Written by **Christian Gomez** on July 20, 2023

# What an Article V Convention Is and Is Not

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Conservatives of all stripes in the United States generally agree that the federal government — Congress, the Supreme Court, and the presidency — is out of control, having departed from the original intent of the Constitution and the limitations of power that it imposes on the government. Where debate does arise, however, is in how to restore adherence to limited government.

Constitutionalists — those who adhere to an originalist interpretation of the Constitution — such as The John Birch Society, and by extension *The New American*, believe that the best method to push the federal beast back into its constitutional cage is through enforcement of the Constitution as written. A key aspect of constitutional enforcement includes the nullification of all "duly enacted" federal laws, executive orders, actions, regulations, or court rulings that are *not* made in adherence to the Constitution.

The John Birch Society works to achieve this with its nationwide paid staff of field coordinators and JBS members actively working, per the instructions of the JBS monthly *Bulletin*, to build an educated electorate that will understand and treasure the Constitution. Those who treasure the Constitution are motivated to hold their elected officials, at all levels of government, accountable to their oath of office. Tools such as *The New American's* Freedom Index, Congressional Scorecards, and Legislative Scorecards help to inform citizens about how their federal and state legislators voted on key issues and whether or not those votes were in fidelity to the Constitution.

In contrast to the view of organizations such as the JBS, there has been a growing push among some conservatives to amend, or change, the Constitution rather than promote obeying it. Those who prefer this method believe the way to fix Washington is found in Article V of the Constitution, namely the convention method for proposing amendments. Conservative Article V Convention advocates argue that new constitutional amendments are needed to impede federal overreach and force federal compliance to limited government.

This line of reasoning ignores the glaring fact that those in charge of the federal government are already disobeying the existing clear constitutional limitations on federal power. If federal politicians do not adhere to existing limitations on their power as set forth in the Constitution, why should we expect them to adhere to new or additional limitations? Furthermore, are the problems of the federal government today the result of adherence to the Constitution as written, or because of a *lack* of adherence? If the problem originates from adherence to the Constitution, then perhaps it would be prudent to reevaluate the document and correct (i.e., amend) the areas where it is found to be deficient.

But if the problem originates from a *lack of adherence* to the Constitution, then amending the Constitution is not the proper solution.

The purpose of this article is not to evaluate the arguments of both sides (constitutional enforcement vs. new constitutional amendments), but simply to inform you, the reader, about what an Article V Convention is and is not, in order to better help you come to an informed decision about this topic.

**The Purpose of Article V**

Article V of the federal Constitution is the amendment article. It was included in the Constitution to correct any errors, or defects, in the document — should any be found. On June 11, 1787, at the Philadelphia Convention, Colonel George Mason said of the new Constitution: "The plan now to be formed will certainly be defective, as the [Articles of] Confederation has been found on trial to be. Amendments therefore will be necessary." What are amendments? The 1785 edition of Samuel Johnson's *A Dictionary of the English Language* — which would have been the latest English dictionary available to the delegates at the convention — says of the word "Amendment": "It signifies, in law, the correction of an error committed in a process, and espied before or after judgement; and sometimes after the party's seeking advantage by the error."

And writing in *The Federalist*, No. 43 — published on January 23, 1788 — James Madison, often regarded as the Father of the Constitution, said of Article V, "It moreover equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other."

The full text of Article V reads:

> 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.

Notice the first two words of Article V: "The Congress." *Congress* is the subject of the sentence/paragraph. The actions of this article are dependent entirely upon Congress. Congress, when two-thirds of both houses see fit, proposes amendments *or* Congress calls a convention when the two-thirds of the states (or 34 out of 50) have applied for one. The only role guaranteed to the state legislatures is that of applying to Congress to in turn call the convention. State legislatures do not call the convention. Nor can the American people arbitrarily call the convention. Calling the convention, and all forgoing powers necessary and proper for the calling of such a convention to propose amendments, are reserved exclusively to Congress.

In either case, the proposed amendments officially become part of the Constitution when ratified by either three-fourths of the state legislatures or special state ratifying conventions, whichever *Congress* decides. However, if the delegates to an Article V Convention draft a new constitution, instead of

proposing amendments, the new constitution could include its own mode of ratification. *All 27 amendments* to the Constitution were proposed by Congress and afterwards sent to the states for ratification. The Article V Convention method has *never* been used to propose amendments.

**Convention of States or Constitutional Convention?**

The phrase "convention of the states" does not appear in Article V. Labeling an Article V Convention as a "convention of the states" can be traced to former University of Montana law professor and Article V Convention advocate Robert Natelson. In a speech delivered on September 16, 2010, Natelson said, "I'm going to put the process on reset." In a modified transcript of that speech published in 2011, Natelson said "we should call it … an *Article V convention,* an *amendments convention,* or a *convention of the states*." (Emphasis in original.)

Natelson spearheaded the modern name change. Then, in 2013, internet privacy attorney turned Tea Party activist Mark Meckler founded Citizens for Self-Governance, which later that year launched its Convention of States Project, mirroring Natelson's name change. Convention of States (COS) Project is the leading organization within the conservative movement promoting an Article V Convention to amend the Constitution. In both its literature and website, the COS organization repeatedly contends, "A Convention of States is NOT a Constitutional Convention."

Indeed, COS explains on its website, "It is not a convention of delegates but a convention of states.… This is also a matter of history. In 1788, the Virginia legislature correctly called this process a 'convention of states' in the first application ever passed under Article V."

While Virginia's application from 1788 for an Article V Convention did use the phrase "convention of the States," the resolution actually went on to call it a "convention … of deputies from the several States." Likewise, New York's application from 1789 for an Article V Convention (the second application passed under Article V) also referred to it as a "Convention of Deputies from the several States." The specific phrase "Convention of States" or "convention of the states" did not appear in any other application for an Article V Convention made prior to 2010.

In fact, many state applications to Congress referred to the convention as a "constitutional convention," and some applications today still call it a Constitutional Convention. But by calling it a "Convention of States," as opposed to the traditional and correct term "Constitutional Convention," Meckler and COS are attempting to portray the two terms as having completely different meanings. They define a "Convention of States" as meaning an Article V Convention to amend the Constitution. According to COS, a "Convention of States" is only for amending the Constitution, whereas the term "Constitutional Convention" they have *redefined* to mean a convention *exclusively* for framing or writing a new Constitution (remember this when reading the next section of this article). This distinction has gone a long way toward misleading state legislators into believing that a "Convention of States" could never exceed its "limited" authority and draft an entirely new Constitution.

*Black's Law Dictionary* — the nation's premier legal dictionary used by law students, lawyers, and judges — has, since its second edition printing in 1910, consistently defined the term "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*." (Emphasis added.) Additionally, the fifth edition of *Black's Law Dictionary*, published in 1979, further says: "Art. V of the U.S. Const. provides that a Constitutional Convention may be called on the application of the Legislatures of two-thirds of the states."

Furthermore, objecting to the use of the phrase "Constitutional Convention" to describe an Article V Convention is ridiculous. The word "constitutional" simply means "relating to a constitution." An Article V Convention *is* a Constitutional Convention, because it is a convention relating to the Constitution. Simply put, an Article V Convention, is in fact, a Constitutional Convention. It is *not* a "Convention of States" or a national gathering of state governments.

**The First Real Convention of States**

In actuality, the label "Convention of the States" was *first* applied to the Philadelphia Convention of 1787 — the same convention that COS insists was *not* a "Convention of States" because it was the convention that drafted the current Constitution. On March 25, 1787, exactly two months prior to the convening of the Philadelphia Convention, George Washington, who would go on to be elected president of the convention and later president of the United States, wrote, in a letter to Marquis de Lafayette:

> Indeed, the thinking part of the people of this Country are now so well satisfied of this fact that most of the Legislatures have appointed, & the rest it is said will appoint, delegates to meet at Philadelphia the second Monday in May next in general *Convention of the States* to revise, and correct the defects of the federal System. [Emphasis added.]

As recorded in *Secret Debates of the Federal Convention of 1787*, New York Chief Justice Robert Yates, along with another a delegate from New York, wrote in the notes for "Friday, May 25th, 1787": "Attended the Convention of the States at the State House in Philadelphia when the following States were represented." This was followed by a list of the states and names of the delegates from each one.

Furthermore, Nathan Dane, a delegate from Massachusetts to the Confederation Congress, made a motion on September 26, 1787, saying, "It was expedient that a Convention of the States should be held for the Sole and express purpose of revising the articles of Confederation." Dane's motion concluded, "Resolved that there be transmitted to the Supreme executive of each State a copy of the report of the Convention of the States lately Assembled in the City of Philadelphia signed by their deputies the seventeenth instant including their resolutions and their letter directed to the president of Congress."

The Convention of 1787, which gave us our current Constitution, was referred to as a "Convention of the States" numerous times. Therefore, to say that "a convention under Article V is a 'Convention of the States' and not a 'constitutional convention,' because a 'Convention of States' is only for amending rather than rewriting the Constitution," is completely disingenuous and ignores the historical record. And if a Convention of the States intended to amend the existing framework of government can replace the Constitution with an entirely new one, who is the say that it could not happen again?

**A Federal Function**

An Article V Convention is a *federal* convention, called by the *federal* government to amend the *federal* Constitution. It is *not* a function, nor under the purview, of state governments. It is a *federal* Constitutional Convention. An Article V Convention exercises a sovereign function to either propose modifications to the federal government, or to establish a new one. Delegates to an Article V Convention represent the people-at-large, with power and scope that supersedes established governments. As such, the convention *cannot* be limited. The Declaration of Independence says:

> That whenever any Form of Government becomes destructive of these ends, *it is the Right of the People to alter or to abolish it, and to institute new Government*, laying its foundation

> on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. [Emphasis added.]

James Madison invoked this right in *The Federalist*, No. 40, to justify the actions of the delegates in the 1787 Convention, writing that it is "the transcendent and precious right of the people to 'abolish or alter their governments as to them shall seem most likely to effect their safety and happiness.'" This precedent has not changed.

At a convention, delegates have power to review every single article and clause of the Constitution and rewrite each one, add, remove, or replace at will, or simply propose an entirely new Constitution. And given the present political, cultural, and economic climate, "who knows what would come out of it," as the late Justice Antonin Scalia retorted during an episode of *The Kalb Report* in 2014 when asked about a present-day Constitutional Convention.

**If Not an Article V Convention, What Should We Do?**

The Constitution *already limits* the federal government to the powers listed therein. Therefore, the proper remedies to federal overreach are *enforcement* and *nullification*. Nullification is clearly grounded in the text of Article VI of the Constitution. Article VI binds state legislators — along with members of Congress and judges — by their oath "to support this Constitution." Also, the Bill of Rights declares what government *cannot* lawfully do.

Article VI explicitly says that all laws and treaties "which shall be made in Pursuance" of the Constitution are the "supreme Law of the Land." All others that are made *not* in "Pursuance," or in agreement, with the Constitution are null and void and therefore *unenforceable*. It's the duty of governments at all levels to *nullify* unlawful acts.

States can *immediately* stop unconstitutional federal seizures of power and abuses. Taking action to hold elected officials accountable to their oath and to get them to nullify unconstitutional acts will stop these predatory abuses. Rewriting the Constitution will not. Which of two makes more sense: Changing the rules, or enforcing the existing rules?

**No Substitute for an Educated Electorate**

Ultimately, there is no substitute for a well-educated electorate acting in an organized manner. Proper educational materials, action tools, and an organizational structure are necessary to expose and stop the subversive and deliberate acts against American liberty and the Constitution, including the push for a Constitutional Convention under any other name. The John Birch Society provides these essential resources. Join The John Birch Society to help enforce the Constitution as the Founders intended, nullify all unconstitutional federal acts, and to save the Constitution from the revisionist impulses of an Article V Convention.