

The Honest Path to Save Democracy

Demand the truth about an Article V Convention

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Many of us stopped watching cable news awhile ago because we're tired of being misled. The information being presented in a professional manner by seemingly reputable people is so blatantly cherry-picked that we instinctively know it can't be trusted. Our B.S. detectors are shooting off the charts. We've come to expect this type of negligent, one-sided reporting from mainstream media, but when it comes to the people and organizations we have long trusted, it may be harder to recognize.

"Cherry picking" is a method of recounting a story by ignoring inconvenient data. As Professor Bob Bennett describes, it occurs "when only select evidence is presented in order to persuade the audience to accept a position, and evidence that would go against the position is withheld" (1). People, governments, businesses/organizations have been using deceptive tactics like this to control the message and pursue their own agenda for centuries. It's nothing new, but that doesn't make it any less reprehensible, and we should never accept it in any form.

Last week, we published "[The Logical Path to End Corruption](#)," describing the specifics of Wolf-PAC's plan to use an Article V Convention in order to help us secure balance and integrity in our elections through an amendment to the U.S. Constitution. We work alongside thousands of intelligent, dedicated, passionate people who are tired of playing defense and feel that it's past time to go on the offense with every tool of democracy available to us in order to wrestle our Republic back from the death grip of the establishment and their powerful special interests.

In that article you'll also learn how a progressive organization, Common Cause, is using their lobbyists, and now mainstream news outlets, to stop our efforts in the states because of the unfounded theory of what is referred to as a "runaway convention." It's no secret that we disagree on the path to achieve a free and fair elections amendment. What we find disturbing, though, is that in our search to understand the opposition's perspective, when we looked into the evidence they

provide to support their position, what we have found is the use of cherry-picked information to fit their argument (for a quick chart on this, see below; for more context, keep reading).



One of the scholars Common Cause often cites is the late Supreme Court Justice Antonin Scalia. He's a curious choice, not only because of his long standing history with equating money as speech, including his decision to side with the majority in *Citizens United v. FEC*, but also because Common Cause has a history of questioning his ethical behavior as evidenced in their letter to him in 2013 (2), including his relationship with the Koch Brothers, as stated in a separate letter to him in 2011 (3), and another letter in 2014 (4).

Despite their lack of trust in his integrity as a Justice, Common Cause quotes Scalia as a scholar who supports their belief in the runaway convention: "I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?" (5).

On its own, this quote makes it seem as if Scalia was against having a convention, but it helps to know that he had a solid understanding of Article V that goes back decades, and when deciphering what he meant when he said "constitutional convention," it's important to have more context.

The John Birch Society, an extremist conspiracy theorist group, uses the same Scalia quote as Common Cause, and they claim that he was referring to a limited Article V Convention. Others argue that when Scalia said this he was referring to a general convention, or what scholars recognize to be a true constitutional convention, which would be permitted to discuss and propose any amendments to the Constitution, as opposed to a limited Article V Convention like the one that Wolf-PAC is working towards on the subject of campaign finance reform.

Determining what Scalia meant is better understood by taking a look at his argument in a debate he attended in 1979 that was explicitly organized to discuss an Article V Convention (6):

I have not proposed an open convention. Nobody in his right mind would propose it in preference to a convention limited to those provisions he wants changed. [...] It is not much of a risk. Three-quarters of the states would have to ratify whatever came out of the convention; therefore, I don't worry about it too much. [...] I really want to see the process used responsibly on a serious issue so that the shibboleth—the Richard Rovere alarm about the end of the world—can be put to rest and we can learn how to use the process responsibly in the future.



Not only does Scalia poke fun at those sounding the alarm about a convention, but he goes on to state that he wants to see an Article V Convention take place so people will realize that we are capable of using the process responsibly, which is a direct contradiction to the image currently being portrayed of him by Common Cause and others. The John Birch Society argues that Scalia must not have known much about the Article V process in 1979 and likely changed his mind by 2014, but when you read the transcripts from the 1979

debate it is obvious that he was well-versed in the subject and, in fact, clarifies in the above quote that he understands the difference between an open, or general, convention and a limited one.

In 2014, the question Scalia was answering was this: "If you could amend the Constitution in one way, what would it be and why?" He immediately responded (7):

"I certainly would not want a constitutional convention. I mean, whoa, who knows what would come out of that, but if there were a targeted amendment that were adopted by the states, I think the only provision I would amend is the amendment provision. I figured out at one time what percentage of the populous could prevent an amendment to the constitution and if you take a bare majority in the smallest states by population I think something less than 2% of the people can prevent a constitutional amendment. It oughta be hard, but it shouldn't be that hard."

The question itself wasn't asking about a convention at all, which is why it's important to consider the 1979 debate when weighing in on what he meant. Scalia mostly focuses, though, on the high ratification threshold of any amendment. Here he confirms what is a solid fact, as stated by the Constitution itself, that an Article V Convention cannot, under any circumstances, change the Constitution. Any proposal, whether by Congress or the states, still has to be ratified by a super-high majority of 75% of the states.

It is likely that journalists and advocacy groups repeating the Scalia quote are trusting in Common Cause because they have been around for nearly five decades, but that cannot be an excuse for

blind trust. We must question even the sources that we are quick to rely on. We all have a responsibility to promote information with intellectual integrity, but journalists and organizations should especially be held accountable due to their ability to influence the public on a greater scale.



Professor Laurence Tribe of Harvard, a renowned scholar of the Constitution, has also been cherry-picked by Common Cause: “Ultimately, Professor Tribe said a constitutional convention would essentially ‘put it [the Constitution] all up for grabs,’ and his doubts about a convention overcome his desire to experiment with the Constitution” (5).

This is in reference to a 2011 conference at Harvard featuring a panel of constitutional scholars discussing the Article V Convention. Professor Tribe’s view, however, is more thoughtful than Common Cause would have us believe. In that same conference, Tribe explains that there is a difference between a limited convention and an open one, and if there is ever a time for an Article V Convention it may be when Congress becomes immovable. He even provides the issue of money’s influence on our political system as an example for when we might need to invoke an Article V Convention (8):

I do agree that there is a difference between an Article V convention, [...] and a totally new convention [...]. It’s just that I don’t know the leaps and bounds of those differences. Now, does that lead me to think that we should never have another Article V convention? No, I agree very much with Nick that there’s a first time for everything. And I do believe that there may be certain kinds of systemic breakdowns where a large majority of the people of the United States want something to happen. For example (and I take this just as an example), they want to limit the ability of amassed corporate wealth to dominate American politics. Now, I count myself as part of that group. [...] But it may be the case that the very things that make us want to change the influence of corporate money on politics will make it essentially inconceivable that Congress would propose that amendment to the states. Now, if we get that kind of lockdown, [...] then I

think we're at least in the territory where I think there's perhaps a plausible systemic case for a limited purpose convention [...]. (for full quote, see chart below)

Common Cause goes on to list questions that the professor mentions are left unanswered regarding the convention, but they conveniently leave out this part of Tribe's stated position at that very same conference: "I would also object very much to someone who said that because I don't know the answers to all of the questions about an Article V convention I would be opposed to ever having one, and that's why I've made very clear that I don't take that view" (8). *(for full quote, see chart below)*

This obviously does not align with Common Cause's claim that "his doubts about a convention overcome his desire to experiment with the Constitution." This type of spin doctoring in order to present their position in a way that makes us come to the conclusion they want us to is why people are losing trust in the media and political parties. We recognize that Professor Tribe has questions when it comes to an Article V Convention, but his position is clearly more nuanced than Common Cause would like for us to believe.

There is too much at stake for half-truths. The reality is that there is a wealth of knowledge and scholarly research done around the subject of an Article V Convention, the majority of which has concluded that the states have every right to call a convention limited to a single subject, and that mechanisms are in place for that limitation to be enforced (9).

As citizens, we must hold not only our elected officials to a higher standard, but also the organizations that influence them, whether that be corporations, unions, or non-profits. As reformers, we must hold ourselves to these same ideals and practice them at every opportunity. If we're going to move our country towards a better tomorrow and address the overwhelming amount of corruption taking place in our nation's capitol, we must insist on high-level discussions that exude transparency, intellectual integrity, and a level of trust in the audience. To do this, we will need to lead with courage and reject all deceptive tactics meant to keep us content with the status quo, and we must always demand truth.

Common Cause's Sources	Context
<p>Supreme Court Justice Antonin Scalia: "I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?" (5).</p>	<p>The entire quote: "I certainly would not want a constitutional convention. I mean, whoa, who knows what would come out of that, but if there were a targeted amendment that were adopted by the states, I think the only provision I would amend is the amendment provision. I figured out at one time what percentage of the populous could prevent an amendment to the constitution and if you take a bare majority in the smallest states by population I think something less than 2% of the people can prevent a constitutional amendment. It oughta be hard, but it shouldn't be that hard" (7).</p> <p>Scalia also stated: "I have not proposed an open convention. Nobody in his right mind would propose it in preference to a convention limited to those provisions he wants changed. [...] It is not much of a risk. Three-quarters of the states would have to ratify whatever came out of the convention; therefore, I don't worry about it too much. [...] I really want to see the process used responsibly on a serious issue so that the shibboleth—the Richard Rovere alarm about the end of the world—can be put to rest and we can learn how to use the process responsibly in the future" (6).</p>
<p>"Ultimately, Professor Tribe said a constitutional convention would essentially 'put it [the Constitution] all up for grabs,' and his doubts about a convention overcome his desire to experiment with the Constitution" (5).</p>	<p>At the same 2011 conference, Professor Tribe stated: "I do agree that there is a difference between an Article V convention, which I read the Constitution that contemplates some creature that would be an Article V convention and a totally new convention of the sort that I think Sandy Levinson (though he can speak for himself) advocates. It's just that I don't know the leaps and bounds of those differences. Now, does that lead me to think that we should never have another Article V convention? No, I agree very much with Nick that there's a first time for everything. And I do believe that there may be certain kinds of systemic breakdowns where a large majority of the people of the United States want something to happen. For example (and I take this just as an example), they want to limit the ability of amassed corporate wealth to dominate American politics. Now, I count myself as part of that group. I've helped people in Congress to introduce an amendment that would try specifically to overturn Citizens United; it was introduced by Rep Donna Edwards just a few days ago. But it may be the case that the very things that make us want to change the influence of corporate money on politics will make it essentially inconceivable that Congress would propose that amendment to the states. Now, if we get that kind of lockdown, which is what I think led (though he can certainly speak for himself) Larry Lessig to suggest the exploration of a new convention, then I think we're at least in the territory where I think there's perhaps a plausible systemic case for a limited purpose convention, assuming enough people can be convinced that it could be limited" (8).</p>
<p>They list questions that the professor mentions are left unanswered regarding the convention, but they conveniently leave out this part of Tribe's stated position at that very same conference (5).</p>	<p>"I've never thought that the provision of Article V for a new convention should be disregarded the way that Robert Bork thought that the 9th Amendment should be. In that sense, I've never thought either of them was an inkblot. Remember, it was his position that because no one knows what the unenumerated rights of Americans are, that they have none and I've always thought that the whole point of the 9th amendment was that we have all kinds of rights that were never written down. And I profoundly objected to the idea that the Constitution's interpretation would be entrusted to someone who thought that we have no rights except those that are expressly enumerated.</p> <p>I would also object very much to someone who said that because I don't know the answers to all of the questions about an Article V convention I would be opposed to ever having one, and that's why I've made very clear that I don't take that view" (8).</p>

Update May 11, 2017: This article was [originally published](#) on [TYT Network](#). Due to the fact that an article cannot exist on more than one publication, we are required to reprint it so that we can have it posted on [Wolf-PAC](#).

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7. The National Press Club (2014, April 17). *The Kalb Report — Ruth Bader Ginsberg & Antonin Scalia* [Video file]. Retrieved from https://www.youtube.com/watch?v=z0utJAu_iG4
8. Harvard Law School (2011, October 6). *Conference on the Constitutional Convention: Legal Panel* [Video file]. Retrieved from <https://www.youtube.com/watch?v=ZbJ7NOF3HRU>
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