



Written by [Christian Gomez](#) on March 23, 2023

Congress Introduces Resolution Calling for Article V Constitutional Convention

Chairman of the U.S. House Budget Committee Representative [Jodey Arrington](#) (R-Texas) is pushing a resolution that, if passed, would open the entire U.S. Constitution for revision. On March 14, 2023, Representative Arrington introduced [H.Con.Res. 24](#) calling for a federal [Constitutional Convention](#) to propose a balanced budget amendment to the U.S. Constitution. “As provided in Article V of the Constitution of the United States, and except as provided in paragraph, Congress hereby calls a Convention for proposing amendments to the Constitution of the United States for a date and place to be determined on calling the Convention,” Section 1(a) of the resolution reads.



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A Constitutional Convention is simply a convention pertaining or relating to a constitution. Since 1910, [Black's Law Dictionary](#) — the premier legal dictionary for attorneys, judges, and students of the law — has, for the most part, consistently defined a Constitutional Convention as:

A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution.

As it relates to the federal government, it is one of the two methods listed in [Article V](#) to propose amendments to the Constitution. And Article V is the part in the Constitution that explains how the text of the Constitution can be amended (changed), especially if any part of the Constitution is found to have defects or errors in it. According to Article V, amendments to the Constitution can be proposed with either a two-thirds vote in both houses of Congress (this is how all 27 Amendments to the Constitution were proposed) or when two-thirds (34 of 50) of the state legislatures make applications to Congress to call a convention for proposing amendments.

Article V is only [one paragraph](#) long, and is vague about the details of a convention. The *only* role guaranteed to the state legislatures is that of making the application to Congress. It is *Congress* — not the states — that calls the convention, once enough states (two-thirds) have applied for one. Once enough states have passed and sent applications to Congress to call the convention, the process is out of the hands of the state legislatures. Congress determines the date, location, and the process for the selection of delegates.

Article I, Section 8, Clause 18 of the Constitution, also known as the Necessary and Proper Clause, clearly says: “The Congress shall have Power ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, *and all other Powers vested by this Constitution* in the



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Government of the United States, or in any Department or Officer thereof.” (Emphasis added.) Calling a Constitutional Convention is a power vested to Congress by Article V of the Constitution. Despite what some convention lobbyists claim, an Article V Convention does *not* bypass or circumvent Congress. *Congress calls the convention* (Article V) and *Congress “make[s] all Laws which shall be necessary and proper for carrying into Execution ... all other Powers vested by [the] Constitution”* (Article I, Section 8, Clause 18).

Also, the President of the United States does not play any role in calling an Article V Convention. Therefore, a presidential signature is not required, nor can the President veto a convention call. Only a simple majority of Congress is required for Congress to call the convention.

If Congress passes H.Con.Res. 24, the delegates to the convention — serving as the sovereign representatives of “We the People” — would possess the inherent power to dispense with any state limitations and draft an entirely new constitution with its own mode of ratification. This fact is based on the precedent of the first and only convention ever tasked to amend the nation’s framework of government, the [Philadelphia Convention of 1787](#). The Philadelphia Convention predated the creation of Article V. And since the ratification of the federal Constitution in 1789, Congress has never called an Article V Convention nor have the states gathered with the authority to amend (i.e. change) the U.S. Constitution.

As of the publication of this article, [26 states](#) have outstanding, or “continuing,” applications to Congress to call a convention specifically to propose a balanced budget amendment (BBA). And [19 states](#) have outstanding applications to Congress to call a convention based on the Convention of States (COS) Project model resolution for a convention. The BBA and COS applications constitute separate tracks, or tallies, for a federal convention to propose amendments under Article V. Since shortly after the Constitution was ratified, state legislatures have made applications to Congress to call a convention for various purposes. Recognizing the dangers of convening such a convention, many legislatures have rescinded (revoked or retracted) their state’s previous applications.

However, Congressman Arrington’s resolution, H.Con.Res. 24, contends that the two-thirds state threshold in Article V requiring Congress to call the convention has long been met and even exceeded. The resolution [claims](#):

Whereas congressional and State records of plenary applications for amendments on any subject *and* applications [i.e., in combination with] for the single subject of Inflation-fighting Fiscal Responsibility Amendments [such as those for a BBA] compiled by the Article V Library counts Nevada’s “continuing” application, reported February 8, 1979, in the Congressional Record, as the 34th thus achieving the “two thirds” congressional mandate to call the Convention for proposing amendments; congressional records reported 39 applications by the end of 1979, 40 in 1983, and 42 total applications over time. [Emphasis added.]

The [Article V Library](#) is a website created and maintained by Robert Biggerstaff, an Article V Convention promoter. The number of applications mentioned in the resolution [i.e., 42 total over time, 39 in 1979, 40 in 1983, and 34 for many years following] is in fact inflated by *aggregating* (combining) applications for a convention ostensibly “limited” to propose a BBA *together* with unrelated/non-BBA Constitutional Convention applications. Article V Convention promoters are now claiming that these



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unrelated/non-BBA Constitutional Convention applications are “plenary,” or without a limited purpose, thus enabling them to be combined with those for a limited purpose. This is the whole basis of the aggregation scheme.

The Article V Library’s “[Article V Convention Application Analysis](#)” for a BBA aggregates the following unrelated applications, which they deem as being “plenary,” together with BBA Constitutional Convention applications:

- Virginia’s 1788 application for a Constitutional Convention;
- New York’s 1789 application for a Constitutional Convention;
- Georgia’s and South Carolina’s 1832 applications related to tariffs;
- Applications from 1861 attempting to prevent the then-impending American Civil War;
- A plethora of applications ranging from 1899 to 1911 for the direct election of U.S. senators; and
- Wisconsin’s 1911 and 1929 applications for a Constitutional Convention, which were motivated by the desire at the time to propose constitutional amendments for the direct election of U.S. senators and to repeal the 18th Amendment (Prohibition), respectively.

In the case of Wisconsin, in 2017, the state legislature passed [Assembly Joint Resolution 21](#) applying to Congress to call a convention to propose a BBA, which remains counted among the 26 states with “continuing” applications for a Constitutional Convention to propose a BBA. However, the state also previously passed two applications for a general Constitutional Convention, simply “to propose amendments to the Constitution,” without specifying in the resolutions the desired purpose or subject of the amendments that would be proposed at the convention. These “plenary” Constitutional Convention applications from Wisconsin include [Joint Resolution No. 28](#) of 1911 and [Joint Resolution No. 51](#) of 1929. Although they were motivated by a desire at the time to propose constitutional amendments for the direct election of U.S. senators and for the repeal of the [18th Amendment](#) (prohibition of alcohol), respectively, those facts are omitted from the resolutions.

The unspecified, or general, operative language of Wisconsin’s J.R. 28 (of 1911) and J.R. 51 (of 1929) makes them targets for those desperately itching for an Article V Convention. Eager convention promoters may seek to aggregate them with other state’s Article V Convention applications limited to proposing a specific amendment in order to reach the required two-thirds (34 states) threshold for Congress to call a Constitutional Convention. In recent years, the legislatures of New Jersey and Illinois have rescinded all of their state’s previously passed Article V Convention applications, including “plenary” ones from 1861 for the purpose of proposing constitutional amendments intended to somehow prevent the war between the states.

Delving deeper into these past convention applications, we find that New York’s 1789 application — just like Virginia’s 1788 application — requests “that a Convention of Deputies from the several States be called as early as possible, with full powers to take the said Constitution into their consideration, and *to propose such amendments ... to ... secure ... the great and unalienable rights of mankind.*” (Emphasis added.) This objective was met on December 15, 1791, when the Bill of Rights, the first 10 amendments to the Constitution, was ratified. Furthermore, in 2004, the Virginia Legislature rescinded all of their previous convention applications, including their 1788 application. And in the New York State Legislature, two resolutions — Senate Resolution No. 477 ([B 477](#)) and Assembly Resolution No. 137 ([K 137](#)) — are currently pending and, if passed, would rescind all of New York’s previous Constitutional Convention applications, including its 1789 application.

Given the age of these applications, the fact that their objectives were met with the ratification of the



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Bill of Rights, and that no other states have since applied for a convention to propose amendments for the explicit purpose of securing “the great and unalienable rights of mankind,” both New York’s 1789 and Virginia’s 1788 applications are no longer active and thus ineligible to be counted toward the calling of an Article V Constitutional Convention today. Nor is it appropriate to use other unrelated centuries-old Article V Convention applications toward the counting of modern day convention.

Representative Arrington appears to disagree. He introduced a [similar](#) Constitutional Convention resolution [last year](#) with only [five co-sponsors](#). As of March 23, 2023, H.Con.Res. 24 has [zero co-sponsors](#) despite a Republican majority in the House of Representatives. Although Arrington is a Republican, just like all five of the co-sponsors for his resolution from the previous Congress, many Republicans, especially those who are more constitutionally minded see the idea of an Article V Convention as one fraught with much risk.

On September 8, 2022, U.S. Representative [Thomas Massie](#) (R-Ky.) [tweeted](#):

I think an Article V Convention is a bad idea, and could be disastrous for our country.
How many state legislatures stood up to the illegal and unconstitutional acts of their governors during COVID?

Congressman Massie makes a valid argument. Why would anyone expect state legislators — potentially serving as delegates to an Article V Convention — to stand up for fiscal restraints on the federal government when many of them went along with their governors’ illegal and draconian Covid lockdowns and mask mandates?

Furthermore, concerns about the disastrous outcome of an Article V Convention are not new among conservatives. On February 26, 1979, shortly after the Arizona State Legislature passed an application to Congress applying for a convention to propose a fiscal restraint amendment, in the form of a balanced budget amendment, to the Constitution, then-U.S. Senator Barry Goldwater (R-Ariz.) warned:

I think it would be very foolhardy, it would be a tragic mistake, to hold a constitutional convention for this one purpose. I say it would be foolhardy and dangerous because if we hold a constitutional convention, every group in the country — majority, minority, middle-of-the-road, left, right, up, down — is going to get its two bits in and *we are going to wind up with a Constitution that will be so far different from the one we have lived under for 200 years that I doubt that the Republic could continue.*” [Emphasis added.]

It would behoove conservative and Republican lawmakers in Washington to heed Senator Goldwater’s words of wisdom and the current foresight of constitutionalists such as Representative Thomas Massie in safeguarding the Constitution from the radical and revisionist impulses that would be unleashed at a modern Article V Convention.



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To urge your U.S. representative and senators to oppose H.Con.Res. 24, “Calling an Article V Convention for proposing a Fiscal Responsibility Amendment to the United States Constitution and stipulating ratification by a vote of We the People, and for other purposes,” visit The John Birch Society’s federal legislative alert [here](#). Additionally, to urge your state legislators to oppose all resolutions applying to Congress to call an Article V Constitutional Convention, visit The John Birch Society’s nationwide state legislative alert [here](#).



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