



The

Phyllis Schlafly Report



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Mischief-Making about the Constitution

Attacks on the U.S. Constitution are coming from all sides. There are many pressure groups that just don't like our U.S. Constitution, even though it is the longest lasting Constitution in history and has enabled us to prosper with 43 peaceful changes of government. Back in the 1970s, powerful and highly placed U.S. officials made a strenuous effort to change us into a parliamentary system of government. The global government-oriented Council on Foreign Relations has said that the provision it despises the most is the treaty clause, which requires the vote of two-thirds of Senators to ratify a treaty.

More recently, there have been several groups with intricate but conflicting plans to persuade us to hold a national convention in order to add major amendments to our Constitution. The *New York Times* opened its op-ed page to several liberal professors of government: one calls our Constitution "imbecilic," another claims it contains "archaic" and "evil provisions," and a third urges us to "rewrite the Second Amendment."*

Out of exasperation with the flouting of the Constitution by Barack Obama and his acolytes, and the way Congress is letting them get by with these violations, several conservative authors and pundits are toying with the idea of calling a national convention to propose amendments to the Constitution, which they believe can put our country on a wiser path.

They want to use a procedure authorized by *Article V* of our Constitution. In the 1970s and 1980s, this was called a constitutional convention (which people dubbed a Con Con). Now they call it an *Article V* convention, but it is clear they want a convention that will make major constitutional changes.

However, they are fooling themselves when they suggest that *Article V* creates a path to bypass Congress by means of a "convention of states." The only power the states are given by *Article V* is the opportunity to submit an "application" (petition) humbly beseeching Congress to call a convention. Hundreds of such applications have been submitted over the years, with widely different purposes and wording, many

applications were later rescinded, and many purport to make the application valid for only one particular amendment such as a federal balanced budget or congressional term limits.

Article V states that Congress "shall" call a convention on the application of two-thirds of state legislatures (34), but how will Congress count valid applications when many say they are valid for a convention only to pass a Balanced Budget Amendment? We don't know which applications are in the count, and so far Congress has ignored them anyway. The states have passed at least 400 convention applications; some say there may be as many as 600 on file.

If Congress ever decides to act, *Article V* gives Congress exclusive power to issue the "Call" for a convention to propose "amendments" (note the plural). The Call is the governing document which determines all the basic rules such as where and when a convention will be held, who is eligible to be a delegate (will current office-holders be eligible?), how delegates will be apportioned, how expenses will be paid, and who will be the chairman.

Article V also gives Congress the power to determine whether the ratification of amendments by three-fourths of the states would be implemented by the state legislatures or by state conventions.

The most important question to which there is no sure answer is how will convention delegates be apportioned? Will each state have one vote (no matter how many delegates it sends), which was the rule in the 1787 Philadelphia convention? Or will the convention be apportioned according to population (like Congress or the Electoral College)? Nothing in *Article V* gives the states any power to make this fundamental decision. If apportionment is by population, the big states will control the outcome.

Current advocates of an *Article V* convention seem to think they can get the ball rolling by having a convention called by the states. Of course, the states can have a jolly get-together anytime they want, but a "convention of states" has no power to amend the Constitution. Only a convention called by Congress has that power.

Article V doesn't give any power to the states to propose

constitutional amendments, or to decide which amendments will be considered (or not considered) by the convention. *Article V* doesn't give any special power to the courts to correct what does or does not happen.

Everything else about how an *Article V* Convention would function, including its agenda, is up for grabs. Advocates of an *Article V* convention can hope and predict, but they cannot assure us that any of their plans will come true. And remember, there is no consensus among the various *Article V* groups about which constitutional planks they really want. Imagine Democratic and Republican conventions meeting in the same hall and trying to agree on constitutional changes!

If we follow the model of the 1787 Convention, will the deliberations be secret? Are you kidding? Nothing is secret any more. What are the plans to deal with protesters: the gun-control lobby, the gay lobby, the abortion lobby, the green lobby, occupy Wall Street, plus experienced protesters trained by Obama's Organizing for Action, at what would surely be the biggest media event of the year, if not of the century.

There is no proof that the VIPs promoting an *Article V* convention have any first-hand knowledge of the politics or procedures of a contested national convention. Don't they realize that the convention will set its own agenda and that states will have no sayso over which amendments will be considered?

A recent example of how a convention chairman wielding the gavel can manipulate what happens is the way the 2012 Democratic National Convention chairman ruthlessly called the vote wrong when a delegate tried to add a reference to God to the party platform. The chairman took the vote three times, and then declared the amendment passed even though we all saw on television that the "Noes" won the vote.

The whole process is a prescription for political chaos, controversy and confrontation. I'm worried about those who think they can do a better job than George Washington, James Madison, Ben Franklin and Alexander Hamilton.

Arguments of Convention Advocates

Among those who have indulged in public criticism of those who warn about the mischief of holding a "convention for proposing amendments" to the U.S. Constitution is Rob Natelson, who taught law and constitutional history at the University of Montana. Like many self-important professors, he writes as though he knows the answers to all the questions people have been raising about how a convention would be called, delegates apportioned and agenda set. He presumes to know what was in the minds of the Founding Fathers. He even predicts how the Supreme Court would rule in contested cases about a convention.

Natelson states that a new convention for proposing constitutional amendments would be bound to follow the

example set by the several meetings of the states that took place before the Constitutional Convention met in 1787, that is, before *Article V* was written. He argues that all those gatherings of the states before the Convention that wrote the U.S. Constitution would somehow be a binding precedent on any future convention. He also assures us that a new *Article V* convention will follow the procedures used in an 1861 (Civil War era) convention of the states.

Of course, states can have a national meeting anytime they want to get together, but that does not empower them to write new language for the U.S. Constitution.

Natelson seems eager for the federal courts to decide any disputes about the rules and the agenda and other decisions of a proposed *Article V* convention. *Article V* doesn't mention any involvement of the judiciary, but of course, anybody can file a lawsuit. Only a know-it-all professor would have the temerity to predict how the courts would rule.

Natelson scoffs at warnings that there could be a "runaway" convention, which means the convention could consider many amendments beyond the scope of state applications that try to limit the convention to one subject, such as a Balanced Budget Amendment. Mark Levin's new book, *The Liberty Amendments*, urges an *Article V* convention to adopt eleven new amendments! That would be a "runaway" according to all those applications that deny a convention the authority to consider more than one amendment.

All the articles that tell us not to worry about the mischief and pitfalls of an *Article V* convention added together don't add up to the eloquent letter and prestige of the late U.S. Supreme Court Chief Justice Warren Burger. (Burger's letter is reproduced in full on the next page.)

His analysis is fortified by many really distinguished constitutional authorities, both Republican and Democratic, who say it is impossible to restrict the agenda of a new convention to amend the Constitution, including Gerald Gunther of Stanford Law School (whose textbook is used in the majority of law schools), Charles Black of Yale, Walter Dellinger of Duke, and Charles Alan Wright of the University of Texas.

I've attended 16 Republican National Conventions plus many other national, state and district political conventions, and I've seen every kind of highhanded tactic and rules broken with the bang of the gavel, including cutting off microphones, recognizing only pre-selected delegates, expelling unwanted delegates, cheating on credentials and rules, fixing the voting machines, refusing to count the votes accurately, etc.

And I attended conventions with only Republicans! Double the opportunity for mischief when delegates are from two or three parties. How do Sarah Palin and Al Sharpton work out a proposed plank?

* "imbecilic": Sanford Levinson, *New York Times*, 5-28-12;

"archaic": Louis Michael Seidman, *New York Times*, 12-31-12;

"rewrite the Second Amendment": Zachary Elkins, *New York Times*, 4-4-13.

Supreme Court of the United States
Washington, D. C. 20543

June 22, 1988

CHAMBERS OF
CHIEF JUSTICE BURGER
RETIRED

Dear Phyllis:

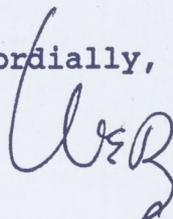
I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly replied that such a convention would be a grand waste of time.

I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Our 1787 Constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,



Mrs. Phyllis Schlafly
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Alton, IL 62002

Good Advice Against an *Article V* Convention

The Father of the U.S. Constitution, James Madison, wrote this warning on November 2, 1788, against calling another general constitutional convention:

“If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric.

“Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. 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, meeting in the present temper of America, and under all the disadvantages I have mentioned.”

Madison’s prophetic warnings against calling a convention to amend our Constitution are even more compelling today. Let’s examine his arguments.

1. A new convention would “naturally consider itself as having a greater latitude than the Congress” to amend the Constitution. Indeed, that’s exactly what the *Article V* convention advocates want: a convention to bypass Congress and do what Congress won’t do.
2. A new convention would “give greater agitation to the public mind.” Indeed, a convention about amending the Constitution would attract dozens of groups agitating for various changes, creating a bigger media event even than a presidential election and dominated by Mainstream Media and theatrical demonstrators.
3. The election of convention delegates “would be courted by the most violent partisans on both sides.” Of course, it would.
4. The convention would “probably consist of the most heterogeneous characters . . . heated men of all parties.” Think a repeat performance of the way the Obama crowd

turned out voters in 2008 through his “Organizing for America.” Think ACORN, illegal voters and vote frauds.

5. The amendments convention “would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts . . . might have a dangerous opportunity of sapping the very foundations” of our Constitution. A convention called under *Article V* would, indeed, be a magnet for individuals of “insidious” and “dangerous” views that could eat away at the foundations of liberty and a sovereign independent republic. These would include pressure groups seeking elimination of the Second Amendment, global governance through treaty law, deletion of the provision that requires a two-thirds majority of Senators to ratify treaties, the addition of new constitutional rights (such as same-sex marriage and government health care), elimination of the Electoral College, and other “insidious” and “dangerous” changes.
6. We could not presume that “the deliberations of the body could be conducted in harmony.” “Harmony”? You must be dreaming! Indeed, it would be a wild and raucous political event of world-class magnitude. Have you ever attended a hotly contested Republican or Democratic National Nominating Convention? Think the Democrats in Chicago in 1968 or Republicans in San Francisco in 1964 or Chicago in 1952. Now imagine trying to agree on constitutional principles and planks with the Obama demonstrators.
7. Madison trembled for the result of another convention in the “temper of America” in his time. We should, indeed, tremble for the result “in the present temper of America.” Think Obama’s proclaimed goal of “fundamentally transforming the United States of America.”
8. Madison reminded us that the first Constitutional Convention “assembled under every propitious circumstance.” Those propitious circumstances included having George Washington as convention chairman. Somehow, we don’t see any George Washington or James Madison today, and we don’t want to put our fate in the hands of men who think they can improve on the work of George Washington and James Madison.

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