

FOAVC Frequently Asked Questions

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Welcome to **FOAVC's** (Friends Of the [Article V](#) Convention) **Frequently Asked Questions (FAQ)** Page, which is intended to answer the most commonly asked questions about an **Article V** Convention. All of the information given as answers are based on federal court rulings, historic information and records and other reference materials.

Based on our research into an **Article V** Convention, **FOAVC** has come to the conclusion that, as with the rest of the branches of government (state and national) described in the Constitution, the **Article V** Convention is similarly bound by all provisions and clauses of the Constitution. Thus, the equal protection clause of the 14th Amendment applies to an **Article V** Convention meaning that all laws, regulations, court rulings and so forth which have been applied to Congress (the only other branch of government authorized by the Constitution to propose amendments to the Constitution) automatically and equally applies to the **Article V** Convention, its delegates and its powers *with one important exception*---Constitutional scholars agree that an **Article V** Convention is limited strictly and exclusively to proposing amendments to the Constitution, which must then be ratified by three-fourths of the states before taking effect. The Convention itself possesses no legislative or taxing authority; it can only debate, formulate and propose amendments.

An **Article V** Convention is simply an alternative method of amendment provided by the Framers of our Constitution enabling the citizens of the United States to advance proposals for amendments to the Constitution *without national governmental approval or oversight and nothing more*. **Article V** was never intended nor does it authorize the formation of a new Constitution; rather, it serves to modernize and clarify the existing document as do the existing 27 Amendments.

To use our **FAQ** Page, simply scroll down the list of questions by issue and question. Click on the under-lined [Question](#) (see below) and you will be directed to the **ANSWER** for that question. To return to the previous question (and list of questions), simple left-click once on [Back](#) that appears to the left of each **ANSWER**. Also, if you would like to reference specific questions on this page, bookmarks are embedded for each question. For example, to reference [Question 4.7](#) below, use:

<http://www.foavc.org/file.php/1/Articles/FAQ.htm#Q4.7> (i.e. add **#QN.N** to the end of the hyperlink).

[Here \(click here\)](#) is the text of Article V of the U.S. Constitution. The meaning is simple and unambiguous as stated in **United States v. Sprague, 282 U.S. page 716 (1931), the Supreme Court stated:**

1. "The United States asserts that *article 5 is clear in statement and in meaning*, contains *no ambiguity* and calls for no resort to rules of [construction](#). A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the States, *must call a convention to propose them.*"

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Agenda:

(1.1) QUESTION: How long would an Article V Convention last?

Back **ANSWER:** While it is impossible to state exactly how long an Article V Convention would be in session, its term would be very short. The only authority an Article V Convention has is to propose amendments to the Constitution. As soon as that has been accomplished, the convention would have to adjourn as it would no longer have any constitutional authority to remain in existence. Because Congress has failed to call an Article V Convention in a timely fashion and has let applications pile up, it is likely the first Article V Convention will be the longest simply because the delegates will have so much work in front of them; at least 17 different issues in all.

(1.2) QUESTION: Who would determine the time constraints on an Article V Convention?

Back **ANSWER:** As the Article V Convention is limited by the Constitution to proposing amendments and no other duty, the length of the convention would be set by how long delegates would be at work composing, debating and disposing by vote of various proposed amendments. Just as Congress does, the convention would use committees to address the various amendment issues as well as other procedural business of the convention. These committees would have to have time to work in order to create the actual language of proposed amendments. Unlike Congress however, the convention has no power to tax nor could it be funded by either the states or Congress as such funding would

allow these political bodies to dictate and control the convention much as is done currently with federal spending and the states. The convention delegates will be volunteer, as will be its staff, if the convention has any at all. In this regard it will be exactly as the 1787 convention. This lack of funds will therefore be the overriding limit on the length of convention most likely limiting it to a few weeks at most.

While Congress must issue a call setting a time and place for a convention, there is nothing in the Constitution stating delegates must actually meet there. Given the circumstances of no funding, and the tremendous costs involved of renting a hall for several hundred delegates, providing services and security for these delegates, setting a vast communications network needed to publicize such a convention plus other such expenses, it is likely the convention will instead turn to a much cheaper, more universal method of communication-- Internet teleconferences, which will allow delegates to "meet" on a single website, conduct business, exchange ideas, speeches, documents, debate the issues and vote all while remaining in the comfort of their own homes, still attending to their daily lives. This method of conducting convention business will also allow for delegates from all different economic strata rather than the rich and super rich as are found in Congress now to become delegates as the delegates will still be able to keep their current incomes and sources of revenue unlike members of Congress who must travel to Washington D.C. where they become prey to lobbying efforts. As the voting and discussion at such a convention will certainly be designed to accommodate such delegates, it will be easy for any delegate to simply "pick up" the conversation hours later and remain fully involved in convention business while still having a normal life. Further, as the teleconferences can easily be saved and distributed live on the Internet, it will allow a true, real time observation by any American interested in the proceedings on his computer.

It is also likely the convention committees will use such teleconferences to gather information and input in the form of surveys, forms and other Internet data directly from the American people. The Internet of course will provide direct communication between the delegates and the people they represent as well as allowing the delegate to remain in the district he represents so that he can continue to communicate with his electors face-to-face all the time the convention is in session thus allowing the electors to keep an "eye" on the delegate and his activities.

(1.3) QUESTION: Who would determine the agenda for an Article V Convention?

ANSWER: While nearly all the applications submitted by the states for an Article V Convention do contain a issue for a particular amendment, the issue of the application has no *constitutional* significance because the application by the states is for a *convention call* ["on the application of two-thirds of the states legislatures [Congress] shall call a convention..."] rather than a specific amendment issue. When Congress calls the convention, then the issue of the applications form, in part, the basis of the agenda of the convention.

The agenda for an Article V Convention will be determined (1) by the already submitted applications on currently on file in the Congressional Record; (2) any new issues the states submit to the convention for its consideration and (3) any amendment issues submitted by the delegates themselves. Presumably, the delegates will reflect in these issues the desires of those Americans who elect them to the post for specific amendment proposals.

Article V Convention:

(2.1) **QUESTION:** Is an Article V Convention the same thing as an "amendatory convention"?

ANSWER: Yes. An "amendatory convention" is merely an informal term describing an Article V Convention. It is also appropriate to use the term "convention to propose amendments" which is the exact language used in Article V of the Constitution to describe an Article V Convention. All these terms refer to the limited and single power of an Article V Convention to propose amendments to our current Constitution. The Article V Convention has no other powers than this.

(2.2) **QUESTION:** Can an Article V Convention "runaway" like a "constitutional convention" can?

ANSWER: No. Only a "constitutional convention" can runaway. The Article V Convention, as its name suggests, is held under the authority of Article V of the Constitution which means as with all branches of government, it is held to the same standards of law as Congress, the president or the Supreme Court. Thus, if a an Article V Convention were to attempt to "runaway", that is assume more power than assigned it by the Constitution, the delegates who would undertake such a coup can be arrested, tried and convicted under already existing [federal criminal laws](#).

Amendments:

(3.1) **QUESTION:** What amendment proposals will likely be discussed for proposal at an Article V Convention?

ANSWER: While it is impossible to predict every amendment proposal that will be discussed at an Article V Convention, it is certain that amendment issues submitted [by the states in their applications](#) will create an agenda for the convention which might be best termed "old business" as these will be amendment issues already submitted. The convention most certainly will pass a rule that will prohibit an amendment issue that is "old business" from being considered again in "new business" where issues not submitted by the states already or submitted by the delegates themselves will be considered.

The fact that many amendment proposals involving many amendment issues does not mean a convention will actually propose a large number of amendments. [As discussed elsewhere](#), proposing and ratifying an amendment to the Constitution is a difficult matter at best.

(3.2) **QUESTION:** Can one state delegation offer multiple amendment proposals?

ANSWER: Yes. As with any meeting, and in the ultimate analysis, an Article V Convention is nothing more than a meeting, any member can propose as many motions or amendments as he wishes. The same applies to state delegates to an Article V Convention.

However, as with any meeting, the convention may choose in establishing its

rules of procedure rules that would limit motions or amendment proposals by a single state delegation. Therefore, unless the convention itself limits the number of amendment proposals that a single state delegation may advance, there is no restriction on the number of amendment proposals a single state delegation may propose.

(3.3) QUESTION: Can states offer amendment proposals?

Back ANSWER: It is entirely within the purview of states be it through state legislatures, initiatives, private citizen actions or any other legal means to present or advance to delegates of an Article V Convention amendment proposals or suggest issues of amendment for consideration by the convention.

However, as with Congress, only an actual congressional member or in the case of an Article V Convention, a delegate, may actually offer an amendment proposal to the convention for its consideration. If this rule of limiting who can actually offer an amendment didn't exist, total chaos would ensue as it would anyone could propose amendments. However the Constitution makes it clear that only Congress or an Article V Convention may propose amendments to the Constitution thus preventing any such action. the reason states cannot offer amendment proposals directly is it would violate separation of powers giving a single political body (the states) the ability to both propose and ratify amendments *without* review by anyone. Thus states cannot offer amendment proposals without first either presenting them to Congress or a convention for consideration and review.

The Article V Convention however as [described elsewhere in these FAQs](#), will most likely be conducting its work on the Internet. Unlike Congress therefore, the use of the Internet will enable the convention to have a much more direct, interactive communication with the people the delegates will represent and will enable the people to have a much more direct input to the delegates and the convention than is possible with Congress. Unlike Congress in which rich, highly paid staff members and lawyers are employed by members of Congress to prevent direct access between the member and the public, the convention will have a small staff and unless the specific delegate hires staff members, will have no rich, highly paid staff members and lawyers to act as roadblocks for public access. Thus, there will be a direct link between the public and the delegates. In short, an Article V Convention will be able to listen to the American public more attentively and better than Congress ever has.

As delegates will be able to remain in their homes because the convention will be held on the Internet rather than be forced to travel to a distant, unfamiliar meeting location such as Washington D.C. where they would be prey to the special interest lobbyists and other money peddlers so common to Congress today they will easily be able to directly and personally deal with members of the public in their own district who actually elected the delegate.

But thanks to the Internet the convention will be able to do much more than Congress does. A simple web page form with appropriate security measures will allow members of the public to submit amendment proposals and issues to the delegates. The form will inform people whether an amendment issues has already been submitted and filters will prevent the submission of duplicate issues and amendment language thus preventing automated spam from flooding the site. The public will be able submit comments on forums about amendment proposals which the delegates will be able to monitor via email

messages. Delegates will be able to respond to the public via the Internet by posting their own web sites and email letters to the public. All of this will be public information which can viewed by the public, unlike Congress which goes to great efforts to hide and obfuscate public information regarding its activities and certainly does not allow for direct public input into its business preferring instead to accept "campaign" contributions by the lobbyists to be the only source of "public" input listened to by Congress.

(3.4) QUESTION: How will the number of potential amendment proposals be limited or controlled so that everything in the Constitution isn't amended?

Back ANSWER: Amending the Constitution is deliberately difficult to do. It was made this way by the Framers because they believed it was important that the Constitution could be changed if required but should not so easily altered that it could be done for transient reasons. As a result they established that a super-majority (two-thirds) must first approve an amendment proposal before it can even be proposed for ratification and then an even larger super-majority (three-fourths) must ratify the proposal. To make the matter more difficult the Framers made the amendment process involve at least two distinct groups, either the Congress or an Article V Convention to propose the amendment and either the state legislatures or state ratifying conventions to ratify it. The Framers realized each group would bring to the amendment table a different perspective and thus a different agenda regarding any amendment proposal. With all these safeguards, the Framers realized that only those amendment proposals that would have a wide acceptance would gather the necessary support to become part of the Constitution.

Because of the equal protection clause of the 14th Amendment the Article V Convention will be under the same restraint as Congress when it comes to proposing amendments for ratification, that is, it will require two-thirds of the state delegations voting in favor of any amendment proposal before the convention will be able to submit a proposal for ratification consideration.

As with any group, the convention will be composed of a variety of citizens representing the entire political spectrum. Naturally some of these political views will conflict forcing the delegates to compromise and work out solutions in order to reach the required two-thirds consent necessary to pass an amendment proposal.

All together, these political and constitutional hurdles will limit the number of amendment proposals coming out of an Article V Convention to a small number just as has happened in Congress. Over the years literally hundreds of amendment proposals have been proposed in Congress but only a handful, 27 in all spaced over a period of over 200 years have actually been proposed by Congress for ratification. With the convention having a life of only a few weeks, it is likely the number of amendments proposed by the convention will much less, perhaps as few as only one or two amendment proposals. Beyond all these limitations for the convention is the fact that there is no guarantee that any amendment proposal will receive the required three-fourths ratification consent thus presenting another political and constitutional hurdle entirely out of the control of the convention which, by the time the amendments shall have been presented to the states for ratification, will have adjourned permanently.

(3.5) QUESTION: Can the Article V Convention propose repeal of current amendments, such as the 16th Amendment, for example?

Back **ANSWER:** Yes. Congress proposed the [21st Amendment](#) to the Constitution repealing national prohibition which had been created by the [18th Amendment](#). The Convention could obviously do the same thing. In fact, the [record](#) shows that the one most common issue for a convention is repeal of the [16th Amendment](#) with so many states behind it that had not Congress refused to obey the Constitution, it would have been ratified long ago and the paying of federal income tax and the IRS would be a distant memory. However, regardless of what amendment the convention may propose for repeal, that amendment proposal must be ratified by the states *before such a repeal can take place*. If the proposed repeal is *not* ratified, the original amendment remains in place as part of the Constitution.

(3.6) QUESTION: Can the Article V Convention "clarify" a current amendment, such as the Second Amendment, for example specifying it refers to "individual right" rather than a "state right"?

Back **ANSWER:** Yes. Congress did this with the [12th Amendment](#) which "clarified" language regarding the election process of the President of the United States commonly referred to as the electoral college. The amendment was added to the Constitution following the 1800 election in which several weaknesses in the Constitution regarding electing the president were exposed. In fact, as shown by the links in the [12th Amendment](#), presidential succession has been "clarified" by at least two other amendments, the [20th](#) and [25th](#).

It is possible that because of applications [already on file](#), the convention will again visit the electoral college. Currently however, there are no applications on file for a "clarification" of the Second Amendment. Therefore such an amendment would have to come from initiation by a delegate or a new application filed by a state.

(3.7) QUESTION: Can the Article V Convention propose an amendment overturning a Supreme Court ruling?

Back **ANSWER:** Yes. By one estimate, nearly 80 percent of the applications made by the states contain issues relating to Supreme Court decisions. The issues range from apportionment, judicial review of statutes, limited congressional terms, line item veto to limited judicial terms, right to life, school prayer, secular school funding, supreme court authority and selection of federal judges.

While it is possible the convention may attempt to propose amendments addressing each of these supreme court ruling issues, the likelihood of this is small. [As noted above](#), each amendment proposal will face a difficult path to ratification and therefore it is likely the convention will take a more practical, pragmatic approach.

Instead of attempting to write an amendment to solve each problem the convention is asked to resolve by proposing an amendment, the convention may instead decide that the best solution to the problems facing the United States is to provide its citizens with a new set of constitutional "tools" which will in turn allow the people to solve these problems *after* the convention has adjourned.

It is possible the convention may come to realize that the [indirect democracy](#) the United States has operated under no longer is operative. Therefore the convention may determine that a form of [directed democracy](#) will better suit

the nation in the coming centuries. As such it will not pass proposed amendments to solve or deal with each Supreme Court ruling but instead will most likely address the overriding question of proposing an amendment that defines the court's power of judicial review (as this question has never answered by a constitutional amendment) as well as providing a means whereby the people can review those court decisions in some manner.

(3.8) QUESTION: Can an Article V Convention propose amendments dealing with economic issues?

Back ANSWER: Yes. Several amendments in the past have dealt with economic issues or were related to economic issues such as [11th Amendment](#) which addressed lawsuit for claims across state lines, the [13th Amendment](#) which eliminated slavery, a form of economic income in this nation, the [16th Amendment](#) which expanded the taxing base of the government, the [18th](#) and [21st](#) Amendments which first removed, then restored the liquor trade in this nation, a source of income, the [24th Amendment](#) which eliminated a poll taxes a source of income for states and the [27th Amendment](#) which attempted to regulate pay raises by members of Congress but has largely been circumvented by Congress thanks to a Supreme Court ruling allowing for automatic "cost of living" increases the court said does not fall under the purview of the amendment.

Because Congress has, over the years, seen fit to regulate and control much, of not all of our economy through the [commerce clause](#) it is possible economic amendments will be discussed and possibly proposed at the convention. Such amendments may include [balanced budget](#) and [repeal of federal income tax](#) along with common practice of federally mandated programs requiring the states to pay for the program commonly referred to as [federal mandates](#).

It is also possible the convention other solutions in the economic area to solve problems America faces. For example, the convention may come to realize our current taxed-based government might be better served if the income for the government was based, not on taxes on the citizens, but on interest in investments in the economy from which the government would derive its funds. Naturally the convention would set up a system whereby the people would regulate the government in this and there would be a transition time as the time necessary to invest built up meaning that people would still pay taxes but less each year. The advantage, of course, would be that as soon as investment money began building a return, taxes would be lowered, first with the lowest income as they would pay the least tax and therefore money to cover their financial income would appear first, and later trickling up the economic ladder finally to the most wealthy freeing them from paying taxes last, basically creating a trickle up economy. Finally such an amendment proposal by the convention would consolidate several other amendment proposals as balanced budget as the amount of interest available to the government would be all that would available forcing a balanced budget.

Applications:

(4.1) QUESTION: What are applications for a convention?

Back ANSWER: Under the terms of [Article V of the Constitution](#), two-thirds of the state legislatures must apply for a convention in order to compel Congress to call an Article V Convention. The applications for a convention are those documents

submitted by the state legislatures to notify Congress officially of the desire of the state legislature under its authority granted it by Article V to have Congress "call a convention to propose amendments." Because the word "application" is used in the Constitution to describe the act of applying, the term "application" has been applied to describe these documents.

The Constitution does not specify what form an application submitted by a state must have. Because of this, states have been free to submit whatever they desire in the application frequently using the application for political rather than constitutional reasons. Thus, it has become common for states to submit an application containing language asking for a specific amendment proposal or issue rather than just a convention call. Earlier applications submitted by the states contained no amendment issue and have been given the name "general" applications by most constitutional authorities. However constitutionally whether an application contains a proposed amendment issue or not, it is just as valid an application and just as binding upon Congress to cause it to call an Article V Convention.

(4.2) QUESTION: When the states submit an application for an Article V Convention exactly what are they applying for?

Back **ANSWER:** The application applies for a convention call by Congress. The language of Article V is explicit and clear: "...or, on the application of the legislatures of two thirds of the several states, [Congress] shall call a convention for proposing amendments...". Therefore, the action that the applications clearly cause is for Congress to call for a convention, and do not have anything to do with any amendment actually proposed at a convention.

Because the action of the application by the states is for a convention call rather than a specific amendment, the issue of any amendment proposal contained in the application is constitutionally irrelevant to the purpose of the application (the purpose being: to cause Congress to call an Article V Convention). The reason that applications are a trigger for a convention call, rather than a specific amendment issue, is because: *if* the application were for a specific same-subject amendment only, it would mean that the states could actually ratify an amendment issue *before* the written language was finalized (assuming that three-fourths of them "applied" for the same amendment issue). There then is essentially no need for both steps. But that is unlikely that two-thirds of the states will word their amendment applications the same way. There must exist a phase for the states to all work on the final wording of each amendment before being submitted for ratification. That is the purpose of the convention, and the reason the same-subject requirement makes no sense. Otherwise, Congress would then be put in the position of calling a convention to propose an amendment which the states were essentially already prepared to ratify. That means that the convention would have the power to add language into the Constitution without anyone having the authority to review it, which is the purpose of ratification. The Framers of the Constitution clearly intended that all amendment proposals, whether proposed by Congress or convention, must be ratified *before* taking effect (i.e. as stated in Article V: "...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..."). So, it is clear that the application language of Article V cannot refer to a same-subject amendment, since the language of each issue can vary greatly when initially submitted (since the states do not collude on the wording prior to submission of an amendment). The language is hammered out in the convention. Not before the convention.

Further proof of the fact that the applications are for a convention call rather than a specific same-subject amendment is that the above scenario currently exists. The record shows that 39 states have applied for the repeal of the [16th Amendment](#) which authorizes Congress to tax and collect income tax. If, as many suggest, the applications are same-subject, then it follows that even without writing the amendment, federal income tax has already been repealed. That is, enough same-subject amendments already exist. If "same-subject" is the correct interpretation as to how applications should be counted, the IRS has not gotten the message, since it continues to collect income tax despite having no constitutional authority to do.

(4.3) QUESTION: How must the applications for an Article V Convention be counted?

Back ANSWER: The applications must be counted by a simple numeric count of applying state legislatures. The language of Article V specifies "...on the application of the legislatures *of two thirds of the several states...*" Obviously two-thirds is a numeric ratio of the applying states to the total number of states in the union as well as a specific number of states comprising that two-thirds group. The Constitution therefore clearly designates that any count of applications must be based solely on the number of applying states seeking a convention call *with no other stipulations required or implied.*

Many people suggest that the applications must be "counted" on the basis of the amendment issue ([same-subject](#)) asked for in the applications. Some have even suggested that unless the applications are *exactly worded the same* Congress may reject them as not counting as a "proper" applications. Others have suggested the issue matter of the applications must be [contemporaneous](#). Hamilton makes it quite clear that neither of these was the intent of the Framers as he states, "[Nothing in this particular is left to the discretion of that body.](#)" Therefore as the language of the Constitution gives Congress no discretion in that it specifies how applications shall be counted, it is clear that any determination by Congress as to what is a "proper" application such as using "same-subject" is forbidden as the Constitution has eliminated any other method of tabulation except a numeric count of applying states.

(4.4) QUESTION: Who counts the applications for an Article V Convention?

Back ANSWER: Congress is charged with counting the applications but the evidence is clear that Congress has completely ignored its constitutional responsibility in this regard. Even though Alexander Hamilton made it clear a convention call was ["peremptory"](#) on the part of Congress, Congress does not even maintain a single source of reference for compiling state applications for an Article V Convention according to research done by FOAVC member Mr. Steve Moyer.

In a reply by [letter](#) to an inquiry made by Senator Bernard Sanders of Vermont at the request of Mr. Moyer, the office the National Archives and Records Administration admitted, "...there is no single category for petitions asking for amendments to the Constitution, let alone amendments by the convention route." The letter was signed by Mr. Rodney A Ross, Center for Legislative Archives.

Obviously, Congress cannot count the applications for an Article V Convention, something it is constitutionally mandated to do, if a single source showing what applications have been filed by the states does not exist. If Congress were

serious about obeying the Constitution in this regard it would have long since established a single source to compile the applications and transmit the information to leaders of Congress so they could act on the information when needed. According to their own archivist this has never been done. Therefore it is fair and correct to state Congress has no intention, nor has it ever had intention, of obeying the Constitution as to calling an Article V Convention. Otherwise, at the minimum, it would maintain a record system allowing it to do so.

(4.5) QUESTION: What does "same-subject" mean as it relates to counting applications?

Back **ANSWER:** The term "same-subject" is a term derived by those usually associated with opposing the Congress calling a convention. The term means that unless the applications submitted by the states all deal with the "same-subject" that is, they all request the same amendment proposal, Congress has no obligation to issue a convention call. Naturally these opponents suggest that the language of the applications must be exactly the same in each application or the applications don't "count".

There are several problems with "same-subject". In the first place, the Constitution does not limit a convention to a single issue amendment proposal. The term used in the Constitution is "convention to propose amendments". Amendments is plural and in no way implies "same-subject". Therefore the convention cannot constitutionally be limited to proposing just a single issue for amendment consideration. The applications therefore [which do not relate to amendment issue](#) but instead to a numeric count of states cannot refer to a specific issue because the convention cannot be limited to just that issue.

Secondly, the Constitution does not refer to amendment issue nor does it provide any mechanism whereby the states are required to submit identical language for a same-subject application. Certainly it is reasonable to assume that if the Framers of the Constitution had intended that same-subject be the method of application, they would have included a method for the states whereby this could be accomplished.

Thirdly, as noted by Hamilton, the convention call is "[peremptory](#)" and therefore any discretion not to call, such as "same-subject" gives to Congress, was never intended by the Framers of the Constitution.

Finally, even if "same-subject" were the method by which applications were counted, Congress is still remiss as the [record](#) clearly shows that the states have applied for the same-subject in at least 3 different times (on different amendment subjects) as required to require Congress to call an Article V Convention.

(4.6) QUESTION: What does "contemporaneous" mean as it relates to counting applications?

Back **ANSWER:** The term "contemporaneous" as it relates to counting applications for an Article V Convention is a argument usually advanced by opponents to Congress calling an Article V Convention that all applications need to be "contemporaneous" that is, submitted to Congress within a given period of time otherwise the applications do not "count".

The problem with this argument is (1) the Constitution sets no time limits on state applications meaning the applications remain in effect until Congress calls

a convention at which time the application is satisfied and therefore terminates and (2) the opponents fail to specify what period of time is "contemporaneous" leaving it to Congress to set such time period. The danger is obvious. All Congress need do to prevent a convention is simply define a time period *shorter* than the time period of submission of the required two-thirds applications by the states and declare the applications are not "contemporary." It is for this reason Hamilton said the Framers made the call "peremptory" to prevent such constitutional mischief on the part of Congress.

There is yet another problem with the "contemporaneous" and that has to do with the ratification of the [twenty-seventh amendment](#) to the Constitution. The amendment was originally proposed in 1789 but was not ratified until 1992. Obviously the ratification vote, which was spread out over 200 years of our history, had to have been "contemporaneous" or else Congress would have used that excuse to defeat the ratification of the amendment. However as Congress accepted this long term of ratification, it is clear the passage of the [twenty-seventh amendment](#) terminates the "contemporaneous" argument for any amendment action including convention applications.

(4.7) **QUESTION:** How many applications have the states submitted to Congress for an Article V Convention?

ANSWER: To date, the states have submitted over [400](#) applications to Congress for an Article V Convention. Congress has ignored them all.

(4.8) **QUESTION:** How many states have submitted applications to Congress for an Article V Convention?

ANSWER: All 50 states have submitted over [400](#) applications for an Article V Convention. The [record](#) clearly shows that Congress has been obligated to call an Article V Convention as early as 1911 and despite these applications, has refused to obey the Constitution.

(4.9) **QUESTION:** Where can I view a list of all previous state applications for an Article V Convention?

ANSWER: You may view [a list of all state applications](#), [a table summarizing all issues applied for](#), [convention applications listed by state by state](#) and a [table summarizing](#) state applications for an Article V Convention simply by clicking the appropriate links. As Congress has never in its history kept an [official record of Article V Convention applications](#), (thus clearly indicating its failure to perform its duty, and a lack of commitment to obeying Article V) these tables are based on the best information available compiled from private scholarly works.

Constitutional Convention *versus* Article V Convention:

(5.1) **QUESTION:** Is a "constitutional convention" the same thing as an Article V Convention?

ANSWER: A "constitutional convention" is not the same thing as an Article V Convention. The language of Article V in the United States Constitution clearly limits an Article V Convention to "*proposing amendments...to this Constitution.*" Therefore, the only constitutional power the Article V Convention possesses is to [propose](#) amendments to the existing Constitution. It is merely an alternative

methodology provided by the Framers to discuss and submit amendments for the states to consider. Regardless of how amendments are proposed, either by a two-thirds vote of both Houses of Congress or by Application of the Legislature of two-thirds of the States [which is the **Article V Convention method**], it would still be necessary for three fourths of the states to ratify such proposals before they would become effective.

On the other hand, a 'constitutional convention' -- one that seeks to literally discard, replace and re-write the current Constitution -- is blatantly extra-constitutional. It is neither authorized by our Constitution nor is it sanctioned elsewhere by any federal or state law. In short, a 'constitutional convention' would constitute a quasi-rebellious act if not an outright direct assault on our constitutional republic which, in the view of many constitutional scholars, would violate numerous federal and state laws. This is the type of convention that deserves the scorn of the American people. **FOAVC** absolutely and categorically opposes a constitutional convention.

(5.2) QUESTION: What is a "runaway constitutional convention"?

Back **ANSWER:** A "runaway constitutional convention" is, according to the critics of a convention, the main reason Congress should be allowed to disobey the Constitution and not call a convention. Ignoring the dangers of allowing the government to be able to veto or ignore the text of the Constitution which could ultimately lead to a "runaway" government, these critics hold that a constitutional convention would remove the rights of all Americans, that it would completely overthrow the Constitution and, by fiat, write a new constitution which they would then impose on the American people.

The "runaway" convention is a myth created by these critics to prevent the American people from exercising their right to participate in amending the Constitution without government interference or approval. **Article V** requires that all proposed amendments must first be ratified by the states thus preventing any such radical actions as envisioned by the critics of a convention. These critics also fail to acknowledge that already existing federal criminal laws would quickly and swiftly be asserted by the government against any convention delegates who might attempt such actions as envisioned by these critics.

However the biggest lie told by these critics is that the original 1787 convention was a "runaway" convention and that this nation can't risk this "danger" happening again. The lie goes that the delegates to the 1787 convention had been sent by Congress to revise the Articles of Confederation and, once in place, *on their own authority and no one else's decided to write what became the new Constitution and thus became a runaway convention. As said, this is an outright lie.*

In the first place, the Articles of Confederation had a provision for amendment in the articles but unlike the Constitution of today, it required *unanimous consent of all* states to amend it. The State of Rhode Island had consistently refused to consent to anything let alone amending the Articles of Confederation thus hampering the national government and being one of the main reasons why a convention was called.

As a result of these concerns the Congress of the United States as authorized by the Articles of Confederation issued a call for a convention on February 21,

1787. It is important to note that the convention was held in Philadelphia beginning in May, 1787, that the only issue discussed was altering the provisions of the Articles of Confederation and that a simple reading of the text of the Constitution and the Articles of Confederation show that much of the articles were left untouched by the convention, that the convention upon completion of its work first turned the proposed Constitution over to Congress who voted to accept it (but could have rejected it thus stopping any "runaway" convention) and who then forwarded it to the states for ratification.

The call from Congress read:

"Whereas there is provision in the articles of Confederation and perpetual Union for making alterations therein by the Assent of a Congress of the United States and of the Legislatures of the several States...

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several States be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and preservation of the Union."

It is historic fact the convention did no more than it was authorized to do by an Act of Congress. Therefore any suggestion that the 1787 Convention was in any way a "runaway" convention is an outright lie.

Finally, a "runaway" convention will be nearly impossible with an Article V Convention which is held on the Internet. Not only would all communication between delegates be monitored by the public but the fact that the delegates will be physically scattered around the country will prevent any "group mentality" from occurring that would be needed to create a "runaway" convention.

Convention Call:

(6.1) QUESTION: If Congress has disobeyed the Constitution by not granting state applications for an Article V Convention, why have no states filed suit against Congress?

back ANSWER: While there are those who might speculate the reason the states have not brought suit against Congress for failure to call an Article V Convention may be that their convention applications were merely political gestures not really intended to cause a convention to actually occur, this most likely is not the reason for lack of state action in the courts.

It is possible the states are not at all sure that the federal courts would even hear the suit due to the decision reached in [Coleman v. Miller, 307 U.S. 433 \(1939\)](#) in which Congress was bestowed by the Supreme Court "exclusive" control of the amendatory process, that is to say, Congress, not the states, not the people, not the courts, not even the Constitution, according to the

Supreme Court had anything to say regarding whether or not the Constitution was amended despite direct text to the contrary. It is possible the states fear a decision from the Court could make the situation even worse for them than it already is. Or it is possible the states are concerned that besides granting Congress *exclusive* control over the entire amendatory process, the Supreme Court also saw fit to sanction [military action by Congress](#) against the states and the members of the state legislatures in order to compel a specific ratification vote or other amendment action Congress desires. It is possible the reason no state legislature has brought suit regarding an Article V Convention is they fear Congress, with the blessings of the Supreme Court expressed in its Coleman decision, may have them arrested and replaced with a new state legislature of Congress' choosing.

However, the most likely reason the states have not acted is they have not yet been informed of the *benefits* an Article V Convention will be to them. Many of the [applications](#) deal with states rights in one form or another. The record shows that these applications all deal with re-establishing a more proper balance between the states and the federal government than exists at present. The states, for example, have brought numerous requests for an amendment to prevent mandatory state spending to pay for a federal program, commonly called *federal mandates*. The advantage to the states in terms of state budgets is obvious. If the federal government and its bureaucracy is forced by amendment to pay for all programs it wishes the states to administer rather than compelling the states to come up with funds as is the case now, there will much more money at the state level to deal with local and statewide problems and concerns than exists now.

Another issue that the states wish to discuss that would be of advantage to them would be in the area of revenue sharing, such that a portion of the money collected by the federal government in each state would be returned to that state to be used by the state as it desires.

But perhaps the greatest advantage to the states would not be in any amendment whatsoever but in the fact that Congress, once forced into calling an Article V Convention would realize it would forever be obligated to call such conventions again should the states so dictate. It is only natural that professional, life-long politicians such as those that exist in Congress would want to preserve their political power (which is why Congress refuses to call a convention in the first place) and thus, given this new political circumstance would want to make the situation such that the states would not feel compelled to call such a convention. The upshot of this would be that the states, and the people they represent, would be *listened* to much more in Washington D.C. than they are now and that the needs of the states would receive much more attention (and federal dollars) than they do now. There would be a new balance of political power between the federal government and the states. The new federal system that would evolve from the calling of an Article V Convention, long after that convention had adjourned and its amendment proposals had been disposed of, would be that the federal government would be forced to consider the needs of the states and the local communities much more than they do now and that those states and communities would wield much more power in Washington D.C. than is presently the case.

(6.2) QUESTION: How long from the first application do the states have to submit the required two-thirds applications in order to compel Congress to call an Article V Convention?

Back **ANSWER:** There is no standard as to how long the states have to submit the required two-thirds applications in order to compel Congress to call an Article V Convention. Article V merely specifies "*on the application of two-thirds of the state legislatures [Congress] shall call a convention to propose amendments...*"

Those who have opposed an Article V Convention have used as one of their arguments that all applications must be contemporaneous. That is, the states are required to submit their applications within a period of time which is never specified by the opponents. Second, the opponents always suggest that Congress be the one empowered to determine if the applications are contemporaneous. Naturally, the opponents fail to point out that Congress can, by a simple act of legislation, always set a time period of contemporaneous that is shorter than the period of applications by the states thus blocking the applications.

Delegates:

(7.1) QUESTION: How will delegates be chosen for an Article V Convention?

Back **ANSWER:** Delegates will be elected to their positions of office. In *Hawke v Smith* (253 U.S. 221 (1920)) the Supreme Court addressed the issue when it discussed ratification conventions saying: "Both method of ratification, by Legislatures or conventions, call for action by deliberative assemblages representative of the people..."

The court thus defined what the word "conventions" mean in the text of the Constitution: deliberative assemblages representative of the people, and equates that with legislatures, all of whom are representatives *elected* by the people of the state.

Beyond this, the 14th Amendment's equal protection clause as well as Article IV, Section 2 of the Constitution make it clear that all citizens are entitled to all privileges and immunities of citizens in the several states. The Constitution requires that all members of Congress must be citizens of the United States and that they must be elected to that office. The Fourteenth Amendment creates two citizenships for all citizens of the United States: citizens of the United States and citizens of the state in which they reside or, state citizenship. Citizens, whether elected to Congress or to an Article V Convention receive, as a result of that election, the privilege to offer amendments to the Constitution and therefore the 14th Amendment requires that both sets of citizens, members of Congress and delegates to a convention must receive equal protection under the law. This means as members of Congress are elected and receive the privilege to offer amendment proposals, delegates who are given the same privilege to offer amendment proposals, must also be elected.

(7.2) QUESTION: What would be the qualifications for delegates for an Article V Convention?

Back **ANSWER:** Once it is established that members of Congress and delegates to an Article V Convention must receive equal protection under the law, which includes any constitutional standards, it is clear those standards set on the members of Congress must equally apply to the delegates.

The Constitution establishes three standards for the election of members of Congress: age, citizenship and state inhabitancy. Thus, a member of Congress must be a certain age (25 years in the House, 30 years in the Senate), a citizen of the United States for a period of time (seven years in the House, nine years in the Senate). The third requirement, state inhabitancy, is required for both House and Senate at the time of election.

Thus, delegates are under the same constraints. First, at the time of election, the delegates must be inhabitants of the state which they are elected from. Second, they must be citizens of the United States and third, must have achieved a certain age at the time of election. Obviously, the terms of the equal protection clause dictate that members of Congress and delegates to an Article V Convention must be equal under the law. Therefore it follows that qualifications for office cannot be more than the *least qualifications* for the members of Congress. In other words, delegates cannot be held to a higher standard of membership in the convention allowing them the privilege to propose amendments than is afforded a member of Congress with the same privilege. Thus, it is clear that the standards set by the Constitution as they apply to members of the House of Representatives also will apply to convention delegates meaning: (1) delegates must be at least 25 years old; (2) delegates must be citizens of the United States for at least seven years and; (3) must, at the time of their election, be inhabitants of the state from which they shall be chosen.

(7.3) QUESTION: Would delegates be already elected officials such as current members of Congress, sitting governors or state legislators?

Back **ANSWER:** No. Neither sitting governors, state legislators or members of Congress could not be delegates to a convention and retain their current office. [Article I, Section 6, Clause 2](#) of the Constitution is plain on the matter. No member of Congress may hold another civil office and no person holding any office in the United States may be a member of Congress and hold the other office. The principle is well established as many members of Congress as well as presidential candidates have held other civil offices before being elected and, as required by the Constitution, were required to resign before assuming their office in Congress or the office of president.

This clause of the Constitution does not prevent a member of Congress, sitting governors or members of state legislatures from seeking the office of convention delegate like any other citizen, but they would be required to resign that office upon election as a delegate.

(7.4) QUESTION: Are delegates to an Article V Convention considered federal officials?

Back **ANSWER:** Yes. Just as members of Congress are considered federal officials because their authority is derived from the federal Constitution, so too are delegates to an Article V Convention as their authority is also derived from the federal Constitution.

(7.5) QUESTION: How many delegates to an Article V Convention would each state have?

Back **ANSWER:** There is a great deal of discussion on this matter and it is certainly not settled. The main question revolves around how voting will be conducted at the convention. If the convention votes by states, then the number of delegates is not that important as each state would have one vote. If, on the other hand each delegate casts a vote and the states are ignored then the number of

delegates is very important.

The problem is that if the convention is operated on the basis of individual delegates as there are not two houses as is the case in Congress (the Constitution does not create two conventions in **Article V** but calls for *a convention to propose amendments* meaning a single entity or whole. The word "a" thus creates one convention.) then the numeric numbers of the larger states would threaten to dominate the smaller states as was the main issue before the Founders of the Constitution. Their solution was to allow for one house of Congress (the House of Representatives) to represent the populations of each state thus favoring the large states and a Senate of equal representation for each state favoring the smaller states *and requiring that no action by Congress could occur without both houses affirming this action*. This is known as the Great Compromise and was the key to the states agreeing on the Constitution.

The issue is no less important for an **Article V** Convention. Fortunately, there is a solution. Because of the 14th Amendment of equal protection under the law, the Constitution would demand that as in Congress each state would receive the same number of representatives as it currently has in Congress, that is the total number of representatives and senators combined.

Therefore the answer of how many delegates each state would have is that they would have the **same number** as they now have in total in Congress. How they would vote is described in [Question 7](#) of this FAQ.

(7.6) QUESTION: How would delegates be paid?

Back **ANSWER:** The **Article V** Convention has no taxing power and therefore cannot tax the people to raise funds for its operations. It has no authority to require funds from either the state legislatures or Congress. As it has no source of income the convention will have to do something rarely found in government today. Pinch pennies. As such the convention will not have the resources to pay the delegates who will be donating their time primarily because they are patriotic Americans wishing to serve their nation.

(7.7) QUESTION: How would the delegates to an **Article V** Convention vote, as individuals or by states?

Back **ANSWER:** [Article V](#) of the Constitution and the 14th Amendment's [equal protection clause](#) provides the answer to this question. **Article V** mandates that both houses of Congress ([assuming a quorum](#)) require a two-thirds vote of the members present to propose an amendment to the Constitution. The equal protection clause therefore compels that any vote from the convention must be a two-thirds vote of the entire convention (assuming a quorum of its members).

Thus, whether the convention votes by individual delegates or by states in which the delegates vote to create a state vote, the Constitution mandates that two-thirds of those votes must exist in order for an **Article V** Convention to propose an amendment for ratification by the states. This fact is a little noticed but important obstacle in the way of any runaway convention besides those [discussed elsewhere](#) in this FAQ's.

The equal protection clause goes further than a total vote however. In the original design of Congress, the Founders intended that one of the houses

would represent population (the House) and the other the states (the Senate). Thus, a two-thirds vote by *both population and states is required in order to propose an amendment to the Constitution*. This standard, under the equal protection clause, must therefore apply to an Article V Convention and the answer as to how the delegates will vote, by state or individuals, becomes obvious.

The convention will be required to have at least two-thirds of the total number of delegates ([assuming a quorum](#)) vote in favor of a proposed amendment as well as voting in such a manner that two-thirds of the states present ([assuming a quorum](#)) also favor the amendment proposal. This constitutional double whammy (which is the same obstacle Congress faces each time members wish to propose an amendment) is certain to limit the number of proposed amendments making it out of the convention as well as insuring that there is absolutely no chance a ["runaway" convention](#) will occur.

(7.8) QUESTION: Would the District of Columbia have any delegate representation at an Article V Convention?

Back ANSWER: No. Article V makes it clear that applications for a convention is a *state* power, that is that only states in the union may apply for a convention. Similarly, ratification is done by state either through legislatures or conventions called for that purpose in each state. While the 23rd Amendment does grant residents of the District of Columbia the right to have electors in the Electoral College for voting for president and vice-president, the Amendment does not designate the District of Columbia as a state. Therefore, the District of Columbia does not have constitutional authorization to send delegates to an Article V Convention *with the power of vote*.

However, Congress has seen fit to allow delegates representing Washington D.C. and other territories of the United States to sit in Congress but have no vote in the proceedings. According to the [House of Representatives web page](#), this procedure has existed since colonial times. It is therefore likely, under the terms of equal protection, that the same procedure and limits would be followed in an Article V Convention.

(7.9) QUESTION: Would the protectorates like Puerto Rico, Guam or American Samoa have any delegates to an Article V Convention?

Back ANSWER: As discussed in the [above question](#), any protectorates which are currently represented by delegates in the House of Representatives would be able to send representatives to an Article V Convention but those representatives would be unable to vote in any of the convention proceedings.

(7.10) QUESTION: Will delegates be able to accept campaign contributions?

Back ANSWER: The answer is both yes and no. As with any federal election campaign, delegates seeking the office would be able to accept campaign contributions under the same guidelines, rules, regulations and laws as members of Congress or candidates seeking the office of president. Unlike members of Congress however *as there would be no re-election of the delegate as his or her term of the office would be limited strictly to the period of time a convention existed to propose amendments* the delegate could not accept "campaign" contributions (i.e. bribes) for "re-election" as there would be no "re-election" to run for.

However there would be a problem for those who would make such "contributions" to the delegates in hopes of influencing a specific amendment. In the first place, thanks entirely to the fact that Congress has refused to obey the Constitution and allowed the applications for a convention to pile up, there are so many issues of amendment before a convention, and certainly others will be added, that it will be very difficult to have a delegate-candidate to run on a single issue and thus be subject to the influences of "campaign" contributions. In addition, the campaign finance laws are based around supporting a political party candidate. The office of convention delegate will be non-partisan and therefore accepting "contributions" will be limited by federal laws operating through the [Federal Election Commission](#).

Secondly, unlike Congress in which the seniority system and political party system allow for the creation of power committee chairmen who essentially decide which pieces of legislation will even be allowed out of committee (which is one of the issues that most likely will be addressed by the new "tools" [addressed elsewhere](#) in these FAQs) all delegates will be equal. They will have all served the exact same time period in office. None of them will ever be re-elected to their office. All are non-partisan. The convention will have a single purpose which will be to process amendment proposals for possible ratification. Everyone in the United States will be watching every move made by the delegates for signs of corruption, influence or any other threat to either the people or the Constitution.

Putting all these factors together it will mean that any committee chairmen and committees the convention creates to work on specific amendment proposals will have little or no say in "regulating" or "holding" any proposed amendments. In the first place, the only assignment the committees will be able to have is actually writing a proposal which, as with any motion before any group, may be amended by the group during its meeting. The convention most certainly will, with all the public scrutiny going on, not allow for a single delegate sitting as a committee chair, to determine the fate of a proposed amendment. Thus the convention will require that all committees issue their reports (or proposed language for a particular amendment) to the convention where it will come for a vote. Beyond this, parliamentary rules allow for members or delegates not part of the committee to force that committee to bring the matter to the floor and these rules will certainly exist in the convention as they are quite common in all meetings. Thus there will be little political influence as the delegates will be non-partisan and the seniority system will not exist as no one delegate will have any seniority over any other delegate.

In sum while a delegate may accept campaign contributions from those seeking influence at a convention without doing the American act of running for the office but in fact the return, unlike Congress where perverted money in means perverted vote out, will be small, if at all. This fact will most likely mean that such "contributors" will not even make the effort as there is little guarantee their "contributions" will have any effect and therefore simply be a waste of money.

General:

(8.1) QUESTION: Where will the convention be held and how will it be paid for?

Back **ANSWER:** As [described elsewhere in these FAQ questions](#), it is likely the convention will be held on the Internet. The reason for this is the convention has no taxing power nor ability to compel either Congress or the states to finance it in any manner. Therefore it will turn to the Internet in order to conduct its business as websites and other communication necessary to conduct a convention will cost next to nothing, well within the delegates own financial means to provide.

(8.2) QUESTION: What can an ordinary citizen do to help bring about an Article V Convention?

Back **ANSWER:** Plenty. Without the help of the ordinary citizen, a convention will never occur. A citizen can help in many ways such as:

1. Write letters to the [members](#) of Congress *and* your state legislature asking why they do not want to obey the Constitution, and asking them to call a convention as they are required to do?
2. Organize your own website with links to [FOAVC](#) and spread the word about the Article V Convention.
3. Join [FOAVC](#) and a state chapter and work to lobby members of your state legislatures to bring political pressure on Congress to fulfill its duty to obey the Constitution.
4. Discuss and read the Constitution with your children and tell them about the history of the document, what it means and how and why a convention will help preserve the document.
5. Hold demonstrations urging Congress to call an Article V Convention.
6. As this is a presidential campaign year, ask the various presidential candidates (who, if they are elected are sworn to uphold the Constitution) what their position is on an Article V Convention and, if they are members of Congress how do they square their position of opposing to obey the Constitution versus their oath and duty to uphold the Constitution?
6. Contact the local and national media and ask them why they have not covered the fact Congress is now free to veto the Constitution and urge them to get involved with the issue.
7. Above all, spread the word about what Congress has done, by as many ways as possible, to as many friends, acquaintances, family members, etc. as possible, and ask them to tell everyone they know.

(8.3) QUESTION: Is the Article V Convention a good idea?

Back **ANSWER:** An Article V Convention is not an "idea." Webster's Dictionary defines an "idea" as "a presentation of sense, concept, or representation." In short the mental image or rough sketch of the beginning of a project.

An Article V Convention is law. It is part of the Constitution. To suggest it is a "bad" idea is to suggest the Constitution itself is a "bad" idea and only disloyal, unpatriotic Americans would suggest that.

It is a right of the people. It is a check and balance designed to enable the people to alter the national government and to confine the excesses of government or to improve its deficiencies.

It was put in the Constitution so the people could do more than simply complain about how bad things are in this nation and then not have the power, authority and responsibility to do something about it. Like it or not, the *idea* of this nation is that the people are sovereign, that they govern themselves and the convention is part of how we, the people, do that.

Those who suggest otherwise are simply un-American and un patriotic for not supporting the law of the Constitution and urging however foolishly, ignorantly or fearfully that the precedent be established the law of the Constitution can be disobeyed by the government. That idea is called tyranny and it certainly *is* a bad idea.

The Article V Convention is a *good* idea, because it is the alternative to what the Framers of our Constitution hoped to avoid by creating it. To let the people use it when the stresses inside our nation grew too strong for the usual systems of government to resolve, a civil war. A government that will not change by evolution is bound to be changed by revolution. Sooner or later this growing anger by all segments of the population will manifest itself in action. Those who suggest an Article V Convention is a bad idea had best consider the alternative, a civil war, certainly a really bad idea.

(8.4) QUESTION: What have the courts stated with regard to Article V and interpretations of the U.S. Constitution?

Back **ANSWER:** The literal text and "**plain and obvious**" meaning of Article V is quite clear, as stated by the Supreme Court (see [#11](#) below): "*article 5 is clear in statement and in meaning, contains no ambiguity*".

Article V of the U.S. Constitution States: 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.

The Supreme Court has already (many times) dealt with cases in interpreting the Constitution (including Article V) and its provisions:

#01	Marbury v. Madison, 5 U.S. 137 (1803): "It cannot be presumed that any clause in the constitution is intended to be without effect."
#02	Martin v. Hunter's Lessee, 14 U.S. 304 (1816): "Words of [the]

	Constitution are to be taken in natural and obvious sense , and not in sense unreasonably restricted or enlarged."
#03	Martin v. Hunter's Lessee, 14 U.S. 304 (1816): "Where the text of the constitution is "clear and distinct", no restriction on its plain and obvious import should be admitted unless the inference is irresistible."
#04	Martin v. Hunter's Lessee, 14 U.S. 304 (1816): "The government of the United States can claim no powers which are not granted to it by the Constitution."
#05	Ogden v. Saunders, 25 U.S. 213 (1827): "Where provision in United States Constitution is unambiguous and its meaning is entirely free from doubt, the intention of the framers of the constitution cannot be inquired into, and the supreme court is bound to give the provision full operation, whatever might be the views entertained of its expediency."
#06	Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842): "[The] Court may not construe Constitution so as to defeat its obvious ends when another construction, equally accordant with the words and sense thereof, will enforce and protect them."
#07	Dodge v. Woolsey, 59 U.S. 331 (1855): "The departments of the government are legislative, executive and judicial. They are coordinate in degree to the extent of the powers delegated to each of them. Each, in the exercise of its powers, is independent of the other, but all, right-fully done by either, is binding upon the others. The constitution is supreme over all of them, because the people who ratified it have made it so; consequently, any thing which may be done unauthorized by it is unlawful. ... It is supreme over the people of the United States, aggregately and in their separate sovereignties, because they have excluded themselves from any direct or immediate agency in making amendments to it, and have directed that amendments should be made representatively for them, by the congress of the United States, when two thirds of both houses shall propose them; or where the legislatures of two thirds of the several States shall call a convention for proposing amendments, which, in either case, be-come valid, to all intents and purposes, as a part of the constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths of them, as one or the other mode of ratification may be proposed by congress."
#08	Jarrott v. Moberly, 103 U.S. 580 (1880): "A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed."
#09	Hawke v. Smith, 253 U.S. 221 (1920): "The framers of the Constitution realized that it might in the progress of time and the development of new conditions require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the fifth article . This article makes provision for the proposal of amendments either by two-thirds of both houses of Congress or on application of the Legislatures of two-thirds of the states; thus securing deliberation and consideration before any change can be proposed. ... The fifth article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by the Constitution; that power is conferred upon Congress, and is limited to two methods, by the action of the Legislatures of three-fourths of the states, or conventions in a like number of states. The framers of the Constitution might have adopted a

	different method. Ratification might have been left to a vote of the people, or to some authority of government other than that selected. The language of the article is plain, and admits no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed."
#10	Dillon v. Gloss 256 U.S. 368 (1921), the Court reaffirmed its previous interpretations of Article V saying: "An examination of article 5 discloses that it is intended to invest Congress with a wide range of power in proposing amendments. Passing a provision long since it expired subjects this power to only two restrictions: one that the proposal shall have the approval of two-thirds of both houses, and the other excluding any amendment which will deprive any state, without its consent, of its equal suffrage in the senate. A further mode of proposal—as yet never invoked—is provided, which is, that on the application of two thirds of the states Congress shall call a convention for the purpose."
#11	United States v. Sprague, 282 U.S. 716 (1931), the Supreme Court stated: "The United States asserts that <i>article 5 is clear in statement and in meaning</i> , contains no ambiguity and calls for no resort to rules of construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the States, must call a convention to propose them."
#12	U.S. v Sprague, 282 U.S. 716 (1931): "Where intention of words and phrases used in Constitution is clear, there is no room for construction [i.e. re-interpretation] and no excuse for interpolation or addition."
#13	Wright v. U.S., 302 U.S. 583 (1938): "In expounding the Constitution, every word must have its due force and appropriate meaning."
#14	U.S. v. Classic, 313 U.S. 299 (1941): "Where there are several possible meanings of the words of the constitution, that meaning which will defeat rather than effectuate the constitutional purpose cannot rightly be preferred."
#15	Ullmann v. U.S., 350 U.S. 422 (1956): "Nothing new can be put into the constitution except through the amendatory process, and nothing old can be taken out without the same process".
#16	Ullmann v. U.S., 350 U.S. 422 (1956): "As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion."

(8.5) QUESTION: Has the government written information about Article V, and is that information it reliable?

ANSWER: The Congressional Research Service (CRS) has written an extensive article in its generally reputable book "*The Constitution of the United States of America: Analysis and Interpretation*", entitled "["Article V"](#)". The article discusses the Article V Convention method of amendment. The CRS article has many erroneous statements, is obviously biased in its conclusions, and therefore is not a reliable source of information about an Article V Convention. FOAVC has prepared a series of corrections in response to these errors and misstatements which can be read [here](#). We have presented our corrections to the Congressional Research Service, but as of December 13, 2008, we have not received a response, or any indication whether CRS intends to correct the errors. As always, our corrections are based on easily verifiable

original documentation, which is usually government records themselves.

On January 30, 2009 FOAVC received word from the office of Senator Patty Murray U.S. Senator from the state of Washington that as formally requested by the office of the senator that it update the article to reflect the information provide it by FOAVC, CRS would "take into consideration" the information supplied it via the senator's office when updating the article in the near future.

(8.6) QUESTION: What can you tell me about the so-called Burger Letter of 1988 that the opponents to an Article V Convention make so much about?

B_{back} **ANSWER:** The [so-called Burger Letter](#) is a one-page letter purportedly written by Supreme Court Justice Warren E. Burger in 1988 at the behest of Phyllis Schlafly, founder of the Eagle Forum, a conservative political action group. Mrs. Schlafly is best known for her political opposition to the proposed ERA amendment during the 1980's.

[Article V of the Constitution](#) requires Congress call an Article V Convention if two-thirds of the state legislatures apply for a convention call ("on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments"). [All 50 state legislatures have submitted over 400 \(or more\) applications for an Article V Convention](#), nearly twenty times the number of applications required to cause a convention call. Article V limits an Article V Convention only to proposing amendments to the current Constitution ("as part of this Constitution"). An Article V Convention is thus not constitutionally empowered to rewrite or propose a new constitution to replace our current Constitution. Hence, an Article V Convention, authorized by Article V of the Constitution, and a constitutional convention, not authorized by Article V of the Constitution, is two separate and distinct conventions. The former is constitutional. The latter is not.

In the mistaken belief these two bodies are identical, Phyllis Schlafly and other right wing organizations such as the John Birch Society, has opposed an Article V Convention call by Congress despite the fact the terms of Article V requiring such a call have been more than satisfied by state applications. Thus, in assuming this opposition, Phyllis Schlafly and her allies in fact are supporting the veto of the Constitution by the government. These anti-constitutionalist opponents believe current political leaders would use a convention to assume total political power and take away all rights currently enjoyed by Americans by rewriting our current Constitution. They would impose this new constitution on America by simple fiat. They present no proof of their allegations. Indeed, their evidence of this belief is so flimsy they cannot even name a single political leader who has advocated using a convention to achieve political power much less be in a political position to mount a coup d'état of the Constitution.

There are practical political problems associated with their position. Primarily among them is the fact their opposition has existed for several decades. During this time, both conservative and liberal political leaders have been in power in America. None of these leaders has done, or even suggested doing, what these opponents, such as Phyllis Schlafly, have said they would do if they could call a convention. Based on public record the fact is if these political leaders wanted to use a convention to achieve the political power Schlafly says they would exercise, they could have done it at any time in the past century.

All 50 states have submitted about 400 applications to Congress for an Article

V Convention. Only 34 applications are required to compel Congress to call a convention. Therefore, if any political leader was so disposed to use a convention in order to gain political control as charged by opponents to a convention, he could have done any time in the last century. Indeed, as described elsewhere [within this FAQ](#), all of members of Congress are publicly opposed to obeying **Article V** of the Constitution and calling an **Article V Convention**. Given these facts, such charges as opponents such as Phyllis Schlafly make, regarding the political ambitions of leaders of this nation in using a convention to assume massive political power are obviously absurd.

The only evidence opponents to the calling of an **Article V Convention** as authorized under **Article V** of the United States Constitution have ever produced supporting their position is the so-called Burger Letter said to have been written in 1988. This so-called Burger Letter expresses former Chief Justice Warren E Burger's supposed opposition to a constitutional convention meaning his opposition to an unconstitutional, unauthorized convention (not authorized under the terms of **Article V**), which would write a new constitution.

In the mistaken and unsupported belief, an **Article V Convention** is identical to a constitutional convention; opponents have used this so-called Burger Letter as the centerpiece of their opposition to an **Article V Convention**. Tom Deweese, an outspoken opponent to an **Article V Convention**, has referred to the letter as "a major and damning piece of evidence against a call for a Con Con because it verifies our fears that states could not control the subject matter discussed at the convention." Deweese ignores the fact that under the terms of **Article V**, Congress has the exact same power of proposal as an **Article V Convention**. Regardless of whatever body proposes amendment, the states do not control the subject matter of any amendment proposal discussed. These opponents know this and attempt to confuse the issue by referring to powers of **Article V** as applying to a constitutional convention, which they know, does not apply because **Article V** does not allow for a constitutional convention. The Founders knew well the issue of lack of control of agenda when they wrote **Article V** in 1787. For this reason the Founders gave the states ultimate control of any proposed amendment, be it by Congress or convention-- ratification. Without ratification, no amendment proposal can become part of the Constitution. Hence, regardless of agenda, the states control any amendment proposal by means of public ratification votes.

When examined, the entire public record regarding Burger's comments about the amendatory process presents several problems associated with the authenticity of so-called Burger Letter. For one, the supposed statements made in the letter do not agree with other public statements made by Burger. Further, different references cite different dates as to when the letter was written. Indeed, the only reference made about the Burger Letter that states Burger wrote the letter in 1988 is from Phyllis Schlafly herself. Therefore, it cannot be accurately verified Chief Justice Warren E. Burger wrote the letter in 1988.

The text of so-called 1988 Burger Letter clearly shows it was written in response to a letter sent by Mrs. Schlafly to Justice Burger. While Mrs. Schlafly has published the so-called Burger Letter on her website available for public review and [cited it in her arguments against a convention in 2008](#) and [earlier in 1996](#), the full public record regarding communication between her and Justice Burger has been deliberately hidden by Mrs. Schlafly. She has never published the letter written by her to Justice Burger in 1988. Additionally, there are at least two other unpublished 1986 letters written by Mrs. Schlafly to

Justice Burger. Therefore, there is no complete public record of all written communications between Mrs. Schlafly and Justice Burger.

According to statements on at least [two anti-convention websites published years apart](#) [see page 7 under NOTEWORTHY OPINIONS], the so-called Burger Letter was written in 1983. Tom Deweese, in a January 17, 2009 [column](#), affirmed the 1983 date. Deweese later tried to assert he made a typographical error in his column in a [follow up column](#) but this offer of a “typographical error” does not explain the other Internet sites with references to a “1983 letter” made years before the Deweese statement.

FOAVC believes this “major and damning piece of evidence” of the so-called Burger Letter may not be authentic because statements made in it, as well as facts surrounding it, do not agree with easily verified public record. On January 16, 2009, FOAVC released [a video on You tube](#) summarizing our concerns about this letter. The so-called Burger Letter may exist. FOAVC only questions whether Warren Burger was the person who wrote it.

In our video, FOAVC questioned the authenticity of the so-called Burger Letter for the following reasons:

- | The letter, according to Mr. Deweese and other sources, written in 1983 describes Chief Justice Warren Burger as “retired.” Fact: Burger served on the Supreme Court from 1969 to 1986.
- | The letter refers to Burger as [chairman of a committee](#). The committee did not exist until 1985, two years after the date of the supposed letter.
- | The source of the letter according to one [Internet](#) source was Doug Kelly a known John Birch Society operative and not Phyllis Schlafly the supposed recipient of the Burger letter.
- | The letter says Justice Burger spoke on the issue of an Article V Convention “many times.” Because he was active on the court at the time of the letter (1983), it is unlikely Burger would have made such statements, as it would have compromised his judicial objectivity.
- | Burger states there is no way to control the agenda of an Article V Convention. This statement, if made by Burger, shows a complete ignorance regarding the ratification procedure of Article V specifically intended to control any amendment agenda of either Congress or a convention. Does it make sense a chief justice of the Supreme Court of the United States would be that ignorant about the Constitution ?
- | In the letter, Burger perpetuates the myth about the 1787 convention acting on its own to create the Constitution. The [public record](#) disproves this claim. Would a chief justice of the United States make such an obvious blunder so easily checked in public record ? Moreover, would he repeat this mistake once it became public ?

- | Burger mentions state rescissions of Article V applications made in 1983. Fact: [the public record clearly shows](#) there were no rescissions submitted to Congress in the year 1983.

Following the release of our video, FOAVC continued to research the history of the so-called Burger Letter. Our research has revealed even more questions of authenticity rather than providing answers to questions already raised.

- | In the 2005 biography "Phyllis Schlafly and Grassroots Conservatism" written by Donald T. Critchlow, the letter [is mentioned](#) on p.285 and described as a "one-page letter opposing a constitutional convention." However, [the footnotes \(52,53\)](#) of the book (based on references to actual archive files of the Eagle Forum) refer to *two letters written in 1986 and do not refer to a 1988 letter.*
- | In a February 2, 2009 [You tube response](#) to the FOAVC video, a writer only identifying herself as Thelema314 stated, "For what it's worth, I'm the member of Phyllis Schlafly's staff that scanned this letter and two others for her website. The letter is dated June 22, 1988. I can't explain the 1983 date on your source, but the original is clearly 1988. Thelema314 then continued in another comment after being asked why Donald T. Critchlow did not cite it in his 2005 book, "Not that hard to believe - the original letter has been in our basement archives for forever. It could be that the first electronic version had the typo and no one else looked at the original. As to Don's book, he admits that he didn't know of the letter's existence. There's a *lot* of materials in our archives, even our archivist finds new things from time to time."

In sum, any references that cite the letter as written in 1983, according to Phyllis Schlafly, can all be explained as typographical errors even though they span some 15 years in time and were written by several independent sources none of which are aligned with FOAVC. These sources include one author writing a bibliography on Schlafly with full access to the Eagle Forum files. The author was specifically writing about a letter from Burger to Phyllis Schlafly which he referred to as the "one-page letter" and referred as "one of her most effective anti con-con pieces." None of the opponents has ever cited any other Burger Letter as evidence to support their cause except this so-called 1988 Burger Letter. They state the letter was actually written in 1983. As to the question of authenticity raised by the author of her own bibliography, a person said to represent Phyllis Schlafly states the author of her bibliography knew nothing of the letter. This, despite the fact the author writes about it in his book, cites it as the "one page letter" but then references two letters dated in 1986.

Besides raising even more questions about the 1988 letter, these two 1986 letters, one written in [April, 1986](#) and another written in [August, 1986](#), present an entirely different point of view than the so-called Burger letter of 1988. Unlike the unverified [so-called 1988 letter](#), these two letters must be authentic. Federal law requires all official correspondence of federal officers (such as Chief Justice Burger) be in the National Archives. Hence, unlike the so-called 1988 Burger Letter, these two letters are verifiable.

These 1986 letters are significant. In 1986, Justice Burger was still Chief Justice of the Supreme Court. He did not retire until September 1986. As such, Phyllis Schlafly, by use of written correspondence, was attempting to solicit and influence the opinion of a sitting federal judge in regards his official position on a clause of the Constitution of the United States. While still serving as chief justice, Justice Burger might have been required to rule on a federal lawsuit connected with Article V. More importantly, in 1982 the court had before it, [NOW v Idaho 459 U.S. 809 \(1982\)](#), which involved Article V of the Constitution while Burger was chief justice. The case involved the ratification of the proposed ERA amendment. The court declared that case moot.

While the 1986 letter were written after NOW vs. state of Idaho it is still possible by expressing any public opinion regarding Article V, Burger may have violated Supreme Court [Rule 7](#). This rule forbids certain actions by members of the court specifically that a member of court "participated in a professional capacity in any case that was pending in the Court [the Supreme Court] during the employee's tenure." In his 1986 letters written on official Supreme Court stationary and listing Burger's official position as chief justice, Burger refers to using "official channels" regarding Article V. At the very least, because of this comment, Burger would have been [required to disqualify himself](#) should a case involving the amendatory process been placed before the court as his impartiality had been compromised by his correspondence with Phyllis Schlafly.

Phyllis Schlafly has never released copies of the letters she wrote to Justice Burger so the public record of exchange between them is incomplete. There is mention of "meetings" between her and Justice Burger in the 1986 letters. There is no way of knowing what these meetings involved or what took place between Mrs. Schlafly and Justice Burger at these meetings. Clearly however what ever did take place involved Burger's opinion about Article V. Further, it is unknown what Schlafly stated in her letters to him to induce Burger to make the responses he did in his letters. Obviously, as Mrs. Schlafly corresponded with Justice Burger repeatedly she was seeking a specific political answer from Justice Burger. Obviously, she was not satisfied with those given by him in his official position as Chief Justice of the United States when such an opinion would have carried the most judicial as well as political weight.

It may be in her letters Mrs. Schlafly strayed into areas with her presentations that were ill advised. There are [federal criminal laws](#) which prohibit such action if Mrs. Schlafly were to offer "anything of value" in her letters, but as she has never released the full record of these letters, it cannot be determined whether her actions were in criminal violation of any federal law. Most likely she did not violate federal criminal law, but clearly both she and Warren Burger exercised bad judgment in placing Burger in a position in which he may have violated Supreme Court rules or been forced to recuse himself while functioning as Chief Justice. Further the mention of repeated meetings between Burger and Schlafly where additional efforts at influencing a sitting federal judge raises, at the least, questions of propriety particularly on the part of Schlafly.

Public record shows Warren Burger's position was not as cut and dry as the so-called 1988 Letter indicates. These public records raise additional questions regarding the authenticity of the so-called 1988 Burger Letter. For example, in one of his 1986 letters, Burger refers to his appearance before the National Press Club (Thursday, December 19, 1985) in which reporters asked him about the constitutional convention. [Burger was asked in a question and answer period](#), if a convention "could abridge rights guaranteed by he founding

fathers.

"I don't think it would pose a threat, "he [Burger] said. But he adds, "It would be a grand waste of time."

In short, in a 1985 public statement, Burger refutes much of what he was said to have stated in 1988. In sum, Burger's statement makes it clear he did not favor a convention, but even if held, he did not believe it would pose a threat to removing rights already enjoyed by Americans. Further an [Associated Press Article, August 21, 1987](#) made it clear any comments Burger was addressing about a constitutional convention were not intended to apply to an Article V Convention which is part of the "amendment process" which clearly, in Burger's mind as expressed in his letter, was different than a constitutional convention. Thus, while the 1988 letter makes it appear Burger was addressing both an Article V Convention as well as a constitutional convention, his 1986 letter makes it clear he was not.

Clearly, the Schlafly letter of 1988 misused the Burger comments of earlier letters and public statements and choose to conveniently ignore any comment by Burger in which he expressed a belief that a convention "would not pose a threat' to Americans. Further, in the 1988 letter, Burger perpetuates the myth about the 1787 convention acting on its own accord. [Easily checked public record](#) refutes this. For example, James Madison directly discusses it in [Federalist #40](#). David Keating, executive vice president of the National Taxpayers Union in an [August 21, 1987 Associate Press article published in the Boston Globe](#) publicly corrected Burger on this mistake. Given this fact, would Burger have repeated the same mistake in a letter certain to become public, thus opening him up for additional criticism? Clearly, the statements made in the so-called Burger Letter are based on earlier public statements of Burger but which either have been misused or are incomplete when verified against Burger's full public record.

The 1986 letters make it clear Burger was addressing the political issue of a constitutional convention rather than the constitutional questions surrounding it. His first comment in his [April 1986 letter](#) make it clear Burger understood the difference between a constitutional convention and an Article V Convention. ("I went on to say that any particular problem should be dealt with one at a time as needed, and that there was no occasion in my view for a Constitutional Convention." Obviously, he could not be discussing the identical subject (a constitutional convention and an Article V Convention) as he presents two different methods for solving a problem meaning he saw two different solutions. His reference to an Article V Convention ("dealt with one at a time") versus a Constitutional Convention ("no occasion in my view for a Constitutional Convention.") makes this clear. Phyllis Schlafly and other political allies in her anti-convention campaign of course, ignored this obvious and important distinction made by Burger.

This political opposition by Phyllis Schlafly and others aim exclusively at one amendment proposal out of twenty issues submitted by the states for consideration at an Article V Convention—a balanced budget amendment. The fact two other amendment issues (Apportionment and Repeal of Federal Income Tax) each have enough applications submitted by the states to cause a convention call is ignored by Phyllis Schlafly and her allies. The reason is obvious. These groups support these amendment issues and are on public record saying so. Therefore, clearly, the real issue Phyllis Schlafly and others have to an Article V Convention is not with the convention itself, but the

possibility an Article V Convention might propose a balanced budget amendment, which they politically oppose. As stated by Tom Deweese, the issue they have is the “inability to control the agenda” of a convention and thus might not be able to stop this amendment proposal. In short, Phyllis Schlafly and her allies want the ability to control the agenda of a convention to suit their political agenda, the very thing they say their political opponents would do at a convention.

Burger’s [second 1986 letter](#) makes it clear he is exclusively addressing the idea of a constitutional convention (which is also opposed by FOAVC). Again, he writes the letter in response to Schlafly’s letter. We have no idea what the “subject of your [Schlafly’s] August 18th letter” is. Therefore cannot say how Burger’s comments relate to it. Burger also speaks of a “Second Report” and speaks of his and Schlafly’s “strong views” being “communicated through proper channels.” As we do not have access to the Schlafly letter of August 18, 1986, we can only ask unanswered questions:

- | Did Mrs. Schlafly make a specific request of Justice Burger to act in an official capacity?
- | What official channels does Justice Burger refer to that he will employ in order to “communicate” his and Schlafly’s “strong views”?
- | Is he referring to instructing other federal judges to accept Mrs. Schlafly’s point of view regarding Article V? Does he mean he will ask other members of the Supreme Court to issue a ruling favoring Schlafly despite the fact she did not bother to file a lawsuit to present to the court?
- | Is he referring to attempting to bring political or judicial pressure on the White House or Congress thus compromising his judicial objectivity? Is he discussing, for example, issuing a contempt citation against those favoring a convention such as President Reagan?
- | Is he speaking of communicating with President Reagan directly? If so, what official power would he ask the president to invoke—commander in chief to take military control of the government or possibly the states?
- | Without the knowing content of Schlafly’s letters, there is no way to determine the answers to these important questions. More importantly, without knowing the content of Phyllis Schlafly’s letters it is impossible to know for certain whether Phyllis Schlafly went past the line of federal law prohibiting such actions.

In sum, the so-called 1988 Burger Letter misuses public quotes by Warren E. Burger. The so-called Burger Letter ignores clearly important information to present a distorted view on the position of former Chief Justice on the issue of the amendatory process of the Constitution. Primary among these distortions is the fact Burger drew a clear distinction between a constitutional convention

and an Article V Convention. Burger supported using the amendment process (which includes an Article V Convention) to resolve the problems facing this nation and thus actually supported an Article V Convention.

The fact is Phyllis Schlafly has never been completely honest with the American people. She has never released all the letters involved in this exchange between her and Justice Burger. She has not been completely honest in presenting Burger's comments as he actually expressed them in her references to the so-called 1988 Burger Letter. Sources surrounding these letters disagree as to the authenticity of the letter. Given all these facts, it is likely the so-called 1988 Burger Letter is not authentic. More likely, [as indicated by one of the anti-convention websites](#), the so-called 1988 Burger Letter was created by Doug Kelly, a known John Birch Society operative. Kelly took such parts of Burger's 1986 letters and other public comments as needed in order to create a distorted view of Burger's view on the issue of the amendatory process. He did this in order to further a clearly political agenda of the John Birch Society and other allies such as Phyllis Schlafly.

Powers of Congress:

(9.1) QUESTION: If the states were to submit a new set of applications, identical in every respect, what guarantee is there, after all the work needed to get the necessary applications, that Congress won't simply ignore the states' requests as they have in the past?

ANSWER: Absolutely no guarantee whatsoever. In fact, based on recent court rulings, it is likely Congress will ignore all applications no matter on what basis they are submitted. All members of Congress are on public record as supporting a "right" to "exclusive" control of the amendment process and a "right" to veto the law of the Constitution in direct violation of federal criminal law. Thus, it is unlikely a new set of applications, however composed, will be obeyed by Congress any more than the last [400](#) (or more) applications by the 50 states have been.

This assertion is based on the result of two federal law suits dealing with the issue of whether or not Congress must call an Article V Convention, Walker v. United States (2000) and Walker v Members of Congress (2004). The suits were filed by Mr. Bill Walker, co-founder of FOAVC. Audio comments by Mr. Walker about these lawsuits can be heard by clicking the links entitled "Comments" as the reader passes through this FAQ. [Comments](#)

(Note: The following explanation contains a large number of links and detailed legal references related to the Walker lawsuits. This detail may be considered boring or esoteric by many. For those desiring only a [quick summation the Walker lawsuits](#) (un-referenced) it may be found at the link in this sentence. (However, due to the importance of the matter, it is urged the reader read the *full* explanation and all details of it.)

Mr. Walker began his work on the Article V Convention at the state level in Washington state. He began by attempting to establish that applications for an Article V Convention could be submitted by means of a state initiative from the people to the state legislature, which, in turn, would apply to Congress for a convention call as described in Article V. While still researching what would become his [Overlength Brief](#) for Walker v. United States, Mr. Walker

established in 1994, based on a long forgotten state court ruling, *that initiatives could be used at the state level to compel state legislatures to make an application for an Article V Convention.* [Link_1](#), [Link_2](#). This is not the same as the current ["National Initiative for Democracy"](#) as that movement [has no legal standing and in fact may actually be a violation of federal criminal law.](#)

Based partly on his own research for his [Overlength Brief](#) and by the state court decision, Mr. Walker reached the conclusion that Congress was obligated to issue an Article V Convention call based on the number of applying states rather than on the amendment issue content of any application. Based the terms of the 14th Amendment's [Equal Protection Clause](#), [Article IV, Section 2](#) of the Constitution as well as the [Full Faith and Credit Clause](#) of the Constitution, privilege of citizenship enjoyed by Washington voters allowing them to compel their legislature to make applications for an Article V Convention as the result of an initiative submitted by the people must be extended to all voters in all states even to those states which do not have an initiative system as those votes in those states would otherwise discriminated against by being denied equal access amendment of the Constitution. [Comments](#)

In 2000 Mr. Walker filed his first lawsuit, Walker v. United States. In that suit he produced a [781 page brief](#) which, for the first time in American history, examined all of the questions and issues surrounding an Article V Convention. Unlike other works on the issue written before his, Mr. Walker sought answers to these questions and issues from existing federal law and Supreme Court rulings. Unlike other authors, Mr. Walker deliberately avoided basing his arguments in his brief on any particular amendment proposal or political agenda. As a result of this objective approach, Mr. Walker was able to prove, based primarily on 208 Supreme Court rulings, that more than sufficient constitutional and legal guarantees already exist in current federal law to prevent any of the catastrophic predictions made by opponents to an Article V Convention such as a [runaway](#) convention. Using the same 208 Supreme Court rulings, Mr. Walker proved that a simple extension of the 14th Amendment's [Equal Protection Clause](#) to include both members of Congress and Article V Convention delegates (when either acts in their amendatory duties) creates a single legal class which, under the terms of the clause, all members of it must be treated equally. This principle of equal protection resolves all other issues of concern such as the number of delegates from each state, the voting level required to pass an amendment out of an convention for ratification, the choosing of delegates and so forth having already been determined for members of Congress apply equally to convention delegates. Federal District Court Judge John C. Coughenour who heard the suit, refused to read the document.

On March 19, 2001 Judge Coughenour issued his [three page ruling](#) with ["prejudice"](#). He dismissed the lawsuit. Interestingly, Judge Coughenour did not use the legal term ["res judicata"](#) which is a legal term meaning the question before the court is permanently settled. The word ["prejudice"](#) has an entirely different meaning possibly reflecting the judge's refusal to read Mr. Walker's original [brief](#).

While the court order appears at first to be a simple dismissal based on the [affirmative defense](#) assertion by the government of lack of standing, in fact a ruling was actually issued by the court creating [a legal contradiction](#). A single sentence stating in part, ["...his \[Mr. Walker's\] complaint raises political questions that are more properly the province of Congress"](#) made the decision a ruling. Judge Coughenour cited three Supreme Court rulings as the basis of

his decision. Two of these decisions deal with the doctrine of standing. The third, *Coleman v. Miller* 307 U.S. 433 (1939) ([full decision](#), [excerpts](#)) deals with the political question doctrine. Further, Judge Coughenour deliberately ignored (by ellipsis of the sentence in Mr. Walker's brief referring to them) [four Supreme Court rulings](#) which specifically stated Congress must call an Article V Convention if the states apply. Instead Judge Coughenour linked the convention to *Coleman*, a case that doesn't even *discuss* the amendment convention call. [Comments](#)

Thus, despite the legal contradiction, Judge Coughenour did not dismiss *Walker v United States*. [He simply ignored it and instead, ruled directly and fundamentally on the central issue of the suit: whether Congress is peremptorily obligated to obey the law of the Constitution and call an Article V Convention when its terms have been satisfied.](#) He used the political question doctrine to determine Congress was not so obligated meaning despite the language in the Constitution, Congress could ignore that law. Under the terms of the political question doctrine a specific branch of government is assigned by the court to execute the duties and tasks of a constitutional power, not to deny it. Up until *Walker v United States*, the courts had always used the political question doctrine to [effectuate](#) the clause of the Constitution in question, that is, ensure that the constitutional provision was executed by the branch of government assigned to do it. It had never been used by the courts to ensure the constitutional provision would be ignored. However Judge Coughenour ignored [the full effect](#) of [Coleman](#) on his ruling. [Comments](#)

In the case of an Article V Convention where Congress is peremptorily *required to call a convention, the political question doctrine was used to ensure Congress did not* execute the constitutional duty assigned it. Thus, by assigning an Article V Convention call to Congress under the political question doctrine, something the constitutional Framers explicitly forbid, Judge Coughenour gave Congress a *choice* as to whether or not Congress had to obey the law of the Constitution thus permitting them to disobey that law. The fundamental point is the Framers of the Constitution [described the call](#) as "[peremptory](#)" and used the word "[shall](#)" as the operative word intended to convey this meaning in Article V.

By assigning the Article V Convention call to the political question doctrine meaning a convention call was no longer [peremptory](#) and thus assigning himself the role of a Framer of the Constitution, Judge Coughenour provided the means whereby the peremptory command could be ignored. Thus, the operational word "shall" used in Article V to convey this peremptory meaning also became [optional](#) and could be ignored as well. Obviously, as "peremptory" is absolute in meaning and intent, if a means is provided whereby some action the word describes as "peremptory" becomes optional, that action can no longer be said to "peremptory". However the "Framer of the Constitution" Judge Coughenour caused a problem by altering the meaning and intent of the word "shall" in order to allow Congress not to call an Article V Convention. He neglected in his ruling to account for the effect of the 14th Amendment's [Equal Protection Clause](#) which was discussed in depth in the [Overlength Brief](#) that he refused to read. The original Framers of the Constitution used "shall" in Article V to describe the peremptory requirement of the convention call and used the same word "shall" [throughout the entire Constitution whenever and wherever they intended to describe the same peremptory compliance by the government](#) to actions described in the Constitution. Hence, under the 14th Amendment's Equal Protection Clause, when Judge Coughenour effected the meaning and intent of word "shall" altering from that of meaning "peremptory"

to that of "optional", it applied to all the uses of the word through out the entire Constitution.

Under the 14th Amendment's Equal Protection Clause citizens cannot receive different levels of constitutional protection. The Constitution must be applied equally to all. This means the level of constitutional protection afforded by the word "shall" in Article V regarding a convention call must be the same everywhere as the word "shall" is used throughout the Constitution. Thus, by the Constitution's own language, if the word "shall" is optional in Article V, it means it is optional everywhere else in the Constitution. When Judge Coughenour changed the meaning of the word "shall" in Article V he *automatically* changed its definition *throughout the entire Constitution and thus established formally and officially in a court ruling that word "shall" as used in the Constitution is optional on the part of the government thus allowing it to vet the law of the Constitution.* The rules of grammar of the English language are clear: you cannot have two meanings for the same definition of the same word. The definition of the word "shall" as used by the original framers of the Constitution is absolute obedience. The definition of the word as used by Judge Coughenour is optional discretion. Either the original Framers of the Constitution were wrong, or Judge Coughenour was wrong. [Comments](#)

Following the conclusion of Walker v. United States, Mr. Walker spent the next few years writing an [amicus brief](#) for McConnell v. FEC 02-1674 (2003), a United States Supreme Court suit. The amicus was not accepted by the Supreme Court due to the fact that the court only allowed practicing attorneys licensed to practice before the court to submit an amicus brief thus denying the privilege to all other citizens. No law firm in Washington D.C. would attach their name to the amicus brief. Thus, the only public record of it is contained in the Department of Justice along with several hundred other amicus briefs which were submitted by numerous individuals and groups. Mr. Walker explains why he submitted his amicus brief in his comments. [Comments](#)

In order to determine the official public record of the members of Congress regarding an Article V Convention call and thus determine their official public position for purposes of public record as to obeying the law of the Constitution, Mr. Walker filed his second federal lawsuit Walker v Members of Congress in 2004. What would the members of Congress do as named defendants in the suit thus being on public record on the issue for the first time in United States history? Would they, faced with the possibility of being on public record against obeying the law of the Constitution and in violation of their [oath of office](#), simply call a convention as required by the Constitution, or would they hold they had the right to disobey the law of the Constitution and ignore their oath of office? He knew from his experience in Walker v United States the Department of Justice would oppose his lawsuit. He also was aware of [the legal contradiction](#) regarding his first lawsuit. [Comments](#)

Unlike Walker v United States, each member of Congress was sued [individually, that is each members of Congress was named as a party to the lawsuit.](#) Under [federal law](#) this meant each member of Congress was required *individually to decide* whether or not to support the law of the Constitution as required by his [oath of office](#) or declare for public record his disobedience to obeying that law and thus refusing to obey his oath of office. If the member decided to join *against* the lawsuit, it meant he was stating for the public record his advocacy for disobeying the law of the Constitution in violation of his oath of office as well as [advocating](#) altering the Constitution, and therefore our constitutional form of government, by means other than by formal amendment. [Such](#)

[advocacy violates federal criminal law](#). Every member of Congress joined against the lawsuit, thus voluntarily choosing to assert, as a matter of public record, a "right" to disobey the law of the Constitution and violate their oath of office. No member of Congress has ever publicly repudiated his decision to establish this "right" to disobey the law of the Constitution despite being given [public opportunities to do so](#). Such a "right" removes the Constitution as the Supreme Law of the United States. Members of Congress have deliberately and voluntarily created a [totalitarian](#) government by ensuring there are no longer any restraints on them thus giving them absolute political power. [Comments](#)

For the purposes of standing, Mr. Walker, after careful research, sought reparation of his federal income tax, that is, repayment of monies to him already paid by him to the government in the form of federal income tax. Federal income tax law allows for reparation of income tax illegally collected in violation of federal income tax law. At no time did Mr. Walker ever suggest that he, or anyone else, should not pay their legal obligation of federal income tax as required by law. He did state that everyone, including members of Congress, should obey the law.

Mr. Walker based his [argument for income tax reparation](#) on the fact that Congress had [criminally](#) refused to obey the law of the Constitution and call an Article V Convention. This refusal to obey the law of the Constitution prevents the proposal and ratification of a [constitutional amendment \(supported by 39 states, one more than is needed for ratification\) to repeal the 16th Amendment](#) and therefore federal income tax. [Withholding of an official act required by law of an official in order to continue to collect federal income tax](#) where such collection would not otherwise occur if the act were executed is [criminal extortion under federal income tax law](#). By refusing to obey the law of the Constitution in [criminal violation of their oath of office](#) the members of Congress continued to collect income tax where, had they obeyed the law of the Constitution, such tax collection would not longer exist.

Under such circumstances [federal law permits the reparation of federal income tax and specifically grants jurisdiction and hence standing to citizens seeking such reparation](#). Despite direct federal law to the contrary, District Court Judge Ricardo S. Martinez ruled Mr. Walker lacked standing to seek reparation of his federal income tax and dismissed the lawsuit but cited the quote by Judge Coughenour thus repeating [the legal contradiction](#) of the earlier lawsuit. In both [violation of oath of office](#) and [violation of federal income tax laws](#), Mr. Walker alleged the members of Congress had violated federal criminal laws. In his [order of dismissal](#), none of these criminal allegations were denied or refuted by Judge Martinez who, without comment, struck the motions in which the charges were contained. [Comments](#)

Judge Coughenour issued his ruling in Walker v. United States with "[prejudice](#)." Judge Martinez chose to be bound by Judge Coughenour's admitted "prejudice" ruling. However there were significant differences between the lawsuit Walker v. United States brought to Judge Coughenour that he dismissed and the lawsuit Walker v. Members of Congress that Judge Martinez dismissed. Unlike Walker v. United States, Mr. Walker asserted in Walker v. Members of Congress that as a matter of fact and law members of Congress violated federal criminal law by disobeying the law of the Constitution by violating their oath of offices as well as federal income tax law. Judge Martinez did not refute these allegations nor did he determine the fact and law asserted was not true. In his order of dismissal Judge Martinez quoted the same sentence that Judge

Coughenour had used in his ruling that a convention call was a “political question that was the province of Congress” to decide. Thus Judge Martinez reasserted the political question doctrine issue allowing this doctrine to be challenged in appeal as well as the question of whether or not members of Congress had violated federal criminal law. [Comments](#)

Walker v Members of Congress was appealed to the Ninth Circuit Court of Appeals. Due to the volume of cases before the court it required over a year before a three judge panel of Circuit Judges Betty Fletcher, Stephen S. Trott and Consuelo M. Callahan released their [three sentence ruling](#) on May 22, 2006 affirming the district court ruling of Judge Martinez. While disappointing, it was during this appeal that [the government made official statements and decisions required of them by federal law](#) which would directly bear on the Supreme Court appeal.

In August, 2006, Walker v Members of Congress was appealed to the Supreme Court of the United States with the submission of a [writ of certiorari](#) to the court. Under [Supreme Court rules](#), a writ of [certiorari](#) is required to be submitted to the court by the plaintiff or appellant in the lawsuit. On the basis of that writ of certiorari, the court decides if it will hear arguments in the suit. Otherwise it denies the writ of certiorari and the suit is not heard by the court. This has the effect of the Supreme Court *affirming* the lower court’s decision whatever that may be.

As with all courts, the Supreme Court operates under a set of rules. However few people realize the Supreme Court rules are actually federal law which can be found 28 U.S.C. Appendix Rules of the Supreme Court. Thus, these rules are not only court rules of procedure but federal law as well which apply to all parties before the Supreme Court. Therefore it can be stated that *federal law* requires an action on a party appearing before the court.

[Federal law](#) requires that before the Court determines whether or not it will hear a case under certiorari, it must first establish the facts and law of the suit [as required by the Constitution](#). The [federal law](#) governing the filing a certiorari to the Supreme Court requires the appellant (the party bringing the appeal) to assert what is correct and true as to fact and law in the suit. The opposition party (appellee) is required by [federal law](#) to declare formally and officially for the public record whether these assertions of law and fact are correct and true or not. This requirement in the law is described by the phrase [misstatement](#) of fact or law. If the appellee believes the stated fact and law are not true and correct, they are required to so declare this and state *the reasons why* these asserted facts and law are not correct. If the appellee waives their right to challenge the assertions by appellant of fact and law, the appellee has formally and officially acknowledged the assertions made by the appellant in the suit are correct and true as to fact and law.

In Walker v Members of Congress, the Solicitor General of the United States as authorized [by federal law](#) represented the members of Congress as [attorney of record](#). In this dual official capacity the Solicitor General [decided](#) to [waive](#) any challenge the assertions of fact and law made by appellant in Walker v. Members of Congress were misstatement of fact and law. By waiving this right, under [federal law](#), the attorney of record formally and officially admitted [these assertions were true and correct as to fact and law](#). His [admission](#) refuted the [“patently frivolous” remarks](#) of DOJ attorney Karen D. Utiger and created [a final irony](#) in Walker v. Members of Congress. [Comments](#)

On October 30, 2006 the Supreme Court [denied certiorari](#) but not before it was established and admitted for court and public record that all assertions made in the writ of certiorari were [true and correct as to fact and law](#). In sum, the federal court system, [admitting it had no jurisdiction to do so](#) and basing its decision on an [advisory opinion](#) which had had no [constitutional authority whatsoever](#), endorsed a "right" by the members of Congress under the political question doctrine disobey the law of the Constitution in violation of federal criminal law. The courts however did not exempt the members of Congress from the penalties of these federal criminal laws.

Because of the following reasons:

- | that the Congress was required under federal law to take a formal public position disobeying the Constitution in a federal lawsuit,
- | that the members of Congress knew they were violating federal criminal law by taking this formal public position,
- | that they did so voluntary, that they accepted a report written by the Attorney General of the United States required by federal law outlining who, when and why such an action was justified,
- | that the members of Congress raised no objection to this report,
- | that their attorney of record at the Supreme Court admitted as a matter of fact and law these members were peremptorily required to call an Article V Convention and were in violation of federal criminal law for refusing to do so,
- | that Congress has taken no action as to calling a convention since the admission by their attorney of record,

. . . it is highly unlikely that a new set of applications submitted by the states, however composed, will be paid attention by Congress anymore than the other [400](#) (or more) applications already submitted to Congress by all 50 states has been. [Comments](#)

(9.2) QUESTION: One political commentator has said, "Congress must approve proposed amendments before they can be sent to the states for ratification." Is this true and what happens if Congress refuses to do so?

Back ANSWER: This is not true. However, under the terms of previously proposed legislations Congress reserved this power to itself along with limiting what issues of amendments a convention could propose. These proposed legislations failed to become law. The proposed legislations were Senate Bill 1272 (S.1272), submitted in 1973 entitled the "[Federal Constitutional Convention Procedures Act](#)" and Senate Bill 40 (S.40) entitled the "[Constitutional Convention Implementation Act of 1985](#)".

The reader is directed to Sections 6 (a), 11 (B) and 13(c) demonstrating Congress' intent to veto any proposed convention amendment based on "[same-subject](#)". As to the 1985 proposed law, regulations allowing Congress not to call a convention are contained in Sections 6 (a), 10 and 11 (b) (ii).

Noticeably absent are any standards in either proposed legislation defining "[same-subject](#)" as to meaning, use or intent allowing Congress to set whatever interpretation it pleases on convention applications or proposed amendments coming from a convention for ratification. The main reason these legislative proposals never became law is because they were created in response to a political movement supporting a specific amendment proposal. Members of

Congress politically objected to that amendment proposal. They were concerned a convention might pass that amendment. To provide themselves with a political method whereby a proposed amendment could be vetoed by Congress where no such method existed in the Constitution, these members of Congress created "[same-subject](#)".

Both pieces of proposed legislation had different methods to resolve any issue raised by Congress regarding refusing to send a proposed amendment for a ratification vote by the states. In the 1973 bill, Congress appointed itself as final arbitrator (Section 13 (c)). In the 1985 bill (Section 15 (a) the Congress allowed review by the Supreme Court but only if the issue was brought by a state within a sixty day period. As most states would require action by the state legislature before they would act, and many legislatures are not in session year round (unlike Congress) it is obvious the limit was intended to take advantage of this fact and thus exclude most states from raising objection.

It is probably based on these proposed pieces of legislation that this political commentator expressed his statement. As the legislation never became law, the commentator is incorrect. As there is no federal law regulating a convention, the only law that does apply is the Constitution itself. The Constitution is emphatic regarding congressional power to refuse to call a convention. *It does not exist.* The Constitution *does not* provide in any manner that Congress is endowed with a "veto" power over proposed amendments submitted by an Article V Convention for ratification. The language clearly limits Congress to a single ratification power: choosing which method of ratification will be employed, state legislatures or state ratifying conventions, to ratify a proposed amendment. Obviously the fact that the Constitution does not describe a third alternative (not to submit for ratification at all) makes it clear no such power exists or was intended to exist.

(9.3) QUESTION: What legislative acts can a responsible Congress undertake to facilitate an Article V Convention beyond issuing the call as called for in Article V?

Back ANSWER: A responsible, patriotic Congress loyal to the Constitution would enact the following legislation:

A convention call that would recognize all applications currently on file with Congress and set a date and location for such a convention or even more responsibly, allow the convention to set such a location as it deemed proper thus allowing the convention to meet on-line if it so desired.

The Congress should repudiate entirely by appropriate legislation the Supreme Court decision, "[Coleman v Miller](#)" and the assertion by the Supreme Court that [Congress may use federal troops to determine the outcome of a ratification vote by the states](#), making it absolutely clear Congress does not maintain, assert nor hold in any fashion or manner whatsoever that it has "exclusive" control of the amendatory process or of the ratification process except for those powers granted it in the Constitution which are: (1) the power to propose amendments by two-thirds vote of each house and; (2) its power to decide by which method (not whether) a proposed amendment either by convention or congress shall

be ratified.

An irrevocable law which would (a) making it a criminal offense for any member of Congress to refuse to call a convention when the proper numeric count of states had so applied; (b) establish a set procedure for the future tabulation and recording of all state applications together with a mandated system of notification by an officer of Congress (most likely the Speaker of the House) when the proper number of applications had been received.

A law addressing the major the fears and concerns people have expressed over an Article V Convention which at the minimum would be (a) making it a federal criminal act for any member of an Article V Convention in any fashion to act outside his assigned constitutional duty of proposing amendments (i.e., attempting to create a ["runaway"](#) convention in any fashion); (b) establish such procedures and laws as would be necessary and proper for the convention to function *without* congressional interference or oversight meaning primarily that Congress would recognize that all applicable laws which effect Congress as to election of members, conduct, immunities and privileges and so forth would be equally applied to a convention and that any law imposed by Congress with the intent of regulating a convention would be equally applied to Congress; (c) establish a specific timetable for Congress to choose a method of ratification for any amendments proposed by convention and impose mandatory criminal sanctions against any member of Congress for failure to abide by that timetable; (d) establish and recognize that any amendment proposed by a convention and ratified by three-quarters of the states either by legislature or convention shall in fact become part of the Constitution without further delay or interference by Congress or any other member of the government.

In short a responsible Congress would recognize by appropriate legislation that the states and most especially the people have the right to amend their Constitution without national government interference or oversight and a responsible Congress would reject entirely the series of controls attempted in its [1973](#) and [1985](#) proposals obviously intended by Congress to make the convention process nothing more than a surrogate amendment proposal system for the political benefit of Congress thus rendering such process meaningless.

In a very early case [Hollingsworth v Virginia, 1798](#) the Supreme Court, made it clear Congress lacks the constitutional authority to legislate control of an Article V Convention by creating a veto power such as the two examples of proposed legislation above. The court stated that "The case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not within the policy, or terms, of investing the President with a qualified negative on the acts and resolutions of Congress." The Court went on to say, "The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution."

Clearly an Article V Convention has to do with the "proposition" of amendments to the Constitution. Therefore because the Supreme Court ruled the President of the United States cannot exercise his veto power in such legislation and the [Constitution specifies that in order for Congress to pass legislation it must be subject to a presidential veto](#), this means Congress cannot pass legislation regulating a convention.

However, the proposed legislation we have suggested is Constitutional because it does not regulate the convention. It merely ensures that the preemptory obligation of Article V is carried out by Congress and prevents such controls as have been proposed from occurring. Further, it limits a convention only to what the Constitution specifies: proposing amendments. The proposed law would not control what the convention does in that area of its constitutional responsibility. It would simply ensure the convention did not attempt to assume powers constitutional or otherwise, it wasn't supposed to.

(9.4) QUESTION: What legislative acts should Congress not enact in regards to an Article V Convention?

Back ANSWER: In the past Congress has consistently set itself up as the regulator of any convention amendment proposal such that it claimed the right to veto, edit or otherwise modify any amendment proposal [made by convention](#). Further, it has established [major hurdles of review](#) that it does not subject itself to in its amendment proposals for a convention proposal to pass. None of this should be in any legislative act Congress would propose.

The Congress should not attempt to set itself up as "judge" of the amendments by determining whether the applications are "[contemporaneous](#)" or all deal with the "[same-subject](#)" thus allowing Congress the right to refuse to call based on some politically motivated transient standard established for the sole purpose of thwarting the convention and the Constitution. The Congress should obey the law of the Constitution and establish the only standard for a convention call is a numeric count of states taking into account of course [the Supreme Court ruling](#) on the meaning of the word "two-thirds" as it would apply to a quorum of applying states.

In a recent [federal law suit](#), the federal government admitted the only standard for deciding Article V Convention applications was a simple numeric count of applying states and that any political subject contained in the application was irrelevant. Therefore such standards of [contemporaneous](#) and [same-subject](#) according the government are invalid.

Ratification:

(10.1) QUESTION: Under the terms of Article V, Congress chooses the method of amendment ratification, by state legislatures or state ratification conventions. Does it matter which method Congress chooses for ratification of an amendment proposed by an Article V Convention?

Back ANSWER: From a constitutional point of view it does not matter whether ratification is by state legislatures or by state ratification conventions. So long as three-fourths of these bodies, legislatures or conventions, ratify the proposed amendment it is equally constitutionally valid.

Unlike Congress and the Article V Convention [which require a two-thirds vote to propose an amendment](#), the ratification conventions and the state legislatures (assuming a quorum) need only pass a ratification vote by a majority of those present. The reason for the difference is that Congress and the Article V Convention represent *all the states* while a state legislature or the state ratifying convention represents only the single state and thus technically become delegates elected by the people of that state to make a ratification vote *for that single state*. As fifty individual ratification votes will be taken all at different times and state locations, there is not one ratification action but fifty individual ones. Hence, the vote need only be a majority for each state.

As to the political point of view, the choice made by Congress between legislature and state convention may be viewed as more significant politically and it is possible lobbying for a specific amendment ratification procedure may occur in Congress depending on how the proponents and opponents of a particular amendment proposal view the chances of ratification in each mode of ratification. Most certainly lobbying for ratification or against such ratification will occur during that process throwing up an additional obstacle for amendment proposals.

(10.2) QUESTION: Who would determine the effective date of a specific amendment if it were to be ratified---Congress or the Convention?

Back ANSWER: Neither. Under current [federal law](#), the Archivist of the United States is charged with determining the effective ratification date of a ratified proposed amendment which is to be done "forthwith" according to the law meaning that as soon as the Archivist receives notice of the ratification vote by the thirty-eighth state, he shall take the steps in the law required to announce the proposed amendment is now part of the United States Constitution. These steps are specified in the law and apply to all ratified amendments whether proposed by Congress or convention or ratified by legislature or state ratifying convention.

(10.3) QUESTION: Once amendments have been presented to the states for ratification, how long do the states have to achieve the required three-quarters approval?

Back ANSWER: In recent years Congress has seen fit to place a time limit for ratification in the amendment itself. In earlier amendments there was no time limit set in the amendment thus allowing the states as much time as they wanted. The most famous example is the [27th Amendment](#) which was originally proposed in 1789 but was not ratified by the states until 1992.

Congress does not have the power to "edit" an amendment proposed by an Article V Convention anymore than a convention could "edit" a congressional proposal. Likewise, the states must either vote in favor of or against ratification and cannot modify the language of the proposed amendment. Thus, it is up to the proposing body to determine how long the amendment shall remain valid and there is no requirement constitutional or otherwise which provides that a convention would have to obey the seven year custom established by Congress. The convention could therefore choose a shorter or longer period of time or as with earlier amendments, place no time limit whatsoever on the amendment.

Rescission:

(11.1) QUESTION: Can the states rescind an application *before* the number of applications reaches the two-thirds necessary to cause Congress to call an Article V Convention?

Back ANSWER: No. The Constitution does not grant the states the right of rescission of any application by a state once it has been submitted to Congress. The reason for this prohibition is best illustrated by an example:

Let us assume an Article V Convention has been held thus clearing the records of all current applications. Then, sometime in the future, Issue X arises and triggers a new set of applications by the states. The states submit a total of 34 applications sufficient to cause Congress to call an Article V Convention. However, as Congress is in session it receives word that State Y has rescinded its application thus establishing that State Y, not Congress, shall determine if an Article V Convention shall be called because it is the decision of that state which allows it to veto all other applications as well as preventing Congress from carrying out its constitutional authority.

Obviously State Y, nor any state for that matter, does not have the authority to overrule the Congress nor control the actions of the other states which, if rescissions were allowed, the state would have such authority. For this reason states may not rescind their applications once they have submitted them regardless of how many other states have applied for an Article V Convention because the Constitution was intended to allow any state to veto the actions of another state or states.

(11.2) QUESTION: Can the states rescind an application *after* the number of applications reaches the two-thirds necessary to cause Congress to call an Article V Convention?

Back ANSWER: No. In fact a "rescission" by a state will in fact cause the exact opposite effect than is intended by the rescission. When a state submits a "rescission" it is in effect asking Congress to recognize that the state in question is withdrawing or nullifying rescissions already submitted to it for an Article V Convention. A [list of states](#) that have submitted rescissions shows clearly that no applications for rescissions were made *before* the two-thirds requirement had been long satisfied thus "locking in" the applications. The Constitution does not allow for the withdrawal of votes (which is what an application technically is, a vote by the state for an Article V Convention) regarding an act anywhere. A member of the Senate or House, for example, cannot withdraw or rescind his vote in favor of a law or action by the United States government after that law or action takes effect in an attempt to nullify that law or action. Voters cannot "withdraw" their vote after they have cast them at an election. Judges cannot, on their own, open a case they ruled on and have closed and change their rulings. The same principle applies to the states with their applications for an Article V Convention.

Further, if the state does submit a rescission, that rescission first causes Congress to examine the applications which are being rescinded and, if the two-thirds state applications exists, as it does now, Congress would first be required to acknowledge the application made by the state for an Article V Convention before considering the rescission of that application. Obviously, Congress cannot rescind an application by a state until it first acknowledges

that which the state wishes to rescind. In acknowledging the application, as the rescission requires, the state is actually causing Congress to *consider* not reject the applications on file for an Article V Convention and, as required by the Constitution, act on these applications which means calling a convention. Of course once the applications have been acted upon and thus a convention called, the rescissions become meaningless. It is for this reason that Congress has never acted on or even acknowledged any rescission by any state regarding an Article V Convention. Therefore rescissions are in fact merely another form of application *for* an Article V Convention as the Constitution does not recognize their legality or constitutionality.

The Supreme Court has addressed the issue of state legislatures or Congress attempting to add or alter the amendatory language of Article V by affirming the states nor Congress can change its procedures. Therefore the Supreme Court has made it clear that rescissions, which would obviously alter "the method which the Constitution has fixed" are unconstitutional as the article does not even imply a state may rescind an application once a state legislature has made it.

The court said:

This article [Article V] makes provision for the proposal of amendments either by two-thirds of both houses of Congress, or on application of the legislatures...thus securing deliberation and consideration before any change can be proposed. the proposed change can only become effective by the ratification of the legislatures of three-fourths of the states..."

"The language of the article is plain and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed."

---Hawke v. Smith, 253 U.S. 221 (1920).

Finally, in [Missouri Pac. Ry. Co v State of Kansas, 248 U.S. 276 \(1919\)](#) the Supreme Court made it clear that the definition of "two-thirds" as used in Article V is not two-thirds of *the total number of members in Congress but instead is two thirds of the members present assuming a quorum of members present*. The court defined a quorum to mean, "a majority, one-half and one more." Thus, according to the Supreme Court in a relatively small number of senators and representatives could propose an amendment to the Constitution. It would require a total of 51 senators and 218 representatives which translates into 26 states in the Senate and a few as six or seven states in the House assuming the most populous states favored the proposal.

Under the 14th Amendment rule of equal protection, the same definition of the term "two-thirds" made by the court must also apply to the states as it used to describe the necessary number of states required to apply cause a convention call. Article V clearly states, "on the application of the legislatures of *two thirds of the several states* [Congress] shall call a convention for proposing amendments..." Thus, the Supreme Court by its quorum ruling has established that *less than two-thirds of the total number of states in the union can cause a convention call to occur*. The alternative to this interpretation is that if all states must be considered to define the meaning the word "two-thirds" then all

amendments proposed by Congress (including those by the Framers themselves) were done unconstitutionally as all members of Congress must vote in order for "two-thirds" of each house to propose an amendment. The court makes it clear two-thirds does not mean this interpretation. Given this court decision of quorum, the only possible interpretation is that if a state elects to rescind its applications, it has decided to no longer attend the "meeting" or convention. Therefore as that state has withdrawn from the convention, it means that *the two-thirds quorum of applying states required to cause a convention call cannot be based on the total number of states which includes a state or states that have "rescinded" their applications. Therefore the two-thirds number required to compel a convention call must be reduced* meaning all a rescission by a state legislature does is lower the quorum of states *necessary to compel a convention call*. According to the [record](#), a total of eighteen states have allegedly submitted rescissions, but only a handful of these were to withdraw *all* applications. Most rescissions were directed at withdrawing a single application which in most cases was replaced by another application. All rescissions were submitted long after the original two-thirds necessary for a convention call had been satisfied. None of these rescissions have been accepted by Congress nor acted upon in any manner whatsoever.

Beyond this, regardless of whether any states have submitted rescissions, the Supreme Court ruling means that only two-thirds a quorum of states (26) or a total of 18 states are required to submit applications for an Article V Convention in order to compel Congress to call. If the [Coleman](#) decision, which did not describe nor mention the convention method of amendment proposal but can be applied to the convention, it follows the [Missouri](#) decision must also apply as in describing congressional amendatory process it automatically includes the convention. Whether rescissions are considered or not it is clear Congress cannot escape its mandated duty regarding a convention call by use of rescissions submitted by the states for the following reasons: (1) The Constitution does not allow rescission by the states in Article V or anywhere else in the Constitution; (2) All rescissions by the states were submitted *after the two-thirds requirement was satisfied thus meaning that if rescissions are valid Congress is first required to acknowledge the application before the rescission and if it does so, is compelled by the direct text in the Constitution to call a convention*; (3) The states have no more authority to veto the text of the Constitution than Congress does; (3) According to the Supreme Court, a rescission of an application by a state means that state legislature no longer wishes to be part of the "quorum" of states necessary to apply for a convention which means the two-thirds quorum needed for a convention call is reduced thus lowering the number of states needed to apply for a convention in order to compel Congress to call. In sum, all a rescission accomplishes is making a convention easier to achieve, not more difficult.

Resources:

(12.1) QUESTION: What resources would you recommend I read to learn more about the Article V Convention?

ANSWER: There are several references available both in hard copy and on-line that provide a great deal of information regarding an Article V Convention. Many of these resources were written either in support of or in opposition to a specific amendment proposal which, at the time of the publication, was thought might cause a convention call. As such, the reader is advised these books may

contain material which was intended by the author(s) to sway a reader to a particular point of view regarding an Article V Convention in order to effect a convention call. References listed here does not imply, nor is intended to indicate, support by FOAVC of any specific amendment proposal or a political point of view.

Nearly all of the references below refer to an Article V Convention as a "[constitutional convention](#)" rather than as an "Article V Convention". However, while a "[runaway](#)" convention is discussed in nearly all the references, none advocate it. Thus, while these references may use the term "[constitutional convention](#)" what they are really advocating and discussing is an Article V Convention.

Suggested Resources

One of the best and earliest books on conventions, specifically state conventions, is [Constitutional Conventions, Their Nature, Powers and Limitations](#) written in 1917 by Roger Sherman Hoar, A.B., LL.B. The book can be read in its entirety on-line at <http://www.constitution.org/rsh/concon00.htm> . Mr. Hoar studies the history of the many state conventions that have been held in the United States, their powers and issues.

[Unfounded Fears, Myths and Realities of a Constitutional Convention](#), by Paul J. Weber and Barbara A. Perry published in 1989 discusses several aspects of an Article V Convention. The book presents proposed congressional legislation aimed at regulating a convention as well as discussion of the proposed balanced budget amendment. The book favors the position of [same-subject](#) convention call.

[A Constitutional Convention, Threat or Challenge?](#) by Wilbur Edel published in 1981. Mr. Edel book focuses primarily, as the title indicates, whether a convention is a threat or a challenge to our nation. Mr. Edel takes the position that Congress should propose an amendment to Article V to "settle the two major points of controversy: limited versus unlimited convention authority, and the role of the president".

[The Federalist Papers](#) written by John Jay, James Madison and Alexander Hamilton during the ratification fight of the United States Constitution after the 1787 convention provide great insight into the thinking and intent of the men who wrote the Constitution. Particularly important to any serious scholar of the Article V Convention is [Federalist No. 40](#) and [Federalist No. 85](#) written by James Madison and Alexander Hamilton respectively. A link to one many on-line sources for all the Federalist Papers is provided here: <http://www.foundingfathers.info/federalistpapers/fedi.htm> . The Founders, as explained in [Federalist No. 85](#) (highlighted for purposes of clarity) intended the convention call be a [simple numeric count](#) of applying states.

[American Bar Association \(ABA\) Constitutional Conventions Study \(Report No. 127\)](#) released 1973. This report, released by a committee created by the ABA, "to analyze and study all questions of law concerned with the calling of a national Constitutional Convention, including but not limited to, the question of whether such a Convention's jurisdiction can be limited to the issue giving rise to its call, or whether the convening of such a Convention, as a matter of constitutional law, opens such a Convention to multiple amendments and the

consideration of a new Constitution..." reaches several conclusions regarding an Article V Convention primarily that Congress has the authority to limit the issue debated at an Article V Convention to a single amendment proposal, permits that members of Congress may appoint themselves as delegates to a convention and proposes Congress has the authority to review convention amendment proposals before permitting ratification of them. The report generally refutes the position taken in [Federalist No. 85](#) that "nothing in this particular is left to the discretion of that body" and is viewed as supporting almost total congressional control of the convention process.

[The Second Constitutional Convention, How The American People Can Take Back their Government](#), by Richard Labunski published in 2000. The author's note states, "This book explains why the American people should hold a second constitutional convention and how they can organize it." The book discusses several proposed amendments which may be presented at an Article V Convention.

[Constitutional Brinkmanship, Amending the Constitution by National Convention](#) by Russell L Caplan, published in 1988. This book advocates that Congress has the right to establish conditions and requirements (such as [same-subject](#)) beyond the single numeric count specified in Article V for states to satisfy before Congress consents to a convention. The book advocates that Congress can "determine whether the amendments proposed by the convention (if any) meet all constitutional requirements" thus establishing Congress could refuse or veto a proposed amendment submitted for ratification by a convention and thus prevent its ratification.

[The Constitutional Convention, How is formed, How is it run, What are the guidelines, What happens now?](#) published in 1987 by Dean James E. Bond, Professor David E. Engdahl and Henry N. Butler, J.D., Ph.D. This small booklet published by the National Legal Center for the Public Interest discusses the Article V Convention in light of the then current push for a balanced budget amendment. The booklet favors [same-subject](#) as the basis of a congressional decision of whether or not to call a convention and total regulation of an Article V Convention by suggesting in its conclusion that Congress "should clarify its position on what type of State resolution or memorial will be accepted as valid Article V petitions. Congress should do this by enacting legislation governing all aspects of an Article V Convention."

[A Lawful and Peaceful Revolution: Article V and Congress' Present Duty to Call a Convention for Proposing Amendments](#) published in 1990 in the Hamlin Law Review, Volume 14, Number 1. This article, co-authored by Judge Van Sickle (North Dakota Supreme Court) and Lynn Boughey, presents the most extensive list of convention applications known listed by Congressional Record location, issue of application, date of application and state making the application and asserts that Congress is remiss in not calling a convention. Judge Van Sickle asserts that the term "application" as used in Article V must apply to all applications, regardless of issue, and therefore must *all* be considered as applying for an Article V Convention. Judge Van Sickle presents evidence that at least three issues, on their own merits, Repeal of the 16th Amendment, Balanced Budget and Apportionment, have gained sufficient state support in number of applications to compel a convention call and refutes the concept that Congress has the right to ignore the applications.

[Walker v United States Overlength Brief](#) was written as a legal brief for the first

lawsuit in history presented to the United States federal courts specifically addressing whether or not Congress is obligated to call an **Article V** Convention. Together with the 2004 federal lawsuit, *Walker v. Members of Congress* which was appealed to the Supreme Court, the first such case of its kind in United States history, these two lawsuits are landmarks in the **Article V** Convention issue. The [Overlength Brief](#), written by Bill Walker, FOAVC co-founder, employees 208 Supreme Court rulings as the basis to examine all issues surrounding the convention from the question of a ["runaway" convention](#) and ["same-subject"](#) applications to the effect of the 14th Amendment equal protection clause on **Article V** and the **Article V** Convention. In sum, the brief determines that Congress must call an **Article V** Convention, that the applications are for a convention call rather than an amendment issue and thus a convention call is nothing more than a numeric count of applying states with Congress having no discretion whatsoever as to whether to call or not.

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