

## **Addendum: Other Questions**

**By: Derek Khanna**

### *Other Questions:*

- What would the convention look like?:
  - During the Founding Era, a “convention” was usually an ad hoc assembly designed to pinch-hit for a legislature. Today we tend to think of a convention as a “constitutional convention,” but during the Founding Era most of those gatherings were not “constitutional” at all. Most were simply task forces assigned to recommend solutions to pre-specified problems. Others were established to ratify the work done by others. The Constitution authorizes three kinds of limited purpose conventions: One kind to ratify the Constitution itself, another to ratify amendments, and a third to act as a task force to recommend solutions to pre-specified problems. The convention for proposing amendments is in the third category.

The historical record tells us what the Founders had in mind when they authorized a convention for proposing amendments: They envisioned an interstate or “federal” convention—that is, an assembly composed of state delegations (“committees”) responsible to their respective state legislatures and operating, at least initially, according to a rule of one state/one vote. Although the fact is not widely known today, interstate conventions were commonplace during the Founding Era: There were at least eleven of them.

They were modeled after diplomatic conventions among separate sovereignties. The agenda and powers of interstate conventions were fixed by the participating states, sometimes after congressional recommendation, sometimes not. Usually the agenda was fairly narrow. For instance, the interstate convention held in Yorktown, Pennsylvania in 1777 was entrusted only with issues of price inflation. The 1781 interstate convention held in Providence, Rhode Island was restricted to military supply for a single year. The scope of a convention for proposing amendments is similarly narrow. As James Madison made clear, it is not what leading Founders called a “plenipotentiary convention.” In other words, it is not an assembly with very wide authority, such as one charged with drafting or adopting a Constitution. Thus, it is simply incorrect to refer to a convention for proposing amendments as a “constitutional convention.” They are different creatures entirely (ALEC [handbook](#)).
- Who establishes the rules for selecting delegates?

- Some have suggested that, under the Necessary and Proper Clause, Congress might specify how delegates to an Article V convention are chosen. However, Founding-era practice informs us that delegate selection is incidental to the powers of the state legislature, not to the powers of Congress. Subsequent history is fully consistent: Applications and other documents from the Founding through the 19th century generally referred to Article V conventions as “federal conventions” and “conventions of the states,” rather than as conventions of the people.

The Supreme Court also has used the term “convention of the states.” On the one occasion when Congress opted for a proposed constitutional amendment to be ratified by state conventions rather than state legislatures, the states were left in full command of delegate selection. Of course, state legislative decisions are subject to general rules imposed on the states by the Constitution, particularly the guarantees of due process, equal protection, and voting rights defined by the Fourteenth, Fifteenth, Nineteenth, and Twenty-sixth amendments. The Twenty-fourth Amendment, prohibiting requirements that electors be taxpayers, does not apply to voting for conventions under Article V (according to the [Goldwater Institute](#)).

- Who sets the rules of the convention?

- As noted above, both Founding-era custom and modern case law hold that control over the convention’s proceedings is its own prerogative. As incidents to its power to propose amendments, the convention may establish its own rules, elect its own officers, determine where it continues to sit, fix the hours of sitting, judge the credentials of members, and otherwise oversee housekeeping.

If the convention wishes to alter the “one state, one vote” rule, it may do so. During the Founding era, conventions could punish members of the general public for such “breaches of privilege” as slander of the convention or of members, but this power was removed by the Due Process Clause of the Fifth Amendment (according to the [Goldwater Institute](#)).

- What happens if the convention “proposes” an amendment outside the subject matter assigned by the applications?

- Because the convention ultimately serves the state legislatures, proposals outside the call are ultra vires: Only those within the scope of authority, as fixed by the applications, have legal force.

Under agency law (both at the Founding and today), an agent may suggest to his principal a course of action outside the agent’s sphere of authority—but it has no legal effect. For example, if a convention called to consider a

balanced-budget amendment recommends both a balanced budget amendment and a term-limits amendment, only the former is a “proposal” within the meaning of Article V. The latter is merely a recommendation for future consideration. Congress may specify a “Mode of Ratification” only for the balanced-budget amendment, and states may ratify only that proposal.

If Congress, the legislatures, or the public agrees with the convention’s term-limits recommendation, the states may apply anew for a convention with authority to propose it, or Congress itself may propose it (according to the [Goldwater Institute](#)).

- If 2/3 of the states call for a convention does the federal government have to act?:
  - This question is best answered by Alexander Hamilton’s [Federalist 85](#):  
*“It is this that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged "on the application of the legislatures of two thirds of the States [which at present amount to nine], to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air”*
  - Also George Mason [argued](#) at the Philadelphia Convention,:  
*“[i]t would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their consent on that very account.”*
- Professor Randy Barnett of Georgetown Law and Ilya Shapiro are the leading proponents of an Amendments Convention. Professor Barnett proposes the convention for his [Bill of Federalism](#):
  1. Restrictions on Tax Powers of Congress
  2. Limits of Commerce Power
  3. Unfunded Mandates and Conditions on Spending
  4. No Abuse of the Treaty Power
  5. Freedom of Political Speech and Press
  6. Power of States to Check Federal Power
  7. Term Limits for Congress
  8. Balanced Budget Line Item Veto
  9. The Rights Retained by the People

10. Neither Foreign Law nor American Judges May Alter the Meaning of  
Constitution

## **Addendum: Source Documents**

**By: Derek Khanna**

### **Source Documents (hyperlink included):**

The Goldwater Institute's Rob Natelson has written some of the definitive scholarship on this topic:

1. **Amending the Constitution by Convention: A Complete View of the Founders' Plan (Part 1 in a Series)**  
<http://goldwaterinstitute.org/article/amending-constitution-convention-complete-view-founders-plan-part-1-series>
2. **Learning from Experience: How the States Used Article V Applications in America's First Century (Part 2 in a Series)**  
<http://goldwaterinstitute.org/article/learning-experience-how-states-used-article-v-applications-americas-first-century-part-2>
3. **Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers (Part 3 in a series)**  
<http://goldwaterinstitute.org/article/amending-constitution-convention-practical-guidance-citizens-and-policymakers-part-3-series>
4. **ALEC: 23 Unanswerable Questions and Their Answers, Concerning an Article V Convention For Proposing a Constitutional Amendment.**  
[http://www.bba4usa.org/uploads/23\\_Unanswerable\\_Questions\\_and\\_their\\_Answers.pdf](http://www.bba4usa.org/uploads/23_Unanswerable_Questions_and_their_Answers.pdf)

### **Original Sources (hyperlink included):**

1. **Federalist No. 43**  
In James Madison's Federalist No. 43 he writes: *"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."*  
<http://www.constitution.org/fed/federa43.htm>
2. **Federalist No. 85**  
In Federalist No. 85, Alexander Hamilton writes: *"We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."*  
<http://www.constitution.org/fed/federa85.htm>
3. **Report of Proceedings on September 15, 1787 in Elliot's Debates (1905), at 356-58**

<http://www.goldwaterinstitute.org/sites/default/files/Elliot%20356-358.pdf>

4. **Report of Proceedings on September 15, 1787 in Farrand's (1911), at 503-05**  
<http://www.goldwaterinstitute.org/sites/default/files/Farrand%20503-506.pdf>

5. **Washington's Letter to Armstrong**

In a letter from George Washington to John Armstrong, the future first president writes: *"It should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine States."*

<http://gwpapers.virginia.edu/documents/constitution/1788/armstrong.html>

6. **Report On The Virginia Resolutions, House of Delegates**

In James Madison's Report On The Virginia Resolutions, House of Delegates (pg 501-02), he writes: *"...or two thirds of themselves (states), if such had been their opinion, might, by an application to Congress, have obtained a convention for the same object."*

<http://goldwaterinstitute.org/sites/default/files/Virginia%20Resolutions.pdf>

7. **Madison's Letter on Nullification**

James Madison's letter on Nullification also made reference to the Article V amendment process when he writes: *"The final resort within the purview of the Constitution, lies in an amendment of the Constitution, according to a process applicable by the states."*

[http://www.constitution.org/rf/jm\\_18300801.htm](http://www.constitution.org/rf/jm_18300801.htm)

***Additional Support (hyperlink included):***

**1. President Abraham Lincoln:**

"This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their *constitutional* right of amending it or their *revolutionary* right to dismember or overthrow it. I cannot be ignorant of the fact that many worthy and patriotic citizens are desirous to have the National Constitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself; and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to either accept of refuse." ([First Inaugural Address](#), March 4, 1861)  
<http://www.bartleby.com/124/pres31.html>

**2. President Dwight D. Eisenhower:**

"Through their state legislatures and without regard to the federal government, the people can demand a convention to propose amendments that can and will reverse any trends they see as fatal to true representative government." (May 26, 1963)

**3. President Reagan:**

There are 171 speeches in the [Reagan archives](#) that include his support for a federal balanced budget amendment.

*"I hope we won't lose sight of the main target in a debate over rich route we take to amend the constitution. Some want to call a Convention. Others want to go the legislative way. . . The Constitution provides for both methods and the convention is a safety valve giving the people a chance to act if Congress refuses to."*

*"This reluctance by Congress has inspired a number of Americans to try [for] ... a constitutional convention ... [to] propose a balanced budget amendment, and then send it on to the state legislatures for approval.... If the Congress continues to balk ... I think the drive for a constitutional convention will pick up steam."* (May 23, 1987)

*"I will again ask Congress to submit a balanced budget amendment to the States. And if the Congress will not act, I'll have no choice but to take my case directly to the States [through an Article V convention]."* (July 3, 1987)

*"If the Congress continues to oppose the wishes of the people by avoiding a vote on our balanced budget amendment, the call for a constitutional convention is only two states away from approval, and, one way or another, the will of the people always prevails."* (August 12, 1987)

[http://www.reagan.utexas.edu/search/speeches/speech\\_srch.html](http://www.reagan.utexas.edu/search/speeches/speech_srch.html)

- [Remarks to the American Lobby for the Balanced Budget Amendment](#)  
Remarks to the American Lobby for the Balanced Budget Amendment Remarks to the
- [The President's News Conference](#)  
President's News Conference The President's News Conference July 28, 1982
- [Remarks on Administration Goals to Senior Presidential Appointees](#)  
Remarks on Administration Goals to Senior Presidential Appointees Remarks on A
- [Interview With Pat Robertson of the Christian Broadcasting Network](#)  
Interview With Pat Robertson of the Christian Broadcasting Network Interview W
- [Radio Address to the Nation on the Federal Budget and the Congressional Elections](#)  
Radio Address to the Nation on the Federal Budget and the Congressional Electio
- [Remarks at the National Federation of Independent Business Conference](#)  
Remarks at the National Federation of Independent Business Conference Remarks
- [Remarks at a Fundraising Reception for Senator Orrin G. Hatch of Utah](#)  
Remarks at a Fundraising Reception for Senator Orrin G. Hatch of Utah Remarks
- [Radio Address to the Nation on the Fiscal Year 1987 Appropriations Bills](#)  
Radio Address to the Nation on the Fiscal Year 1987 Appropriations Bills Radio
- [Statement Endorsing the Congressional Conference Agreement on the Balanced Budget and Emergency Deficit Control Bill](#)  
Statement Endorsing the Congressional Conference Agreement on the Balanced Budg
- [Remarks at a Republican Party Fundraising Reception](#)  
Remarks at a Republican Party Fundraising Reception Remarks at a Republican Pa
- [Remarks to Citizens in New Britain, Connecticut](#)  
Remarks to Citizens in New Britain, Connecticut Remarks to Citizens in New Bri
- [Statement on Signing the Bill Increasing the Public Debt Limit and Enacting the Balanced Budget and Emergency Deficit Control Act of 1985](#)  
Statement on Signing the Bill Increasing the Public Debt Limit and Enacting the
- [Remarks at a Nebraska Republican Party Rally in Omaha](#)  
Remarks at a Nebraska Republican Party Rally in Omaha Remarks at a Nebraska



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- [Remarks to the Business-Government Relations Council](#)  
Remarks to the Business-Government Relations Council Remarks to the  
Business-G
- [1988 Legislative and Administrative Message: A Union of Individuals](#)  
1988 Legislative and Administrative Message: A Union of Individuals 1988 Legis
- [America's Economic Bill of Rights](#)  
America's Economic Bill of Rights America's Economic Bill of Rights July 3, 19

*Outside Sources (hyperlink included):*

1. **Heritage Foundation: Background Paper - Amending the Constitution by the Convention Method**

In 1988, the Heritage Foundation published a report showing numerous safeguards are in place that would keep such a convention from “running away.” In fact, the Heritage Foundation calls a state-called amendments convention *safer than Congress proposing amendments*:

“Worries [regarding a run-away convention] are based upon a misperception of the nature of an Article V convention and of the safeguards built into the amendment process. A wide variety of authorities, including a special study committee of the American Bar Association, point out that a convention legally can be limited to a particular subject. These limitations can be enforced by Congress or by the courts. A convention also would be constrained by a range of political factors, including the election of its delegates.

Most important, a convention called under Article V could only propose, not enact, amendments. These proposal still would have to be ratified by 38-states – no easy task. Given these strong safeguards, a convention would be far less able to “run away” with the Constitution than Congress itself, which may propose constitutional amendment at any time and on virtually any subject. . .

If despite [the Constitutional, legal and political restraints] a convention still strayed. . . those amendments would face a second obstacle: Congress. Under Article V, the convention would not actually submit amendments to the states for ratification until Congress chose the “Mode of Ratification.” Congress must designate whether state legislatures or state ratifying conventions are to ratify the amendment. This gives Congress a tool to stop, in effect, any amendments that exceed the convention’s charge.

Given the numerous safeguards built into the convention method of amendment, fears that use of this method would endanger the Constitution are unfounded. In fact, the convention method actually may be the safer method of amendment. A convention is subject to many constraints, while Congress may propose an amendment to the states at any time, with almost no limits. . .the framers of the Constitution wisely intended the convention method to be a vital counterweight to the powers of Congress to block amendments. As the campaign for direct elections to the U.S. Senate demonstrated, the threat of a constitutional convention sometimes is necessary to force consideration of amendments that challenge the self-interest of Capitol Hill lawmakers.

. . . the convention clause of Article V is an integral and necessary part of the constitutional system of checks and balanced. Americans and their representatives in state legislatures and in Congress should not allow misinformation to divert them from employing this wisely crafted provision. When Congress fails to propose needed amendments to the Constitution, policy makers should not hesitate to put it to use.”

<http://www.goldwaterinstitute.org/sites/default/files/Heritage%20Foundation%20Pro%20Article%20V%201988.pdf>

2. **[Cato: Who's Afraid of An Amendments Convention?](#)**

Congress is unlikely to ever amass a two-thirds majority in favor of limiting its own power, however, so the state-called convention idea looks attractive.

<http://www.cato-at-liberty.org/whos-afraid-of-an-amendments-convention/>

3. **[U.S. Justice Department: Legal opinion that Article V authorizes a limited subject amendments convention\\*\\* \(one of the best sources\)](#)**

In 1979, the U.S. Justice Department wrote a legal opinion that Article V of the Constitution authorizes a limited subject amendments convention. "First, we think that if a convention for proposing amendments were called under Article V, the constitutionally mandated procedures would operate to deprive the convention of power to make constitutionally viable proposals except with respect to subjects within a predetermined field."

The report explains that states are supposed to have no more or less power than Congress to propose amendments. Just as Congress proposes specific amendments, so can the states.

<http://www.goldwaterinstitute.org/sites/default/files/US%20Justice%20Dept.pdf>

4. **[American Bar Association's Special Constitutional Convention Study Committee](#)**

Their report, from 1974, found:

In summary, we believe that a substantively-limited Article V convention is consistent with the purpose of the alternative method since the states and people would have a complete vehicle other than the Congress for remedying specific abuses of power by the national government; consistent with the actual history of the amending article throughout which only amendments on single subjects have been proposed by Congress; consistent with state practice under which limited conventions have been held under constitutional provisions not expressly sanctioning a substantively-limited convention; and consistent with democratic principles because convention delegates would be chosen by the people in an election in which the subject matter to be dealt with would be known and the issues identified, thereby enabling the electorate to exercise an informed judgment in the choice of delegates.

<http://freeourcommerce.com/PDFs/Limited%20Convention.pdf>

5. **[Walter Dellinger Yale Law Article: The Recurring Question of the "Limited" Constitutional Convention](#)**

It is reasonable to expect that a convention would choose to confine itself to considering amendments addressing the problem that led states to apply for the convention. If the prospect of a "runaway convention" is frightening, then delegate candidates are likely to campaign for office on a pledge to limit the convention's agenda and that pledge is likely to have popular appeal.

[http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1268&context=faculty\\_scholarship](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1268&context=faculty_scholarship)

6. **[Harvard Journal of Law & Public Policy: The Other Way to Amend the Constitution](#)**

The history of the drafting of the Convention Clause at the Philadelphia Convention shows that the Clause's accepted meaning at the time was that the applications by the States to Congress could be limited and could thus limit the subject matter of a convention. At one point in the drafting process, the Convention removed the language granting States the power to apply for a convention and instead gave Congress the power to propose amendments whenever it would "deem necessary, or on the application of two thirds of the Legislatures of the several states . . . ." This language is nearly identical to the Convention Clause language in Article V that requires Congress to call a convention "on the Application of the Legislatures of two thirds of the several states." The draft language surely meant that the States could make applications to Congress to propose amendments on specific issues.

[http://www.law.harvard.edu/students/orgs/jlpp/Vol30\\_No3\\_Rogersonline.pdf](http://www.law.harvard.edu/students/orgs/jlpp/Vol30_No3_Rogersonline.pdf)

7. **[James Madison and the "Constitution's Convention for Proposing Amendments" \(by Robert Natelson\)](#)**

James Madison was a principal drafter of Article V. That he and the other Framers should turn to conventions, particularly interstate conventions, as tools for amendment was not at all surprising: Conventions were well-precedented ways of accomplishing specific political tasks of the kind best not left to legislatures. Moreover, as Madison grew in age and experience, he came to view the "Convention for proposing Amendments" as an instrument by which states could resist an abusive or overreaching federal government. This Essay traces that development in Madison's thought. . .

After most of the other states rejected his 1798 Virginia Resolution, Madison came to view the Article V convention as a way to guard against federal governmental excesses. By 1830, he was strongly promoting state-application-and-convention process as an alternative to nullification, and—in the event of otherwise incorrigible federal abuse—as the last constitutional step states should pursue. . .

<http://www.uakron.edu/dotAsset/eb2e9bf5-993a-40ba-acca-856dd886a19b.pdf>

8. **[Rebuttal of Eagle Forum/John Birch Society Arguments by Nick Dranias of the Goldwater Institute](#)**

[Their claims] simply ignore the recorded history of the Philadelphia convention that drafted the Constitution. [Four times on Sept. 15, 1787](#), convention delegates rejected attempts to change Article V to allow the states to call a general or wide-open convention. They kept the language of "a convention to propose amendments" and required three-fourths of the states to ratify any proposed amendment before it became law. Later, [in Federalist No. 85](#), Alexander Hamilton specifically distinguished between states holding a second general convention and states using the amendments convention process of Article V, urging the second approach. Similarly, James Madison's opposition to a "general" or wide-open convention, as recounted by Mrs. Schlafly, is completely

consistent with his later support of states using Article V for targeted amendments, such as the repeal of the Alien and Sedition Acts.

The founders clearly want to provide the states with the same power as Congress to address specific problems by proposing limited amendments, and nothing more. Mrs. Schlafly is mistaken to think the use of the plural form “amendments” means an Article V convention can only propose to rewrite the entire Constitution. The Constitution often uses the plural form to include the singular, not to exclude it. The plural form “amendments” is also used with respect to Congress’ amendment power, and Congress routinely proposes single amendments. The same is true of an Article V convention.

Even opponents of the Constitution recognized this fact. Patrick Henry tried to convince states to not ratify the original Constitution because he knew Article V made it impossible for an amendments convention to ever rewrite it, which Henry hoped states would do.

A runaway Article V amendments convention is a myth; a runaway Congress that has amassed \$14 trillion in federal debt is a reality the states must start addressing now. <http://mobile.wnd.com/2011/03/270545/>

9. **[Harvard Journal of Law & Public Policy: How to Count to Thirty-Four \(by Michael Paulsen\)](#)**

How Should One “Count,” and Cumulate, Subject-Specific Applications? If a constitutional convention may not properly be limited in what it chooses to propose, what is one to make of state legislatures’ convention applications that specify a particular subject for amendments? Are they valid or invalid? Can they count toward the number needed for a constitutionally proper, general convention? Interestingly, this question arises even if a convention could be limited: Everybody acknowledges that a convention may be unrestricted. (It is only the notion of a limited convention that is constitutionally questionable.) Thus, subject-specific applications might well count toward the two-thirds of states needed to apply for a “general” convention, whether or not they could validly count toward a limited convention. The answer here is that some such applications count as valid applications for a general constitutional convention and some of them do not count. It all depends, naturally enough, on what the applications actually say.

The Question of Multiple Applications. Granting that some subject-specific applications for conventions are invalid (or valid only toward the total needed for a limited constitutional convention, if such a thing were possible), what is one to make of multiple state applications, some of which are invalid and some of which are not? The answer, I submit, again depends on what the applications say. Some invalid applications operate to rescind all prior valid applications. But most would leave prior valid applications in place.

The Question of Cumulation over Time. Can valid, unrepealed applications for an unrestricted constitutional convention be cumulated over time and across subjects? The

answer to this question is a simple, straightforward yes. And that is where the interesting case of the Twenty-seventh Amendment, concerning congressional pay raises, comes into play. That amendment was proposed in 1789 and ratified in 1992. If the Twenty-seventh Amendment is valid--and I believe it is--it is because an amendment proposal, if not rescinded or extinguished, can live on until ratified. There is no reason a state's constitutional convention application, if not rescinded or extinguished, cannot do likewise.

Access on [Westlaw](#).

**10. [American Legislative Exchange Counsel's Handbook on Article V](#)**

“State legislators must take the long-sighted view and exercise our rights within the Constitution to limit Congress’s ability to drive our nation into further economic decay. This Handbook is your "guide to achieving that goal.” (State Senator Jim Buck)

The state application and convention process was not inserted in the Constitution merely to increase the length of the document. It was an important component—perhaps the most important component—in the federal balance between states and central government.

It was, in Madison’s terms, the ultimate constitutional way for curbing an abusive or out of control federal government. In more modern terms, it is the analogue to the initiative process at the state level: Just as the initiative enables the people to make reforms the state legislature refuses to undertake, the state application and convention process enables the state legislatures to effectuate reforms Congress refuses to propose.

If we could address one or more of the leading Founders today, we might tell them what has happened to American federalism—that the states are increasingly mere administrative subdivisions for the convenience of Washington, D.C. After we related the situation, those Founders doubtless would ask, “Well, have you ever called a convention of the states under Article V?” And when we admitted we never had, they might well respond, “In short, you refused to use the very tools we gave you to avoid this situation. The sad state of American federalism is clearly your own fault.”

Thus, the responsibility for reclaiming constitutional government is very much ours.  
<http://www.alec.org/docs/ArticleVHandbook.pdf>

**11. [Tennessee Law Review Article: Robert G. Natelson's - Proposing Constitutional Amendments By Convention: Rules Governing The Process](#)**

(This source is the most in depth source on the entire convention process and resolves many of the lingering questions on the topic).

Much of the mystery surrounding the Constitution's state-application-and-convention amendment process is unnecessary: History and case law enable us to resolve most questions. This Article is the first in the legal literature to access the full Founding-Era record on the subject, including the practices of inter-colonial and interstate conventions held during the 1770s and 1780s. Relying on that record, together with post-Founding practices, understandings, and case law, this Article clarifies the rules

governing applications and convention calls, and the roles of legislatures and conventions in the process.

Access on [Westlaw](#).

## **12. What State Legislators Need to Know About the Prospect of a Convention**

Arkansas state legislators could easily pass legislation that ensures that, in the event of an Article V convention, our state's delegates could never create a "runaway convention." For instance, Arkansas could pass legislation in 2013 that confined the authority of its Article V convention delegates – more particularly, it could require convention delegates to act only on the constitutional amendment proposal that had already been approved by the legislatures of two-thirds of the states and therefore that had triggered the convention. (Similar legislation was recently introduced by legislative leaders in Tennessee.) This legislation could require any delegate who ignored such instructions to be immediately and automatically stripped of voting power, recalled, and replaced. If a majority of delegates across the nation were required to operate under such state laws, convention delegates would be unable to approve any amendment that had not been proposed by two-thirds of the states.

<http://www.advancearkansas.org/storage/ndrapaper.pdf>

## **13. Goldwater Institute - Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers**

This report provides crucial practical drafting guidance for exercising the states' constitutional authority. In essence, it recommends that state legislators draft their Article V applications and delegate commissions with an eye to targeting specific subject matters, while still giving state delegates a meaningful level of deliberative independence to ensure that the amendments convention can serve its consensus-building and problem-solving purpose. The key is to regard an amendments convention as a modern-day "task force"—a representative body that is limited to a specific agenda but expected to exercise judgment on accomplishing that agenda.

[http://goldwaterinstitute.org/sites/default/files/PB%2011-02%20Article%20V%20Part%203%20of%203\\_0.pdf](http://goldwaterinstitute.org/sites/default/files/PB%2011-02%20Article%20V%20Part%203%20of%203_0.pdf)

## **14. Independence Institute - Why an Amendments Convention is not a "Constitutional Convention"**

In sum, here are the principal differences between a constitutional convention and a convention for proposing amendments:

1. A constitutional convention is commissioned to write an entirely new constitution. A convention for proposing amendments is commissioned to consider and write amendments "particularized" (Sam Adams' word) by the sponsoring states.
2. A federal constitutional convention operates outside existing law. Thus, the 1787 convention was commissioned directly by the participating states and not called under the Articles or bound by them. It was nearly "plenipotentiary" (James Madison's word). But a convention for proposing amendments is held under the Constitution and subject to the same constitutional rules that restrict Congress when Congress proposes amendments. For example, the convention may not change the ratification rules or

“deprive[]” a state, without its Consent . . . of its equal Suffrage in the Senate.” See U.S. Const., art. V.

<http://constitution.i2i.org/2012/03/04/why-an-amendments-convention-is-not-a-%E2%80%9Cconstitutional-convention%E2%80%9D/>

**15. James Madison Institute: Why the US Needs a Balanced Budget Amendment**  
(Current scholar for the Heritage Foundation and for the James Madison Institute)

It is time to dust off and sharpen an important constitutional tool the Framers made available during such crises. It is time for an Article V constitutional amendment convention to propose and for the States to ratify a balanced budget amendment.

As recent political history instructs, such an amendment will not be forthcoming from the Congress. It is a political ploy to buy time and diffuse airtight constitutional limits on deficits. If the fiscal responsibility is to be forthcoming, it will only come from a constitutional amendment convention of the states, proposing a balanced budget amendment without the gimmicks and escape hatches for politicians to manipulate. Such blighted political circumstances were anticipated by the Framers and is why they included an Article V convention proposed amendment in the U.S. Constitution. The states are to serve as a check on a corrupt and irresponsible national government.

[http://www.jamesmadison.org/wp-content/uploads/IssueAnalysis\\_BalncBudgAmendConv\\_DeRosaAug11.pdf](http://www.jamesmadison.org/wp-content/uploads/IssueAnalysis_BalncBudgAmendConv_DeRosaAug11.pdf)

**16. James Madison Institute: Is it Time for a Balanced Budget Constitutional Amendment Convention?**

Because an Article V convention has never been convened, there is neither historical nor statutory precedent to guide the process. This lack of precedent alarms many would-be well-intentioned supporters of a constitutional amendment convention to add a balanced budget amendment to the US Constitution. However, it also provides an unfortunate opportunity for supporters of the status quo, i.e., unsustainable debt and political corruption, to make nugatory one of the most effective weapons in the constitutional arsenal to make government accountable to the governed. As will become clear, the alarmists’ arguments are specious.

Coleman v. Miller (1939) and Senator Sam Ervin’s legislative blueprint for an Article V constitutional amendment convention make manifest that the process would be constrained and effective.

[http://www.jamesmadison.org/wp-content/uploads/IssueAnalysis\\_BalncBudgAmendConv\\_DeRosaAug11.pdf](http://www.jamesmadison.org/wp-content/uploads/IssueAnalysis_BalncBudgAmendConv_DeRosaAug11.pdf)

**17. Congressional Research Service Report: The Article V Convention to Propose Constitutional Amendments – Contemporary Issues for Congress**

A broad range of constitutional scholars holds that a convention may, in fact, be limited to a specific area or areas contained in state applications, or indeed, that it *must* be so



limited. A fundamental assumption of this viewpoint is that the framers did not contemplate a wholesale or large-scale revision of the Constitution when they drafted Article V. Senator Sam Ervin, a champion of advance congressional planning for a convention, wrote that, "... there is strong evidence that what the members of the convention were concerned with ... was the power to make specific amendments.... [The] [p]rovision in article V for two exceptions to the amendment power underlines the notion that the convention anticipated a specific amendment or amendments rather than general revision."

One commentator, championing the states' authority in this question, noted that the founders' intention in establishing the state petition device was to provide a check against a Congress that had declined to propose an amendment or amendments that commanded widespread support, suggesting that a convention limited by the subject area of state applications was constitutional, but that a convention could not be limited by Congress, "... Congress may not impose its will on the convention....the purpose of the Convention Clause is to allow the States to circumvent a recalcitrant Congress. The convention Clause, therefore, must allow the States to limit a convention in order to accomplish this purpose." According to this view, the states should decide whether a convention would be open and general, or limited, depending on the actions of the several legislatures.  
<http://www.fas.org/sgp/crs/misc/R42589.pdf>

#### **18. Congressional Research Service Report: The Article V Convention – Historical Perspectives for Congress**

Reviewing the history of the Article V Convention alternative, the record of the Constitutional Convention of 1787 clearly demonstrated the founders' original intent. During the convention, they agreed that a second mode of amendment was needed to balance the grant of amendatory power to Congress. This method, clearly identified in Article V as co-equal to congressional proposal of amendments, empowered the people, acting through their state legislatures, to summon a convention that would have equal authority to propose an amendment or amendments, which would then be presented to the states for ratification.  
<http://www.fas.org/sgp/crs/misc/R42592.pdf>