

## Reform Groups Strongly Oppose Efforts in the States to Call a Constitutional Convention\*

Statement Issued by the Brennan Center for Justice, Common Cause, Democracy 21, Issue One, People For the American Way, Public Citizen and USAction

-- April 10, 2015\*\*

Our groups support a number of campaign finance measures to respond to the destructive and indefensible Supreme Court decision in the *Citizens United* case. Many of us support a constitutional amendment to overturn *Citizens United*. Others are focused on building the case for a new jurisprudence to serve as the basis for reversing *Citizens United*.

All [7] of our groups, however, strongly oppose the calling of a constitutional convention\* [*sic*] which would put the constitutional rights and protections of all Americans at great risk. We do not believe this is the way to address the campaign finance problems created by *Citizens United* or any other problems currently facing the country.

The Constitution provides that two-thirds of the states can force Congress to call a constitutional convention. It provides very little further guidance. Thus the Constitution does not say whether the issues to be considered by a constitutional convention\* can be limited to the ones set forth in the call for a convention. Most observers believe the scope of issues to be considered by a convention cannot be restricted.<sup>1</sup>

## Rebuttal Notes from [Get Money Out Maryland](#), May 2015

### PREFACE & CONTEXT

Fully 90% of Americans disapprove of Congress. Likewise, 90% are deeply troubled by big money corrupting our politics and want it fixed. GMOM and allies working for an Article V convention of the states believe ours is the most effective and safest strategy to inspire, mobilize and build the massive movement it will take to get around our bought-off Congress and Supreme Court. The same old Congress-centric approach by the same DC-based grass-tops that have been losing for over 40 years can't do it. It requires a genuine and inclusive grassroots movement of citizen-equals, inspiring and empowering all participants to "do what you can, with what you have, where you are," as progressive T. Roosevelt urged.

Congress seems too remote, big and bought for most people to affect. But we can still save democracy at the state level, with fresh strategies, social media, leaders, and many thousands of activist youths, seniors and others. We must train and support each other to speak truth to power to reclaim our own, with courage and dignity. These are far better motivators than fear—and the surest antidotes to ALEC, the Kochs and their ilk. Whatever the groups opposing this approach are afraid of—Balanced Budget Amendment or any other liberal nightmare—they'd best fight those—not the growing movement above.

Moreover, the mere threat of a convention induced Congress to propose the 17<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> and 25<sup>th</sup> Amendments, all quickly ratified by ¾ of the states. And it would likewise almost certainly propose our new Democracy Amendment, too, as the number of states passing this binding resolution approaches 20, 25, or even the 34 needed. (Carrot and stick, good cop-bad cop, and so on.) **So the statement at left and our rebuttal are mainly academic.**

### HEADING NOTES:

\*The term "Constitutional Convention" is misleading, and used NINE TIMES to frighten readers. Article V grants states the power only to "call a Convention [of the states] **for proposing Amendments**, which... shall be valid to all Intents and Purposes, as **Part of this Constitution.**" (look it up.) There was only one U.S. "Constitutional Convention," the first that produced our one and only Constitution of 1788, subsequently amended 27 times—all ratified by both legislative chambers of ¾ of all the states.

\*\*This statement was rushed to release April 10, 2015, the very day of the Maryland House Rules Committee hearing on the Democracy Amendment Resolution, so it could be used to kill the bill's core purpose, to call for a states convention. **More at [GetMoneyOutMD.org](#)**

Former Supreme Court Justice Warren Burger stated, “[T]here is no way to effectively limit or muzzle the actions of a Constitutional Convention.\* The Convention could make its own rules and set its own agenda.” Former Supreme Court Justice Arthur Goldberg stated, “There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights.”<sup>2</sup>

Thus, the call of a convention would place all of the constitutional rights and protections of individuals up for grabs. This includes protections that exist for civil rights, civil liberties, freedom of religion, freedom of speech, voting rights, privacy and many others. The role of the courts in protecting the rights of individuals and minority interests would also be subject to change.<sup>3</sup>

All of the nation’s constitutional history and constitutional rights would be vulnerable to alteration and revision. Justice Antonin **Scalia** has said, “I would not want a constitutional convention.\* Whoa! Who knows what would come of it?”<sup>4</sup>

There are no established rules, furthermore, for determining whether the 34 states calling for a convention have to adopt a resolution focused on the same issue, whether resolutions previously passed can be withdrawn, whether resolutions passed long ago expire after a certain period of time elapses, or whether all resolutions count regardless of how they are limited to specific issues.

Furthermore, there are no rules and no process in existence for determining how delegates would be chosen for the convention and how decisions by the delegates would be made. Different states could establish different rules for electing or appointing delegates. If states held elections, there may or may not be any campaign finance or election rules that apply to the election in each state. We do not know how many delegates each state would have and how the votes of the delegates of each state or the votes of the states

#### BODY NOTES:

- 1) “**Most observers**” is a vague, unsubstantiated and **WRONG**. [DOJ reports](#), “[T]he structure and purpose of the text, as well as the interpretation of it by the states, Congress, and the majority of scholars... all support the view that Article V permits limitation of the subject matter of the convention.” As with any point of law (or scriptures), one can cite experts who agree with whatever point one wants to make. GMOM trusts DOJ and constitutional law professors [Lawrence Lessig](#) (Harvard), and nationally acclaimed homegrown hero Sen. **Jamie Raskin** (AU), proclaimed the smartest member of the General Assembly by the *Baltimore Sun*, and others.
- 2) **WRONG**: How about the uproar from the 90% of Americans across the spectrum who revere our Constitution as sacred above all else—millions of whom have sworn to defend it! But the ultimate institutional failsafe is the requirement of **ratification by both chambers of ¾ of the state legislatures (38)**—an ominous supermajority requirement guaranteeing that no amendment can take effect without consensus of a trans-partisan, trans-spectrum supermajority of Americans.
- 3) **Here’s our scholarly experts’ explanation regarding this core concern**: Amendments conventions can be limited to specific topics. When the Founders drafted the U.S. Constitution in 1787, they specifically rejected language for Article V that would have allowed the states to later call for an open convention. The limited scope of an amendments convention is underscored in the last sentence of Article V, which specifies that amendments cannot alter the equal number of votes for each state in the U.S. Senate without the consent of the affected state. This establishes that an Article V convention couldn’t simply rewrite the entire Constitution. The states define the agenda of an amendments convention through their applications for the convention and through the commission of delegates. **There is zero precedent that any convention of the states has ever “runaway”** from its assigned agenda. There have been 12 interstate conventions in the history of our country. All of them stayed within their stated agenda. Even the Constitutional Convention of 1787 was not convened to “amend” the Articles of Confederation, but to “revise” and “alter” the Articles to establish an effective national government. This was fully consistent with the Articles of Confederation because the Articles authorized alterations—a term that had revolutionary significance because it echoed the language of the Declaration of Independence. The broad purpose of the Constitutional Convention of 1787 was specifically mentioned in the call of Congress and in nearly all of the commissions for the delegates for each state. The 1787 convention did not runaway at all; it did what it was charged to do—like all interstate conventions.
- 4) Why Scalia? Do none of the four justices outvoted in *Citizens United* oppose this?

would be counted in a convention. And since there are no rules for the functioning of the convention itself, we have no idea as to the process by which the convention would reach decisions.<sup>5</sup>

Huge amounts of money would very likely be spent by wealthy Americans, corporations and other well-financed interests to influence the decisions made by the convention.<sup>6</sup>

To put it simply, we would be unleashing the opportunity for a wholesale rewrite of the founding Constitution of our country with no limit on the issues to be considered and no idea about how the process for doing this would work and how decisions would be made.

This makes no sense and would pose grave danger to the nation.

Unlike the well-established and tested process for proposing, considering and adopting individual amendments to the Constitution, which has been used multiple times throughout our history (both successfully and unsuccessfully), there has never been a constitutional convention\* since the Constitution was first adopted and ratified in 1788.<sup>7</sup>

To call a constitutional convention\* would imperil the work of our Founders and more than 200 years of constitutional history that followed.

Our groups strongly urge states to oppose adopting a call for a constitutional convention.<sup>8</sup>

5) Our forebears must be forgiven for not specifying every procedural detail, but let us not make the perfect the enemy of the good. Actually, our institutions are inherently biased toward caution and precedence. The procedures for conducting an amendments convention would surely be similar to Congress' long-established rulemaking powers. Constitutional text, language and custom make clear that Congress calls the convention, setting a time and location; states appoint delegates by way of resolutions and commissions (or general state law); delegates initially vote as states at the convention; and majority votes will decide what amendments are proposed—each to be considered individually for ratification by 38 states. **One cannot take the Constitution seriously and contend that Article V was not meant to be used. It is a critical and “deal closing” element of the balance of power.**

6) Yeah, just one more manifestation of the problem we must move ASAP to fix. To count that as a reason to take a slower, less promising approach makes no sense!

7) See paragraph of our PREFACE: Congress only proposed the 17<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> and 25<sup>th</sup> Amendments in response to many states calling for an Article V convention.

8) See HEADING NOTES: Why do they repeat this SCARY, incorrect term NINE times? See BODY NOTES 1-5 for why the statement's conclusion is wrong and misleading.

**AFTERWORD:** the Constitution was sold by the Founders to the ratifying states on the basis that they retained their ultimate authority over the federal government through their Article V amendment powers. James Madison in *Federalist No. 43* specifically argued that states should use the power to correct errors in the Constitution [not usurp it]. And Alexander Hamilton in the “final argument” of the “Federalist Papers,” in *Federalist No. 85*, said the Article V amendment process was the means by which the states would rein in an out-of-control federal government [as it is now!]. **One cannot take the Constitution seriously and contend that Article V was not meant to be used by the states, citizens. It is a critical and “deal closing” element of the balance of power created by the Constitution.**

**For Further Reading: Find more at [GetMoneyOutMD.org/articlev](http://GetMoneyOutMD.org/articlev)**

- [Limited Convention, the DOJ report](#)
- Congressional Research Service 2014 report: [Article V Convention to Propose Constitutional Amendments: Contemporary issues for Congress](#)