calling for Con Con, the obligation to call one is mandatory on Congress. The roller-coaster ride will have started, and there will be no way to get off.

Article V of the U.S. Constitution provides two methods of amendment: "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."

The 26 existing amendments to the Constitution were all adopted by the first of the two amendment procedures specified in Article V. The alternate method, a Constitutional Convention, has never been used. That doesn't make it wrong; but it should require us to evaluate the risks before plunging into a radically different method which could put our entire Constitution on the bargaining table to be torn apart by the media, political factions, and special-interest groups.

What Con Con Supporters Say

In talking with people who support Con Con as a device to get a Balanced Budget Amendment, several curious factors emerge.

(1) They argue single-mindedly for a Balanced Budget Amendment and seldom address the Con Con issue at all. They seem to think that, when 34 states pass a Con Con resolution, that will *ipso facto* give us a Balanced Budget Amendment. The truth is that, even if Congress calls a Con Con, there is no assurance that Con Con would pass the Balanced Budget Amendment.

(2) They are usually uninformed about what Con Con is, how it would function, and what Article V of the U.S. Constitution requires. They do not present any Con Con argument which makes sense -- constitutionally, legislatively, or politically. They have not evaluated the pros and cons, the risks and the expectations.

(3) They usually pigeon-hole everyone who opposes Con Con as "anti-Balanced Budget Amendment," which is false. Many of us do support a Balanced Budget Amendment but do NOT support Con Con. The intemperate language and the *ad hominem* attacks against anyone who opposes Con Con are offensive to fair-minded persons.

(4) Most remarkable, many advocates of Con Con, when pressed about the dangers of Con Con, say they really don't want Con Con and that it won't happen

anyway; they just want a Balanced Budget Amendment. It is amazing -- and peculiar -- to see people supporting a political goal that they do NOT want to happen, and engaging in fundraising for a goal that they do not believe is desirable or attainable.

A Runaway Convention

Would the Constitutional Convention have a wide-open agenda in which any constitutional amendment could be considered, or even an entire substitute Constitution offered in place of our present one? Does Con Con provide the opportunity for those who would like to make major alterations in our government?

The best way to predict the outcome of any American legal controversy is to ask, what is the precedent? We have only one precedent for a Federal Con Con, the Constitutional Convention of 1787, and it was, indeed, a runaway convention. It violated its orders to merely amend the old Articles of Confederation. Instead, it produced an entirely new document -- the Constitution.

That was fortunate; in that era, we had a historically unique group of great men to write our Constitution, including George Washington, James Madison, Alexander Hamilton, and Benjamin Franklin. No one has detected men of that stature in our country now.

The text of Article V of the U.S. Constitution uses the plural "amendments" in referring to Con Con. Article V states that, upon the application of 34 states, Congress "shall call a Convention for proposing amendments." It is rather far-fetched to claim that the Founding Fathers didn't mean what they said in plain English.

NO constitutional authority claims that a Con Con could be limited to an up-or-down vote on a particular Balanced Budget Amendment as proposed by the groups urging it. Even though the state resolutions explicitly tie their call for Con Con to a Balanced Budget Amendment, those resolutions cannot override the plain words of the U.S. Constitution.

If not limited to one Balanced Budget Amendment, could Con Con be limited to amendments (plural) on the one general subject of fiscal matters? The opinion of constitutional authorities is divided on this question. For example, former Senator Sam J. Ervin, Jr., believes that a Con Con could be limited to one subject; Gerald Gunther (author of the leading casebook on constitutional law used in law schools) says it could not. Any lawyer can give his opinion on what the Con Con procedure can be or should be; but NO lawyer, no matter how distinguished, can tell us what it surely will be, because nobody knows. No law exists to prescribe rules for a Con Con and, even if Congress passes one now, we would never know its constitutionality until it is reviewed by the Supreme Court.

The Safeguards That Aren't

Materials published by the Balanced Budget/anti-tax groups do not offer any arguments in favor of Con Con, but they attempt to answer the arguments of those against Con Con, stating that there are eight "checks" to prevent a runaway Con Con. None of these "checks"

stands up as a safeguard in which we can place any confidence. Let's consider them.

1. "Congress could avoid the Con Con by acting itself." The authors must not have read the U.S. Constitution. Congress does NOT have this option. Article V imposes the obligation on Congress to call a Con Con if 34 states request it. The Con Con advocates also base this argument on speculation that Congressmen would rather live with a Balanced Budget Amendment which *they* drafted than one drafted by a Con Con. But those are not the alternatives. Tip O'Neill's Congress does NOT want a Balanced Budget Amendment at all. From the viewpoint of the big-spending liberals, it makes more sense to plunge us into the uncertainties of Con Con, where the emergence of a Balanced Budget Amendment would be doubtful, than to send the Balanced Budget Amendment out to achieve probable speedy ratification by the states.

2. "Congress establishes the Con Con procedures." Con Con advocates assure their readers that Congress has the power to limit Con Con to one topic and establish all the procedures. It's true that Congress has the *power* to pass such a law, but nobody knows if Congress has the *right* to pass it or if it would be upheld by the Supreme Court. No one can assure us what the Con Con agenda, procedures, or method of election would be. Would the Con Con be able to propose amendments by a simple majority vote instead of by the 2/3rds majority required in Congress? Nobody knows.

3. "The delegates would have both a moral and legal obligation to stay on the topic." That assertion is false. There is no legal obligation whatsoever. The anti-tax groups have no mandate to determine the moral obligations of others. Other people have different ideas of what their moral obligations are. The suggestion that each delegate swear an oath to limit the Con Con to the topic for which it was called is probably unconstitutional and would surely be aggressively challenged.

4. "Voters themselves would demand that a Con Con be limited." On the contrary, it is far more probable that voters would demand that the Con Con agenda be opened up to other issues. How could a Human Life Amendment be barred when 20 states passed a Con Con resolution on that very issue? Many controversial issues, such as abortion funding, school prayer, forced busing, and the gold standard could be germane to the one general subject of Federal spending.

5. "Even if delegates did favor opening the Con Con to another issue, it is unlikely that they would all favor opening it to the same issue." Maybe that is true, but it sets the stage for a very practical compromise -- "You vote to open up Con Con to consider my amendment, and I'll vote to open it up to consider yours." That type of bargaining would put many amendments out on the table to be wrangled about.

6. "Congress would have the power to refuse to send a nonconforming amendment to ratification." It could, but the Con Con by that time might have

produced a cluster of amendments, or an entirely new Constitution, agreeable to Tip O'Neill's Congress, the *Washington Post*, the *New York Times*, and the TV networks. So this is no safeguard at all.

7. "Proposals which stray beyond the Con Con call would be subject to court challenge." That's the understatement of the year. Anything and everything to do with the Con Con, including its call, procedure, and agenda, would end up in court anyway. One of the real defects of the whole idea is that it injects the Supreme Court into the middle of the amendment process.

8. "Thirty-eight states must ratify." That is true, but it doesn't have to be 38 State Legislatures. If the liberal machinery in Congress by that time had pinned its sails to the Con Con idea, Congress could specify that state ratifications must take place by conventions, too, thereby bypassing the State Legislatures altogether.

Electing Delegates to Con Con

Who would be the delegates to Con Con? How would we elect the persons who would decide which amendments to consider, to propose to Congress and then the states? Nobody knows how the delegates would be selected, who would be eligible, or from what districts they would be chosen.

Some anti-tax and/or conservative organizations seem to think they have enough grassroots support to elect an anti-tax/conservative Con Con, and so they are anticipating the power to write the constitutional amendments which they want.

These groups who dream about the glory of serving in a Constitutional Convention should ponder the fact that all anti-tax proposals were defeated in 1984 referenda. They should also ponder the fact that, since they couldn't elect a conservative Congress in a year when the top of the ticket was the most conservative Presidential candidate in 60 years, there is no realistic expectation that they could elect a conservative Con Con.

The International Women's Year Conference of 1977 and the several White House Conferences (on Families, on Education, etc.) provide frightening lessons in how the election of delegates to a one-time-only national conference can be manipulated by special-interest pressure groups. Those conferences created chaos and controversy, bitterness and divisiveness, and essentially were media events. No one could reasonably assert that their final resolutions represented majority thinking in the United States.

The Newstates Constitution

Con Con poses another danger which is far greater than the threat of warring factions battling for consideration of their special amendments. It is the danger that the one-world, authoritarian liberals will use this opportunity to junk our present constitutional system and replace it with a different government which they can more easily control. They meet in secluded conference rooms of their tax-exempt foundations and plan for internationalism to replace patriotism, a parliamentary system to replace the Separation of Powers, appointed officials to replace government

"of the people, by the people, for the people," and the elimination of our unique structure of a Republic with its interlacing checks and balances.

Changing our entire structure of government has been a longtime project of the Center for the Study of Democratic Institutions at Santa Barbara, California, which was established by the Fund for the Republic, which in turn was financed by the Ford Foundation. Over a ten-year period, the Center produced 40 successive drafts of an entirely new and different constitution. The project was headed by Rexford Guy Tugwell, one of the academic liberals from Franklin D. Roosevelt's New Deal "brain trust" of the 1930s.

In 1974, the Center released its final draft in the book *The Emerging Constitution* by the then 83-year-old Tugwell (published by Harper & Row). It was called a "Constitution for the Newstates of America." It is radically different from our present Constitution in ideology, concept of rights, structure of government, and power over individuals.

The Newstates Constitution would pitch out our 50 states and replace them with 10 (or a maximum of 20) regional "Newstates," which would not be states at all but rather subservient departments of the national government. The government would be empowered to abridge freedom of expression, communication, movement and assembly in a "declared emergency." The practice of religion would be considered a "privilege."

The Newstates' "political procedures" would be controlled by nationally-appointed Overseers. If a Newstate didn't follow national orders, the Watchkeeper would require it "to forfeit revenues" to the national government.

The President of the Newstates of America would have one term of nine years. The Senate would be made up of 100 persons with lifetime tenure, most of them appointed by the President. The House of Representatives would have 100 members elected at-large as a single ticket with the President and Vice President (for nine-year terms).

The Newstates Constitution would eliminate our American Separation of Powers and Checks and Balances and replace them with a government of six branches. In addition to the executive, legislative and judicial, there would be the Electoral, the Planning, and the Regulatory. The government would be run by appointed, not elected, officials. Elections would be managed by an Overseer of Electoral Procedures. The economy would be directed by a National Planning Board and managed by a National Regulator.

Total Constitutional Change

The liberal has-beens of the FDR Administration didn't get anywhere with their Newstates Constitution. It was "far out" and its terminology sounded like George Orwell's Newspeak in 1984. But the conservative movement to get state legislatures to call a Constitutional Convention has given the intellectual liberals the opportunity to try again.

On May 30, 1984, a group called the Committee

on the Constitutional System (CCS) held a Washington, D.C., news conference and released a summary of a meeting which had taken place the preceding September 9-10, 1983, at the Woodrow Wilson Center in Washington, D.C. This confirms that a powerful elite group is waiting in the wings to bring about a radical restructuring of our American Constitution.

The co-chairmen of this group are C. Douglas Dillon, former Secretary of the Treasury and a powerful Wall Street figure, and Lloyd N. Cutler, former counsel to President Jimmy Carter. Others participating in working panels include former Defense Secretary Robert McNamara, former Senator J. William Fulbright, Congressman Henry Reuss, and representatives from the Brookings Institution, the Rockefeller Foundation and the Woodrow Wilson Center.

Just to call the roll of the prominent names is enough to reveal what enormous power in business, finance, the media, politics, and academia is behind this plan for total constitutional change. This group is building a liberal consensus for these objectives:

1. Allow or require the President to appoint members of Congress to some or all Cabinet positions.
2. Increase the terms of U.S. House members from two to four years, with all elections held in Presidential years.
3. Force the American people to cast a single vote for a package slate consisting of the President, Vice President, and the voter's own House candidate.
4. Change a large number of U.S. House seats from election by district to election "at large" in order to increase the possibility that the political party which wins the White House will also control the Congress, and that the "at large" members would be more likely to take a "nationwide view" of the issues.
5. Devise a "more realistic, feasible" method of Presidential removal by an extraordinary majority in both Houses of Congress.
6. Permit the President to dissolve Congress (when he thinks Congress is "intractable") and call for new Congressional elections.
7. Reduce the two-thirds requirement for Senate ratification of treaties to a simple majority only.
8. Eliminate the 22nd Amendment which limits Presidents to two terms.
9. Eliminate the Electoral College and allocate each state's electoral vote directly.
10. If no candidate receives a majority vote in the Electoral College, then elect the President and Vice President at a joint session of both Houses of Congress, with each member having one vote (instead of the present system of one vote per state).
11. Eliminate the requirement that appropriation bills must originate in the U.S. House.
12. Overturn the *Buckley v. Valeo* Supreme Court decision which upheld the right of individuals to contribute to political campaigns.
13. Force the taxpayers to finance Congressional

election campaigns so that political expenditures by the candidate and by PACs can be limited or prohibited.

14. Reduce the cost of Presidential and Congressional elections by holding them at irregular intervals so that the date would not be known very far in advance.

15. Give the Federal Government -- instead of the state governments -- the power to regulate and supervise cities.

Con Con: A 1985 Issue in the States

The Con Con issue will be a lively one in state legislatures in 1985. The organizations promoting a Balanced Budget through Con Con will zero in on the remaining states which have not passed Con Con resolutions: Hawaii, Washington, California, Montana, Minnesota, Wisconsin, Illinois, Michigan, Ohio, Kentucky, West Virginia, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, and Maine.

Will the 18 non-Con Con state legislatures realize what a momentous responsibility hangs on a decision to become the 33rd or 34th state calling for Con Con?

Will those non-Con Con states realize that the real issue is **not** a Balanced Budget, but the integrity of our United States Constitution? A Balanced Budget should and can be achieved on its own merits, but a Federal Constitutional Convention would be a constitutional crisis of divisive, destructive dimensions. It would serve the purposes of powerful groups which want to use the approaching Bicentennial observance of the United States Constitution in 1987-89 as an opportunity to bring about their view of "a new world order" to replace the American Republic.

Our United States Constitution is an inspired document which has guaranteed our political and spiritual freedom, economic opportunity, state diversity, and national growth. It is a statement of principle and practicality that has worked well for two centuries. The Bicentennial in 1987-89 should be a celebration of our Constitution's unique and unparalleled success, not crisis years when we are uncertain whether or not it will survive.

Eagle Forum has been the grassroots guardian of the U.S. Constitution since 1972. We have protected it against the powerful and well-financed efforts of those who tried to amend it with pleasing words to achieve radical goals. We urge our friends to work energetically for a Balanced Budget Amendment, but to oppose Con Con because NO cause, however worthy, justifies risking our great United States Constitution. We urge state legislatures to reject all proposals to request a Federal Constitutional Convention and to rescind any previous call for a Con Con.

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Box 618, Alton, Illinois 62002
ISSN0556-0152

Published monthly by The Eagle Trust Fund, Box 618, Alton, Illinois 62002.

Second Class Postage Paid at Alton, Illinois.

Subscription Price: \$10 per year. Extra copies available: 50 cents each; 4 copies \$1; 30 copies \$5; 100 copies \$10.