

Treating "runaway" fever

Relatively few Americans know about the Constitution's provision for an amendment-proposing convention. Fewer still understand what Article V actually says. The arguments against the Democracy Amendment Resolution that stem from this ignorance vary subtly, but boil down to one flawed premise: The myth of the "runaway convention." It has caused seemingly unshakable fear that has been exacerbated by the political tumult of the past year.

We must stop the spread of this debilitating condition.

What follows are some concerns that citizens and legislators often express, and some succinct responses that can help you cure a few cases and turn some opponents into allies.

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Concern: ***I agree we need to overturn Citizens United and rein in campaign fundraising and spending, but I fear that a constitutional convention would be taken over by radical elements who would run roughshod over the Bill of Rights.***

**I can understand why you might feel that way. Let's talk about what worries you.**

Our treatment regimen must include empathy. However misguided, runaway fever almost always comes from genuine concern about the direction in which our nation is headed. We can go a long way toward winning people over by acknowledging that instead of dismissing it.

**The term "constitutional convention" is inaccurate.**

The exact words in the Constitution are "a convention for proposing amendments." The phrase "constitutional convention" implies a gathering authorized to amend the Constitution wholesale, even scrap the entire document and replace it with something else. The U.S. Constitution does not provide for such a thing.

**Legal scholars find, and history demonstrates, that a convention of states can be limited to a single topic.**

While there has never been a convention of the states under Article V, various states have held more than 200 conventions to amend their constitutions. Not one of them has strayed from its stated purpose. The Department of Justice, the Congressional Research Service and the American Bar Association have all found the so-called "runaway convention" to be a myth.

Concern: ***Would an amendment approved by the convention immediately become part of the Constitution?***

**Any amendment requires the approval of the legislatures of 3/4 of the states to be ratified.**

Whether the proposed amendment comes from Congress or a convention, it cannot take effect until 38 state legislatures approve it. Including Nebraska's unicameral legislature, the 50 states have a total of 99 state legislative houses. If just 13 of those 99 houses oppose an amendment, it is defeated. Proposals reflecting ideological extremes or aimed at enshrining one party's agenda have no realistic chance of success.

Concern: ***Right now the Republicans hold a majority of state legislatures. They would amend the Constitution to cement their power and further the agenda of the radical right.***

**This convention won't happen tomorrow.**

Five states -- California, Vermont, Rhode Island, Illinois and New Jersey -- have so far called for an amendment-proposing convention to address the corrupting influence of big money in our politics. For this convention to happen will require calls from a total of 34 states. We've been working since before the 2014 legislative session to get Maryland to issue a convention call.

Getting enough states to issue calls will take many years, perhaps decades. The political landscape by then will have changed in ways we cannot foresee. If we ever get anywhere near the number of states required for the convention to actually happen, it would mean there has already been a dramatic shift, with citizens and state legislatures working for this critical reform.

**Abandoning the convention path will do nothing to discourage the right in its pursuit of amendments.**

Conservatives' convention drives in support of a balanced-budget amendment and a general curtailment of federal authority have gotten many more states signed on than have campaigns to end corporate personhood and guarantee voting rights. Whatever happens to our effort will have no bearing on theirs. Why should progressives let only their adversaries make use of a powerful tool afforded by the Constitution? Why should advocates of campaign finance reform unilaterally disarm?

**We are seeking an amendment, not a convention.**

Article V gives us two paths toward a constitutional amendment. If Congress proposes the one we're seeking, a convention would be unnecessary. So much the better.

But even though countless thousands of citizens have pleaded for decades with our national leaders to confront the money-in-politics problem, even though many state legislatures have implored Congress to act, and even though a few members of Congress have tried to get an amendment proposal to the states for ratification, no amendment has been forthcoming. Sen. Chris Van Hollen and Rep. Jamie Raskin have both testified that we need the push from state convention applications to improve the chances of Congress proposing an amendment. Nearly all amendments require the creation of a massive grassroots movement.

This scenario has played out repeatedly in U.S. history, with convention calls mounting until Congress has been compelled to propose amendments -- including the direct election of U.S. senators and the repeal of Prohibition -- before the people could take matters into their own hands.

Concern: ***There has never been an amendment-proposing convention. If we were to have one, it could have unforeseen consequences.***

**If you think a convention would be risky, compare that to the risk of inaction. The Supreme Court is already in runaway mode.**

It's true that an amendment convention takes us into uncharted waters. But American democracy is dying from strangulation by powerful forces bent on furthering their own interests to the exclusion of everyone else's.

For the reasons outlined above, activists and constitutional scholars have every confidence that employing the Article V convention strategy is effective and as safe as it could possibly be. But no, there's no iron-clad guarantee.

On the other hand, we do know what will happen if we maintain our present course. Congress is unlikely to tackle this issue. Playing it safe is no longer an option.

Every reform movement steps into the unknown: Abolition, women's suffrage and the civil-rights movement confronted powerful opposition and forged ahead regardless.

*"I believe that such a Convention is warranted only in the narrowest of circumstances -- where there is a pressing matter of supreme national importance and where that matter is not likely to be resolved through an act of Congress. This test has been met in this case."*

U.S. Senator Chris Van Hollen

testimony to the House of Delegates Rules and Executive Nominations Committee, March 10, 2017

*"I don't fear a so-called runaway convention. What I do fear is a country that has become convinced it is no longer mature enough to consider amendments to its constitution, that believes it is too sacred for ordinary people to touch. I just reject that. Basically, it's saying there's nothing we can do but go ahead with a constitution that, as currently interpreted, is subverting representative democracy."*

Lawrence Lessig

Harvard Law professor and constitutional scholar