My Testimony in favor of SCR 4004 .

Ken Clark, Hilton Head Island, SC

Good Morning Chairman, and distinguished committee members. My name is Ken Clark and I live in Hilton Head Island SC and am the Regional Director for US Term Limits which is seeking to hold an convention for proposing and amendment to the Constitution for the purpose of limiting the terms of members of the United States Congress, we are a single issue organization.

"Experience must be our only guide, reason may mislead us"

For my testimony this today, I'd like to quote John Dickinson, a delegate to the 1787 Federal Convention: "Experience must be our only guide, reason may mislead us. The following historical documents, articles, and newspaper clippings will demonstrate that not only do we have a rich history of Convention of States, but also hundreds of State Constitutional Conventions and State Amendments Conventions proving that the myth of a "runaway convention" is not only false but denies the facts of our history and our true experience with conventions. The supporting evidence will address the following points:

- The 1787 Federal Convention was not a "runaway" convention. The convention was not called by Congress for the "sole express purpose to revise the Articles of Confederation, but was called by the state of Virginia "to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate for the exigencies of the Union. James Madison refutes the false "runaway" charge in Federalist 40. (Pages 3-8, Timeline of commissions submitted by states with scope of commission language, pages 9-11, Journals of Congress pages 12-14).

- An Article V convention is limited to the amendment(s) or topic(s) of the applications submitted by 2/3 of the states. Congress has absolutely no authority on the subject. (Federalist 85 pages 15-19, Debates in Congress, May 5, 1789, pages 20-22, Article V applications submitted by states, page 23).

- There have been numerous State Conventions prior to and after our nation's independence (Rob Natelson, "The 37th Convention of States Discovered!" (Pages 24-26).

- The state legislatures control the convention process and the commissioners at the convention. (Maine appointment of commissioners for the Washington Peace Conference of 1861, pages 27-28).

- There have been hundreds of State Constitutional Conventions and Amendment Conventions throughout our nation's history. Approximately 233 constitutions and 12,000 amendments ratified. New Hampshire has experienced 17 conventions, mostly for proposing amendments, none of these conventions has ever been a "runaway." NH conventions have proposed 215 amendments and the people ratified 119 of them. (The Council of State Governments, pages 29-33).

- State Conventions have been held every year since 1892! The association is the National Conference of Commissioners on Uniform State Laws, known today as the Uniform Law Commission. The rules and processes used by the ULC are virtually identical to an Article V convention, except that uniform state laws are proposed instead of amendments to the Constitution. (Pages 34-35).

Federalist No. 40 - On the Powers of the Convention to Form a Mixed Government Examined and Sustained

Written by James Madison
New York Packet, Friday, January 18, 1788

To the People of the State of New York:

THE second point to be examined is, whether the convention were authorized to frame and propose this mixed Constitution.

The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents. As all of these, however, had reference, either to the recommendation from the meeting at Annapolis, in September, 1786, or to that from Congress, in February, 1787, it will be sufficient to recur to these particular acts.

The act from Annapolis recommends the "appointment of commissioners to take into consideration the situation of the United States; to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every State, will effectually provide for the same."

The recommendatory act of Congress is in the words following: "Whereas, there is provision in the articles of Confederation and perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas experience hath evinced, that there are defects in the present Confederation; as a mean to remedy which, several of the States, and particularly the State of New York, by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these States a firm national government:

"Resolved — That in the opinion of Congress it is expedient, that on the second Monday of May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitution adequate to the exigencies of government and the preservation of the Union."

From these two acts, it appears, 1st, that the object of the convention was to establish, in these States, a firm national government; 2d, that this government was to be such as would be adequate to the exigencies of government and the preservation of the union; 3d, that these purposes were

to be effected by alterations and provisions in the Articles of Confederation, as it is expressed in the act of Congress, or by such further provisions as should appear necessary, as it stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to be reported to Congress, and to the States, in order to be agreed to by the former and confirmed by the latter.

From a comparison and fair construction of these several modes of expression, is to be deduced the authority under which the convention acted. They were to frame a national government, adequate to the exigencies of government, and of the Union; and to reduce the articles of Confederation into such form as to accomplish these purposes.

There are two rules of construction, dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, to be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part; the means should be sacrificed to the end, rather than the end to the means.

Suppose, then, that the expressions defining the authority of the convention were irreconcilably at variance with each other; that a national and adequate government could not possibly, in the judgment of the convention, be affected by alterations and provisions in the Articles of Confederation; which part of the definition ought to have been embraced, and which rejected? Which was the more important, which the less important part? Which the end; which the means? Let the most scrupulous expositors of delegated powers; let the most inveterate objectors against those exercised by the convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of Confederation should be disregarded, and an adequate government be provided, and the Union preserved; or that an adequate government should be omitted, and the articles of Confederation preserved. Let them declare, whether the preservation of these articles was the end, for securing which a reform of the government was to be introduced as the means; or whether the establishment of a government, adequate to the national happiness, was the end at which these articles themselves originally aimed, and to which they ought, as insufficient means, to have been sacrificed.

But is it necessary to suppose that these expressions are absolutely irreconcilable to each other; that no alterations or provisions in the Articles of the Confederation could possibly mould them into a national and adequate government; into such a government as has been proposed by the convention?

No stress, it is presumed, will, in this case, be laid on the title; a change of that could never be deemed an exercise of ungranted power. Alterations in the body of the instrument are expressly authorized. New provisions therein are also expressly authorized. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted that this power is infringed, so long as a part of the old articles remain? Those who maintain the affirmative ought at least to mark the boundary between authorized and usurped innovations; between that degree of change which lies within the compass of alterations and further provisions, and that

which amounts to a transmutation of the government. Will it be said that the alterations ought not to have touched the substance of the Confederation? The States would never have appointed a convention with so much solemnity, nor described its objects with so much latitude, if some substantial reform had not been in contemplation. Will it be said that the fundamental principles of the Confederation were not within the purview of the convention, and ought not to have been varied? I ask, What are these principles? Do they require that, in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. Do they require that the members of the government should derive their appointment from the legislatures, not from the people of the States? One branch of the new government is to be appointed by these legislatures; and under the Confederation, the delegates to Congress may all be appointed immediately by the people, and in two States1 are actually so appointed. Do they require that the powers of the government should act on the States, and not immediately on individuals? In some instances, as has been shown, the powers of the new government will act on the States in their collective characters. In some instances, also, those of the existing government act immediately on individuals. In cases of capture; of piracy; of the post office; of coins, weights, and measures; of trade with the Indians; of claims under grants of land by different States; and, above all, in the case of trials by courts-marshal in the army and navy, by which death may be inflicted without the intervention of a jury, or even of a civil magistrate; in all these cases the powers of the Confederation operate immediately on the persons and interests of individual citizens. Do these fundamental principles require, particularly, that no tax should be levied without the intermediate agency of the States? The Confederation itself authorizes a direct tax, to a certain extent, on the post office. The power of coinage has been so construed by Congress as to levy a tribute immediately from that source also. But pretermitting these instances, was it not an acknowledged object of the convention and the universal expectation of the people, that the regulation of trade should be submitted to the general government in such a form as would render it an immediate source of general revenue? Had not Congress repeatedly recommended this measure as not inconsistent with the fundamental principles of the Confederation? Had not every State but one; had not New York herself, so far complied with the plan of Congress as to recognize the principle of the innovation? Do these principles, in fine, require that the powers of the general government should be limited, and that, beyond this limit, the States should be left in possession of their sovereignty and independence? We have seen that in the new government, as in the old, the general powers are limited; and that the States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction.

The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the articles of Confederation. The misfortune under the latter system has been, that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged against it, and to require a degree of enlargement which gives to the new system the aspect of an entire transformation of the old.

(Federalist 40 was published only four months after the Constitution was written. After publication, all 13 state legislatures did approve the new ratification process by calling ratfication conventions. All 13 states ratified the Constitution. The unanimous approval by the state legislatures was satisfied)

In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation [of the legislatures] of all the states, they have reported a plan which is to be confirmed [by the people,] and may be carried into effect by nine States only. It is worthy of remark that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a majority of one sixtieth of the people of America to a measure approved and called for by the voice of twelve States, comprising fifty-nine sixtieths of the people an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this objection, therefore, has been in a manner waived by those who have criticised the powers of the convention, I dismiss it without further observation.

The third point to be inquired into is, how far considerations of duty arising out of the case itself could have supplied any defect of regular authority.

In the preceding inquiries the powers of the convention have been analyzed and tried with the same rigor, and by the same rules, as if they had been real and final powers for the establishment of a Constitution for the United States. We have seen in what manner they have borne the trial even on that supposition. It is time now to recollect that the powers were merely advisory and recommendatory; that they were so meant by the States, and so understood by the convention; and that the latter have accordingly planned and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the convention.

Let us view the ground on which the convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis, which had led their country almost with one voice to make so singular and solemn an experiment for correcting the errors of a system by which this crisis had been produced; that they were no less deeply and unanimously convinced that such a reform as they have proposed was absolutely necessary to effect the purposes of their appointment. It could not be unknown to them that the hopes and expectations of the great body of citizens, throughout this great empire, were turned with the keenest anxiety to the event of their deliberations. They had every reason to believe that the contrary sentiments agitated the minds and bosoms of every external and internal foe to the liberty and prosperity of the United States. They had seen in the origin and progress of the experiment, the alacrity with which the proposition, made by a single State (Virginia), towards a partial amendment of the Confederation, had been attended to and promoted. They had seen the liberty assumed by a very few deputies from a very few States, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect by twelve out of the thirteen States. They

had seen, in a variety of instances, assumptions by Congress, not only of recommendatory, but of operative, powers, warranted, in the public estimation, by occasions and objects infinitely less urgent than those by which their conduct was to be governed. They must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,"2 since it is impossible for the people spontaneously and universally to move in concert towards their object; and it is therefore essential that such changes be instituted by some informal and unauthorized propositions, made by some patriotic and respectable citizen or number of citizens. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness, that the States were first united against the danger with which they were threatened by their ancient government; that committees and congresses were formed for concentrating their efforts and defending their rights; and that conventions were elected in the several States for establishing the constitutions under which they are now governed; nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and proposed was to be submitted to the people themselves, the disapprobation of this supreme authority would destroy it forever; its approbation blot out antecedent errors and irregularities. It might even have occurred to them, that where a disposition to cavil prevailed, their neglect to execute the degree of power vested in them, and still more their recommendation of any measure whatever, not warranted by their commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies.

Had the convention, under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay and the hazard of events, let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly? Or if there be a man whose propensity to condemn is susceptible of no control, let me then ask what sentence he has in reserve for the twelve States who usurped the power of sending deputies to the convention, a body utterly unknown to their constitutions; for Congress, who recommended the appointment of this body, equally unknown to the Confederation; and for the State of New York, in particular, which first urged and then complied with this unauthorized interposition?

But that the objectors may be disarmed of every pretext, it shall be granted for a moment that the convention were neither authorized by their commission, nor justified by circumstances in proposing a Constitution for their country: does it follow that the Constitution ought, for that

reason alone, to be rejected? If, according to the noble precept, it be lawful to accept good advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is offered by our friends? The prudent inquiry, in all cases, ought surely to be, not so much from whom the advice comes, as whether the advice be good.

The sum of what has been here advanced and proved is, that the charge against the convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assume; and that finally, if they had violated both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America. How far this character is due to the Constitution, is the subject under investigation.

Timeline of Resolutions Leading Up to the 1787 Constitutional Convention

Below is a listing of the resolutions that led to the 1787 Constitutional Convention, in chronological order. The quote provided for each one contains the statement of purpose for the convention. Note that the state resolutions served as the official instructions to the delegates of that state.

Note: As used at this time, the word "constitution" did not refer to the Articles of Confederation specifically, but rather, to the system of government more broadly. [1] Where reference to the Articles of Confederation was intended, the term "Articles of Confederation" was always used.

1. Report from the Annapolis Convention – 9/14/1786 – "Your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the union, if the States, by whom they have been respectfully delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union…
2. Virginia – 10/16/1786 – "devising and discussing all such alterations and farther provisions as may be necessary to render the Foederal Constitution adequate to the Exigencies[2] of the Union…"
3. New Jersey – 11/23/1786 – "taking into consideration the state of the Union, as to trade and other important objects, and of devising such other Provisions as shall appear to be necessary to render the Constitution of the Federal Government adequate to the exigencies thereof."
4. Pennsylvania – 12/30/1786 – "devising and deliberating on, and discussing, all such alterations and further Provisions, as may be necessary to render the federal Constitution fully adequate to the exigencies of the Union…"
5. North Carolina – 1/7/1787 – "revising the Foederal Constitution."

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1 See Robert G. Natelson, *Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments*," 65 Florida L. Rev. 618, 673, n386 (May 2013) (citing 1 JOHN ASH, THE NEW AND COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (1775), which defined "constitution" as "The act of constituting, the state of being, the corporeal frame, the temper of the mind, and established form of government, a particular law.").

2 "Exigencies" are demands, or needs.

6. New Hampshire – 1/17/1787 – "devising & discussing all such alterations and further provisions as to render the federal Constitution adequate to the Exigencies of the Union…"
7. Delaware – 2/3/1787 – "devising, deliberating on, and discussing, such Alterations and further Provisions as may be necessary to render the Foederal Constitution adequate to the Exigencies of the Union…"
8. Georgia –2/10/1787 - "devising and discussing all such Alterations and farther provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union…"
9. Confederation Congress – 2/21/1787 – "Resolved, that in the opinion of Congress, it is expedient, that on the second Monday in May next, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitution adequate to the exigencies of Government, and the preservation of the Union."
10. New York – 2/28/1787 – "revising the Articles of Confederation, and reporting to Congress, and to the several Legislatures, such alterations and Provisions therein, as shall, when agreed to in Congress, and confirmed by the several States, render the federal Constitution adequate to the Exigencies of Government, and the preservation of the Union…"
11. Massachusetts – 4/9/1787 – "revising the Articles of Confederation and reporting to Congress and the several Legislatures, such alterations an provisions therein as shall when agreed to in Congress, and confirmed by the States render the federal Constitution adequate to the exigencies of government and the preservation of the Union."
12. South Carolina – 4/10/1787 – "devising and discussing all such Alterations, Clauses, Articles and Provisions, as may be thought necessary to render the Foederal Constitution entirely adequate to the actual Situation and future good Government of the confederated States…"
13. Connecticut – 5/2/1787 – "to discuss upon such alterations and provisions agreeable to the general principles of Republican Government as they shall think proper to render the federal Constitution adequate to the exigencies of Government and, the preservation of the Union…"
14. Maryland – 5/26/1787 – "revising the Foederal System, and to join with them in considering such alterations and further provisions as may be necessary to render the Foederal Constitution adequate to the Exigencies of the Union."

SIGNERS OF THE CONSTITUTION

Virginia Called 1787 Federal Convention

John Blair, James Madison, and George Washington

New Hampshire

Nicholas Gilman and John Langdon

Massachusetts

Nathaniel Gorham and Rufus King

Connecticut

William Samuel Johnson and Roger Sherman

New York

Alexander Hamilton

New Jersey

David Brearly, Jonathan Dayton, William Livingston, and William Paterson

Pennsylvania

George Clymer, Thomas Fitzsimmons, Benjamin Franklin, Jared Ingersoll, Thomas Mifflin, Gouvernor Morris, Robert Morris, and James Wilson

Delaware

Richard Bassett, Gunning Bedford, Jr., Jacob Broom, John Dickinson, and George Read

Maryland

Daniel Carroll, Daniel Jenifer, and James McHenry

North Carolina

William Blount, Richard Dobbs Spaight, and Hugh Williamson

South Carolina

Pierce Butler, Charles Pinckney, Charles Cotesworth Pinckney, and John Rutledge

Georgia

Abraham Baldwinand William Few, Jr.

States that issued commissions prior to Congressional opinion dated February 21, 1787.

Only MA, NY, and CT reference Congressional opinion.

Only MA and NY limited to Congressional opinion.

Journals of the Continental Congress, 1774-1789
THURSDAY, SEPTEMBER 27, 1787.

Congress assembled, present as before.

According to Order Congress resumed the Consideration of the form of a Constitution[3] for the United States of America framed and transmitted to Congress by the Convention of the States held at Philadelphia pursuant to the Resolve of the twenty first day of February last. And a motion[4] being made by Mr R[ichard] H[enry] Lee seconded by Mr [Melanction] Smith in the words following "Resolved That Congress after due attention to the Constitution under which this body exists and acts find that the said Constitution in the thirteenth Article thereof limits the power of Congress to the amendment of the present confederacy of thirteen states, but does not extend it to the creation of a new confederacy of nine states; and the late Convention having been

[Note 3: 3 See September 20, 1787. This subject was first considered September 26, and was acted on September 28, 1787.]

[Note 4: 4 Papers of the Continental Congress, No. 36, III, p. 377, in the writing of Mr. Richard Henry Lee.]

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constituted under the authority of twelve states in this Union it is deemed respectful to transmit and it is accordingly ordered that the plan of a new federal constitution laid before Congress by the said convention be sent to the executive of every state in this Union to be laid before their respective legislatures."

A motion was made by Mr [Abraham] Clarke seconded by Mr [Nathaniel] Mitchel to postpone the consideration of that Motion in order to take up the following "That a copy of the Convention of the several states with their resolution and the letter accompanying the same be transmitted to the executives of each state to be laid before their respective legislatures in order to be by them submitted to conventions of delegates to be chosen agreeably to the said resolutions of the Convention".

On the question to posptone for the purpose above mentioned the yeas and nays being required by Mr R[ichard] H[enry] Lee

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So it was resolved in the affirmative.

On motion of Mr [Edward] Carrington seconded by Mr [William] Bingham the motion of Mr [Abraham] Clarke was postponed to take into consideration the following motion viz "Congress proceeded to the consideration of the Constitution for the United States by the late Convention held in the City of Philadelphia and thereupon resolved That Congress do agree thereto and that it be recommended to the legislatures of the several states to cause conventions to be held as speedily as may be to the end that the same may be adopted ratified and confirmed.

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[Motion of Mr. Dane on new constitution [1]]

[Note 1: 1 Papers of the Continental Congress, No. 36, III, pp. 375--376, in the writing of Mr. Dane. It is indorsed by Thomson as of October 1787, which is evidently an error.]

Whereas Congress sensible that there were defects in the present Confederation; and that several of the States were desirous that a Convention of Delegates should be formed to consider the same, and to propose necessary alterations in the federal Constitution; in February last resolved that it was in their opinion expedient that a Convention of the States should be held for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures, such alterations and provisions therein, as should when agreed to in Congress, and be confirmed by the States, render the federal Constitution adequate to the exigencies of Government, and the preservation of the Union.

And whereas it appears by Credentials laid before Congress, that twelve States appointed Delegates who assembled in Convention accordingly, and who did on the 17th. instant, by the unanimous consent of the States then present in convention agree upon, and afterwards lay before Congress, a Constitution for the United States, to be submitted with the to a convention of Delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their Assent and ratification which constitution appears to be intended as an entire system in itself, and not as any part of, or alteration in the Articles of Confederation; to alterations in which Articles, the deliberations and powers of Congress are, in this Case, constitutionally confined, and whereas Congress cannot with propriety proceed to examine and alter the said Constitution proposed, unless it be with a view so essentially to change the principles and forms of it, as to make it an additional part in the said Confederation and the

members of Congress not feeling themselves authorised by the forms of Government under which they are assembled, to express an opinion respecting a System of Government no way connected with those forms; but conceiving that the respect they owe their constituents and the importance of the subject require, that the report of the Convention should, with all convenient dispatch, be transmitted to the several States to be laid before the respective legislatures thereof therefore

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Resolved that there be transmitted to the supreme executive of each State a copy of the report of the Convention of the States lately Assembled in the City of Philadelphia signed by their deputies the seventeenth instant including their resolutions, and their letter directed to the President of Congress.

[Report of Secretary of Congress on letter of T. Barclay [1]]

[Note 1: 1 Reports of Secretary of Congress, Papers of the Continental Congress, No. 180, p. 62. According to the Committee Book, Papers of the Continental Congress, No. 190, p. 168, the letter and accounts were referred to the Board of Treasury. See September 25, 1787.]

Federalist No. 85 - Concluding Remarks

Written by Alexander Hamilton
Independent Journal, Wednesday, August 13, Saturday, August 16, 1788

To the People of the State of New York:

ACCORDING to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points: "the analogy of the proposed government to your own State constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been so fully anticipated and exhausted in the progress of the work, that it would now scarcely be possible to do any thing more than repeat, in a more dilated form, what has been heretofore said, which the advanced stage of the question, and the time already spent upon it, conspire to forbid.

It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this State holds, not less with regard to many of the supposed defects, than to the real excellences of the former. Among the pretended defects are the re-eligibility of the Executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press. These and several others which have been noted in the course of our inquiries are as much chargeable on the existing constitution of this State, as on the one proposed for the Union; and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the government under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally or perhaps more vulnerable.

The additional securities to republican government, to liberty and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals.

Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant, not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well-born, and the great, have been such as to inspire the disgust of all sensible men. And the unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men. It is not impossible that these circumstances may have occasionally betrayed me into intemperances of expression which I did not intend; it is certain that I have frequently felt a struggle between sensibility and moderation; and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much.

Let us now pause and ask ourselves whether, in the course of these papers, the proposed Constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. 'T is one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation; and let him remember that a majority of America has already given its sanction to the plan which he is to approve or reject.

I shall not dissemble that I feel an entire confidence in the arguments which recommend the proposed system to your adoption, and that I am unable to discern any real force in those by which it has been opposed. I am persuaded that it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.

Concessions on the part of the friends of the plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. "Why," say they, "should we adopt an imperfect thing? Why not amend it and make it perfect before it is irrevocably established?" This may be plausible enough, but it is only plausible. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective, and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as far as I have understood

the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of the measure can be found, who will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such an one as promises every species of security which a reasonable people can desire.

I answer in the next place, that I should esteem it the extreme of imprudence to prolong the precarious state of our national affairs, and to expose the Union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wisdom, of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

The reasons assigned in an excellent little pamphlet lately published in this city, are unanswerable to show the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worthy the perusal of every friend to his country. There is, however, one point of light in which the subject of amendments still remains to be considered, and in which it has not yet been exhibited to public view. I cannot resolve to conclude without first taking a survey of it in this aspect.

It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each State. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine2 in favor of subsequent amendment, rather than of the original adoption of an entire system.

This is not all. Every Constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties.

But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point — no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.

In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing THIRTEEN STATES at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congres will be obliged "on the application of the legislatures of two thirds of the States [which at present amount to nine], to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.

If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light with me, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their own object.

The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society [says he], whether monarchical or

republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; EXPERIENCE must guide their labor; TIME must bring it to perfection, and the FEELING of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments." These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from TIME and EXPERIENCE. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A NATION, without a NATIONAL GOVERNMENT, is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a PRODIGY, to the completion of which I look forward with trembling anxiety. I can reconcile it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States, and after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that POWERFUL INDIVIDUALS, in this and in other States, are enemies to a general national government in every possible shape.

States and other Powers who are not in treaty with her, and therefore did not call upon us for retaliation; if we are treated in the same manner as those nations we have no right to complain. He was not opposed to particular regulations to obtain the object which the friends of the measure had in view; but he did not like this mode of doing it, because he feared it would injure the interest of the United States.

Before the House adjourned, Mr. MADISON gave notice, that he intended to bring on the subject of amendments to the constitution, on the 4th Monday of this month.

TUESDAY, May 5.

Mr. BENSON, from the committee appointed to consider of, and report what style or titles it will be proper to annex to the office of President and Vice President of the United States, if any other than those given in the Constitution, and to confer with a committee of the Senate appointed for the same purpose, reported as followeth:

"That it is not proper to annex any style or title to the respective styles or titles of office expressed in the Constitution."

And the said report being twice read at the Clerk's table, was, on the question put thereupon, agreed to by the House.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

Mr. MADISON, from the committee appointed to prepare an address on the part of this House to the President of the United States, in answer to his speech to both Houses of Congress, reported as followeth:

The Address of the House of Representatives to George Washington, President of the United States.

SIR: The Representatives of the People of the United States present their congratulations on the event by which your fellow-citizens have attested the pre-eminence of your merit. You have long held the first place in their esteem. You have often received tokens of their affection. You now possess the only proof that remained of their gratitude for your services, of their reverence for your wisdom, and of their confidence in your virtues. You enjoy the highest, because the truest honor, of being the First Magistrate, by the unanimous choice of the freest people on the face of the earth.

We well know the anxieties with which you must have obeyed a summons from the repose reserved for your declining years, into public scenes, of which you had taken your leave for ever. But the obedience was due to the occasion. It is already applauded by the universal joy which welcomes you to your station. And we cannot doubt that it will be rewarded with all the satisfaction with which an ardent love for your fellow citizens must review successful efforts to promote their happiness.

This anticipation is not justified merely by the past experience of your signal services. It is particularly suggested by the pious impressions under which you mean to commence your administration, and the enlightened maxims by which you mean to conduct it. We feel with you the strongest obligations to adore the invisible hand which has led the American people through so many difficulties, to cherish a conscious responsibility for the destiny of republican liberty; and to seek the only sure means of preserving and recommending the precious deposite in a system of legislation founded on the principles of an honest policy, and directed by the spirit of a diffusive patriotism.

The question arising out of the fifth article of the Constitution will receive all the attention demanded by its importance; and will, we trust, be decided, under the influence of all the considerations to which you allude.

In forming the pecuniary provisions for the Executive Department, we shall not lose sight of a wish resulting from motives which give it a peculiar claim to our regard. Your resolution, in a moment critical to the liberties of your country, to renounce all personal emolument, was among the many presages of your patriotic services, which have been amply fulfilled; and your scrupulous adherence now to the law then imposed on yourself, cannot fail to demonstrate the purity, whilst it increases the lustre of a character which has so many titles to admiration.

Such are the sentiments which we have thought fit to address to you. They flow from our own hearts, and we verily believe that, among the millions we represent, there is not a virtuous citizen whose heart will disown them.

All that remains is, that we join in your fervent supplications for the blessings of heaven on our country; and that we add our own for the choicest of these blessings on the most beloved of our citizens.

Said address was committed to a Committee of the whole; and the House immediately resolved itself into a committee, Mr. PAGE in the chair. The committee proposing no amendment thereto, rose and reported the address, and the House agreed to it, and resolved that the Speaker, attended by the members of this House, do present the said address to the President.

Ordered, That Messrs. SINNICKSON, COLES, and SMITH, (of South Carolina,) be a committee to wait on the President, to know when it will be convenient for him to receive the same.

Mr. CLYMER, from the committee appointed for the purpose, reported a bill for laying a duty on goods, wares, and merchandise, imported into the United States, which passed its first reading.

Mr. BLAND presented to the House the following application from the Legislature of Virginia, to wit:

VIRGINIA, *to wit:*

IN GENERAL ASSEMBLY, NOV. 14, 1788.

Resolved, That an application be made in the name and on behalf of the Legislature of this Commonwealth to the Congress of the United States, in the words following, to wit:

"The good People of this Commonwealth, in Convention assembled, having ratified the Constitution submitted to their consideration, this Legislature has, in conformity to that act, and the resolutions of the United States in Congress assembled, to them transmitted, thought proper to make the arrangements that were necessary for carrying it into effect. Having thus shown themselves obedient to the voice of their constituents, all America will find that, so far as

it depended on them, that plan of Government will be carried into immediate operation.

"But the sense of the People of Virginia would be but in part complied with, and but little regarded, if we went no farther. In the very moment of adoption, and coeval with the ratification of the new plan of Government, the general voice of the Convention of this State pointed to objects no less interesting to the People we represent, and equally entitled to our attention. At the same time that, from motives of affection to our sister States, the Convention yielded their assent to the ratification, they gave the most unequivocal proofs that they dreaded its operation under the present form.

"In acceding to the Government under this impression, painful must have been the prospect, had they not derived consolation from a full expectation of its imperfections being speedily amended. In this resource, therefore, they placed their confidence, a confidence that will continue to support them, whilst they have reason to believe that they have not calculated upon it in vain.

"In making known to you the objections of the People of this Commonwealth to the new plan of Government, we deem it unnecessary to enter into a particular detail of its defects, which they consider as involving all the great and unalienable rights of freemen. For their sense on this subject, we beg leave to refer you to the proceedings of their late Convention, and the sense of the House of Delegates, as expressed in their resolutions of the thirtieth day of October, one thousand seven hundred and eighty-eight.

"We think proper, however, to declare, that, in our opinion, as those objections were not founded in speculative theory, but deduced from principles which have been established by the melancholy example of other nations in different ages, so they will never be removed, until the cause itself shall cease to exist. The sooner, therefore, the public apprehensions are quieted, and the Government is possessed of the confidence of the People, the more salutary will be its operations, and the longer its duration.

"The cause of amendments we consider as a common cause; and, since concessions have been made from political motives, which, we conceive, may endanger the Republic, we trust that a commendable zeal will be shown for obtaining those provisions, which experience has taught us are necessary to secure from danger the unalienable rights of human nature.

"The anxiety with which our countrymen press for the accomplishment of this important end, will ill admit of delay. The slow forms of Congressional discussion and recommendation, if, indeed, they should ever agree to any change, would, we fear, be less certain of success. Happily for their wishes, the Constitution hath presented an alternative, by admitting the submission to a convention of the States. To this, therefore, we resort as the source from whence they are to derive relief from their present apprehensions.

"We do, therefore, in behalf of our constituents, in the most earnest and solemn manner, make this application to Congress, that a convention be immediately called, of deputies from the several States, with full power to take into their consideration the defects of this constitution that have been suggested by the State Conventions, and report such amendments thereto as they shall find best suited to promote our common interests, and secure to ourselves and our latest posterity the great and unalienable rights of mankind.

"JOHN JONES, *Speaker Senate.*
"THOMAS MATHEWS, *Speaker Ho. Del.*"

After the reading of this application,

Mr. BLAND moved to refer it to the Committee of the whole on the state of the Union.

Mr. BOUDINOT.—According to the terms of the Constitution, the business cannot be taken up until a certain number of States have concurred in similar applications; certainly the House is disposed to pay a proper attention to the application of so respectable a State as Virginia, but if it is a business which we cannot interfere with in a constitutional manner, we had better let it remain on the files of the House until the proper number of applications come forward.

Mr. BLAND thought there could be no impropriety in referring any subject to a committee, but surely this deserved the serious and solemn consideration of Congress. He hoped no gentleman would oppose the compliment of referring it to a Committee of the whole; beside, it would be a guide to the deliberations of the committee on the subject of amendments, which would shortly come before the House.

Mr. MADISON said, he had no doubt but the House was inclined to treat the present application with respect, but he doubted the propriety of committing it, because it would seem to imply that the House had a right to deliberate upon the subject. This he believed was not the case until two-thirds of the State Legislatures concurred in such application, and then it is out of the power of Congress to decline complying, the words of the Constitution being express and positive relative to the agency Congress may have in case of applications of this nature. "The Congress, wherever 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." From hence it must appear, that Congress have no deliberative power on this occasion. The most respectful and constitutional mode of performing our duty will be, to let it be entered on the minutes, and remain upon the files of the House until similar applications come to hand from two-thirds of the States.

Mr. BOUDINOT hoped the gentleman who desired the commitment of the application would not suppose him wanting in respect to the State of Virginia. He entertained the most profound respect for her—but it was on a principle of respect to order and propriety that he opposed the commitment; enough had been said to convince gentlemen that it was improper to commit—for what purpose can it be done? what can the committee report? The application is to call a new convention. Now, in this case, there is nothing left for us to do, but to call one when two-thirds of the State Legislatures ap-

ply for that purpose. He hoped the gentleman would withdraw his motion for commitment.

Mr. BLAND.—The application now before the committee contains a number of reasons why it is necessary to call a convention. By the fifth article of the Constitution, Congress are obliged to order this convention when two-thirds of the Legislatures apply for it; but how can these reasons be properly weighed, unless it be done in committee? Therefore, I hope the House will agree to refer it.

Mr. HUNTINGTON thought it proper to let the application remain on the table, it can be called up with others when enough are presented to make two-thirds of the whole States. There would be an evident impropriety in committing, because it would argue a right in the House to deliberate, and, consequently, a power to procrastinate the measure applied for.

Mr. TUCKER thought it not right to disregard the application of any State, and inferred, that the House had a right to consider every application that was made; if two-thirds had not applied, the subject might be taken into consideration, but if two-thirds had applied, it precluded deliberation on the part of the House. He hoped the present application would be properly noticed.

Mr. GERRY.—The gentleman from Virginia (Mr. MADISON) told us yesterday, that he meant to move the consideration of amendments on the fourth Monday of this month; he did not make such motion then, and may be prevented by accident, or some other cause, from carrying his intention into execution when the time he mentioned shall arrive. I think the subject however is introduced to the House, and, perhaps, it may consist with order to let the present application lie on the table until the business is taken up generally.

Mr. PAGE thought it the best way to enter the application at large upon the Journals, and do the same by all that came in, until sufficient were made to obtain their object, and let the original be deposited in the archives of Congress. He deemed this the proper mode of disposing of it, and what is in itself proper can never be construed into disrespect.

Mr. BLAND acquiesced in this disposal of the application. Whereupon, it was ordered to be entered at length on the Journals, and the original to be placed on the files of Congress.

DUTIES ON TONNAGE.

The House then resumed the consideration of the Report of the Committee of the whole on the state of the Union, in relation to the duty on tonnage.

Mr. JACKSON (from Georgia) moved to lower the tonnage duty from thirty cents, as it stood in the report of the committee on ships of nations in alliance, and to insert twenty cents, with a view of reducing the tonnage on the vessels of Powers not in alliance. In laying a higher duty on foreign tonnage than on our own, I presume, said he, the Legislature have three things in contemplation: first, The encouragement of American shipping; 2ndly, Raising a Revenue; and, 3dly, The support of light-houses and beacons for the purposes of navigation. Now, for the first object, namely, the encouragement of American shipping, I judge twenty cents will be sufficient, the duty on our own being only six cents; but if twenty cents are laid in this case, I conclude that a higher rate will be imposed upon the vessels of nations not in alliance. As these form the principal part of the foreign navigation, the duty will be adequate to the end proposed. I take it, the idea of revenue from this source is not much relied upon by the House; and surely twenty cents is enough to answer all the purposes of erecting and supporting the necessary light-houses. On a calculation of what will be paid in Georgia, I find a sufficiency for these purposes; and I make no doubt but enough will be collected in every State from this duty. The tonnage employed in Georgia is about twenty thousand tons, fourteen thousand tons are foreign; the duty on this quantity will amount to £466 13s. 4d. Georgia currency. I do not take in the six cents upon American vessels, yet this sum appears to be as much as can possibly be wanted for the purpose of improving our navigation.

When we begin a new system, we ought to act with moderation; the necessity and propriety of every measure ought to appear evident to our constituents, to prevent clamor and complaint. I need not insist upon the truth of this observation by offering arguments in its support. Gentlemen see we are scarcely warm in our seats, before applications are made for amendments to the Constitution; the people are afraid that Congress will exercise their power to oppress them. If we shackle the commerce of America by heavy imposition, we shall rivet them in their distrust. The question before the committee appears to me to be, whether we shall draw in, by tender means, the States that are now out of the Union, or deter them from joining us, by holding out the iron hand of tyranny and oppression. I am for the former, as the most likely way of perpetuating the federal Government. North Carolina will be materially affected by a high tonnage; her vessels in the lumber trade will be considerably injured by the regulation; she will discover this, and examine the advantages and disadvantages of entering into the Union. If the disadvantages preponderate, it may be the cause of her throwing herself into the arms of Britain; her peculiar situation will enable her to injure the trade of both South Carolina and Georgia. The disadvantages of a high tonnage duty on foreign vessels are not so sensibly felt by the Northern States; they have nearly vessels enough of their own to carry on all their trade, consequently the loss sustained by them will be but small; but the Southern States employ mostly foreign shipping, and unless their produce is carried by them to market it will perish. At this mo-

State Article V Applications - By Subject
Source: The Article V Library

Anti-polygamy	States with applications	19	States with unrepealed applications	15
Antitrust	States with applications	1	States with unrepealed applications	1
Apportionment	States with applications	33	States with unrepealed applications	19
Balanced budget	States with applications	35	States with unrepealed applications	29
Campaign Finance Reform	States with applications	5	States with unrepealed applications	5
Capital Punishment	States with applications	1	States with unrepealed applications	0
Coercive use of federal funds	States with applications	8	States with unrepealed applications	5
Congressional term limits	States with applications	9	States with unrepealed applications	8
Constitutionality of state enactments	States with applications	1	States with unrepealed applications	1
Control communism	States with applications	1	States with unrepealed applications	1
Convention of States Project	States with applications	8	States with unrepealed applications	8
Direct election of President	States with applications	1	States with unrepealed applications	0
Direct election of Senators	States with applications	29	States with unrepealed applications	23
Establish Court of the Union	States with applications	5	States with unrepealed applications	4
Federal labor regulations	States with applications	1	States with unrepealed applications	1
Federal preemption of state law	States with applications	1	States with unrepealed applications	1
Federal regulations and rules	States with applications	1	States with unrepealed applications	0
Federal taxing power	States with applications	31	States with unrepealed applications	19
Federal/National debt limit	States with applications	11	States with unrepealed applications	10
Flag desecration	States with applications	1	States with unrepealed applications	0
Funding private schools	States with applications	2	States with unrepealed applications	2
General	States with applications	21	States with unrepealed applications	17
Judicial authority	States with applications	1	States with unrepealed applications	1
Limit presidential tenure	States with applications	5	States with unrepealed applications	4
Line-item veto	States with applications	1	States with unrepealed applications	0
Nullification	States with applications	1	States with unrepealed applications	1
Oil and mineral rights	States with applications	1	States with unrepealed applications	1
Pensions for the elderly	States with applications	1	States with unrepealed applications	1
Posse Comitatus	States with applications	1	States with unrepealed applications	1
Preservation of states' rights	States with applications	1	States with unrepealed applications	1
Presidential electors	States with applications	10	States with unrepealed applications	6
Presidential selection	States with applications	1	States with unrepealed applications	1
Proceeds of federal taxes on fuel	States with applications	1	States with unrepealed applications	1
Prohibit federal commercial enterprises	States with applications	3	States with unrepealed applications	1
Repeal Eighteenth Amendment	States with applications	5	States with unrepealed applications	5
Repeal Sixteenth Amendment	States with applications	29	States with unrepealed applications	18
Replace Vice-President as head of Senate	States with applications	1	States with unrepealed applications	1
Revenue sharing	States with applications	17	States with unrepealed applications	12
Revision of Article V	States with applications	17	States with unrepealed applications	9
Right to life	States with applications	19	States with unrepealed applications	12
School assignment	States with applications	9	States with unrepealed applications	6
School prayer	States with applications	4	States with unrepealed applications	2
Sedition laws	States with applications	1	States with unrepealed applications	0
Selection and tenure of federal judges	States with applications	9	States with unrepealed applications	8
Single Subject Matter	States with applications	1	States with unrepealed applications	1
State control of public education	States with applications	5	States with unrepealed applications	2
State taxing power over nonresidents	States with applications	1	States with unrepealed applications	1
Supreme Court decisions	States with applications	4	States with unrepealed applications	3
Tariffs	States with applications	1	States with unrepealed applications	1
Taxation of bonds	States with applications	1	States with unrepealed applications	0
Taxation of securities	States with applications	2	States with unrepealed applications	1
Townsend plan	States with applications	1	States with unrepealed applications	1
Treaty making	States with applications	3	States with unrepealed applications	1
Validity of Fourteenth Amendment	States with applications	1	States with unrepealed applications	1
Vice-Presidential selection	States with applications	3	States with unrepealed applications	2
World federal government	States with applications	6	States with unrepealed applications	3
	TOTAL APPLICATIONS	392	**TOTAL ACTIVE APPLICATIONS**	278

The 37th “Convention of States” Discovered!

August 21, 2016

Rob Natelson

Recently a professor teaching constitutional law at a prestigious university wrote in one of the nation’s top newspapers that we should oppose an Article V convention of states in part because the 1787 Constitutional Convention is “the only precedent we have.”

As occurs too often among law professors, he obviously had not researched the subject before writing. If he had, he would have discovered that in Russel Caplan’s 1988 Oxford University Press book on amendments conventions, the author identified several conventions of states that assembled during the Founding Era. Moreover, in 2013, *Florida Law Review* published my survey of the many American inter-colonial and interstate conventions before and during that period. In addition, this website has documented five conventions of states held since the Founding Era.

The generation that ratified the Constitution applied the term “convention” to a diplomatic gathering of three or more American colonies or states. The term did not include (1) negotiations between only two governments, (2) meetings of governors not formally authorized, or (3) continuing bodies, such as the United Colonies of New England (1643-84), the Second Continental Congress (1775-1781), or the Confederation Congress (1781-89). Conventions might be limited to colonies or states or they might include other sovereign entities, such as the British Crown or Indian tribes. Among synonyms for “convention” were *congress*, *council*, and *committee*. Often two synonyms were used in conjunction, as in “a committee or convention held at Boston.” The word “congress” to describe a convention fell out of use soon after creation of the Confederation Congress.

My *Florida Law Review article* identified the following American intergovernmental conventions up to and including the 1787 Constitutional Convention:

* Albany (1677) (Indian negotiations)
* Boston (1689) (defense issues)
* Albany (1689) (Indian negotiations)
* New York City (1690) (defense)
* New York City (1693) (defense)
* Albany (1694) (Indian negotiations)
* New York City (1704) (defense)
* Boston (1711) (defense)
* Albany (1722) (Indian negotiations)
* Albany (1744) (defense)
* Lancaster, PA (1744) (Indian negotiations)
* Albany (1745) (defense)
* Albany (1745) (Indian negotiations)
* New York City (1747) (defense)
* Albany (1751) (Indian negotiations)

* Albany (1754) (Indian negotiations and a plan of colonial union)
* Boston(?) (1757) (defense)
* New York City (1765) (response to Stamp Act)
* Fort Stanwyx (Rome, NY) (1768) (Indian negotiations)
* New York City (1774) (response to British actions)
* Providence, RI (1776-77) (paper currency and public credit)
* York Town, PA (1777) (price control)
* Springfield, MA (1777) (economic issues)
* New Haven, CN (1778) (price controls and other responses to inflation)
* Hartford, CN (1779) (economic issues)
* Philadelphia (1780) (price controls)
* Boston (1780) (conduct of Revolutionary War)
* Hartford (1780) (conduct of Revolutionary War)
* Providence, RI (1781) (war supply)
* Annapolis, MD (1786) (trade)
* Philadelphia (1787) (revise the political system)

Thus, I had found 20 inter-governmental conventions from before Independence and 11 after Independence. Here are the conventions held after the Constitution was ratified:

* Hartford, CN (1814) (response to War of 1812)
* Nashville, TN (1850) (Southern response to the North)
* Washington, DC (1861) (propose a constitutional amendment)
* Montgomery, AL (1861) (write the Confederate constitution)
* Santa Fe, NM (1922) (negotiate the Colorado River Compact)

That totals 36 in all. But there's more: Between Independence and ratification of the Constitution, several other conventions were formally called or applied for, but never met. They were to address such issues as taxes, currency inflation, and improvements to interstate navigation. The official records pertaining to their applications and calls provide additional guidance on the subject.

Now a 37th convention has surfaced: **The Albany Council of 1684**.

I had heard of the Albany Council because one of my sources mentioned it—but only as a meeting of two colonies with the Iroquois. It turns out, however, that a third colony also participated, thereby qualifying it as a convention. The colonial governments participating were those of New York, Virginia, and Massachusetts. The Iroquois participants were the Mohawk, Cayuga, Onondaga, Oneida, and Seneca tribes. New York and Virginia were represented by their governors, and Massachusetts by a prominent New Yorker especially commissioned for the purpose: Stephanus Van Cortlandt. The issues were varied: Virginia was unhappy with Indian depredations on its territory. The Senecas complained that the French Canadian governor was arming and inciting the Senecas' enemies. Massachusetts had a number of proposals to promote. All parties wanted to strengthen the "covenant chain" among them. One result of the convention was an Iroquois-colonial treaty.

The records of the convention are in longhand on parchment, and available in the Library in Virginia in Richmond. They are entitled *Proceedings of a Council at Albany, New York, with the Sachems of Three Indian Nations, 1684 July 31*—but as the records indicate, the number of Indian nations participating was actually five.

Listing of American Interstate Conventions, compiled by Professor Robert Natelson

1. Albany (1677) (Indian negotiations)
2. Albany (1684) (Indian negotiations)
3. Boston (1689) (defense issues)
4. Albany (1689) (Indian negotiations)
5. New York City (1690) (defense)
6. New York City (1693) (defense)
7. Albany (1694) (Indian negotiations)
8. New York City (1704) (defense)
9. Boston (1711) (defense)
10. Albany (1722) (Indian negotiations)
11. Albany (1744) (defense)
12. Lancaster, PA (1744) (Indian negotiations)
13. Albany (1745) (defense)
14. Albany (1745) (Indian negotiations)
15. New York City (1747) (defense)
16. Albany (1751) (Indian negotiations)
17. Albany (1754) (Indian negotiations and a plan of colonial union)
18. Boston (1757) (defense)
19. New York City (1765) (response to Stamp Act)
20. Fort Stanwyx (Rome, NY) (1768) (Indian negotiations)
21. New York City (1774) (response to British actions)
22. Providence, RI (1776-77) (paper currency and public credit)
23. York Town, PA (1777) (price control)
24. Springfield, MA (1777) (economic issues)
25. New Haven, CN (1778) (price controls and other responses to inflation)
26. Hartford, CN (1779) (economic issues)
27. Philadelphia (1780) (price controls)
28. Boston (1780) (conduct of Revolutionary War)
29. Hartford (1780) (conduct of Revolutionary War)
30. Providence, RI (1781) (war supply)
31. Annapolis, MD (1786) (trade)
32. Philadelphia (1787) (revise the political system)
33. Hartford, CN (1814) (response to War of 1812)
34. Nashville, TN (1850) (Southern response to the North)
35. Washington, DC (1861) (propose a constitutional amendment)
36. Montgomery, AL (1861) (write the Confederate constitution)
37. St. Louis, MO (1889) (meat packing industry)
38. Santa Fe, NM (1922) (negotiate the Colorado River Compact)

STATE OF MAINE.

Resolves providing for the appointment of Commissioners to Convention at Washington.

Resolved that Hon William P. Fessenden, Lot M. Morrill, Daniel E. Somes, John J. Perry, Ezra B. French, Freeman H. Morse, Stephen Coburn and Stephen C Foster, are hereby appointed Commissioners from the State of Maine, to act in the Convention now assembled in Washington, upon the invitation of Virginia; said Commissioners to be subject at all times to the control of the Legislature.

Resolved that the Governor be requested to inform said Commissioners forthwith by telegraph of their appointment.

Rules suspended. Twice read & passed to be engrossed, &c. &c.

Rufus A. Miller, Clerk.

In Senate, Feby 7. 1861.

These Resolves read twice & passed to be engrossed in concurrence.

James M. Lincoln, Secy.

36TH CONGRESS,
2D SESSION.

S. R. 70.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1861.

Mr. CRITTENDEN, from the select committee of five, reported the following joint resolution; which was read and passed to a second reading, and postponed to and made the special order for Friday, March 1, at 12½ o'clock.

JOINT RESOLUTION

Proposing certain amendments to the Constitution of the United States.

WHEREAS, commissioners, appointed on the invitation of the State of Virginia, by the following States, respectively: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Indiana, Illinois, Iowa, Wisconsin, and Kansas, have met in convention at the city of Washington, for the purpose of considering the distracted and perilous condition of the country, and proposing measures for the preservation of the peace, the safety of the people, and the security of the Union, and having performed that duty, and communicated to Congress the result of their deliberations, with a request and recommendation on the part and in the name of said States, that the following be proposed to the several States as amendments to the Constitution of the United States, according to the fifth article of said instrument, namely:

Table 1.1
GENERAL INFORMATION ON STATE CONSTITUTIONS
(As of January 1, 2010)

State or other jurisdiction	Number of constitutions*	Dates of adoption	Effective date of present constitution	Estimated length (number of words)**	Number of amendments: Submitted to voters	Number of amendments: Adopted
Alabama	6	1819, 1861, 1865, 1868, 1875, 1901	Nov. 28, 1901	365,000 (a)(c)	1,103	807
Alaska	1	1956	Jan. 3, 1959	13,000	41	29
Arizona	1	1911	Feb. 14, 1912	45,909 (b)	258	143
Arkansas	5	1836, 1861, 1864, 1868, 1874	Oct. 30, 1874	59,500 (b)	193	95 (d)
California	2	1849, 1879	July 4, 1879	54,645	883	519
Colorado	1	1876	Aug. 1, 1876	74,522 (b)	329	154
Connecticut	4	1818 (f), 1965	Dec. 30, 1965	17,256 (b)	31	30
Delaware	4	1776, 1792, 1831, 1897	June 10, 1897	19,000	(e)	140
Florida	6	1839, 1861, 1865, 1868, 1886, 1968	Jan. 7, 1969	57,017 (b)	148	115
Georgia	10	1777, 1789, 1798, 1861, 1865, 1868, 1877, 1945, 1976, 1982	July 1,1983	39,526 (b)	89 (g)	68 (g)
Hawaii	1 (h)	1950	Aug. 21, 1959	21,440 (b)	129	108
Idaho	1	1889	July 3, 1890	24,232 (b)	206	119
Illinois	4	1818, 1848, 1870, 1970	July 1, 1971	15,751 (b)	17	11
Indiana	2	1816, 1851	Nov. 1, 1851	10,379 (b)	78	46
Iowa	2	1846, 1857	Sept. 3, 1857	11,500 (b)	58	53 (i)
Kansas	1	1859	Jan. 29, 1861	12,296 (b)	123	93 (i)
Kentucky	4	1792, 1799, 1850, 1891	Sept. 28, 1891	23,911 (b)	75	41
Louisiana	11	1812, 1845, 1852, 1861, 1864, 1868, 1879, 1898, 1913, 1921, 1974	Jan. 1, 1975	69,773 (b)	221	154
Maine	1	1819	March 15, 1820	16,276 (b)	204	171 (j)
Maryland	4	1776, 1851, 1864, 1867	Oct. 5, 1867	41,622 (b)	259	223 (k)
Massachusetts	1	1780	Oct. 25, 1780	36,700 (l)	148	120
Michigan	4	1835, 1850, 1908, 1963	Jan. 1, 1964	35,858 (b)	67	29
Minnesota	1	1857	May 11, 1858	11,734 (b)	215	120
Mississippi	4	1817, 1832, 1869, 1890	Nov. 1, 1890	24,323 (b)	158	123
Missouri	4	1820, 1865, 1875, 1945	March 30,1945	42,600 (b)	172	111
Montana	2	1889, 1972	July 1, 1973	14,028 (b)	55	30
Nebraska	2	1866, 1875	Oct. 12, 1875	34,645 (b)	347 (m)	226 (m)
Nevada	1	1864	Oct. 31, 1864	31,944 (b)	229	136
New Hampshire	2	1776, 1784	June 2, 1784	9,200	287 (n)	145
New Jersey	3	1776, 1844, 1947	Jan. 1, 1948	26,159 (b)	78	43
New Mexico	1	1911	Jan. 6, 1912	27,200	288 (y)	157 (y)
New York	4	1777, 1822, 1846, 1894	Jan. 1, 1895	51,700	295	220
North Carolina	3	1776, 1868, 1970	July 1, 1971	16,532 (b)	42	34
North Dakota	1	1889	Nov. 2, 1889	19,074 (b)	264	149 (o)
Ohio	2	1802, 1851	Sept. 1, 1851	56,163 (b)	282	169
Oklahoma	1	1907	Nov. 16, 1907	74,075 (b)	344 (p)	179 (p)
Oregon	1	1857	Feb. 14, 1859	54,083 (b)	484 (q)	243 (q)
Pennsylvania	5	1776, 1790, 1838, 1873, 1968 (r)	1968 (r)	27,711 (b)	36 (r)	30 (r)
Rhode Island	3	1842 (f) 1986 (s)	Dec. 4, 1986	10,908 (b)	11 (s)	10 (s)
South Carolina	7	1776, 1778, 1790, 1861, 1865, 1868, 1895	Jan. 1, 1896	32,541 (b)	682 (t)	493 (t)
South Dakota	1	1889	Nov. 2, 1889	27,675 (b)	227	214
Tennessee	3	1796, 1835, 1870	Feb. 23, 1870	13,300	61	38
Texas	5 (u)	1845, 1861, 1866, 1869, 1876	Feb. 15, 1876	93,034(b)	642 (v)	467
Utah	1	1895	Jan. 4, 1896	19,366	163	111
Vermont	3	1777, 1786, 1793	July 9, 1793	10,286 (b)	211	53
Virginia	6	1776, 1830, 1851, 1869, 1902, 1970	July 1, 1971	21,601 (b)	51	43
Washington	1	1889	Nov. 11, 1889	34,300 (b)	174	101
West Virginia	2	1863, 1872	April 9, 1872	26,000	121	71
Wisconsin	1	1848	May 29, 1848	15,102 (b)	194	145 (i)
Wyoming	1	1889	July 10, 1890	29,300	125	98
American Samoa	2	1960, 1967	July 1, 1967	6,000	15	7
No. Mariana Islands	1	1977	Jan. 9, 1978	11,000	60	56 (w)(x)
Puerto Rico	1	1952	July 25, 1952	9,281	6	6

See footnotes at end of table.

GENERAL INFORMATION ON STATE CONSTITUTIONS—Continued (As of January 1, 2010)

Source: John Dinan and The Council of State Governments.

*The constitutions referred to in this table include those Civil War documents customarily listed by the individual states.

** Estimated word lengths are in some cases taken from the 2007 edition.

(a) The Alabama constitution includes numerous local amendments that apply to only one county. An estimated 70 percent of all amendments are local. A 1982 amendment provides that after proposal by the legislature to which special procedures apply, only a local vote (with exceptions) is necessary to add them to the constitution.

(b) Computer word count.

(c) The total number of Alabama amendments includes one that is commonly overlooked.

(d) Eight of the approved amendments have been superseded and are not printed in the current edition of the constitution. The total adopted does not include five amendments proposed and adopted since statehood.

(e) Proposed amendments are not submitted to the voters in Delaware.

(f) Colonial charters with some alterations served as the first constitutions in Connecticut (1638, 1662) and in Rhode Island (1663).

(g) The Georgia constitution requires amendments to be of "general and uniform application throughout the state," thus eliminating local amendments that accounted for most of the amendments before 1982.

(h) As a kingdom and republic, Hawaii had five constitutions.

(i) The figure includes amendments approved by the voters and later nullified by the state supreme court in Iowa (three), Kansas (one), Nevada (six) and Wisconsin (two).

(j) The figure does not include one amendment approved by the voters in 1967 that is inoperative until implemented by legislation.

(k) Two sets of identical amendments were on the ballot and adopted in the 1992 Maryland election. The four amendments are counted as two in the table.

(l) The printed constitution includes many provisions that have been annulled. The length of effective provisions is an estimated 24,122 words (12,400 annulled in Massachusetts, and in Rhode Island before the "rewrite" of the constitution in 1986, it was 11,399 words (7,627 annulled).

(m) The 1998 and 2000 Nebraska ballots allowed the voters to vote separately on "parts" of propositions. In 1998, 10 of 18 separate propositions were adopted; in 2000, 6 of 9.

(n) The constitution of 1784 was extensively revised in 1792. Figure shows proposals and adoptions since the constitution was adopted in 1784.

(o) The figures do not include submission and approval of the constitution of 1889 itself and of Article XX; these are constitutional questions included in some counts of constitutional amendments and would add two to the figure in each column.

(p) The figures include five amendments submitted to and approved by the voters which were, by decisions of the Oklahoma or U.S. Supreme Courts, rendered inoperative or ruled invalid, unconstitutional, or illegally submitted.

(q) One Oregon amendment on the 2000 ballot was not counted as approved because canvassing was enjoined by the courts.

(r) Certain sections of the constitution were revised by the limited convention of 1967-68. Amendments proposed and adopted are since 1968.

(s) Following approval of the eight amendments and a "rewrite" of the Rhode Island Constitution in 1986, the constitution has been called the 1986 Constitution. Amendments since 1986 total eight proposed and eight adopted. Otherwise, the total is 106 proposals and 60 adopted.

(t) In 1981 approximately two-thirds of 626 proposed and four-fifths of the adopted amendments were local. Since then the amendments have been statewide propositions.

(u) The Constitution of the Republic of Texas preceded five state constitutions.

(v) The number of proposed amendments to the Texas Constitution excludes three proposed by the legislature but not placed on the ballot.

(w) By 1992, 49 amendments had been proposed and 47 adopted. Since then, one was proposed but rejected in 1994, all three proposals were ratified in 1996 and in 1998, of two proposals one was adopted.

(x) The total excludes one amendment ruled void by a federal district court.

(y) The total excludes one amendment approved by voters in November 2008 but later declared invalid on single subject grounds by the state supreme court.

Table 1.4
PROCEDURES FOR CALLING CONSTITUTIONAL CONVENTIONS
Constitutional Provisions

State or other jurisdiction	*Provision for convention*	*Legislative vote for submission of convention question (a)*	*Popular vote to authorize convention*	*Periodic submission of convention question required (b)*	*Popular vote required for ratification of convention proposals*
Alabama	Yes	Majority	ME	No	Not specified
Alaska	Yes	No provision (c)(d)	(c)	10 years; 2002 (c)	Not specified (c)
Arizona	Yes	Majority	(e)	No	MP
Arkansas	No	No			
California	Yes	2/3	MP	No	MP
Colorado	Yes	2/3	MP	No	ME
Connecticut	Yes	2/3	MP	20 years; 2008 (f)	MP
Delaware	Yes	2/3	MP	No	No provision
Florida	Yes	(g)	MP	No	3/5 voting on proposal
Georgia	Yes	(d)	No	No	MP
Hawaii	Yes	Not specified	MP	9 years; 2008	MP (h)
Idaho	Yes	2/3	MP	No	Not specified
Illinois	Yes	3/5	(i)	20 years; 2008	MP
Indiana	No	No			
Iowa	Yes	Majority	MP	10 years; 2000	MP
Kansas	Yes	2/3	MP	No	MP
Kentucky	Yes	Majority (j)	MP (k)	No	No provision
Louisiana	Yes	(d)	No	No	MP
Maine	Yes	(d)	No	No	No provision
Maryland	Yes	Majority	ME	20 years; 1990	MP
Massachusetts	No		No		
Michigan	Yes	Majority	MP	16 years; 1994	MP
Minnesota	Yes	2/3	ME	No	3/5 voting on proposal
Mississippi	No	No			
Missouri	Yes	Majority	MP	20 years; 2002	Not specified (l)
Montana	Yes (m)	2/3	MP	20 years; 1990	MP
Nebraska	Yes	3/5	MP (o)	No	MP
Nevada	Yes	2/3	ME	No	No provision
New Hampshire	Yes	Majority	MP	10 years; 2002	2/3 voting on proposal
New Jersey	No	No			
New Mexico	Yes	2/3	MP	No	Not specified
New York	Yes	Majority	MP	20 years; 1997	MP
North Carolina	Yes	2/3	MP	No	MP
North Dakota	No	No			
Ohio	Yes	2/3	MP	20 years; 1992	MP
Oklahoma	Yes	Majority	(e)	20 years; 1970	MP
Oregon	Yes	Majority	(e)	No	No provision
Pennsylvania	No	No			
Rhode Island	Yes	Majority	MP	10 years; 2004	MP
South Carolina	Yes	(d)	ME	No	No provision
South Dakota	Yes	(d)	(d)	No	(p)
Tennessee	Yes (q)	Majority	MP	No	MP
Texas	No	No			
Utah	Yes	2/3	ME	No	ME
Vermont	No	No			
Virginia	Yes	(d)	No	No	MP
Washington	Yes	2/3	ME	No	Not specified
West Virginia	Yes	Majority	MP	No	Not specified
Wisconsin	Yes	Majority	MP	No	No provision
Wyoming	Yes	2/3	ME	No	Not specified
American Samoa	Yes	(r)	No	No	ME (s)
No. Mariana Islands	Yes	Majority (t)	2/3	10 years	MP and at least 2/3 in each of 2 senatorial districts
Puerto Rico	Yes	2/3	MP	No	MP

See footnotes at end of table.

PROCEDURES FOR CALLING CONSTITUTIONAL CONVENTIONS— Continued
Constitutional Provisions

Source: John Dinan and The Council of State Governments.

Key:

MP — Majority voting on the proposal.

ME — Majority voting in the election.

(a) In all states not otherwise noted, the entries in this column refer to the proportion of members elected to each house required to submit to the electorate the question of calling a constitutional convention.

(b) The number listed is the interval between required submissions on the question of calling a constitutional convention; where given, the date is that of the most recent submission of the mandatory convention referendum.

(c) Unless provided otherwise by law, convention calls are to conform as nearly as possible to the act calling the 1955 convention, which provided for a legislative vote of a majority of members elected to each house and ratification by a majority vote on the proposals. The legislature may call a constitutional convention at any time.

(d) In these states, the legislature may call a convention without submitting the question to the people. The legislative vote required is two-thirds of the members elected to each house in Georgia, Louisiana, South Carolina and Virginia; two-thirds concurrent vote of both branches in Maine; three-fourths of all members of each house in South Dakota; and not specified in Alaska, but bills require majority vote of membership in each house. In South Dakota, the question of calling a convention may be initiated by the people in the same manner as an amendment to the constitution (see Table 1.3) and requires a majority vote on the question for approval.

(e) The law calling a convention must be approved by the people.

(f) The legislature shall submit the question 20 years after the last convention, or 20 years after the last vote on the question of calling a convention, whichever date is last.

(g) The power to call a convention is reserved to the people by petition.

(h) The majority must be 50 percent of the total voted cast at a general election or at a special election, a majority of the votes tallied which must be at least 30 percent of the total number of registered voters.

(i) Majority voting in the election, or three-fifths voting on the question.

(j) Must be approved during two legislative sessions.

(k) Majority must equal one-fourth of qualified voters at last general election.

(l) Majority of those voting on the proposal is assumed.

(m) The question of calling a constitutional convention may be submitted either by the legislature or by initiative petition to the secretary of state in the same manner as provided for initiated amendments (see Table 1.3).

(n) Two-thirds of all members of the legislature.

(o) Majority must be 35 percent of total votes cast at the election.

(p) Convention proposals are submitted to the electorate at a special election in a manner to be determined by the convention. Ratification by a majority of votes cast.

(q) Conventions may not be held more often than once in six years.

(r) Five years after effective date of constitutions, governor shall call a constitutional convention to consider changes proposed by a constitutional committee appointed by the governor. Delegates to the convention are to be elected by their county councils. A convention was held in 1972.

(s) If proposed amendments are approved by the voters, they must be submitted to the U.S. Secretary of the Interior for approval.

(t) The initiative may also be used to place a referendum convention call on the ballot. The petition must be signed by 25 percent of the qualified voters or at least 75 percent in a senatorial district.

NH - 17 Conventions proposed 215 amendments, 119 ratified

NEW HAMPSHIRE

CONSTITUTIONAL CONVENTION OF 1902

RESOLUTIONS ADOPTED.

THE STATE OF NEW HAMPSHIRE.

In the Year of Our Lord One Thousand Nine Hundred and Two.

In the convention of delegates assembled at Concord on the first Tuesday of December, in the year of our Lord one thousand nine hundred and two, for the purpose of revising the constitution of this state, in pursuance of an act of the legislature passed March 21, 1901.

I. Resolved: That the alterations and amendments proposed to the constitution shall be submitted to the qualified voters of the state, at meetings which shall be duly called and held in the several towns, wards of cities, and other places in the state on the second Tuesday of March, 1902, to be by said voters meetings, or any within the same week

II. Resolved: That the several towns, the state be and are sect, in their warra meetings, an article fect: "To take the voters whether the a ments of the constitu constitutional conve proved."

III. Resolved: That qualified voters shall upon each of the fol mitted to them by t

1. Do you approv person in order to b to office to be able tion in the English l

2. Do you approve of empowering the legislature to impose taxes not only upon polls and estates but also upon other classes of property, including franchises and property when passing by will or inheritance;—as proposed in the amendment to the constitution?

3. Do you approve of allowing the legislature to give police courts jurisdiction to try and determine, subject to the respondent's right of appeal and trial by jury, criminal cases wherein the punishment is less than imprisonment in the state prison —as proposed in the amendment to the constitution?

4. Do you approve of amending the Bill of Rights by striking out the word "evangelical" before the word "principles" and inserting the word "Christian" and striking out the word "Protestant" before the words "teachers of piety, religion and morality" and striking out the word "towns" in two places where the legislature is empowered to authorize "towns, parishes and religious societies" to support and maintain teach-

'ConCon'—

(Continued from page one)

The constitution they drafted was never submitted to the people for their approval and was designed only as a wartime measure. It provided for no separation of power between the executive and judicial branches of government.

While this Constitution was temporary in nature, it was 8½ years before a new one was framed.

The second constitution was rejected three separate times in different forms until it was approved and took effect June, 1783—regarded as the date of the organization of the present government of New Hampshire.

Although it has been amended on several occasions, this constitution remains the fundamental law of the state.

One week from tomorrow, on May 15, more than 450 men and women from all parts of the state, representing nearly every town and city ward, will gather in the Hall of the House of Representatives for New Hampshire's 14th Constitutional Convention. About 60 per cent of them are present or past members of the State Legislature.

They will be here for one pur-

400 New Hampshiremen Scrutinize Constitution

CONCORD, N.H. (AP) — The nation's second-oldest constitution came in for its decennial review today as 400 delegates met in the State House for the start of the New Hampshire Constitutional Convention.

The New Hampshire constitution took effect in June 1784, four years after Massachusetts' and four years before the U.S. Constitution.

Among issues to be voted on this year will be the use of highway funds for general transportation, a state version of the federal Equal Rights Amendment and the size of the 424-seat legislature, largest state legislative body in the nation.

The first order of business was the election of a president from among former Gov. Walter Peterson of Peterboro, Rep. Joseph Eaton of Hillsboro, Wil-

The N. H. ConCon—

(Continued from page one)

By 1960, the House membership total had again climbed—this time to about 400.

o o o

The four Conventions after the turn of the century proposed five amendments to cut the size of the House. All of them failed to be ratified.

"Possibly," according to Upton "because these amendments, with a single exception, would have made the reduction at the expense of the cities and larger towns."

Here's how the present House membership was set up:

The Constitution, under a 1942 amendment, says the House shall have from 375-400 members and for each representative after the first there shall be three times as many inhabitants as required for the first.

each ward sors say the tion leans n of lawmake of populatio

Three con "imperative state are to House as eq will permit.

Their st

1—Towns small to qu tive of their or combines or wards "

2—Repre should be 5 tion. "There fication for and wards

What Is New Hampshire's Constitutional Convention?

Many Changes Suggested But Few Get Adopted

By NORMAN ABELSON

CONCORD (AP) — "Why not allow the Legislature to recommend changes in the State Constitution?"

"County government should be abolished."

"The Governor's Council is a valuable check on the executive branch and is not an outmoded carryover of Colonial government."

"Let's give the cities and towns more to say about running their own affairs."

These are a few of the controversial arguments expected to rise through the Hall of the House of Representatives at New Hampshire's 14th Constitutional Convention, which convenes next Tuesday.

Changing the method of amending the Constitution, abolishing county government and the Governor's Council and "home rule" proposals are almost certain to come up in the course of deliberations at the Con-Con.

But there's a "long road to hoe" before these and other proposals can become amendments to the Constitution.

They must first be passed by a majority of the more than 450 ConCon delegates.

Then the last and most important step — they must be presented to the people in the form of referendums and receive a two-thirds majority of the votes cast to be ratified.

Changes in the method of amending the Constitution have been considered at every New Hampshire ConCon. However, they have been submitted to the people only three times, being rejected in each case.

In 1851 and again in 1889 the people turned down a proposal that amendments be submitted to the voters after passage by two successive Legislatures. In 1948 the voters rejected a proposal that they be asked whether they want a ConCon every eight years instead of seven years.

The proposal expected to be presented this year would allow the Legislature, as well as a ConCon, to submit proposed amendments to the voters.

Former U.S. Sen. Robert W. Upton, president of the 1948 ConCon, says "the great majority of state constitutions provide that amendments may be proposed either by the Legislature or by constitutional conventions. In those states, the constitutional convention is usually convened only when a general revision is deemed necessary."

Gov. Bridges says he favors such a plan for changing the method of amending the constitution. The Governor says he feels it is not necessary to have a ConCon every seven years.

Thus far, there has been little public opposition to such a proposal, although some ConCon delegates anticipate objections will develop.

Another "hot" issue expected to come up at the ConCon is the question of whether county government ought to be abolished in New Hampshire.

The Granite State is divided into 10 counties, which have their own courts and elect their own officials such as county commissioners, sheriffs and solicitors.

Publisher James M. Langley of the Concord Daily Monitor, a ConCon delegate from Bow, says county governments are "superfluous" and have outgrown their usefulness.

County courts should be financed by the state, Langley says, because they are part of the state's judicial system. He also suggests that sheriffs be named by the state in the same manner as judges.

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Full Report On Proposals Soon Ready

CONCORD—Recommendations for action at New Hampshire's Constitutional Convention May 12—all dynamite-laden proposals—were made public here today.

Chairman Joseph A. Millimet said the state's nine-member Constitution Study Commission will recommend 14 constitutional amendments. They are:

1. Reduce the State House of Representatives from 400 members to 300 or less.
2. Increase the State Senate from 24 members to 36 or more.
3. Increase the pay of legislators from $200 to $1,000 per session, and cut their mileage allowances to the rate allowed state employes.

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4. Give the Legislature power to propose amendments to the State Constitution.
5. Lengthen the governor's term from two to four years.
6. Loosen constitutional restrictions on the Legislature's power to levy taxes.
7. Change the basis of apportioning State Senate districts from wealth to population.
8. Provide a district system to allow full-time representation for all towns in the State House of Representatives.
9. Enable the [illegible] individual items

What Is New Hampshire's Constitutional Convention?

Few Persons Know What 'ConCon' Is or How It Works

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What Is New Hampshire's Constitutional Convention?

Possible Revamping of Legislature Seen Key Issue

By NORMAN ABELSON

CONCORD (AP) — "If you live in New Hampshire long enough, you're bound to become a member of the Legislature."

That's an expression often heard in this state. And although usually said with tongue in cheek, to some people it represents a real and present problem.

To others, it symbolizes democracy in action.

Here's the key question: Should the size of the New Hampshire House of Representatives be cut?

And related to that question: If it should be reduced, by how much? Should the State Senate be enlarged? Should the Legislature meet annually for limited sessions instead of every two years?

There aren't easy questions. The arguments pro and con aren't new either.

But they're expected to flare again at New Hampshire's 14th Constitutional Convention, which convenes here a week from today.

These are the facts: New Hampshire's 400-member House is by far the largest in the nation. The second largest, Connecticut, has 270 members. The Granite State Senate has 24 members.

The Legislature meets once every two years with no limit on the length of its deliberations, which usually run between six and eight months.

These are the general arguments for and against a Constitutional amendment to chop the size of the House:

Proponents of such an amendment say the House is unwieldy and inefficient because of its size. They say long, unnecessary wrangles over minor bills cause delays in adjournment and sometimes result in passage of imperfect legislation.

Those who want to keep the House as it is say it is closer to a true democracy, the people are more closely represented. They say it's part of life as old-fashioned New England town meeting on a state-wide level. And they deny that the size of the House makes it inefficient.

If the Constitutional Convention — about half of whose 400 members are legislators — should pass a resolution to cut the size of the House, it would be presented to the people in the form of a referendum at a regular election. And if two-thirds of the people who vote in that election approve the idea, it would become law.

"The size of the House of Representatives and the apportionment of its members has occupied a commanding place in every constitutional convention," says former U.S. Sen. Robert W. Upton.

Upton, president of the 1948 ConCon, says representation in the House was originally — as now — based on towns and wards "but the rule for apportionment has varied. . . ."

In 1784, the Constitution provided for election of one representative for 120 taxpayers and an additional lawmaker for each 360 taxpayers over that figure.

Under this system, the first House had 91 members.

No change was made until the 1850 ConCon. By that time the House had grown to 382 members.

An amendment proposed and ratified at that time provided that a town or ward must have 600 people for the first representative and 1,200 for each additional representative. This amendment reduced the size of the House to 300 members.

The 1889 Convention adopted an additional amendment allowing towns with less than 600 people to be represented in the General Court a proportionate part of the time.

(Please turn to page seven)

Constitutional Convention to Convene in Concord

"The fact that the states today are hosting annual meetings based on the same set of rules that our Founding Fathers followed over 200 years ago, proves that these rules are not dead, or lost, or ignored as some claim. To the contrary, they are vibrant, and healthy, and followed to this day."

Runaway Convention? Meet the ULC: An Annual Conference of States Started in 1892 That Has Never Run Away

Ken Quinn, Regional Director for Convention of States Action

For decades fearmongers and naysayers have been claiming that the 1787 Constitutional Convention was a "runaway" convention and therefore if an Article V convention for proposing amendments were held today that it would "runaway" also.

Constitutional attorney Michael Farris (Can We Trust The Constitution? Answering The Runaway Convention Myth) has conducted a thorough inspection of the commissions from the state legislatures and concluded that the delegates to the Constitutional Convention acted well within their powers. The charge that the delegates exceeded their authority was originally refuted by James Madison in Federalist 40, The Powers of the Convention to Form a Mixed Government Examined and Sustained.

Leading Article V scholar Professor Robert Natelson has discovered and researched over thirty multi-colony and multi-state conventions, proving that the process of states convening to address critical issues was a well-established practice (Founding Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments").

Moreover, the procedures at the conventions were incredibly uniform: each state is represented by "commissioners" appointed in a manner determined by the state legislature, commissioners had no authority to act outside the scope of their commission, each state had one vote regardless of its population or how many commissioners it sent. Not a single one of these thirty-plus conventions "ran away."

Still the naysayers persist and claim that times have changed and a convention could never be held in today's partisan political climate without running away and destroying our Constitution. Reality, however, paints a different picture. In fact, the States have been meeting together every single year since 1892 (except 1945) to propose laws through the Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws).

The Uniform Law Commission: Federalism in Practice

Few people are familiar with the Uniform Law Commission, but almost everyone benefits from their work—in fact, anyone who has ever purchased goods from a seller in another state has been the beneficiary of laws drafted by the ULC. The States created the ULC as a way to promote federalism and exercise their Tenth Amendment powers.

The States recognized that the Tenth Amendment gave them great power to shape the development of American society, but they also realized that with that power came certain dangers. The reservation of certain powers to the States meant that the States could enact different laws on the same subjects creating all kinds of a confusion and difficulty for people dealing with multiple states.1 Of course in some cases this can be a good thing: California and Texas are different states with different heritages and different people—they should be able to enact different laws to represent their citizens. But in others it can be positively crippling. Just ask the Founders who watched their newly founded country nearly tear itself apart due to different commercial systems and regulations in the States.

This has been the perpetual struggle of all federal systems throughout history. One solution is to centralize power in a federal government, and have it enact laws forcing the States to act together. The other is for the States to voluntarily come together and cooperate on issues of common concern, like commerce. In 1892, the States chose the second option and created the Uniform Law Commission.

Thanks in large part to the ULC, today the States have uniform laws on a number of topics, including the Uniform Commercial Code, effectively keeping the federal government at bay and preserving the fragments of federalism. If not for the foresight of the States in 1892, much of the legal framework that allows for seamless and efficient cooperation between the States in our modern commercial system would never have been developed, or, perhaps even worse, would have been created and preempted by the federal government.

This reservation of certain powers to the States, however, created the possibility that the States could and would enact diverse statues on the same subjects, "leading to confusion and difficulty in areas common to all jurisdictions."1 The first annual meeting of the ULC was held in Saratoga, New York. Twelve representatives from seven states attended: Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania (Mississippi's appointed commissioners were unable to attend).3 The States recognized that this was a historic moment. The report of the first meeting proudly stated that "It is probably not too much to say that this is the most important juristic work undertaken in the United States since the adoption of the Federal Constitution."

In the more than one hundred years that have elapsed since that time, there has been no official effort to obtain greater harmony of law among the States of the Union; and it is the first time since the debates on the constitution that accredited representatives of the several states have met together to discuss any legal question from a national point of view.4

Every year, without fail, the commissioners from the States come together at the ULC's annual meeting to draft and vote on legislation to propose to their states, functioning much like an annual Article V Convention of States, except that instead of proposing amendments, they propose legislation. Today the ULC has nearly 350 commissioners representing all 50 states as well as Washington, D.C., Puerto Rico, and the Virgin Islands.

The Uniform Law Commission Follows the Same Rules that Have Governed Multi-State Conventions Throughout American History

The ULC's process of drafting and proposing legislation is almost identical to the process for an Article V Convention of States and the process used by the Founders at their many multi-state conventions. Much like an Article V Convention of States, at the ULC:

- Each state is represented by "commissioners." The number and selection of commissioners for each state is determined by that state's legislature. 5
- Each commissioner is required to present the commission (credentials) issued to them by their state legislature before they can represent their state. 6
- The ULC's "Scope and Program Committee" reviews all proposed topics up for consideration by the ULC to ensure that they are consistent with the ULC's mission. 7
- The ULC appoints drafting committees to draft the text of each legislative proposal. 8
- Each piece of legislation that is drafted must be approved by the entire body of commissioners sitting as a committee of the whole.
- Finally, the commissioners vote on each piece of legislation by state, with each state having one vote. A majority of the States present must approve the legislation before it is formally proposed to the States.
- Even once the legislation is formally proposed to the States as a model act, the state legislatures must adopt that legislation to make it binding. Until it is adopted by the state legislatures it remains only a proposal. 9

The fact that the States today are hosting annual meetings based on the same set of rules that our Founding Fathers followed over 200 years ago, proves that these rules are not dead, or lost, or ignored as some claim. To the contrary, they are vibrant, and healthy, and followed to this day.

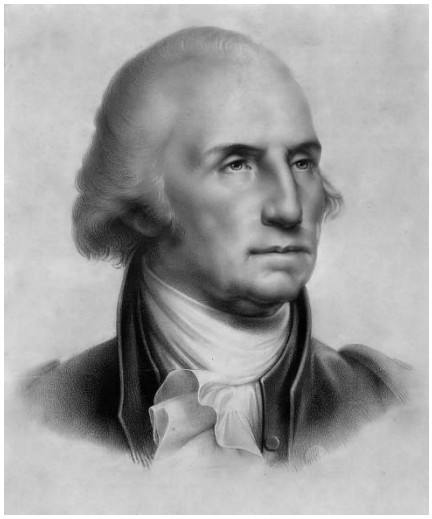
Since its beginning in 1892, the Uniform Law Commission has proposed over 300 acts to the state legislatures for adoption. Over the course of that time the commissioners have never exceeded their authority nor has there ever been a "runaway" conference that exceeded the authority or mission of the ULC.

Conclusion

The preposterous notion that the States are incapable of holding a meeting today to debate, draft, and propose amendments to the Constitution because it will "runaway" is not only historically baseless, but is completely undercut by the hard work of the ULC over the past 124 years. It is an undeniable fact that the States are fully capable today of appointing highly intelligent and qualified individuals to research, draft, and propose laws. There is no need to speculate how the States will come together to hold an Article V Convention of States; they are already in the habit of doing so. There is no need to speculate about the rules for a convention; the same rules our Founders followed centuries ago are still followed today when the States assemble to propose laws through the Uniform Law Commission.

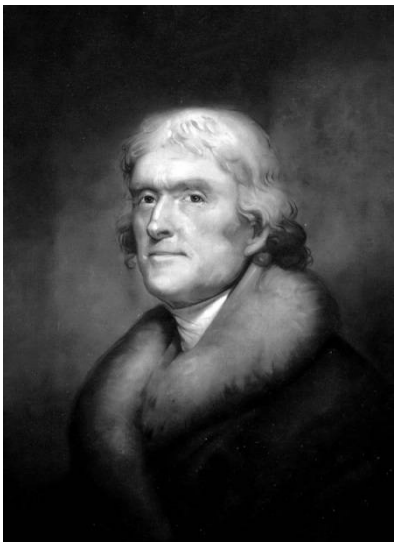
1. Walter P. Armstrong, Jr., A Century of Service: A Centennial History of the. National Conference of Commissioners on Uniform State Laws 12 (1991) at 13 (as cited in Robert A. Stein, Forming A More Perfect Union, A History of the Uniform Law Commission, at 3).
2. Robert A. Stein, A More Perfect Union, A History of the Uniform Law Commission, Forward by Sandra Day O'Connor, at x.
3. Walter P. Armstrong Jr., A Century of Service: A Centennial History of the. National Conference of Commissioners on Uniform State Laws 12 (1991) at 11 (as cited in Robert A. Stein, Forming A More Perfect Union, A History of the Uniform Law Commission, at 7).
4. Robert A. Stein, Forming a More Perfect Union: A History of the Uniform Law Commission 8 (2013) (quoting 41 Cent. L.J. 1, 165 (1895)).
5. Uniform Law Commission Constitution, Article II, Membership, Section 2.2 Commissioners. http://www.uniformlaws.org/Narrative.aspx?title=Constitution
6. Uniform Law Commission Constitution, Article II, Membership, Section 2.6 Credentials. http://www.uniformlaws.org/Narrative.aspx?title=Constitution
7. Uniform Law Commission website, ULC Drafting Process, http://www.uniformlaws.org/Narrative.aspx?title=ULC%20Drafting%20Process
8. Ibid.
9. Ibid.

In Conclusion



"The opponents I expected (for it ever has been, that the adversaries to a measure are more active than its friends,) would endeavor to stamp it with unfavorable impressions, in order to bias the judgment, that is ultimately to decide on it. This is evidently the case with the writers in opposition, whose objections are better calculated to alarm the fears, than to convince the judgment, of their readers. They build their objections upon principles, that do not exist, which the constitution does not support them in, and the existence of which has been, by an appeal to the constitution itself, flatly denied; and then, as if they were unanswerable, draw all the dreadful consequences that are necessary to alarm the apprehensions of the ignorant or unthinking."

~ George Washington to Bushrod Washington, November 10, 1787



"Men by their constitutions are naturally divided into two parties. 1. Those who fear and distrust the people, and wish to draw all powers from them into the hands of the higher classes. 2ndly those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest & safe, altho' not the most wise depository of the public interests."

~ Thomas Jefferson to Henry Lee, August 10, 1824