

## **Voting & Civil Rights Groups Oppose Calls for an Article V Constitutional Convention**

Calling a new constitutional convention under Article V of the U.S. Constitution is a dangerous threat to every American's constitutional rights and civil liberties.

Article V convention proponents and wealthy special interest groups are dangerously close to calling a constitutional convention to enact a federal balanced budget amendment (BBA). This would be the first constitutional convention since the original convention took place in 1787— all constitutional amendments since that time have been passed by Congress first and then been approved by three-fourths of the state legislatures. There are no rules and guidelines in the U.S. Constitution on how a convention would work, which creates an opportunity for a runaway convention that could rewrite any constitutional right or protection currently available to American citizens.

Under Article V of the U.S. Constitution, a convention can be called when two-thirds of the states (34) petition for a convention to enact amendments to the constitution. States can also rescind their calls by voting to rescind in the state legislature. Just a few states short of reaching the constitutionally-required 34 states to call a convention, Article V and BBA advocates have recently increased their efforts to call a new convention.

An Article V convention is a dangerous threat to the U.S. Constitution, our democracy, and our civil rights and liberties. There is no language in the U.S. Constitution to limit a convention to one issue and it is widely understood that a convention once called will be able to consider any amendments to the constitution that the delegates want to consider. There are also no guidelines or rules to govern a convention. Due to the lack of provisions in the constitution and lack of historical precedent, it is unknown how delegates to a convention would be picked, what rules would be in place, what would happen in the case of legal disputes, what issues would be raised, how the American people would be represented, and how to limit the influence of special interests in a convention.

Because there is no way to limit a convention's focus, any constitutional issue could be brought up for revision by a convention. This includes civil rights and civil liberties, including freedom of speech, freedom of religion, privacy rights, the guarantee of equal protection under law, the right to vote, immigration issues, and the right to counsel and a jury trial, among others. Basic separation of executive, legislative, and judicial powers would be subject to revision as well. A convention might not preserve the role of the courts in protecting our constitutional rights. Even the supremacy of federal law and the Constitution over state laws could be called into doubt.

A 2016 *USA Today* editorial<sup>i</sup> correctly stated that calling for a constitutional convention is “an invitation to constitutional mayhem” and “could further poison our politics and hobble American leaders at moments of crisis.” Notable legal scholars across the political spectrum agree. One of the nation’s most esteemed constitutional law scholars, Professor Laurence Tribe of Harvard Law School, has said a constitutional convention would put “the whole Constitution up for grabs.”<sup>ii</sup>

Georgetown University Law professor David Super wrote “a constitutional convention would circumvent one of the proudest democratic advances of the last century in America: one-person, one-vote. Without a precedent no one really knows how a convention would unfold, but proponents predict that each state would have an equal vote in whatever they got up to.”<sup>iii</sup>

Former Supreme Court Chief Justice Warren Burger shared similar concerns, writing, “[T]here is no way to effectively 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 one issue, but there is no way to assure that the Convention would obey.”<sup>iv</sup>

Even the late Supreme Court Justice Antonin Scalia warned of the dangers of a constitutional convention. “I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?” Scalia said in 2014.<sup>v</sup>

The undersigned organizations strongly urge state legislatures to oppose efforts to pass a resolution to call for a constitutional convention. We also strongly urge state legislatures to rescind any application for an Article V constitutional convention in order to protect all Americans’ constitutional rights and privileges from being put at risk and up for grabs.

Sincerely,

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<sup>i</sup> *USA Today*, “Marco Rubio's very bad idea: Our view,” January 6, 2016, available at <http://www.usatoday.com/story/opinion/2016/01/06/marco-rubio-constitutional-convention-balanced-budget-editorials-debates/78328702/>

<sup>ii</sup> Michael Leachman & David A. Super, “States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment and Other Issues,” Center for Budget and Policy Priorities, July 6, 2014, available at <http://www.cbpp.org/sites/default/files/atoms/files/7-16-14sfp.pdf>.

<sup>iii</sup> David Super in *The Chicago Tribune*, “Don't even think about 'updating' the Constitution,” March 19, 2017, available at <http://www.chicagotribune.com/news/opinion/commentary/ct-constitutional-convention-amendments-20170319-story.html>

<sup>iv</sup> Letter from Chief Justice Warren Burger to Phyllis Schlafly, June 22, 1988, available at <http://constitution.i2i.org/files/2013/11/Burger-letter2.pdf>.

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<sup>v</sup> Marcia Coyle, "Scalia, Ginsberg Offer Amendments to the Constitution," *Legal Times*, April 17, 2014, available at <http://www.nationallawjournal.com/legaltimes/id=1202651605161/Scalia.-Ginsburg-Offer-Amendments-to-the-Constitution?slreturn=20140421101513>.