



The Need for Caution amidst Calls for a National Constitutional Convention

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Special interest groups from the right and left are seeking to limit the power of the federal government, impose restraints on federal spending, and change campaign finance law. Spurred by these efforts, the Maryland Legislature is debating whether or not to apply to Congress to call a constitutional convention to propose amendments to the United States Constitution.

Article V of the U.S. Constitution sets forth two methods for proposing amendments to the Constitution. The first method requires that two-thirds of both the House and the Senate vote to pass proposed amendments to the Constitution (hereinafter 'amendments at the request of Congress'). The second method requires that Congress hold a constitutional convention if two-thirds of state legislatures pass resolutions to call a convention (hereinafter 'amendments via an Article V Convention'). In both methods, amendments are adopted if three-fourths of state legislatures ratify the amendments. So far in American history, the first method has been used 18 times; while the second method has never been convened.

Currently, the advocacy group Balance Budget Amendment Task Force claims that 28, of the minimum required 34 state legislatures, have called for an Article V Convention with the specific goal of balancing the federal budget. Legislators in Maryland should be cautious when considering whether to call for an Article V Convention, because the likelihood of a runaway convention is high and the repercussions of such a convention are not well understood. The following questions may help legislators decide whether to vote for or against a resolution that calls for a constitutional convention to change the U.S. Constitution, the oldest working national constitution in the world.

What is an Article V Convention?

There are at least two ways to understand an Article V Convention. First, a convention called by the states can be understood as a means of initiating constitutional reforms Congress is reluctant to support. If states view certain changes to the U.S. Constitution as necessary, but members of Congress are reluctant to initiate those amendments, an Article V Convention would be states' only path to initiate specific constitutional changes. In this view, Congress may call an Article V Convention to address those specific state proposals.

A second understanding assumes that an Article V Convention cannot be limited beforehand and, once installed, can decide the scope of its own amendment powers. In this view, an Article V Convention may reaffirm that it is acting within the scope of previously suggested state proposals or it may decide that it will go beyond that scope.

In both of these understandings, however, most legal scholars hold that an Article V Convention has its power derived from the existing U.S. Constitution, meaning a convention could not go beyond the current core framework of the Constitution. For example, most would argue that changing the republican form of government to an authoritarian one, repealing fundamental civil rights, or modifying Article V of the Constitution itself would be beyond the power of an Article V Convention. If an Article V Convention went to these lengths, it could then be scrutinized under the current U.S. Constitution for what is called “unconstitutional constitutional amendments.” In brief, an Article V Convention method assumes the notion of a political will that will constrain the convention to improving the original Constitution by correcting the shortcomings of an unresponsive Congress.

Absent that political will, however, an Article V Convention could extend its powers and become a runaway Constitutional Convention changing key principles organizing society and its political regime. And given the current polarized political climate, that scenario is likely.

Do the Proposed Amendments Outweigh the Risks of Calling a Constitutional Convention?

Opponents of an Article V Convention correctly warn about the constitutional impossibility of limiting the scope of an Article V Convention once it has been called. An Article V Convention may feel the need and have the capacity to break the bounds of the specific proposals for which it was convened. For instance, strong policy-factions within the convention may seek to set aside accepted rights such as early-term abortion or to add new rights to a variety of benefits like health care, housing, or a minimum income. A convention could adopt changes that would be disastrous for the country. Although unthinkable in the 21st century, to emphasize the risks of a runaway convention, a Maryland Legislator said, “An Article V Convention could reinstate slavery.”

Given the uncertainty of how a convention derives its powers and the perils of it becoming a runaway Convention, the Maryland legislature should apply to Congress for an Article V Convention to amend the Constitution only in the most serious of circumstances and only for essential amendments. A reform may be considered essential if it is unlikely to be achieved at the request of Congress or through judicial review, and if it is necessary to update a failing institutional component of the Constitution. Yet, as James L. Sundquist pointed out on his classical *Constitutional Reform and Effective Government*, “the necessity to experience government failure, in order to prepare for it, is not a happy prospect.” Whether any of the currently proposed amendments merit an Article V Convention should be answered by weighing the seriousness of the consequences of inaction.

An Article V Convention is a Dangerous Path

In these contentious times, democratic institutions, norms, and views are under unprecedented stress. When debating whether to adopt a resolution to apply to Congress to call for an Article V Convention, Maryland legislators should keep in mind the possibility that the call could add to a widespread perception of national disarray and push the American Republic closer to a breaking point. The perils of an Article V Convention running amok and altering the core framework of the American Republic are high. This method of reform should therefore be used only as a last resort.