



The Dangerous Path

Big Money's Plan to Shred the Constitution



COMMON CAUSE

May 2016

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Dedication

Common Cause dedicates this report and our work to protect our Constitution to celebrate the life achievements of David Cohen (1937-2015), president of Common Cause 1975-1981, and all he contributed to making this a more perfect union.

Acknowledgments

In addition to the contributions from people all around the country who support the work of Common Cause nationally and throughout our growing network of state affiliates, generous support for this report was provided by the Philip and Janice Levin Foundation and the Center for Budget and Policy Priorities.

This report was written by Jay Riestenberg and Dale Eisman, with contributions from Scott Swenson, Stephen Spaulding, Karen Hobert Flynn, and Isabella Bronstein.

On February 3rd, edits were made on page 12 to more accurately reflect Professor Lawrence Lessig's comments on Bill Maher's HBO show on Oct. 16, 2015. Another corrects the spelling of Professor Laurence Tribe's first name.

Mission

Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. The Common Cause Education Fund supports Common Cause's work through research, litigation and public education.

Executive Summary

This report sounds the alarm about a dangerous proposal bubbling up in state legislatures throughout the country.

The threat is a constitutional convention, convened on the petitions of at least 34 state legislatures as specified under an Article V of the Constitution and empowered to rewrite or propose new amendments to that document. Its advocates span the ideological spectrum, including right-of-center supporters of new limits on federal power, from a constitutional requirement that the federal budget be balanced, to backers on the left of a constitutional amendment to overturn the Supreme Court's decision in *Citizens United*, a ruling that reversed decades of well-settled law limiting corporate political spending.

Common Cause strongly opposes an Article V convention, even as we strongly support a constitutional amendment to reverse *Citizens United*. We oppose a constitutional convention because we believe there is too much legal ambiguity that leads to too great a risk that it could be hijacked by wealthy special interests pushing a radical agenda that poses a very real threat to American democracy.

A convention of states drafted our Constitution in 1787, including Article V as one of several mechanisms for future amendments. Article V itself has never been used but would be triggered once 34 state legislatures submit applications for a new constitutional convention; it then requires Congress to convene a new convention to draft and submit new constitutional amendments to the states for ratification.

There are no settled rules or procedures to govern an Article V convention and it cannot be limited in scope. Though some constitutional convention proponents say they intend to pass a single amendment – to balance the federal budget or reverse *Citizens United* – there is nothing to prevent the convention, once convened, from proposing additional changes that could limit or eliminate fundamental rights or upend our entire system of government.

It's also unclear how delegates would be chosen. If the selections were made by today's largely gerrymandered state legislatures, the convention would likely have a decidedly Republican bent, despite the fact that surveys show fewer Americans identify as Republicans than as Democrats. If delegate selection were based on population size, then larger states, where Democrats generally have an advantage, would produce a convention tilting toward the left.

A Constitutional Convention Cannot Be Limited Because:

1. The U.S. Constitution does not lay out any guidelines or rules for a convention.
2. There is no clear judicial, legislative, or executive body that would have authority over the convention.
3. Given the lack of rules and authority, the convention would likely open to outside and special interests.
4. The convention could create its own ratification process, rewriting the U.S. Constitution's states process.

One accounting of applications puts constitutional convention proponents within six states of the 34 necessary to call a convention.

Thanks to the financial and organizational muscle, including millions of dollars in undisclosed, tax-deductible contributions, of the corporate-dominated American Legislative Exchange Council (ALEC), and the organizing of those pushing for a convention to overturn *Citizens United*, what once seemed impossible is now within reach. And with it comes a great threat to our democracy.

This report examines the pro-convention campaign from both ends of the spectrum and illuminates the dangers posed by its possible success, making the case that a convention could easily exceed its mandate to focus on budget issues and instead undertake a wholesale and highly divisive re-write of our nation's charter.

ALEC, a corporate lobby disguised as a charity, and the conservative activists aligned with it, are pursuing three paths toward an amendment. In more than two dozen states, they have secured legislative approval of resolutions calling on Congress to convene an Article V convention to enact a balanced budget amendment. Some also are pushing a "Compact for America" initiative, which would bind participating states to petition Congress for a convention for a balanced budget amendment once three-fourths sign the compact. Others are advancing an initiative they call the "Convention of States."

The report explores:

- The activities and funding behind groups and individuals, including ALEC and two presidential hopefuls, Gov. John Kasich of Ohio and former Gov. Mike Huckabee of Arkansas, taking part in the current push for an Article V convention.
- Other proposals to change the Constitution using Article V, including plans to regulate campaign finance and impose term limits on members of Congress and Supreme Court justices.
- Legal and constitutional dangers that would accompany a constitutional convention.
- Opposition to a convention from across the political spectrum, including the Republican National Committee, Republican and Democratic legislators, labor unions, civil liberties organizations, gun advocacy groups, reproductive rights organizations and anti-abortion advocates, and public interest democracy groups.

The report warns that the legal ambiguity around Article V, the financial power of special and corporate interests in the post-*Citizens United* era, could combine in a convention with today's already hyper-partisan political environment to pose a major threat to our constitutional system and government.

The Threat

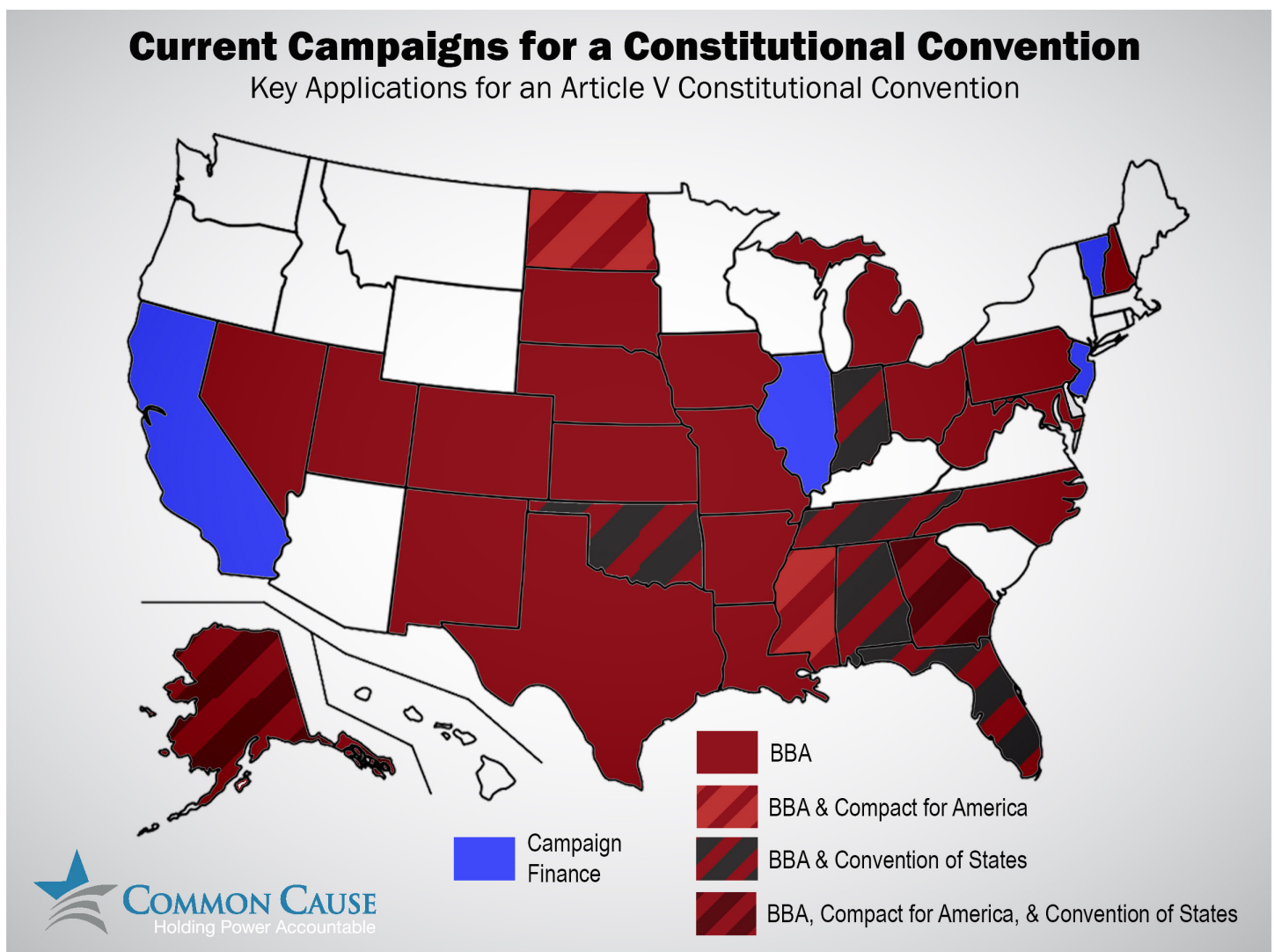
The Constitution, as amended, is America's cornerstone and has long been a model for democratic governance around the world.

It is not perfect, however. The original draft permitted slavery and denied women the right to vote. It did not explicitly protect freedoms of speech, religion and press or the right to bear arms. It did not guarantee a speedy or public trial to those accused of crimes and it did not protect citizens against the seizure of their homes or property by the government.

Americans have amended the Constitution repeatedly to address its flaws. Today there are 27 amendments, the first 10 of which – the Bill of Rights were – ratified in 1791.

Arguably the greatest genius of the Constitution is our built-in authority to revise it. The nation's charter surely would not have lasted so long had we not been able to adapt it to changing times and conditions. But while the founders recognized the Constitution would have to change, they wanted it to endure; they devised mechanisms to ensure that any amendments would require careful deliberation and broad support.

The most recent amendment, limiting Congress' ability to raise the salaries of its members, illustrates the challenges inherent in the amendment process. The amendment was first suggested in 1789 but not ratified until 1992.



Like all the others, it was approved by at least three-fourths of our state legislatures – 38 states – after being passed by a two-thirds majority in both houses of Congress. By contrast, the 26th amendment, which lowered the voting age from 21 to 18, took only three months and eight days to be by the states once it was passed by Congress.

Article V sets out another amendment process, albeit one that has never been used. It calls on Congress to convene a constitutional convention any time two-thirds of the state legislatures petition for such a gathering. Governors, who typically wield veto power over legislatures, are not part of the petition process.

 **[A convention is] a horrible idea. This is not a good century to write a Constitution.**

- Justice Antonin Scalia

Theoretically, any amendment produced by the convention would have to be ratified by three-fourths of the states. Some legal scholars argue the ratification process could itself be changed in a new convention, much like it was in the 1787 convention.

Some supporters of a proposed amendment that would generally require a balanced federal budget want to convene a convention to implement their proposal. These advocates, overwhelmingly conservative and with deep-pocketed allies in the business community, have turned to the convention process after repeated failures to convince Congress to pass an amendment and send it

to the states.

By some counts, the balanced budget forces are within striking distance of securing the 34 petitions needed to require Congress convene a convention. At one point, they claimed to have 32 states on board, but some states have rescinded petitions passed during the 1970s and 80s. Most agree that the current count is 28 live petitions, meaning proponents of an Article V convention need only six more states to demand that Congress act. Meanwhile, at least seven Republican-controlled legislatures where ALEC wields influence – Arizona, Idaho, Montana, South Carolina, Virginia, Wisconsin, and Wyoming, and four with split partisan control – Kentucky, Maine, Minnesota, and Washington – loom as additional targets.

Balanced budget advocates are pursuing several avenues toward a convention. Most of the states involved have passed resolutions independently, but four states – Alaska, Georgia, Mississippi, and North Dakota – have adopted a “Compact for a Balanced Budget Amendment” that would work something like a contract among participating states. If 38 states join the compact, each would submit an identical petition for a convention to Congress, with specific language for a balanced budget amendment.

Other conservative Article V advocates are pushing for a “Convention of States” that could undertake a wide range of potential changes in the Constitution. The Compact and the Convention of States are discussed in more detail later in this report.

At the other end of the political spectrum, a group of activists on the far left, mostly Democrats, now supports a convention to propose an amendment overturning the Supreme Court’s *Citizens United* decision on campaign finance. Advocates have won passage of Article V petitions in four Democratic-controlled state legislatures: California, Illinois, New Jersey, and Vermont.

Given how close convention advocates are to calling a convention, some legislators already are discussing how a convention would work and be governed. The Assembly of State Legislatures, originally called the “Mount Vernon Assembly,” is a bipartisan group of state legislators charged by participating states with “defining the rules and procedures” for an Article V convention. The group’s inaugural meeting in December 2013 at Mount Vernon, Virginia was attended by

more than 100 legislators from 32 states.¹ It was held one day after the American Legislative Exchange Council's (ALEC) winter meeting in nearby Washington, DC. Since then, the Assembly has met in Indianapolis and Washington, DC in 2014 and in Salt Lake City in 2015 to discuss an Article V convention.

Uncertainties about the Article V process run deep and cut across party and ideological lines. The unanswered questions about a convention have led to debate among legal scholars. Among the questions:

- What if the state petitions are not identical? Would Congress still have to act?
- What if Congress was deadlocked and failed to act on those petitions; could a court step in and order the convention convened?
- If Congress acted, how would the convention work?
- Who would choose the delegates and decide how many each state could send?
- Would the convention's work be limited to one subject – like the balanced budget plan or campaign finance reform – or might delegates undertake a wholesale re-write of the national charter?
- And if the convention agreed on one or more amendments, would Congress be required to forward them to the states for ratification?

There are dozens of such questions and multiple possible answers to each of them. Supreme Court Justice Antonin Scalia, a conservative icon, told the Federalist Society last spring that a convention is "a horrible idea."² This is not a good century to write a Constitution." Veteran campaign finance reform advocate Fred Wertheimer, a former president of Common Cause, argues that a convention "is not a bad idea, it's a disastrous idea."³

Article V of the Constitution of the United States of America

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 Balanced Budget Amendment

In testimony to a congressional committee in 1994, former Common Cause chairman and U.S. Solicitor General Archibald Cox characterized a proposed balanced budget amendment as “an act of supreme constitutional irresponsibility.”⁴

Cox viewed a constitutionally-enforced balanced budget requirement as problematic for many reasons. He believed the Constitution was not designed and should not be used to determine fiscal policy and that enforcement of a balanced budget amendment would be problematic. Who would interpret the amendment? What court is equipped to enforce the amendment? A balanced budget amendment could also lead to a less transparent budgeting process. Cox concluded that the amendment would likely “undermine confidence in the Constitution by holding out an appearance of guarantees that would soon prove illusory.”

A federal balanced budget amendment would also have a major impact on the nation’s finances. The Center on Budget and Policy Priorities (CBPP), a Washington, DC-based think tank focused on budgetary issues relating to poverty, inequality, and fiscal responsibility, estimates a balanced budget amendment would trigger tax and program cuts that could spark an economic crisis and force significant cuts to Social Security, military retirement benefits, and other important public services.⁵ The CBPP also warns that the amendment could tie the hands of the federal government from responding to crises such as an economic downturn, a natural disaster, or war.

In 1997, when Congress seriously considered a federal balanced budget amendment, more than 1,000 economists issued a joint statement calling it “unsound and unnecessary.”⁶ A 2011 study by Macroeconomic Advisers⁷, one of the most respected nonpartisan, private, economic forecasting firms, concluded that “recessions would be deeper and longer” with a balanced budget amendment in place, leading to economic uncertainty that could stifle economic growth.

The uncertainties surrounding a balanced budget amendment have not stopped some well-financed organizations and individuals from pushing the idea, and their plan to pass it via an Article V convention is a very dangerous path.

ALEC: The American Legislative Exchange Council

Perhaps no group has been more influential than the American Legislative Exchange Council (ALEC) in pushing for an Article V convention. Arguably the country’s largest and most powerful state-based lobbying organization, ALEC brings corporate representatives and state legislators together behind closed doors to write and vote as equals on model bills affecting everything from environmental protection, workers’ rights, healthcare, telecommunications policy, and criminal justice.

ALEC’s corporate members and funders include such major corporations as AT&T, Pfizer, UPS, Koch Industries, Comcast, Altria, and Chevron. ALEC also claims the membership of nearly one-quarter of the country’s state legislators, roughly 2,000 people. As a 501(c)(3) charity, ALEC provides a tax deduction for its corporate supporters. Its

 **What is described as an act of fiscal responsibility strikes me as an act of supreme constitutional irresponsibility.**

-Archibald Cox

charitable status also puts legal limits on ALEC's lobbying – limits that Common Cause and other organizations allege ALEC routinely violates. Common Cause has filed a "whistleblower" complaint against ALEC with the Internal Revenue Service and is seeking an order requiring the payment of back taxes and penalties. More than 100 major companies have cut ties with the organization.

Although ALEC's work to undermine workers' rights, environmental protection, the Affordable Care Act, telecommunication regulations, and public education has been well documented, the group's push for an Article V convention has largely escaped public notice. In recent years, ALEC has endorsed several "model" bills calling for a constitutional convention to propose amendments that would require Congress to obtain approval from two-thirds of state legislatures before imposing new taxes, increasing the federal debt or federal spending, or issuing federal spending mandates.⁸

In addition to these proposals that would radically change how Congress legislates tax and fiscal policy, ALEC has advanced a two-pronged strategy in support of an Article V convention to draft a balanced budget amendment. The strategy includes:

- A push for legislatures to pass model resolutions calling for an Article V convention on a balanced budget amendment. ALEC has produced at least three model bills advancing this initiative. Since the 1970s, over two-dozen states have adopted this type of resolution. Most believe the current live application count stands at 28 states, just six short of the 34 required to trigger congressional action.
- A push for legislatures to join a proposed "Compact for a Balanced Budget Amendment." The compact is an agreement among participating states that rolls the Article V convention application, convention rules, and ratification process into one mechanism.⁹

The Center for Media and Democracy, a watchdog nonprofit, reports that the Jeffersonian Project – ALEC's 501(c)(4) advocacy arm – has been working "behind the scenes" to push the ALEC model Article V bills. Through the Jeffersonian Project, ALEC has sent "issue alerts" to legislators urging support and votes for Article V balanced budget resolutions.¹⁰ Additionally, ALEC has conducted panels and workshops at its conferences to "educate" legislators about the Article V convention. In 2011, ALEC published the "Article V Handbook," a 40-page manual to guide state legislators in proposing a constitutional convention.¹¹ Written by conservative constitutional theorist Robert Natelson, the handbook includes talking points, model legislative language, and legal arguments supporting the use of Article V.

Natelson, a former law professor at the University of Montana, is well known within the conservative community. He is listed as a constitutional "expert" by the Federalist Society,¹² ran for governor several times in Montana Republican primaries, and now works at the Colorado-based Independence Institute,¹³ a conservative think tank that is a member of the State Policy Network (SPN).¹⁴ The State Policy Network, a frequent ALEC partner, links conservative and libertarian "think tanks" in all 50 states and is funded by corporations including AT&T, Kraft Foods, and Philip Morris, as well as conservative donors such as industrialists Charles and David Koch, the Walton Family Foundation, the Bradley Foundation, and the Searle Freedom Trust.¹⁵ One of SPN's most active affiliates, the Goldwater Institute of Arizona, has endorsed an Article V convention for a balanced budget amendment.¹⁶

Compact for America

The Goldwater Institute's former top lawyer, Nick Dranias, now heads a 501(c)(4) nonprofit group called Compact for America (CFA). This new organization, and the affiliated Compact

for America Education Foundation, which received its 501(c)(3) tax-exempt status in 2014, is promoting a sample resolution, the “Compact for a Balanced Budget Amendment,” nearly identical to ALEC’s “Compact for America” model bill.¹⁷ Staffed and led by several former Goldwater Institute employees, business executives, and conservative activists and thinkers, Compact for America has attracted high-profile endorsements from conservative columnist George Will and former Congressman Allen West,¹⁸ among others. So far, only four states – Alaska, Georgia, Mississippi, and North Dakota – have adopted the Compact for America initiative.

Balanced Budget Amendment Task Force

Another group lobbying for an Article V constitutional convention is the Balanced Budget Amendment Task Force, registered as a 501(c)(4) under the name “Balanced Budget Amendment, Inc.” The Task Force was founded by conservative activists and state legislators, including Lew Uhler, President of the National Tax Limitation Committee, and Pete Sepp, Vice President for Policy and Communications at the National Taxpayers Union, which was one of the original groups to back an Article V convention for a balanced budget amendment in the 1970s.¹⁹ The Task Force’s tax documents reveal that most of its expenses have been dedicated to lobbying legislators and attending conferences, including ALEC meetings and gatherings hosted by the National Council of State Legislators (NCSL), to push for an Article V convention for a balanced budget amendment.²⁰

Balanced Budget Forever

In December 2014, Ohio Gov. John Kasich launched a national tour supporting an Article V convention for a balanced budget amendment. Kasich, a founding member of ALEC in the 1970s, used the tour to promote his experience in working to balance the federal budget in the 1990s. Kasich traveled to Arizona²¹, South Dakota, North Dakota, Montana²², Wyoming, Utah²³, Idaho, Maine²⁴, South Carolina, and West Virginia²⁵ – all states that are targets for an Article V balanced budget resolution. In Oklahoma, a target state he did not visit, Kasich lent his name to an op-ed pushing the resolution and explaining his support for an Article V convention.²⁶



Gov. John Kasich

To promote Kasich’s efforts, a 501(c)(4) nonprofit was formed: Balanced Budget Forever. Its incorporation papers show that the Columbus-based group was set up by a rural Virginia law firm, Holtzman Vogel Josefiak Torchinsky²⁷, that has gained a national reputation for representing high-profile secret money political groups. Holtzman Vogel’s clients include Karl Rove’s American Crossroads organization and several groups in the Koch brothers’ network of political organizations.²⁸ The firm’s managing partner is Virginia State Sen. Jill Holtzman Vogel, former chief counsel to the Republican National Committee and an advocate of an Article V convention.²⁹

Kasich disclosed receiving gifts from Balanced Budget Forever on his 2014 personal financial disclosure form with the state of Ohio, but did not disclose the value of those gifts.³⁰ Kasich has endorsed the Article V convention as a presidential candidate, stating in his economic plan that if Congress refuses to pass a balanced budget amendment, “he will work with the states to call a constitutional convention to craft an amendment that could be submitted to the states for ratification.”³¹

Other Convention Proposals

Convention of States

While many groups are advocating an Article V convention to propose a balanced budget amendment, Convention of States, a project of Citizens for Self-Governance, a conservative advocacy organization, has a more far-reaching plan. Its "Convention of States" plan calls for a constitutional convention to draft an amendment to "impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress."³²

Citizens for Self-Governance advocates a complete change in how the federal government operates. Its Facebook page features attacks on the IRS, the EPA, the U.S. Supreme Court, and President Obama's executive order on immigration as examples of federal government overreach. COS also has attacked the U.S. Supreme Court's 2015 landmark ruling on marriage equality, arguing that an Article V convention could help overturn the decision.³³

Led by homeschool and religious-right political activist Michael Farris, the Citizens for Self-Governance Convention of States project has deep ties to the tea party movement, ALEC, and the Koch brothers. Mark Meckler, president and founder of the Citizens for Self-Governance, and is the co-founder of Tea Party Patriots.³⁴

In 2015 alone, the Convention of States' model resolution was introduced in at least 37 states.³⁵ Since the start of the Convention of States campaign, seven states have passed the initiative: Florida, Georgia, Alaska, Indiana, Oklahoma, Tennessee and Alabama.³⁶ To move its agenda, Citizens for Self Governance has deployed professional lobbyists and grassroots activists to pressure legislators. The group also has sponsored ALEC conferences and made presentations to legislators at ALEC meetings.³⁷ After Citizens for Self Governance led several ALEC conference sessions on the Convention of States initiative, ALEC's Task Force on Federalism and Internal Relations and the ALEC board of directors unanimously endorsed the measure in September 2015 as ALEC model legislation.³⁸



Sen. Tom Coburn

Citizens for Self Governance ("CSG") is registered as a 501(c)(3) organization as the "John Hancock Committee for the States."³⁹ Its lobbying arm to promote the constitutional convention, Convention of States Action, is a 501(c)(4).⁴⁰ Neither group is required to disclose donors, but tax documents show that a significant portion of CSG's funding has come from donor-advised funds such as the Koch-linked Donors Trust and the Greater Houston Community Foundation. The latter has been one of CSG's biggest funders, contributing \$859,382 in 2011 and \$1,164,268 in 2012.⁴¹ For 2013 however, the Foundation's tax documents show just a \$5,000 contribution to CSG, and reveal it came from Houston real estate mogul Richard Weekley.⁴² A prominent advocate for tort reform

in Texas, Weekley has attended secretive fundraising meetings hosted by the Koch brothers⁴³ and is a mega-contributor to GOP and conservative causes, including the Republican National Committee and numerous members of Congress.⁴⁴ It is unclear if all of the Greater Houston Community Foundation's funding to CSG was provided on behalf of Weekley.

Former U.S. Senator Tom Coburn (R-OK) also has been an outspoken advocate for an Article V convention. In February 2015, just one month after retiring from the Senate, Coburn joined Convention of States as a senior advisor.⁴⁵ Since then, Coburn has traveled across the country, testifying in favor of Convention of States bills in front of state legislative committees.⁴⁶ Coburn

also has lent his name to pro-convention op-eds in popular media outlets such as *USA Today*.⁴⁷

Coburn has used the June 2015 U.S. Supreme Court ruling in *King v. Burwell*, upholding the constitutionality of the Affordable Care Act, to bolster his call for a constitutional convention.⁴⁸

Former Arkansas Governor and two-time GOP presidential candidate Mike Huckabee is another endorser of the Convention of States initiative. At ALEC's July 2015 conference in San Diego, Huckabee argued in a speech that Article V is the "only way" to limit the power of the federal government. Huckabee also backed using Article V to propose amendments to overturn U.S. Supreme Court rulings. "It is not the law of the land because five unelected lawyers in black robes said it. They don't have that power," he argued.⁴⁹

In addition to Kasich and Huckabee, 2016 presidential candidates Sen. Marco Rubio, Dr. Ben Carson, Sen. Ted Cruz, and Sen. Rand Paul have all announced their support for an Article V convention.⁵⁰

An Article V call based on *Citizens United*

Far to the left on the political spectrum from Article V convention advocates like Coburn, Huckabee, and Citizens for Self-Governance, a collection of campaign finance reform activists is pushing for an Article V convention to change campaign finance law.

Galvanized by the U.S. Supreme Court's 2010 *Citizens United v. FEC* decision, these activists favor an Article V convention to propose an amendment that would permit new campaign finance regulations. Led by Harvard Law Professor Lawrence Lessig, their call for a convention channels frustrations with a nonresponsive government similar to those heard on the right. In 2011, Lessig teamed with Mark Meckler and Citizens for Self-Governance to host a conference promoting the idea of a new constitutional convention.⁵¹



Lawrence Lessig

Other Article V advocates on the left include political commentator Cenk Uygur, who in 2011 founded Wolf PAC, a political action committee dedicated to passing state resolutions calling for a constitutional convention to overturn *Citizens United* and other Supreme Court rulings on campaign finance. Over the last five years, Wolf PAC has raised \$650,000 and spent over \$520,000⁵² to pass convention calls in the state legislatures of California, Illinois, New Jersey, and Vermont.⁵³

Professor Lessig, an advocate for a convention, briefly described his views to a popular audience during a television interview with Bill Maher on HBO on October 16, 2015. Professor Lessig told Maher that "people get terrified when you use the word 'constitutional convention' because technically a constitutional convention can do whatever the hell it wants. And that's not what we're talking about. The Constitution gives us the ability to have a convention for one purpose: to propose amendments." Whether a convention may only have "one purpose" is widely disputed, as discussed in this report. For example, leading constitutional scholar Professor Laurence Tribe said it is an open, unresolved question whether, among other things, the "convention can set its own rules, independent of Article V," and change the threshold for ratification – which goes far beyond merely proposing amendments."

Opposition from Across the Spectrum

While the ranks of convention supporters are dominated by Republicans, the call for a constitutional convention has strong bipartisan opposition in state legislatures, including many states controlled by Republicans.

In Arizona, where the Republican Party controls both chambers of the legislature, convention advocates have failed at passing a Convention of States or Balanced Budget Amendment resolution. Arizona Senate President Andy Biggs (R) is one of leading voices against an Article V convention. In 2015, Biggs authored *The Con of the Con Con: The Case Against the States Amending the U.S. Constitution*.⁵⁴ In the book, he argues that an Article V convention is not as simple and safe as supporters claim. In a 2014 debate⁵⁵ at the Scottsdale Tea Party, Biggs said:

If you think a convention cannot be hijacked, then why have I noticed that those who support a convention over the last five years have changed and began to try to buckle up so that it cannot be hijacked...When I hear people say that the Article V process is clearly defined and easy to get through, I get back to the point that Article V is not simply a single convention, it is an entire process...The Convention of States and Compact of States alter Article V language and argue that states must agree on an agenda. Agenda is nowhere mentioned in Article V. It is a self-directed conference, and it's hard to imagine how they can limit it...The Article V folks think all our problems will be solved with a ConCon, with an amendment, but unless the people who are supposed to uphold the law follow the law, changing the law or increasing punishment will not work...I hear this a tool and there is no other way, but if you were in a life boat and found a tool that is a drill, do you begin drilling? No, you are looking for other tools...They [the ConCon advocates] cannot decide what amendments would be proposed.

In the Oklahoma House of Representatives, where Republicans outnumber Democrats 71-30, a 2015 resolution calling for a federal constitutional convention was voted down 42-56. State Rep. Mike Ritze (R) urged legislators to vote against the measure, saying "We are venturing on grounds that are uncertain; there are many who believe this would be a runaway convention."⁵⁶ State Rep. David Brumbaugh (R) raised concerns about the process of picking delegates to a convention.⁵⁷

The call for a constitutional convention has also met opposition from Republicans in Virginia, despite Jill Holtzman Vogel's prominence as a state senator. "It's like playing Russian roulette. We kind of think it would work out well. You put a bullet in one chamber, the odds of it working are pretty good. But the consequences of being wrong are immeasurable,"⁵⁸ said Virginia Sen. Richard H. Black (R). In a 2014 floor speech opposing the convention measure, Virginia Del. Robert G. Marshall (R) said the Founding Fathers "did not spell out specific rules" for an Article V Convention. "This is something very fundamental that may alter the structure of government. There is no clear understanding how this would proceed and I urge a no vote on that." The bill in the Republican-controlled Virginia House was ultimately voted down in February 2014, 67-29.⁵⁹



We are venturing on grounds that are uncertain;

there are many who believe this would be a runaway convention.

-State Rep. Mike Ritze (R-OK)

Republican reservations about a constitutional convention extend to the national party. The Republican National Committee adopted a resolution in 2012 declaring that it "strongly opposes the convening of a convention for the purpose of proposing amendments to the Constitution of the United States for the reason that the risk of loss far exceeds the possibility of gain from such

an uncontrolled and uncontrollable proceeding.”⁶⁰ Similar resolutions have been passed by the Texas State Republican Executive Committee, which calls for rescinding “any and all existing calls for a Constitutional Convention.”⁶¹ The Constitution Party National Committee is also opposed to calling a convention.⁶²

Democrats have voiced similar reservations, something of a rarity in today’s hyper-partisan political atmosphere. When Montana was considering a balanced budget amendment resolution, Senate Minority Leader Jon Sesso (D) said that “this is an agenda pushed by out-of-state groups who are not looking out for the best interests of Montana. Montana will have no control over how the process would look or who would represent us. A balanced budget amendment could have disastrous consequences for jobs and our economy. This is a terrible idea for our state and our country.”⁶³

“It’s like playing Russian roulette. You put a bullet in one chamber, the odds of it working are pretty good. The consequences of being wrong are immeasurable.

-Sen. Richard Black (R-VA)

Democratic legislators in Virginia have tried using humor to derail convention proponents in their state. “Every nut job in America would be at that convention. It would not be any Jeffersons or Madisons,” said Virginia Senate Minority Leader Richard L. Saslaw. Virginia Del. Mark Sickles also joked about the proposal while making a serious point about the dangers that would accompany it. “I’m against it, but if we have one, I want to be a delegate,” he said. “There’s a lot of problems with this Constitution. I’ll just get up to this convention and start whacking away.”⁶⁴

Among advocacy groups, Article V convention opposition spans the political spectrum. On the right, the John Birch Society⁶⁵, Concerned Women of America⁶⁶, the Eagle Forum⁶⁷, and the National Rifle Association⁶⁸, which

adopted a resolution against an Article V convention in April 1992, all have spoken out. The Koch brothers’ Americans for Prosperity has also expressed reservations. When the Texas legislature considered a convention balanced budget amendment resolution in 2011, AFP-Texas stated, “We at AFP support a balanced budget at all levels of government but believe that a constitutional convention which would allow other items to be addressed would be problematic.”⁶⁹

Other groups opposed to an Article V constitutional convention include American Civil Liberties Union (ACLU)⁷⁰, Center on Budget and Policy Priorities⁷¹, the AFL-CIO⁷², and the American Federation of State, County, and Municipal Employees (AFSCME)⁷³. And since the 1970s, reproductive rights groups such as NARAL Pro-Choice America⁷⁴ have also opposed calls for an Article V Constitutional Convention to outlaw abortion.

Campaign finance reform groups have also rejected the idea that a constitutional convention is the right strategy to enact money in politics reform. A 2015 statement signed by the Brennan Center for Justice, Common Cause, Democracy 21, Issue One, People for the American Way, Public Citizen, and USAction warns that well-financed special interests could dominate the convention process. The letter argues that “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. To call a constitutional convention would imperil the work of our Founding Fathers and the more than 200 years of constitutional history that followed.”⁷⁵

Fred Wertheimer, who *The New York Times* has called “the dean of campaign finance reformers,” has said the call for an Article V constitutional convention “is by far the most dangerous thing in the country today. If we ever got [to a convention], this would create a constitutional crisis unlike anything we’ve seen in our lifetimes.”⁷⁶

Conclusion:

An Article V Convention is a Dangerous Path

“I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?” – Supreme Court Justice Antonin Scalia⁷⁸

Despite the claims of Article V convention advocates, there is not sufficient legal evidence to support the claim that a constitutional convention could be limited to one issue.

Michael Leachman of the Center on Budget and Policy Priorities and Georgetown University Law Center Professor David Super⁷⁹ explain that an Article V constitutional convention could not be controlled because, among other reasons:

- There are no guidelines or rules to govern an Article V convention in the Constitution, leaving the opportunity for the convention delegation to write its own rules;
- A convention could create a new ratification process, as occurred during the original 1787 convention; and
- No judicial, legislative, or executive body would have clear authority to settle disputes about a convention.

At a 2011 panel convened to examine constitutional convention proposals⁸⁰, Harvard Law Professor Laurence Tribe argued there is no need to debate the possibility of a runaway convention because there is no agreement or legal authority on what any constitutional convention would look like in the first place. Tribe, a renowned constitutional scholar, laid out numerous unanswered questions regarding the constitution convention process under Article V, including:

- How will Congress add up the Article V applications? Can Congress and the states constrain the convention’s mandate based on those applications?
- May the convention propose amendments other than those it was called to consider?
- May Congress prescribe rules for the convention, or limit its powers in any way?
- May the convention set its own rules, independent of Article V, for how amendments that it proposes may be ratified?
- Are the states to be equally represented, or does the one-person, one-vote principle apply? What about the District of Columbia? Do the citizens of the District have a role in a convention?
- Could delegates be bound in advance by legislation or referendum to propose particular amendments or vote in a particular way?
- Could the convention propose amendments by a simple majority, or require a supermajority of two-thirds?
- If each state gets one convention vote, must delegates representing a majority of the population nonetheless vote for an amendment in order for it to get proposed?

- Conversely, if the convention uses the one-person, one-vote formula, must the delegations of 26 states – perhaps including the District of Columbia – vote in favor of a proposed amendment?
- What role, if any, would the Supreme Court play in resolving conflicts among Congress, state legislatures, governors, referenda, and the convention itself? Can we rely on the Court to hold things in check?

Ultimately, Professor Tribe said a constitutional convention would essentially “put it [the Constitution] all up for grabs,”⁸¹ and his doubts about a convention overcome his desire to experiment with the Constitution. At the same panel, Professor John Baker, a conservative legal scholar, echoed Tribe’s concerns, arguing that there is no authoritative way to establish what the founders meant by a “convention.”

In sum, whatever one’s views on the merits of prospective amendments to force a balanced budget or solve the problem of big money in politics, there is ample reason to reject the use of an Article V convention.

The alternate path to an amendment, through action by a two-thirds majority in Congress and then ratification by three-fourths of the states, has been used successfully through American history and can be again.

It is a difficult process but one that ensure that changes will be made with the kind of care and deliberation our nation’s charter and our nation’s citizens deserves.

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