CHRIS KAPENGA
WISCONSIN STATE SENATOR

Testimony on Senate Joint Resolution 18

Senate Committee on Financial Services, Constitution and Federalism
Assembly Committee on Federalism and Interstate Relations
March 28, 2017

Thank you Chairmen and committee members for considering Senate Joint Resolution 18 and this issue of national concern.

As way of introduction, I am a CPA and have spent time in public accounting, the corporate finance world and as a business owner. I have extensive experience with finances, from managing billion dollar international budgets to successfully turning around 3 financially troubled businesses. These points are made to simply establish that I understand numbers and their impact on future outcomes. It is my expertise.

This expertise has led me down the road of understanding the risk our country has created with its debt and the related need to establish safety parameters around that debt to mitigate the high risk position we are in.

Our national debt now totals nearly $20 trillion, or $165,541 per taxpayer. For context, given the median American family income of $56,000, if families were required to list their share of the national debt on their personal financial statements, most would qualify for bankruptcy as there is no tangible asset behind this debt.

Unmistakable warning signs of the consequences our debt will produce are evident, yet Washington takes no action. Former President Obama's National Commission on Fiscal Responsibility and Reform made the following plea to no avail: *"The contagion of debt that began in Greece and continues to sweep through Europe shows us clearly that no economy will be immune. If the U.S. does not put its house in order, the reckoning will be sure and the devastation severe."*

The public, recognizing the dire need for action, overwhelmingly supports this step. A 2010 Florida referendum succeeded with 72% voting in favor, and their legislature subsequently passed the resolution on a bipartisan basis. A national poll in 2014 shows that this is an important issue to more than 80% of voters.

With this resolution, which will be the estimated 8th time Wisconsin has exercised this Constitutional authority, Wisconsin will join 29 other states who have already called for a convention to propose a

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balanced budget amendment to the U.S. Constitution. We will move one step closer to putting our nation's fiscal house in order and, as our Constitution states, secure the blessings of liberty to ourselves and our posterity.

Thank you again Chairmen and committee members for this hearing. At this time I am happy to answer any questions you may have.

CHRIS KAPENGA
WISCONSIN STATE SENATOR

Testimony on Senate Bill 107 & Senate Joint Resolution 19

Senate Committee on Financial Services, Constitution and Federalism
Assembly Committee on Federalism and Interstate Relations
March 28, 2017

Thank you Chairmen and committee members for considering Senate Bill 107 and Senate Joint Resolution 19 pertaining to process should an Article V convention for proposing amendments to the US Constitution be called.

Senate Bill 107

This bill ensures that if such a convention for proposing amendments were called, the legislature has prudent procedures in place to 1) determine how the delegates to such a convention are to be selected, and 2) ensure integrity and transparency in the action of those delegates.

Delegates are to be selected from the legislature in the following manner:

- Three Representatives appointed by the Speaker of the Assembly
- Three Senators appointed by the President of the Senate
- One member appointed by the Governor from the body of his/her choosing

Additionally, a delegate recall process is defined on how to recall the authority of a delegate who takes action, while at the convention, on subject matter outside of the legally authorized subject or subjects of the call.

Finally, a joint committee of correspondence is to be created by the legislature after a call by Congress for an Article V convention. This committee will be the communication channel with the delegates, as well as the control mechanism to ensure they are comfortable with the rules that are adopted by the convention body.

Senate Joint Resolution 19

The Constitution and its related notes provide the state legislatures complete authority on determining how a convention for proposing amendments under the authority of Article V would operate. It has been a point that many state legislators have discussed high-level over the decades but always concluded they would leave that up to the delegates upon convening. This changed in 2013, when for the first time in history state legislators organized to focus solely on the process and rules.

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The Assembly of State Legislatures (ASL) is a bipartisan organization made up only of currently serving state legislators and expressly prohibits participation, financially or in any other manner, from any outside group or individual. This is strictly adhered to in order to ensure political purity in its proceedings, as desired by the founders.

For more than three years, I had the privilege of serving as the co-president of this organization. We had participation from more than 140 elected state legislators from 44 states. I had the privilege of being joined by Chairman Dave Craig and Representative Kathy Bernier as delegates to the ASL meetings. Their dedication and insight were immensely valuable to producing these rules. In addition, Representative Gary Banz, a recently retired state legislator from Oklahoma, is present to testify today. His wisdom as a member of ASL's Executive Committee was invaluable to the entire body.

I and these three legislators can attest to the quality and balance of the proposed rules. The drafts were formed through committees by subject matter. Research was performed using historical documents, notes to the Constitutional Convention in Philadelphia and current legal doctrine. There was then debate and drafting within the committees, with passage of a draft product up to either the full body or committee of the whole.

Debate and amendment then took place with the final product receiving a 2/3rds majority vote. The official proceedings began at George Washington's Mount Vernon Estate, with the work then continuing in the House Chambers at the Indiana Statehouse, the Naval Heritage Center in Washington D.C., the House Chambers at the Utah Statehouse and the final adoption at the Constitution Center in Philadelphia, PA.

The final resolution of adoption was signed at Independence Hall on June 17, 2016. This set of rules and procedures ensures that any product that may come out of a convention for proposing an amendment or amendments will be legally defensible and politically balanced so as to ensure it can meet the steep 38 state threshold of ratification in Article V. It provides sound guidance on proceedings and process.

We encourage you to support Senate Joint Resolution 19, recognizing these rules as appropriate to govern the convening of an Article V convention for proposing amendments.

Thank you again Chairmen and committee members for this hearing. At this time I am happy to answer any questions you may have regarding either of these proposals.

ASSEMBLY DISTRICT
TWENTY • FOUR

DAN KNODL

STATE REPRESENTATIVE • 24TH ASSEMBLY DISTRICT

Assembly Joint Resolution 21

Public Testimony
Assembly Committee on Federalism and Interstate Relations
March 28, 2017

Thank you Chairmen Craig, Vorpagel and members of the committees for holding this hearing on Assembly Joint Resolution 21.

It is no secret that our national debt has been rapidly climbing and one look at the debt clock shows we will soon hit $20 trillion. We would never run our personal finances in the manner that the federal government has, but we have an opportunity to begin righting the ship with passage of AJR 21 and its companion legislation.

Wisconsin could be the 30th state to pass a proposal calling for a convention to propose a balanced budget amendment to the U.S. Constitution. Our founding fathers laid out Article V in our constitution to allow an avenue for the states to propose amendments to the constitution.

This process is true federalism in action and helps to balance the power between the states and the federal government. Some critics are concerned about a runaway convention, but there are also checks on the actions of a convention. No amendment can be adopted without ratification by 38 states. Accompanying legislation to this resolutions (AB 165) serves to specify how our Wisconsin delegates to a convention would be chosen and would also place controls on their actions while serving.

It is important that we address this growing problem before it boils over and becomes more than we can handle. Our debt is often held by other nations who may not always remain friendly to our values and ideals. This is not a burden that we should pass on to our children either.

A majority of states must balance their budgets and it is only reasonable that we ask the same of our federal government. If we cannot find a way to live within our means then the federal government should take a reflective look inward and reassess federal programs and spending. Since they seem unable or unwilling to do just that, the states are forced to use the only tool available.

I believe it is our duty to give this proposal careful consideration so that we may have the opportunity to rein in the runaway spending we have seen at the federal level.

Thank you again for holding this hearing and I will entertain any questions at this time.

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STATE REPRESENTATIVE
KATHY BERNIER

March 28, 2017

Joint Public Hearing
-Senate Committee on Financial Services, Constitution and Federalism
-Assembly Committee on Federalism and Interstate Relations

Good morning Chairman Craig, Chairman Vorpagel and committee members. Thank you for scheduling AB 165 and AJR 20 relating to the establishment of rules in scheduling an Article V convention for proposing amendments to the U.S. Constitution and for the appointment of delegates to such a convention.

First, I want to commend Senator Craig and Senator Kapenga, who served as co-president of ASL, for your resolve and for your efforts in bringing these proposals forward in a timely manner. This package before you today is the product of four years' work with nearly 150 legislators from 44 states.

Assembly Bill 165
Under rules of Article V of the U.S. Constitution, when two-thirds of the states have applied, Congress is directed to call a convention to propose amending the U.S. Constitution. AB 165 lays out how, when Congress calls a convention of states for this purpose, delegates are selected and appointed.

Provisions under AB 165

- Legislature/Governor appoint delegates
  - 7 delegates
    - 3 appointed by the Assembly Speaker from the Assembly.
    - 3 appointed by the President of the Senate from the Senate.
    - 1 appointed by the Governor from either the Assembly or Senate.
  - 5 alternate delegates
    - 2 alternates appointed by the Assembly Speaker from the Assembly.
    - 2 alternates appointed by the President of the Senate from the Senate.
    - 1 alternate appointed by the Governor from either the Assembly or Senate.
- Secretary of State shall certify, in writing, to the convention the appointment of delegates, dismissal of delegates, and any vacancies, within 24 hours.
- Any delegates acting outside the scope of the convention's purpose (such as considering or voting on an unauthorized amendment) may be immediately dismissed and replaced.
- A Joint Committee of Correspondence will be established to be responsible for communication with delegates to the convention.

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- The committee is responsible to approve/disapprove any modification to rules governing the convention.
- If no decision is rendered by the committee after six hours, delegates are to presume committee approval.

Assembly Joint Resolution 20

In acknowledging that Article V of the U.S. Constitution, for proposing amendments to the Constitution, has never been invoked and that rules for such a convention are left to the states to determine. AJR 20, recognizing the work done by The Assembly of State Legislature (ASL) over a four-year period and in bi-partisan fashion, requires Wisconsin delegates to adhere to rules and procedures established by ASL at their June 2016 meeting.

Provisions under AJR 20

- Simply put, should a convention of states be called for purposes of proposing amendments under Article V to the U.S. Constitution, Wisconsin delegates will follow the rules set forth by The Assembly of State Legislatures.

Again, thank you Mr. Chairman and committee for the opportunity to speak in favor of AB 165 and AJR 20. We have special guest experts and many people here to testify so I will conclude my testimony and I am happy to answer any questions.

wisconsin DEMOCRACY campaign

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Testimony of Matt Rothschild, Executive Director
Wisconsin Democracy Campaign

Joint Public Hearing:
Senate Committee on Financial Services, Constitution, and Federalism
Assembly Committee on Federalism and Interstate Relations

March 28, 2017

Chairmen Craig and Chairmen Vorpagel and distinguished members of the committees, I appreciate the opportunity to testify on the bills concerning an Article V Constitutional Convention.

My name is Matt Rothschild, and I'm the executive director of the Wisconsin Democracy Campaign, a nonprofit, nonpartisan watchdog group that tracks money in politics and advocates for clean and transparent government, where everyone has an equal voice and an equal say.

We strongly oppose these bills for the following three reasons:

#1. A balanced budget amendment would lead to economic catastrophe.

By requiring a balanced budget, the amendment that is being proposed would tie the hands of the federal government in times of an economic downturn. This is economic foolishness. The only reliable medicine for bringing large economies like ours out of a recession is deficit spending. Had this balanced budget amendment been in place in 1933, we may never have gotten out of the Great Depression. Had it been in place in 2009, we may never have gotten out of the Great Recession, which would have turned into another Great Depression. If this amendment actually were to pass, millions and millions of Americans would needlessly face unemployment and immense hardship the next time the economy took a turn for the worse, and their suffering would be on your hands and your conscience.

#2. An Article V Constitutional Convention imperils our fundamental rights.

I know you're trying to limit the scope of the Constitutional Convention to just this one balanced budget amendment, but it may not be that easy. The last time we had a

Constitutional Convention in 1787-1789, delegates ended up rewriting our governing document top to bottom. This could result in the erasure of some of our most cherished and fundamental rights, which are enshrined in the Constitution. That's why, for instance, the National Association of Gun Rights and the Gun Owners of America oppose an Article V Constitutional Convention. And that's why the late conservative Justice Antonin Scalia opposed it, too, saying in 2014: "I certainly would not want a Constitutional Convention. Whoa! Who knows what would come out of it? … A Constitutional Convention is a horrible idea."

#3. The way you are proposing to choose delegates to such a Convention is highly partisan and unrepresentative.

Under AB165/SB107, Wisconsin would get seven delegates to such a convention, and here's how they'd be chosen:

"The speaker of the assembly shall appoint 3 members of the assembly." The speaker, as you know, is Republican Robin Vos.

"The president of the senate shall appoint 3 members of the senate." As you know, that is Republican Senator Roger Roth.

"The governor shall appoint 1 member of either the assembly or the senate." Of course, that's Republican Governor Scott Walker.

So, if my math's correct, Republican leaders would get to choose all seven of Wisconsin's delegates!

This is a naked and shameful way to stack the deck in a partisan fashion. It is grossly unrepresentative, since Wisconsin is a state that splits narrowly between Democrats and Republicans, so you would be leaving essentially half of the citizens of Wisconsin totally unrepresented at a Constitutional Convention!

And this proposed method breaks with the tradition of bipartisanship of this body when choosing members to important boards and commissions. For instance, for the Elections Commission and Ethics Commissions, the minority leaders of both parties get to choose the same number of members as the majority leaders. Why be fair about the method of choosing members for these bipartisan commissions, and then be so unfair about the method of choosing delegates at a Constitutional Convention?

For these reasons, we oppose these proposals.

Thank you for considering our views on this crucial matter.

Rosalie Greenley
Appleton, WI

Testimony Against SJR 18 & AJR 21 (Application to Congress to call an Article V convention for proposing a Balanced Budget Amendment)

The Joint Meeting of the Senate Committee on Financial Services, Constitution and Federalism and the Assembly Committee on Federalism and Interstate Relations

10 AM, March 28, 2017 (Room 411 South)

My name is Rosalie Greenley and I live in Appleton.

I am testifying here in opposition to SJR 18 and AJR 21, which are applications "to Congress under the provisions of Article V of the Constitution of the United States for a convention for proposing amendments relating to a balanced budget."

I'd like to clarify the terminology regarding Article V conventions.

The movement to bring about an Article V convention for proposing a Balanced Budget Amendment (BBA) traces back to the 1950s. By the 1970s many states began applying to Congress for such a convention. By 1982, 32 of the necessary 34 states had applied.

Then, no more states applied for a BBA Article V convention for a few years. Next, during the years 1988-2010, seventeen states rescinded their applications for a BBA Article V convention, which set the movement back considerably.

What happened? For one thing, during the years 1950-2010, Article V conventions were very commonly referred to as constitutional conventions, especially by opponents of BBA constitutional conventions.

Next, beginning about 2010, the proponents of Article V conventions apparently decided that their lack of success stemmed from the widespread use of the term "constitutional convention" to refer to Article V conventions. And, it's true that a constitutional convention just sounds more likely to become a runaway convention than an Article V convention.

Since then, proponents have been so successful in differentiating the term "Article V convention" from the term "constitutional convention" that they succeeded in fooling many people into believing that an Article V convention referred to something completely different from a constitutional convention.

However, the 5th edition (1979) of *Black's Law Dictionary*, the most widely used law dictionary, proves that an Article V convention can be properly referred to as a constitutional convention. This dictionary defines "constitutional convention" as "A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Art. V of U.S. Constitution provides that a Constitutional Convention may be called on application of the Legislatures of two-thirds of the states."

Knowing this, you'll be able to understand that when people use the term "constitutional convention" today they are usually referring to an Article V convention.

And, you'll be able to understand what the late Supreme Court Justice Antonin Scalia meant when he said in 2014, "I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?"

Scalia was warning us about the dangers of calling an Article V convention.

Larry Greenley
Director of Missions, The John Birch Society, Appleton, WI

Testimony Against SJR 18 & AJR 21 (Application to Congress to call an Article V convention for proposing a Balanced Budget Amendment)

The Joint Meeting of the Senate Committee on Financial Services, Constitution and Federalism and the Assembly Committee on Federalism and Interstate Relations

10 AM, March 28, 2017 (Room 411 South)

My name is Larry Greenley and I am Director of Missions at The John Birch Society in Appleton.

I am testifying here in opposition to SJR 18 and AJR 21, which are applications "to Congress under the provisions of Article V of the Constitution of the United States for a convention for proposing amendments relating to a balanced budget."

I believe that we should oppose any such Article V conventions on the basis that having such a convention would put our basic, God-given rights at risk.

Here's how I come to this conclusion. Consider the philosophical basis of the Constitution, the Declaration of Independence. In the preamble, it asserts that we are endowed by our Creator with certain inalienable rights. Next the Declaration asserts "That to secure these rights, Governments are instituted among Men...."

Since our government is based on the Constitution, the Constitution necessarily plays a vital role in securing our rights. We can see this by how the Founding Fathers felt the need to add the Bill of Rights to the Constitution as the first ten amendments.

The reason why we say that an Article V convention would put our rights at risk is that we also hold that an Article V convention has the inherent power to become a runaway convention that could extensively rewrite the Constitution, including canceling or revising the Constitution's provisions of security for our God-given rights. Such a convention even has the inherent power to change the ratification procedure for its revised version of the Constitution. Why do I say these things?

We have the very powerful precedent of the Constitutional Convention of 1787. It was held to fix the problems stemming from the constitution in effect at that time, the Articles of Confederation. Article XIII of the Articles required unanimous consent from the Confederation Congress and all 13 state legislatures before any change to the Articles would be ratified.

In their resolutions to send delegates to the 1787 convention, virtually all of the state legislatures specifically stated that any changes to the Articles of Confederation would have to be approved by Congress and all 13 state legislatures. So, it appeared that the state legislatures were in complete control of the convention process; however, when the convention released their work product, it didn't say, "We the delegates of the 13 states submit this draft of a revised Articles of Confederation." Instead it said, "**We the People** of the United States ... do ordain and establish this Constitution for the United States of America.

The new Constitution was a complete rewrite of the Articles of Confederation and it included a brand-new ratification process for the new Constitution. Where the Articles required the unanimous consent of Congress and all 13 state legislatures, the new Constitution required the consent of only 9 states, and furthermore ratification was determined by special conventions of the people in each state, not by the state legislatures. So much for the reassurances of Article V convention advocates that the present ratification procedure requiring three-fourths of the states is a kind of fail-safe provision. A runaway Article V convention could replace the three-fourths of the states ratification requirement with a simple majority of the states, or even a simple majority of the voters.

This is what we mean by a runaway constitutional convention. It's a convention that exceeds the expectations and directions of its organizers and proceeds to largely or completely rewrite the Constitution.

Here's another quote from the Declaration:

> That whenever any Form of Government becomes destructive of these ends [of securing our rights], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

We'll make use of this quote in the paragraphs immediately below.

James Madison, the father of the Constitution, took very seriously the charges that the delegates to the 1787 convention exceeded their authority. In the Federalist No. 40 (published January 18, 1788), Madison took up the question: "whether the convention were authorized to frame and propose this mixed Constitution."

After much sophisticated argumentation he concluded: "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."

Here is Madison's justification for why the Convention of 1787 changed the ratification procedure in the new Constitution:

> [The Convention] 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...."

Here he is using the "right of the people to alter or abolish their form of government" that had earlier appeared in the Declaration to justify the Convention's changing of the Articles' ratification procedure.

Madison then concludes Federalist No. 40 with a vigorous justification for runaway constitutional conventions. Even though in this article designed to persuade the people of New York to ratify the Constitution, he claims "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," he goes on to assert that if the delegates to the 1787 Convention "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."

The John Birch Society applauds what the Founders did in their creation of the Constitution. We accept Madison's use of the principle of the right of the people to alter or abolish their form of government to justify creating the new Constitution with its new ratification procedure.

However, our position is that any new constitutional convention, such as an Article V convention called for any purpose, would have the same inherent power to be a runaway convention as the Convention of 1787, therefore it would be unwise to convene an Article V convention in our era of such widespread lack of knowledge regarding the Constitution among voters and such widespread lack of adherence to the Constitution by the federal government. Such widespread disregard for the Constitution would enable powerful special interests to use an Article V convention to change the Constitution in their favor. This in turn would destroy the Constitution as a rallying point for Americans to work to restore their rights in the future.

With regard to the specific resolutions, SJR 18 and AJR 21, that apply to Congress to call an Article V convention for the purpose of proposing a Balanced Budget Amendment, we point out that the federal government is increasingly out-of-control and increasingly deeper in debt because the voters are not holding them accountable to the Constitution.

The solution to our out-of-control and debt-ridden government is not to hold Article V conventions to change the Constitution. Why would a government that has been for the last century increasingly usurping powers not granted to it in Article I, Section 8 of the Constitution, obey a Balanced Budget Amendment? Instead, the solution is for Constitution-based private organizations, such as The John Birch Society, Hillsdale College, etc., etc., to create an informed electorate that would nominate and elect enough constitutionalists to Congress and state legislatures to bring the federal government back into compliance with the Constitution and to bring about balanced federal budgets as well.

Yes, this solution is very hard to bring about. But remember what Thomas Jefferson wrote: "If a nation expects to be ignorant & free, in a state of civilisation, it expects what never was & never will be."

Madison's Warning

Remember how we discussed a few minutes ago how James Madison spoke so eloquently in the Federalist No. 40 about the necessity for constitutional convention delegates to exceed their powers in order to "accomplish the views and happiness of the people of America." He was saying this in a newspaper article, published on January 18, 1788, designed to sell New Yorkers on ratifying the new Constitution.

By June 21, 1788, nine states had ratified the new Constitution.

On September 13, 1788, the Confederation Congress certified the new Constitution had been ratified and set the dates for the first presidential election (December 15, 1788 to January 10, 1789) and the first meeting of the federal government in early 1789.

On November 2, 1788, James Madison, who was aware that New York was preparing to apply to the Congress of the new government under the new Constitution to call an Article V convention for proposing amendments, wrote a private letter to George Turberville in New York.

Madison quickly got to the subject: "You wish to know my sentiments on the project of another general Convention as suggested by New York. I shall give them to you with great frankness...."

Then he revealed that he was talking about an Article V convention under the new Constitution when he wrote: "A convention cannot be called without the unanimous consent of the parties who are to be bound by it, if first principles are to be recurred to; or without the previous application of ⅔ of the State legislatures, if the forms of the [new] Constitution are to be pursued."

Because Madison's warnings later in this letter are so damaging to the cause of the advocates of Article V conventions, many of these advocates have tried to dismiss

the letter by saying that Madison couldn't have been talking about an Article V convention because the new government hadn't started meeting yet. However, Virginia approved its Article V convention application to the new as-of-yet-unelected Congress on November 14, 1788, just a couple weeks after Madison's letter to Turberville. New York was already working on its application well before the Turberville letter and eventually approved it on February 5, 1789.

So, let's get back to Madison's colorful warning.

> If a General Convention [called by either unanimous consent of the states or by two-thirds of the states as required by Article V of the new Constitution] were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partizans on both sides; it wd. probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumeable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America....

In this letter to Turberville of November 2, 1788, Madison gives many excellent reasons that still apply today for opposing any application for an Article V convention.

NFIB
The Voice of Small Business®

Wisconsin

Statement Before the
Senate Committee on Financial Services, Constitution and Federalism
And
Assembly Committee on Federalism and Interstate Relations

By

Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin Chapter

Tuesday, March 28, 2017

Senate Joint Resolution 18
Assembly Joint Resolution 21

Mr. Chairmen, and members of the Committees, thank you for the opportunity to appear today and to share with you NFIB's support for adoption of Senate Joint Resolution 18 and Assembly Joint Resolution 21.

The NFIB, for over 70 years, has been the voice of small business, working hard in all 50 states, and in Washington, D.C., to protect and to promote the right of our members to own, operate, and grow their business. We have over 11,000 member firms in Wisconsin, and over 325,000 members nationwide.

Historically, the small business community has always strongly supported a balanced federal budget. In fact, we can look back to the 1984 National Small Business Issues Conference and the 1986 White House Conference on Small Business when among the top conference recommendations was passage of a balanced budget amendment to the Constitution.

Yet here we are in 2017 with a national debt of roughly $20 trillion with annual deficits in the hundreds of billions of dollars projected far into the future, and China now holds more than $1.3 trillion of the U.S. Debt.

Current fiscal policies are putting our children's futures at risk, and putting all Americans at the mercy of lenders who don't always act in America's best interest.

The federal debt now equals 75% of the U.S. economic output (Gross Domestic Product), and the Congressional Budget Office expects continued growth in the debt as federal health and social security expenditures climb. When President Obama took office in 2009, the national debt was $10.6 billion, on January 20th, 2017 the debt had grown to nearly $20 trillion.

Short term solutions that may avoid government shut downs, but raise the national debt are not sound economic policies, they do not address the national deficit, and they do not provide an environment for confidence and the certainty that is urgently needed for growing our economy and creating opportunity for our citizens.

There are those concerned about the impact a balanced budget requirement might have on our social programs, and on the ability of government to provide a safety net for our most vulnerable citizens. But I remind members of the Committee that any social safety net is ultimately possible only through responsible budgeting that provides the necessary funding to maintain that safety net. The inability to budget properly and responsibly is as much a danger to the long-term viability of these programs as it is to anything else.

It is time for the states and their citizens to use the powers provided by the founding fathers. Good intentions will not balance the nation's checkbook.

Small business owners are frustrated with the failure of the federal government to address basic budgeting principles that every citizen and small business owner must adhere to every day.

Small business owners have long supported a balanced federal budget. A recent NFIB member survey of Wisconsin small business owners indicate 70 percent of the respondents back a balanced budget amendment to the United States Constitution.

In the past, we have carried the balanced budget message directly to the Congress.

Today we are stepping up our support for a balanced budget, driven by the urgency to act due to the dramatic growth in the federal deficit, the inability of the Congress to find some resolution, the erosion of confidence in and respect for America and its economy, and the threat of economic uncertainty that clouds the future of our lives and the lives of our children, by endorsing Senate Joint Resolution 18 and Assembly Joint Resolution 21, and asking members of these Committees and the Legislature to support adoption of these important resolutions.

Mr. Chairmen, members of the Committees, I respectfully **urge your support for adoption of Senate Joint Resolution 18 and Assembly Joint Resolution 21.**

Thank you.

Committee on Financial Services, Constitution and Federalism

Joint Hearing on SJR18

March 28, 2017

Testimony: David Lewis, Appleton

The drafting of the Constitution of the US in 1787 was a stunning achievement and has been greatly admired by the world. How was their achievement possible? Only by the exceptional morality, character and education of the delegates. The quality of the delegates makes all the difference. In 1787 many states insisted that only if George Washington presided over the Constitutional Convention would they send delegates.

The authors of this resolution seem to overlook the fact that the quality of the results of a modern Constitutional Convention will only be as good as the character and ability of the delegates present.

Where today could the states find statesmen of the caliber of George Washington, James Madison, Benjamin Franklin, Edmund Randolph, George Mason, or James Wilson? Who would be asked to preside over the Convention? This committee needs some solid answers to these questions before proceeding.

The delegates once convened in a Constitutional Convention represent the sovereign voice of the people to discuss the supreme law of the land. It is superior to the Congress, President and Supreme Court because they are the creations of a Convention. There is no greater power than the power inherent in a Constitutional Convention.

The attempt of SB 107 to legally limit Wisconsin's delegates to a single purpose in convention is problematic because it attempts to limit a higher authority. Also, as part of Congress calling the Convention, Congress has determined that the delegates shall be given certain immunities to protect delegates from outside interference, according to Congressional Research Service publication R42589.

Sen. Kapenga and the proponents of a BBA Convention explain that the Congressional Convention will be driven by the states. Does this mean that members of Congress could not serve as delegates to the Convention? It would seem so.

This same Congressional Research Service publication R42589 (pg. 40) explains that there is considerable opinion "that Members of Congress could make a substantial addition to a convention: 'in light of the delegates' function and possible impact on the constitutional scheme, it seems desirable that interested members of Congress be allowed to participate.'" Proponents cite as precedent the fact that several incumbent Delegates to Congress under the Articles of Confederation served with distinction as delegates to the Philadelphia Convention of 1787.

This publication of Congress indicates that the members of Congress with whom the States are at issue, may well end up working along state delegates in a Constitutional Convention.

Today our country does not have the caliber of statesmen of 1787. Perhaps at some future date America will. Until that time, let us be good stewards of the Constitution. Let us be prudent and not pass any resolutions for a Constitutional Convention.

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Testimony of Christian Gomez,
Research Associate for The John Birch Society and
Contributor for *The New American* magazine,
IN OPPOSITION OF SJR 18/ AJR 21, AN APPLICATION TO CONGRESS UNDER THE PROVISIONS OF ARTICLE V OF THE CONSTITUTION OF THE UNITED STATES FOR A CONVENTION FOR PROPOSING AMENDMENTS RELATING TO A BALANCED BUDGET.

Please reject Senate Joint Resolution 18/ Assembly Joint Resolution 21. If passed, SJR 18 and its Assembly companion AJR 21 would constitute a "continuing application for a convention for proposing amendments in accordance with Article V of the Constitution of the United States..." The primary purpose of this application resolution is for proposing a Balanced Budget Amendment (BBA) to the Constitution of the United States. Although this resolution does not provide the text for the proposed BBA, seeing as it would be written, proposed, and debated by the delegates to the convention, under Article V, we do have an idea of what or how an actual BBA might read based on the various iterations that have been proposed by members of Congress, state legislators, and various advocacy organizations over the past several decades.

For reasons, which I shall promptly address in the remaining time allotted, I call this amendment proposal the *Un*balanced Budget Amendment (or UBA). Of the various proposed BBAs in Congress over the past few years, virtually all of them allow for deficit spending based upon an agreement of a 60% or 67% approval of both legislative chambers, the House and Senate. For example, Section 3 of both SJR 7, sponsored by Senator Mike Lee of Utah, and HJR 29, sponsored by Congressman Barry Loudermilk of Georgia, provides for suspending the balanced budget requirements for that fiscal year by an easily attainable role call vote of two-thirds of both houses of Congress. That means that 290 votes in the House and 67 in the Senate would be able to wave the requirement to balance the budget and each of those 290 Representatives and 67 Senators would be able to return to their congressional districts and tell their constituents that they have obeyed their oath of office of upholding the Constitution, with respect to the likely wording we would expect from a BBA.

However, in the event that Congress fell short of the required 290 votes in the House or 67 in the Senate, virtually every proposed BBA includes an even larger loophole that would make it easier for Congress to not have to balance the budget. That loophole reads "requiring that in the *absence of a national emergency* the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year." Did you catch that? "...in the absence of a national emergency..." In other words, all it would take to constitutionally not the balance the budget is a national emergency.

Suppose the BBA was already ratified and part of the Constitution, the budget still might not be balanced. Why? Because the United States is currently under 32 separate state of emergencies, the oldest of which remains the national emergency with respect to Iran that was first issued through Executive Order 12170 by then-President Jimmy Carter on November 14, 1979 during the Iran hostage crisis. Most recently, President Obama extended the 37-year old EO, which gives the president extraordinary powers to seize property, summon the National Guard, and hire and fire military officers at will.

In fact, according to an article[1] from *USA Today*, "In his term in office, Obama has declared 13 new emergencies, continued 21 declared by his predecessors and revoked just two, which imposed sanctions on Liberia and Russia." Of the aforementioned 32 national emergencies, most of these are used to impose economic sanctions as required under the International Emergency Economic Powers Act.

If a national emergency is required to not balance the budget under a BBA then would not Congress likely follow suit in order to avoid the hard task of balancing the budget? If one doubts Congress would do this, consider the following for a moment. According to that same article published by *USA Today* it states: "Congress is also required to meet every six months to consider whether to revoke each state of emergency. In 40 years of the National Emergencies Act, Congress has never done so — and only seriously threatened it once."

In fact, since the National Emergencies Act was passed by Congress and signed by then-President Gerald Ford in 1976, a total of 52 state of emergencies have been declared. Fifty-two national emergencies in just the past 41 years, 32 of which are still in place.

While some may argue that such escape or emergency stipulations are necessary for any unforeseen problems that may arise or as a means of garnering the most or widest amount of broad support across both party and ideological lines, such stipulations would very much also have the adverse effect of making it constitutional to do the very opposite of what the amendment is intended to do, and is this not the problem we already face with our Constitution and its various amendments? If Congress does not already abide by the present Constitution and amendments why would or should we expect them to start doing so with the addition of a new amendment like the balanced budget amendment?

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[1] Korte, Gregory. "Obama extends post-9/11 state of national emergency for 16th year." *USA Today*. September 9, 2016. URL<http://www.usatoday.com/story/news/politics/2016/09/09/obama-extends-post-911-state-national-emergency-16th-year/90004960/>. Last accessed March 28, 2017.

Under Senator Lee and Congressman Loudermilk's BBA proposal, and other such proposals, it would be *constitutional* to not balance the budget if certain conditions are met, conditions which could easily be satisfied in order to not only ensure the continuity of big government but even to justify it as being in accordance with the Constitution. In other words, the BBA makes an unbalanced budget constitutional.

We know that an Article V convention would not be made up of solely fiscal conservative delegates. There may be some, but there would also many delegates from progressive states or even conservative-leaning states that would be progressives, liberals, and moderates. In order to widen support for a BBA from such groups, the BBA would likely be watered down with even further loopholes such as the following amendments that Democratic lawmakers have proposed in Congress to proposed BBAs in the past.

The following is a sampling of such proposals offered on the floors of both the House or Senate during the 1995–1997 considerations for a BBA, this information comes from a report[2] written by Istook Ernest a Distinguished Fellow at the Heritage Foundation:

- Representative Robert Wise (D–WV) offered a multifaceted substitute that would have provided for separate federal capital and operating budgets; would have required that only the operating budget be balanced; would have exempted Social Security from balanced budget calculations; and would have permitted Congress to waive the balanced budget provisions in times of war, military conflict, or recession.
- Senator Richard Durbin (D–IL) tried to insert the following language into the BBA: "The provisions of this article may be waived for any fiscal year in which there is an economic recession or serious economic emergency in the United States as declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law."
- Senator Barbara Boxer (D–CA) proposed, "The provisions of this article may be waived for any fiscal year in which there is a declaration made by the President (and a designation by the Congress) that a major disaster or emergency exists, adopted by a majority vote in each House of those present and voting."
- Representative Major Owens (D–NY) wanted "to allow a majority of Congress to waive the balanced budget provisions contained in the joint resolution in any fiscal year that the national unemployment rate exceeds 4 percent."
- Representative John Conyers (D–MI) wanted to require a detailed plan of spending cuts before balance could be required, proposing "to exempt

[2] Istook, Ernest. "Considering a Balanced Budget Amendment: Lessons from History." Heritage Foundation. July 14, 2011. URL < http://www.heritage.org/budget-and-spending/report/considering-balanced-budget-amendment-lessons-history>. Last accessed on March 28, 2017.

Social Security from balanced budget calculations; and provide that before the constitutional amendment could take effect, Congress would be required to pass legislation showing what the budget will be for the fiscal years 1996 through 2002, containing aggregate levels of new budget authority, outlays, reserves, and the deficit and surplus, as well as new budget authority and outlays on an account-by-account basis."

- Representative David Bonior (D–MI) tried not only to exempt Social Security from the calculations, but also to require only a simple constitutional majority vote (218 in the House, 51 in the Senate) to allow deficit spending.

With amendments such as these, exempting Social Security or not having to balance the budget during a time of military conflict or economic recession, the budget will never truly be balanced and it would be constitutional.

No actual BBA with a realistic chance of working should include escape or emergency clauses but no proposed BBA with any real desire of attaining the most or widest appeal would come without it, so I urge this committee to oppose this measure that potentially jeopardizes the whole Constitution, opening it to a possible total rewrite, for the mere sake of proposing one amendment that will more than likely be diluted, not work after its ratified, and even make it constitutional to not balance the budget. For these reasons is why I both call it the Unbalanced Budget Amendment and respectfully urge this committee to reject SJR 18/ AJR 21. BBA = UBA. Don't risk the Constitution through an unprecedented and unpredictable convention to propose an Unbalanced Budget Amendment. Please vote against SJR 18/ AJR 21.

Testimony before the Wisconsin Joint Federalism Committee on the Article V Balanced Budget Amendment Resolution – SJR18 & HJR21

Tuesday, March 28, 2017

Thomas Llewellyn – BBA Task Force Volunteer
1651 Memory Lane, Milford, MI 48381

Thank you for taking the time to advance the discussion on the Joint Wisconsin Resolutions calling for a Federal Balanced Budget Amendment.

I have **20 Trillion Reasons** to have WISCONSIN join the majority of other responsible states calling for a Federal Balanced Budget Amendment, *but in the interest of brevity*, I will limit my arguments to the most compelling reasons. Whether you are a Democrat or Republican, there is a clear case that supporting a state-driven BBA is in the right thing to do for everyone involved: our nation, the state of WISCONSIN and your constituents.

Others have already discounted the falsehoods surrounding the risks of pursuing an Article V AMENDMENT CONVENTION. I will not give credence to those fearmongering claims of a possible run-away convention. Six procedural barriers is good enough for the majority of state legislatures to support the BBA, after having reviewed the facts.

Suffice it to say, without the states succeeding in the call for the BBA, a far greater risk will continue to threaten our beloved nation. It is in the inaction of Congress to stop the decades of reckless spending BY BOTH PARTIES THAT IS THE TRUE THREAT to America's future.

Let me quickly list the top reasons (whether you are a Republican or a Democrat) for you to pass the Balanced Budget Amendment Resolution, before you today:

- **A Super-Majority of YOUR CONSTITUENTS want this done, NOW**. The facts are in, there is a BI-PARTISAN desire for a Balanced Budget Amendment. Over 75% of voters surveyed in every district in Wisconsin see the need to force Congress to LIVE WITHIN ITS' MEANS. This is consistent with dozens of automated surveys involving tens-of-thousands of random citizens throughout the country. These ordinary folks tell us, "It is just a No-Brainer. Get it done."
- **Both Parties will be "at the table" and involved in the solution**. For the BBA to succeed, both parties will need to participate in its' creation. There are enough Democrat majority state legislatures to stop ratification, thus any proposed BBA will need to include Democrat priorities and be something that we can all live with.
- **The BEST WAY TO SAVE funding for military, gov't. pensions, roads and safety-net programs is to pass the BBA.** Party leaders and others have genned-up many false concerns about the state pursuit of a federal Balanced Budget Amendment. The

BBA is not a conspiracy to attack government mandates or other important programs. In fact, the best way to save these activities is to get the federal budget back under control. Wisconsin's economic dependence on federal spending for roads and numerous social safety-net programs, could be in jeopardy if the federal budget is not brought under control soon.

- **STOP WASTING TAX DOLLARS IN INTEREST PAYMENTS. - Servicing the debt will soon exceed all discretionary funds**. Interest payment obligations will ultimately surpass ONE TRILLION Dollars a year, causing ever more borrowing, inevitably accelerating out-of-control. The only way to save federal programs that we care so much about, is to force Congress to act more responsibly NOW before it is too late.
- **After 40 years the BBA Resolution is more relevant than ever**. This month we will race past the $20Trillion dollar milestone in our nation's massive and unsustainable debt. We cannot let this reckless spending go on any further without severe harm.
- **Safer and Easier to FIX the Budget Now.** The states can ensure a gradual correction that we can all live with. I have been told by budgetary analysts, that (if we act soon) only a 1% yearly change in Congressional spending (over a decade) would be enough to get America back on a solid financial footing.
- **Being Good Stewards of the Public Trust is Not a Partisan Issue**. By "cutting-up the credit cards" of Congress, better spending choices will help ensure that resources will be available in the future for those who need them the most.

Washington has let this get way out of control, recklessly over-spending Trillions of dollars, even in relative peacetime. Before the next fiscal crisis hits (one we might not be able to recover from) the dangerous excess spending of Congress can & must be stopped.

> ***By compelling Washington to live within its means NOW, we can help free our kids and grand-kids of this dangerous threat and relieve such a horrendous burden on their future.***

The states did not create this financial mess, but state legislators like each of you here today, now have the power to permanently fix this. By having the states propose and ultimately ratify a Federal Balanced Budget Amendment **NOW Rather Than Later**, we can be assured that a BBA will not be draconian, but ONE THAT WE CAN ALL LIVE WITH.

*Many legislators in other states have personally told me that supporting the BBA was **the most important and meaningful vote in their extensive public careers.** By voting to have WISCONSIN join the majority of other states in support of the BBA, you will most assuredly improve the lives of **WISCONSIN constituents** for years to come.*

The U.S. Constitution is calls for state legislators to act by pursuing a new amendment when the central government is unresponsive to the on-going concerns of an overwhelming majority of citizens. We ask for you to please step-up and take that action today. Pass the BBA Resolution and save our country from Congress' dangerous and unsustainable deficit spending.

Article V Convention

Twenty False Claims Regarding a Balanced Budget Amendment Convention

Prepared by

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Special Counsel to the
Balanced Budget Amendment Task Force

Introduction

As the Balanced Budget Amendment Task Force (BBATF) has promoted its Article V BBA application throughout the states, we have repeatedly run into the same worn out arguments in opposition that have simply no merit in fact or law. We recognize that state legislators, with all the important issues facing them, don't always have the time or resources to become Article V experts. This booklet is intended to provide you in succinct fashion the information you need to successfully debate and rebut the meritless opposing arguments.

When arguing in support of an Article V BBA resolution, feel free to direct your naysayer opponents to this booklet for "a fuller and more complete response" to the question posed. If you are a skeptic, feel free to review these materials and their source data. We have yet to find any scholarly material which can successfully rebut the facts and law set forth herein.

The BBATF is only six states short of meeting the threshold requirement for calling the first Article V convention of states in this country's history. It will be truly historic. As is pointed out herein, it will by no means be the first convention of states ever held, only the first called pursuant to and under the auspices of Article V. We have abundant historical precedent from which to draw in determining in detail what the scope and parameters are of a convention of states called pursuant to Article V. There are numerous court decisions expounding on Article V. In those cases, the courts looked to the numerous conventions of states held during the founding era to provide guidance on the meaning of Article V.

Thus, when the naysayers claim that we are opening up a Pandora's Box by calling an Article V convention, they simply don't know what they are talking about. The First Amendment's sacrosanct protection of freedom of speech is but 10 words, but no one could ever claim that we don't understand its scope and parameters. We have fleshed those out over the years in court decisions and historical practice. The same can equally be said of Article V and its procedure for a convention of states.

The time to proceed is now. **"We are standing inside a house that is burning down around us, and we are afraid to go outside for fear that we might get hit by a meteor."** May this booklet give you the information you need to stop our country from burning itself to the ground in bankruptcy.

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Mistaken Arguments

Mistaken Argument No. 1
You can't control a "con-con."
It will run away and rewrite the Constitution.

There are multiple procedures and hurdles in place which insure that an Article V convention will not propose a "rogue" amendment. The States limit the subject matter of the convention in their applications. The BBA resolution is limited to one subject: the proposing of a balanced budget amendment. Any effort to intrude upon the Bill of Rights for example would clearly be outside its scope and easily dispensed with on the floor of a convention.

The starting point is the resolution itself. If 34 legislatures call a limited convention, and they represent a supermajority of any votes at the convention, why would they ever allow it to go outside the scope? Each legislative body in the country has rules in place to keep its house in order. The same would be true of an Article V convention. Moreover, when the convention is called, we have urged Congress to make clear to the states in its call that any amendment proposed outside of the scope of the call would be deemed a mere recommendation, and no mode for ratification would be assigned to it.

Additionally, the State legislatures choose the delegates or "commissioners" as they are properly called. The states can require oaths the violation of which constitutes crimes, and they can recall rogue commissioners. The commissioners are the agents of the legislature, not independent contractors, and must follow the instructions of the legislature. It is inconceivable that a majority of commissioners in a majority of states would risk recall from the convention or prison to hijack a convention. The fear that they will somehow be bought off by special interests is a practical and legal impossibility.

The Framers in their wisdom built the ultimate check into the process. The 3/4ths ratification requirement will always guarantee that no rogue amendment could ever be adopted. As of January 2017, there are 32 state legislatures in which both houses are controlled by Republicans. Nebraska's single chamber is Republican controlled. There are 4 split states and 13 Democrat states. To reach the 38 state ratification threshold will require amendments with broad, super-majority support in the country. Remember, we could not even muster 3/4ths support for the Equal Rights Amendment. There is no way a harmful amendment could pass through all 4 split states and both chambers of 21 conservative legislatures to be ratified.

Mistaken Argument No. 2

The 1787 convention was called solely to amend the Articles of Confederation and it ran away. They'll do it again.

The argumentative foundation for those who oppose a convention is that the Philadelphia Convention was called by the Confederation Congress solely to propose amendments to the Articles of Confederation, which required unanimous approval of the states, and that the Convention ignored this limitation and created a new government and provided for 3/4ths of the states to ratify. They suggest since Madison, Washington, and others violated this limitation, a convention to propose a balanced budget amendment will also "run away" and propose a host of rogue amendments. The problem for those who fear such is that the Philadelphia Convention was not called solely to amend the Articles of Confederation and the ratification process was not changed.

The 1787 convention was initially suggested by the Annapolis convention of 1786 which called upon the states to meet in Philadelphia in May 1787 to take such steps as necessary "to render the federal constitution adequate to the exigencies of the union," broad language not limited to mere amendments. Virginia and six other states thereafter followed with broad calls. Just weeks before the convention was to meet, the Confederation Congress sought to pre-empt the states and call the convention for amendment purposes only. That motion actually *failed.* The Confederation Congress instead endorsed the convention in a resolution stating that "in [its] opinion," the convention should be held and limited to proposing amendments, but to report back such alterations as necessary to "render the federal constitution adequate to the exigencies of the union." The Congress specifically did not "call" the convention, nor did it have the legal authority to either call it or limit it.

Ten of the 12 state delegations in Philadelphia had broad authority to draft the Constitution. The 1787 convention reported its work back to the Confederation Congress which could have rejected it had they believed it was beyond the call. Once again, a motion was offered to that effect, but it was procedurally defeated. Instead, the Congress referred the Constitution to the state legislatures without comment.

The "run-away" claim is an inaccurate and false myth. An Article V convention would have no such broad charge, and given the hundreds of analogous interstate and intrastate conventions in our nation's history, there is no evidence to support the claim that delegates will attempt to run away with a convention.

Mistaken Argument No. 3
They could change the ratification requirement like they did in 1787.

Rooted in the fallacious argument the Philadelphia Convention violated the call of the convention to amend the Articles of Confederation, opponents claim the convention to propose a balanced budget amendment can, on its own, change the number of states needed to ratify an amendment from 3/4ths to a lower or higher number. They base this claim on the fact the 1787 convention provided that only 3/4ths of the states were needed to ratify the Constitution, instead of the 100% amendment requirement of the Articles of Confederation. The Philadelphia convention, however, was acting outside the Articles of Confederation pursuant to the states' reserved power. The unanimity requirement did not apply. In contrast, the states at an Article V convention would be acting pursuant to the Constitution. The 3/4ths requirement could not be waived.

Essentially, the 1787 convention basically said: "If 3/4ths of the States (sovereign entities) want to form a new nation under this Constitution, then those 3/4ths may do it with the remainder doing as they will." Remember, George Washington was first elected President when the United States was only comprised of *eleven* states.

Because an Article V convention is held pursuant to and under the auspices of the Constitution, it is subject to the terms and conditions of the Constitution, the primary one being that any amendment proposed, including one containing a provision changing the ratification requirement, would be subject to the 3/4ths ratification requirement.

It is arguable that the Framers' plan of ratification conflicted with the Articles of Confederation, which required unanimity of states for alterations. The better view is that the Confederation Congress, by submitting the Constitution to the state legislatures, was effectively complying by asking the legislatures for their consent to the plan of ratification, which each gave by submitting the Constitution to a state convention for ratification. In essence, every state agreed, both through its legislature and its representation in the Confederation Congress, to the plan of ratification that the Philadelphia Convention recommended. If any state had objected to the procedure, it could have raised that objection in the Confederation Congress, but none did. To the extent that there was any error, it must be ascribed to the Confederation Congress, not to the Philadelphia Convention.

Mistaken Argument No. 4
Congress could bypass the State legislatures and choose the state convention method for ratification of a harmful amendment.

Article V provides two methods of ratification: by vote of the state legislatures or by state ratifying conventions. Twenty-six of our 27 amendments were ratified by state legislatures. The 21st amendment repealing prohibition was ratified using the state convention method. The thought of Congress at the time was that many state legislators would be reluctant to go "on the record" in repealing prohibition. As it turned out, Congress was right as the states quickly ratified the 21st amendment using the state convention method.

Some naysayers argue that if Congress chose the state convention method of ratification, then it would somehow be easier for a rogue amendment to get ratified. That argument fails due to the historic fact which cannot be overcome regarding ratification: Proposed amendments which do not have overwhelming public support *will not be ratified* and amendments with overwhelming support *have always been ratified*, regardless of the method. Rogue amendments simply won't have the support necessary to be ratified. Remember, not even the ERA could get 38 states to ratify it.

Frankly, the BBATF has no objection to either mode of ratification as public support for a Balanced Budget Amendment is almost 80% nationally. If the BBA is sent to state legislatures for ratification and a state votes against it, voters will likely change the legislature at the next election to one which will ratify. If the state convention mode is chosen, the people will have a more direct voice in ratification as in many cases the delegates for or against ratification are elected by the people.

This brings us back to the idea a runaway convention will propose amendments which strip the Bill of Rights and will destroy our Constitution which is suggested by the opposition to a BBA convention. It is not possible for such amendments to ever be ratified by 38 states as the people will not allow it to happen. Thus, even if all of the harmful, radical scenarios were to occur and a harmful amendment outside the scope of the call of an Article V convention were adopted and forwarded to Congress, which in turn forwarded it to the states for ratification through the state convention method - a concept of infinitesimal likelihood – the people would stop that amendment dead in its tracks.

Mistaken Argument No. 5
There is no judicial precedent construing Article V so we really have no way of knowing for sure what will happen if a convention were called.

On the contrary, there a numerous judicial decisions which provide clarity regarding the Article V process. Listed below are a few of the cases that have used history to interpret Article V. A "U.S." citation means the case was decided by the U.S. Supreme Court. Most of the others are federal court cases; two were issued by state courts.

* *Hollingsworth v. Virginia*, 3 U.S. 381 (1798) (following the practice used in proposing the first ten amendments to uphold the 11th).

* *Hawke v. Smith*, 253 U.S. 221 (1920) (citing Founding-Era evidence to define what the Framers meant by the Article V word "legislature")

* *Barlotti v. Lyons*, 182 Cal. 575, 189 P. 282 (1920) (also citing Founding-Era evidence to define what the Framers meant by the Article V word "legislature").

* *Leser v. Garnett*, 258 U.S. 130 (1922) (relying on history to affirm the procedure that ratified the 19th amendment).

* *Opinion of the Justices*, 132 Me. 491, 167 A. 176, 179 (1933) (consulting history to determine how delegates are chosen to a state ratifying convention).

* *United States v. Gugel*, 119 F.Supp. 897 (E.D. Ky. 1954) (citing the history of judicial reliance on the 14th amendment as evidence that it had been validly adopted)

* *Dyer v. Blair*, 390 F.Supp. 1291 (N.D. Ill. 1975) (Justice Stevens) (relying extensively on history to determine whether Illinois had validly ratified a proposed amendment)

* *Idaho v. Freeman*, 529 F.Supp. 1107 (D. Idaho 1981) (also relying on history in discussing a range of questions)

These and numerous other decisions are discussed and cited in the following legislative guide by Prof. Natelson: State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters by Robert G. Natelson (2014), available at https://www.i2i.org/files/2014/11/Compendium-3.01.pdf.

Mistaken Argument No. 6
Since Congress must "call" the convention, Congress will try to control and interfere with it.

Congress' duty to "call" the convention is a ministerial one which does not extend its authority beyond that. This is confirmed in the writings of multiple Framers and the courts. As Alexander Hamilton explained in Federalist No. 85, these words are "peremptory" and "nothing in this particular is left to discretion." The Supreme Court and lower courts have held that when interpreting Article V, look to the founding era intent of the Framers to give it meaning.[1] During the era leading up to the writing of the Constitution, more than 30 conventions were held, all of which were controlled exclusively by the states where each state got one vote. The whole purpose of the Article V convention process was to give the states a mechanism to bypass an oppressive federal government and propose amendments that Congress itself would never propose, so it would be totally inconsistent to think that Congress could interject itself into the process.

There is actually case law on point to refute the claim that Congress can control a convention. In *Dyer v. Blair*, 390 F.Supp. 1291 (N.D. Ill. 1975), future Supreme Court Justice Stevens held that a ratifying convention itself had exclusive authority to write its own rules of order without external interference. This reasoning applies with equal force to a proposing convention.

Moreover, history strongly suggests that Congress won't try to control it. In the late 20th century when convention fever was high, Congress dropped 41 different bills attempting to control some aspect of the convention process; not a single one came close to passing. At the time, such legislation was supported by those who desired an Article V convention because they believed some sort of coordinating mechanism was necessary to enable a convention to be called. Subsequent self-organization by the states has superseded this need. Further legal study suggests that such legislation would be highly questionable as a constitutional matter. Notably, during much of that period, both houses of Congress were controlled by Democrats, who some claim desire to exercise more control over a convention, yet it still didn't happen. There is no practical way such legislation could pass either a conservative or a split Congress today.

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[1] *See* cases cited in response to Mistaken Argument No. 5 at page 5.

Mistaken Argument No. 7
If you called a convention, California would immediately take you to court and demand voting be based on a proportional population basis.

Ultra conservative groups try to strike fear in the minds of legislators from small states that large states will take control of the convention, giving them little or no voice. It is possible that some large state or liberal entity would sue, but assuming they were found to have standing, they would lose either way.

First, based on the decisions already made by the Supreme Court, we look to the founding era to determine what the Framers intended in Article V. All of the founding era conventions voted on a one state/one vote basis. They did so because our Founders viewed such conventions as meetings of equal sovereign bodies. Would anyone ever argue that voting within NATO should be apportioned by population instead of by sovereign nations? The same argument applies here.

Second, the Constitution already recognizes state sovereignty and unequal representative voting power in both the Senate and Electoral College. Were the House called upon to select the President, its delegations would vote on a one state/one vote basis. The apportionment rulings under the 14th amendment apply to state legislatures, not the states as sovereign bodies pursuant to Article V, so those decisions simply don't apply.

Third, even if proportional voting were ordered or agreed to by the convention itself, it wouldn't make a difference in control over the convention. Again, the states control the delegate selection process and most states are under GOP control. If you allocate the delegates at such a convention based upon the apportionment in the House of Representatives, the conservative states would control the delegates by a margin of approximately 270-165, a clear and unimpeachable majority.[2] The 2017 election only increased that majority. Now is the time to move forward with an Article V convention.

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[2] *See* Natelson, "Trying to Abolish the Convention's One-State/One-Vote Rule Would Not Only Be Unconstitutional, It Wouldn't Be Worth Trying," blog published Feb. 6, 2015, *available online at* http://constitution.i2i.org/2015/02/06/trying-to-abolishing-the-convention%E2%80%99s-one-stateone-vote-rule-not-only-would-be-unconstitutional%E2%80%94it-wouldn%E2%80%99t-be-worth-trying/

Mistaken Argument No. 8
No one knows what the process is for calling and convening an Article V convention.

With work of such groups as the Assembly of State Legislatures (ASL), ALEC, the BBATF and others within the Article V community, the process for calling, convening, and conducting a convention is being clearly defined. The historical record and judicial decisions provide for an orderly process.

First, the legislatures of 34 states must pass a resolution to convene the convention limited to proposing a balanced budget amendment. This limits the authority of the convention to that subject.

Second, once 34 are reached, Congress "shall" convene the convention. This is an obligation of Congress. A Congressional convening resolution is essentially limited to the time and place for the convention. The BBATF is working with Congressional leaders on the basic issues in the resolution which will likely include a provision advising the states that any amendment coming out of a convention that is not germane to a BBA will be deemed only an advisory recommendation to Congress and that Congress will not assign a mode of ratification to it. This commitment by Congress assures that even if a rogue amendment were ever proposed, it would never be referred to the states for ratification.

Third, once the call is made, each state legislature will pass a resolution determining the number of delegates or "commissioners" it will send, who they are, a method for recalling and disciplining the commissioners, and specific instructions on how to vote on key issues. Seven states have already passed "faithful delegate" bills that provide a mechanism for choosing commissioners.[3] Multiple others have or are considering them. These laws typically require commissioners to take oaths to address only the limited subject matter of the convention which if violated could subject them to criminal penalties. In all cases, the legislatures themselves select the commissioners, some giving appointment power to leadership, others requiring a vote by legislators.

A state can send as many commissioners to a convention as it desires, but it only gets one vote at the convention. When the states meet, they meet

[3] Georgia: O.C.G.A. § 28-6-8; Florida: Fla. Stat. § 11.93; Indiana: IC 2-8-1-1 *et seq.*; North Dakota: NDCC § 54-03-01 *et seq.*; South Dakota: HB 1069 (signed March 8, 2015); Tennessee: Tenn. Code Ann. § 3-1-1801 *et seq.*; Utah Code 20A-17-101.

as autonomous governmental bodies, much like NATO. Voting is strictly on a one state/one vote basis, not based on population. We expect a state on average to appoint approximately 3-7 commissioners. Most will be fellow legislators to insure still further that the state delegations do not go rogue.

When the convention meets at the time and place designated by Congress, its first duty will be to adopt convention rules. A number of state legislator groups (ALEC and ASL, e.g.) are in the process of formulating model rules that will no doubt become the starting point for the convention. The Tennessee legislature has announced that it intends to hold a non-Article V convention of states in Nashville in July 2017 to draft rules, recommend a host city and otherwise plan for the eventual BBA convention. We can thus be confident that the rules of a convention will insure that no rogue issue will ever come to the floor of the convention.

We anticipate that most of the work at the convention will be done in the various committees. Prior to the convention, there will be a working group or task force to research and call for different proposals for a balanced budget amendment so that the benefits and risks of each proposal can be investigated and weighed. We expect each state to have one delegate sitting on the committee drafting the actual language of a proposed balanced budget amendment. By time a proposal reaches the floor of the convention for debate, it will have been researched and vetted on numerous occasions.

Much work has already been done within the Article V community and with Congress to insure a smooth transition from reaching the goal of 34 states calling for a BBA convention to calling and actually convening the convention. Indeed, Because of these actions, we can be confidant that any Article V BBA convention will stick to task, propose a mutually agreeable BBA and then adjourn with no harm to the Constitution ever arising. Once we show that an Article V convention can work as the Framers intended, then the states will have a tremendous tool available to them to make other necessary changes in Washington that the federal government will never do on its own.

Mistaken Argument No. 9
We have no idea what the convention rules will be?

We have a wealth of history to look to in determining what the rules of an Article V convention would be. During the founding era, there were more than 30 conventions of states held capped off by the Philadelphia Convention of 1787, which drafted the United States Constitution.[4] Since our founding, another five gatherings or conventions of states have been held.[5]

According to Prof. Natelson: "Under the incidental powers conferred by Article V, an amendments convention adopts its own rules and elects its own officers." This is consistent with founding era conventions, and more recently, Justice Stevens' much-quoted opinion in *Dyer v. Blair*, [390 F.Supp. 1291 (N.D. Ill. 1975)]. "Suffrage is decided by convention rule [which the convention can change], but the initial suffrage rule is 'one state, one vote.'"[6]

To date, multiple state legislator groups have begun drafting proposed rules for a convention, including a basic set adopted by ALEC, a work-in-progress being considered by the ASL, and a set drafted by Prof. Natelson for the COS Caucus.[7] All of these rules have certain principles in common: (a) voting will be on a one state/one vote basis; (b) a majority of states present and voting shall conduct the business of the convention; and (c) matters outside the scope of the call shall be deemed out of order. These principles are consistent with those observed in the numerous other past conventions.

Of course, the convention itself, once convened and credentialed, will as its first order of business, consider, debate and adopt a set of rules for the convention. Given that the majority of delegations will be appointed from smaller, conservative states, we would expect the principles set forth herein which protect those states to be adopted at the convention.

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[4]Natelson, "Proposing Constitutional Amendments by Convention: Rules Governing the Process," 78 Tenn. L. Rev. 693, 706-08 (2011).

[5]Natelson, "Yet Another Multi-State Convention Uncovered" (Ind. Inst. 2015) *copy available at* https://www.i2i.org/yet-another-multi-state-convention-uncovered/.

[6]*See* Natelson,. fn. 4 at 740-41.

[7] ALEC model rules may be found at https://www.alec.org/model-policy/rules-for-an-article-v-convention-for-proposing-amendments/; ASL model rules are addressed at http://nebula.wsimg.com/3b1592ba1a029307b2134df298c64adb?AccessKeyId=08BE2CBF692A30D3DD75&disposition=0&alloworigin=1. The COS Caucus rules are available to legislators at http://coscaucus.com/.

Mistaken Argument No. 10
The States will get stuck with the enormous cost of such a convention.

Because the states, not the federal government, control the scope and jurisdiction of an Article V convention, the states will be responsible for the expense of the convention. The ASL has established a committee on the facilities to come up with a proposal for the funding of a convention, but it would most likely be evenly split among the states. The cost of sending a 5 person delegation to such a convention would be miniscule, proportionately similar to how states already provide for funding their own officials during their legislative sessions. Given the preparatory work already started and to be completed, we anticipate that such a single subject limited convention would convene for no more than three weeks.[8]

However, since this will be one of the most important political events since our founding, states will actually compete to have the convention at their capitol. Thousands of people - delegates and staff, world-wide media, and citizens who want to be a part of this historic event, will descend upon the convention location renting thousands of rooms and spending millions of dollars. It is quite likely all of the administrative costs of the convention will be paid by the host state as it will recoup the cost many times over as a result of the positive "economic impact" of the convention. It is not unusual in today's convention marketplace for a state or local tourist development office to provide financial incentives to major conventions.

Of course, the savings from the product of such a convention, a Balanced Budget Amendment, stand to justify many times over the cost of such a convention. The savings from one day's borrowing of the federal government would more than offset the cost of such a convention.

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[8] The Washington Peace Conference of 1861, a forerunner of an Article V convention, lasted from February 4 through February 27, 1861, during which it drafted a fairly complicated multi-part amendment designed to forestall the Civil War. One would expect the drafting of a BBA to be less complex. *See* Natelson, " It's Been Done Before: A Convention of the States to Propose Constitutional Amendments" (Independence Inst. February 21, 2013) *copy available at* https://www.i2i.org/its-been-done-before-a-convention-of-the-states-to-propose-constitutional-amendments/.

Mistaken Argument No. 11
Congress is already ignoring the Constitution. What makes you think Congress will follow any new amendments?

Congress is steadfastly adhering to Article I, Section 8 of the Constitution which enables it to borrow money without limits. The Balanced Budget Amendment will change that.

Many of the issues relative to obeying the Constitution are directed to the main body of the Constitution and the Bill of Rights, as they were written in the language of the time and left to interpretation by courts and others. However, after the Bill of Rights, the amendments to the Constitution were written in very specific language and they have been honored. We adhere to the anti-slavery, women's and 18 year old suffrage and presidential term limits amendments.

The Constitution as presently drafted has no limits on the authority of the federal government to borrow money. The Founders in hindsight regretted this omission from the final document. Congress has tried, but it has consistently failed to adopt a balanced budget amendment proposal which would force it to restrain its borrowing and spending. The only solution is to propose a BBA with self-enforcing mechanisms and incentives within it to force Congress to comply. This might be the first amendment with a "penalty" clause to assure adherence.

From a broader perspective, Congress isn't ignoring the Constitution as much as some suggest. We actually have two Constitutions: the one drafted by the Framers with specific enumerated powers and the one which the Supreme Court has interpreted to contain so many expansive powers. The latter is the one which Congress is using to insert itself into our everyday lives like it does. Article V is THE mechanism the Founders gave us to fix this problem.

If a BBA were proposed and ratified, Congress would comply with it. History reflects that Article V movements cause Congress to react and the government by and large follows amendments more closely than they do the Constitution itself. [9]

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[9] *See, e.g.,* Natelson, "The Lamp of Experience: Constitutional Amendments Work" (independence Inst. April 17, 2016) *copy available at* http://articlevinfocenter.com/the-lamp-of-experience-constitutional-amendments-work/.

Mistaken Argument No. 12
Justices Burger, Goldberg and Scalia opposed an Article V convention and were convinced it could not be limited.

In the 1960's and 1970's, a campaign begun by liberal politicians and law professors sought to discredit the Article V movement, which was pursuing efforts to overturn the Supreme Court's apportionment decisions.[10] This movement successfully interjected the two most common myths into the Article V debate: that an Article V convention is really a "con-con" or constitutional convention and that such a convention will "run away" because it cannot be limited to a given item or topic. This movement to discredit Article V was largely successful and was later adopted by conservative groups such as the John Birch Society and the Eagle Forum. It appears that Justices Burger and Goldberg were parties to this heresy.

Letters from Chief Justice Burger to Eagle Forum founder, Phyllis Schlafly, are often cited as a basis to oppose an Article V convention. There are two reasons not to give credit to this argument. First, much of the research regarding the extensive history of conventions well known to the Framers had not been completed at the time of his remarks. More significantly, there is ample evidence to believe the Burger's opposition was based more on his desire to uphold his controversial apportionment decisions and *Roe v. Wade* than it was a scholarly study on the true risks and benefits of such a convention.[11]

Historically, Justice Arthur Goldberg was not inclined to support restraint on the national government; hence, one would expect that he would look skeptically on the use of Article V to rein in the federal government. In a 1983 article, Goldberg labeled an amendments convention a "constitutional convention" and declared that its agenda would be uncontrollable.[12] He was adopting the then liberal movement to discredit Article V and was commenting preceding the ground breaking research of multiple legal scholars noted below since 2010.

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[10] Natelson, "The Liberal Establishment's Disinformation Campaign Against Article V—and How It Misled Conservatives" (Article V Information Center, March 27, 2015), *copy available at* http://articlevinfocenter.com/how-liberal-propagandists-suckered-conservatives-into-opposing-an-amendments-convention/.

[11] Natelson, "More Evidence That Warren Burger Was Defending Roe v. Wade When He Opposed A Convention of States" (Article V Information Center, May 6, 2015) *copy available at* http://articlevinfocenter.com/more-evidence-that-warren-burger-was-defending-roe-v-wade-when-he-opposed-a-convention-of-states/.

[12] *Id.* at 13.

Justice Scalia is cited for questions posed to him in recent years about a "constitutional convention." He knew a constitutional convention is a gathering to create a new or drastically alter our Constitution. He rightfully opposed that gathering. However no movement is seeking or has sought a convention to rewrite our Constitution.

When Justice Scalia was asked about an Article V convention, he clearly favored a limited, single subject amendment convention. [13] He stated in 1979: *"The Founders inserted this alternative method of obtaining constitutional amendments because they knew the Congress would be unwilling to give attention to many issues the people are concerned with, particularly those involving restrictions on the federal government's own power."*

He went on to explain that the argument against calling a convention effectively gives Congress a monopoly over amendments, contrary to the Framers' intent. Scalia said, *"The alternative is continuing with a system that provides no means of obtaining a constitutional amendment, except through the kindness of the Congress, which has demonstrated that it will not propose amendments—no matter how generally desired—of certain types."*

The fact is that with more detailed and recent research, most constitutional scholars who have examined this issue over the last two decades are in virtual universal agreement that an Article V convention won't run away and that it can be limited. [14]

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[13] http://www.aei.org/wp-content/uploads/2016/03/AEIForums31.pdf.

[14] *See, e.g.* Natelson, "Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments," 65 Fla. L. Rev. 615 (2013) (precedent and Framers' intent supports principle that states may limit the subject matter of a convention); Natelson, "Proposing Constitutional Amendments by Convention: Rules Governing the Process,"78 Tenn. L. Rev. 693 (2011); Rappaport, "The Constitutionality of a Limited Convention: An Originalist Analysis," 81 Const. Comm. 53, 56 (2012) ("The Constitution allows the state legislatures to apply not merely for a convention limited to a specific subject matter [but allows them] to draft a specially worded amendment and then to apply for a convention limited to deciding only whether to propose that amendment."); Stern, "Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention," 78 Tenn. L. Rev. 765, 774 (2011) ("Scholars who believe that an Article V Convention must be unlimited have struggled to explain the constitutional purposes that would be advanced by this interpretation."). *see also* Van Alstyne, "The Limited Constitutional Convention-The Recurring Answer," 1979 Duke L. J. 985, 990 (1979) (Article V convention most likely will be called to address "*particular* usurpations" by Congress).

Mistaken Argument No. 13

If the John Birch Society, Eagle Forum and other conservative groups oppose an Article V convention, perhaps we should also.

As previously noted, in the 1960s and 1970s, a campaign begun by liberal politicians and law professors sought to discredit the Article V movement, which was pursuing efforts to overturn the Supreme Court's apportionment decisions.[15] That strategy was unfortunately later adopted by conservative groups such as the John Birch Society, the Eagle Forum and others, and it continues to this day.

The JBS has in fact been very inconsistent on this issue. The fact is that former JBS leadership - founder Robert Welch and its second President, Congressman Larry McDonald - both supported the calling of an Article V convention to coerce Congress into passing the Liberty Amendment back in the 60s and 70s.[16] JBS tries to rewrite history and soft pedal that strategy by claiming that they never intended to call an actual convention, but just to "scare" Congress to propose an amendment that would repeal the income tax power.[17] They offer no evidence whatsoever to support their convenient re-write of history other than what Welch allegedly "privately told the staff." How convenient, and totally inadmissible in any court of law due to its inherent unreliability.

Phyllis Schlafly and the Eagle Forum took up the banner against Article V around the time that it was defeating the Equal Rights Amendment. Some have said that there was a concern that a convention would be used to re-propose the ERA. It now appears that Ms. Schlafly's opposition to Article V has at least in part led to the internal battle for control of her organization.[18]

The anti-Article V convention groups have failed to offer any new or convincing arguments beyond those rebutted herein to support their concerns about the process.[19]

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[15] Natelson, footnote 10, *supra.*

[16] Ken Quinn, "John Birch Society Denies Its History and Betrays Its Mission" (April 15, 2015) *copy available at* http://www.conventionofstates.com/john_birch_society_denies_history.

[17] JBS Weekly Member Update (March 23, 2015) *copy available at* http://www.icontact-archive.com/Xij92lifAFOxVVofzxvF2iuwd-xVVutk?w=4.

[18] Corsi, "Phyllis Schlafly: My board plotting to fire me over Trump," (WND April 11, 2016) *copy available at* http://www.wnd.com/2016/04/phyllis-schlafly-my-board-plotting-to-fire-me/#UbX6zfpUTgVFxJuB.99

[19] Guldenschuh, "The Article V Movement: A Comprehensive Assessment to Date" (Heartland Inst. Nov. 2015) at 10-13.

Mistaken Argument No. 14
We oppose an Article V convention because it has the support of liberals like George Soros.

There are a few liberal groups that support the Article V process, but not for the same reasons or on the same subjects as the conservatives. Their primary, loosely-organized effort seeks a convention to propose a campaign finance reform amendment. There are not any other significantly organized efforts on their behalf. The fact is, IF they can get 34 states to call for a convention for campaign finance reform, then so be it. And they are welcome to join us in our call for a convention to propose a balanced budget amendment.

There is also evidence that liberal groups are opposed to Article V. In Montana in 2015, a Soros-funded liberal group, Montana Budget and Policy Center, joined with the John Birch Society to successfully defeat an Article V BBA application pending there.

There is other evidence as well.[20] Common Cause, another Soros-favored group,[21] the ACLU, and AFSCME, launched a nationwide campaigns in 2016 to counter the Article V convention of states. Each appeared at legislative hearings to speak against passage of the BBA resolution. Liberal groups succeeded in getting the Delaware state legislature to rescind its pending Article V applications - including one calling for a balanced budget amendment.[22]

In the final analysis, there is no hidden conspiracy here. The argument that we don't want what they want is specious. Did you know that George Soros once ate at McDonald's? Does that mean you will never take your granddaughter to get a Happy Meal again?

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[20] Natelson, "Soros-Funded Groups Attack the Article V Movement" (Article V Information Center, December 16, 2015), *copy available at* http://articlevinfocenter.com/soros-funded-groups-attack-the-article-v-movement/.

[21] *See* http://www.discoverthenetworks.org/viewSubCategory.asp?id=1237.

[22] *See* http://www.commoncause.org/issues/more-democracy-reforms/constitutional-convention/.

Mistaken Argument No. 15
Why not focus on nullification and electing conservative majorities who can "safely" amend the Constitution?

First and foremost, you cannot "nullify" the Constitution itself. Article I Section 8 specifically grants to Congress the ability to borrow money and incur debt without any limits. To change this, a Constitutional amendment is required. You cannot nullify an unbalanced budget. Thus, nullification cannot solve our budget woes.

Moreover, history suggests that nullification rarely works to cancel out big ticket issues. Nullifiers argue that the Constitution has enumerated powers and that all powers not specifically granted to the federal government are exclusively reserved by the Constitution and 10th Amendment to the states. If Congress acts outside those powers, its actions are unconstitutional and the states have a duty to render such acts null and void. Yet, the states could not nullify the federal government's abolition of slavery or desegregation of schools or re-apportionment of the legislatures, even though some tried. There is no reason to believe that nullification will stop Obamacare.

The nullification argument is also somewhat hypocritical. It is inconsistent to support nullification and oppose an Article V convention on grounds that Congress will interfere with it. If Article V does not expressly address who controls the scope of the call or convention process, then under the nullifier's argument, that power is expressly reserved to the states. The naysayers can't have it both ways: the rules of nullification apply equally to Article V as they do to the alleged unconstitutional laws and court decisions which nullifiers seeks to overturn.

As for electing conservative majorities to safely amend or stop borrowing, history again suggests that won't happen. In the mid-1980's when the effort to convene a convention to propose a balanced budget was moving forward at the urging of President Ronald Reagan, ultra conservative groups fought the effort insisting all we had to do was "simply elect people who will stop borrowing and spending." Since that time we have amassed $18 trillion in debt. On three occasions in the last century we have had super-majorities in the Congress and Presidency and they gave us: the New Deal, the Great Society, and Obamacare. That track record of spending does not bode well for electing majorities that will balance the budget long term.

Mistaken Argument No. 16
It's still too risky. We've never done this before. Now is not the time to take such a big risk.

When the Founders met in Philadelphia in 1776 to sign the Declaration of Independence, the risks were much higher, and they didn't have all the answers either. They declared war on the greatest military power on the earth with no existing continental army. They pledged their lives and fortunes to a cause to save the country from continued oppressive government, and they succeeded because they trusted in each other, in their cause, and in a higher power to see them through.

We have far more answers today than the Founders had. The risks are minimal. Society is changing not necessarily for the better and the political and philosophical advantage we currently enjoy may not exist in a decade. Institutional politicians and "the swamp" of corruption in Washington were leading factors in the election of an outsider to Presidency in 2017. If not now, when? If we wait for the first shot to be fired, it will be too late.

The Article V convention process is THE mechanism our Founders gave to the states and the people to deal with the very problems we are experiencing right now. To ignore it is to give up. I am a Patriot, not a Loyalist. I trust the Founders, not the institutional politicians in Washington. I choose to act now and diligently see the process through so as to insure that it works as our Founders intended it to work.

Mistaken Argument No. 17
A Balanced Budget Amendment will destroy our economy

The assumption by those who believe if we prevent Congress from borrowing $1 trillion a year is that our national economy will collapse. This essentially means our economic structure has changed so radically the private sector economy is completely dependent upon federal borrowing to survive. If this is the case, we are in more trouble than anyone can imagine.

In reality, our national debt and annual deficits are literally causing economic decline as borrowing from the private sector sucks hundreds of billions of dollars each year from the private economy and the interest payment on the existing debt produces no economic stimulus or benefit. Deficit spending as a means of stimulating the economy has its roots in economy theory professed by British economist John Maynard Keynes. He wrote that during periods of economic downturn, government should intervene by deficit spending. This would stimulate consumption, which would cause production, returning to a growing economy. Increasing wealth generating production (manufacturing) was the goal. He also anticipated as a result of the improved economy there would be an increase in revenues to government with which it would *pay back* what was borrowed.

The problem with today's deficit spending is that it is not going to increased production (wealth generating activity). Since 1969, Congress has not paid back any of the debt. Over the 9 year period from 2007 through 2015, our national debt increased more than $10 trillion. Yet, such Keynesian borrowing produced one of the most lackluster economies since the Great Depression.

Additionally, Congress over the next ten years will borrow about $10 trillion more, if nothing is done to stop it. There is not enough money in the world to finance this debt, and there hasn't been in the past. That is why between March of 2009 and June of 2014, the Federal Reserve Bank printed and loaned Congress almost $2 trillion.

The printing of currency to pay for the deficit continues. Since the private sector does not have the cash and foreign entities are losing interest in loaning us money, over the next ten years the printing of currency could likely be the main source of financing our deficits. History has taught us the printing of currency to pay for its government is the last act of a desperate nation. The bottom line is simple ... our economy will be destroyed if we do not have a Balanced Budget Amendment.

Mistaken Argument No. 18
Congress will balance the budget by enacting a huge tax hike.

If it were so easy to raise taxes, Congress would have done that instead of borrowing. But it is not easy, as the people will not tolerate it and under a balanced budget amendment that will likely be made an even more difficult thing to do.

First of all, we need to understand the relationship between government and the people, taxing and spending. When government asks the people, "do you want this or that service or benefit?" the people many times say "yes." When the people are then asked to pay for it, usually they quickly say "no." People want all the government goodies they can get as long as they do not have to pay for them.

Since Congress can borrow as much money as it likes, it has created a multitude of spending programs for which the people are not directly being taxed. Had the people been asked for a tax to pay for these programs, the answer would most often been no. It is this cycle which must be stopped by a BBA.

Depending on the structure of the balanced budget amendment, there will likely be a "phase-in" period during which Congress can gradually get its financial house in order. Ironically, the current tax system has over the last twenty years provided an abundance of cash to the government. The problem is Congress has created more new government spending programs than the cash provided.

However, the fear of a run-away taxing Congress is not to be ignored. Rather than trusting Congress, it is quite likely the proposed amendment will include a clause making it difficult to raise taxes and fees. Ratification of a BBA will be extremely difficult without this provision and, frankly, a clause like that would accelerate the ratification process as the people will support it.

Mistaken Argument No. 19
Social Security will be slashed if we have to balance the budget.

One means to strike fear in the minds of millions of retirement individuals is to suggest Social Security will be the victim of balancing the budget, that severe cuts will have to be made if Congress cannot borrow money.

What we should be telling the people is that over the last 20 years trillions of Social Security payroll tax dollars were spent by Congress to pay for other government programs. *In reality, a balanced budget amendment might be the only thing which can save Social Security.*

In 1992, the Social Security fund was close to running deficits, meaning more money would be paid out in benefits that what would be received from the payroll tax. That year Congress effectively doubled the payroll tax which caused massive cash surpluses over the ensuing years. When the tax was passed, Congress pledged the surpluses would be "banked" and used when the fund would have again deficits, sometime in 2017 and have enough cash on hand until 2035 or 2040.

But Congress viewed the surplus cash, in one year almost $200 billion, as a slush fund to spend on other government programs. It gutted Social Security like a fish, spending all its cash reserves. Congress now owes the Social Security Trust fund almost $3 trillion dollars but has no means to repay these funds. That is why the fund is in trouble financially. Social Security has been paying for the deficits since 1992.

Ironically, if we had a balanced budget amendment in place in 1992 and Congress would have been prohibited from borrowing from Social Security and the surpluses had been invested in the private sector, then there would be almost $5 trillion in cash and assets in the fund and the Social Security tax would never have to be increased.

When the balanced budget amendment is written, there should be a prohibition from borrowing from the federal trust and pension funds including the Military Retirement Fund (owed more than $800 billion) and the Civil Service Pension Fund (owed more than $900 billion).

Social Security and Medicare will be saved by a Balanced Budget Amendment.

Mistaken Argument No. 20
We don't know what a Balanced Budget Amendment looks like!

No, we do not at this time know what the language of the amendment will be. The purpose of the convention is to study the issue, deliberate and debate, and craft an amendment as a result of this discussion, or not. The convention is not obligated to propose anything.

However, leading up to the convention there will be a great national discussion regarding debt, deficits, Federal government spending, and how to solve this enormous problem. When it is certain a convention will be convened, universities, high schools, citizen groups, special interest groups, two people standing on a street corner, the entire nation, will begin to discuss and debate the issue. Groups from all around the country, including the BBATF, will ask for ideas for the amendment language, and there will be many thoughtful, educated suggestions. That is a good thing as the people will be engaged in this process.

After states appoint their delegations, hearings will be held in the states. The commissioners will listen to experts on the issue of federal finance, spending, borrowing, and the Washington system as presently functioning. They will also, most importantly, listen to the people, asking them their ideas on how to craft an amendment. They will bring these ideas to the convention and each state will have the opportunity to present them to the convention.

It is anticipated the discussion over the amendment language will include the following issues:

1. Preventing Congress from frivolously borrowing money, especially from trust and pension funds.
2. Providing for exceptions such as armed conflict or natural disaster.
3. Preventing Congress from easily raising taxes and fees.
4. Providing for a penalty for Congress and Federal officials for not obeying the amendment.
5. Limiting the growth in the size of the Federal government.
6. Implementing the amendment to allow for an orderly change from a borrowing government to a responsible government.

The future can be bright, but only if we act now to avoid an economic collapse by proposing and ratifying a balanced budget amendment.

Where can I go to confirm all these things you are claiming?

The most prolific researcher and writer regarding Article V conventions is Professor Rob Natelson of the Independence Institute. He has on numerous occasions served as a consultant to the BBATF. Many of the footnotes cited herein are to Professor Natelson's work.

Professor Natelson is widely conceded to be the nation's foremost scholar on the Article V application-and-convention process, about which he has published extensively. He served as a law professor for 25 years at three different universities. He has been cited repeatedly at the U.S. Supreme Court.

Below are links to Professor Natelson and his additional writings: http://www.i2i.org/robnatelson.php or RobNatelson.com. We particularly recommend the following articles:

- Natelson, "Founding-Era Conventions and the Meaning of the Constitution's 'Convention for Proposing Amendments'", 65 Fla. L. Rev. 615 (2013)

- Natelson, "Proposing Constitutional Amendments by Convention: Rules Governing the Process," 78 Tenn. L. Rev. 693 (2011).

- Natelson, "A Compendium for Lawyers and Legislative Drafters," *copy available at https://www.i2i.org/files/2014/04/Compendium-2.2.pdf.*

For a comprehensive report on the modern day development of the Article V convention of states movement and its status though the end of 2015, please see:

- Guldenschuh, "The Article V Movement: A Comprehensive Assessment to Date" (Heartland Inst. Nov. 2015) *copy available at* https://www.heartland.org/policy-documents/article-v-movement-comprehensive-assessment-date-and-suggested-approach-state-legis.

Essential Convention Rules

As the effort to achieve the necessary 34 states to convene a convention gradually approaches reality, legislators around the country have been preparing for the event.

One of the most important issues to consider is the rules for the convention.

For more than three years, legislators from more than 40 states have been meeting at various forums to discuss the rules for a Convention of State Legislatures pursuant to Article V. As a result of the discussions, assemblies, and mock conventions, a vast majority of legislators in a large majority of the states have agreed upon the following as "essential rules for a convention."

Section 1 – Call of the Convention

1.1 This Convention is convened under the authority granted to the state legislatures of the several States by Article V of the Constitution of the United States.

The only participants at this Convention are the several States represented by delegations duly selected in such manner as their respective legislatures have determined.

The Convention derives its authority from the applications adopted by at least two thirds of the legislatures of the several States, and its authority is thereby limited to the subject of a Balanced Budget Amendment as specified in applications from at least two thirds of the states. This convention, therefore, has no authority to propose an amendment on any other subject.

1.2 Discipline or Expulsion of a Commissioner or State

The Convention shall provide for disciplining a commissioner or delegation for violating the Call of the Convention by raising amendment subjects for discussion or debate that lie outside the subject of the Call of the Convention.

Section 2 – Quorums and Voting

2.1 Quorum

A quorum for all sessions of the Convention and for all committee meetings shall be a majority of the states attending the convention or serving as members of the relevant committee.

2.2 Voting

2.2.1 All voting at the Convention or in a committee shall be by State with each State having one vote, without apportionment or division. Each state shall determine the internal voting and quorum rules for casting the vote of its delegation.

2.2.2 A majority vote of the quorum shall prevail on all issues before the Convention and in all committees.

2.2.3 An affirmative vote of a majority of states attending and voting shall be necessary to propose an amendment.

These rules reflect in principle the rules which were used at the more than twenty conventions of states held during and after the founding of our country.

The essential rules place an absolute firewall against discussing or proposing an amendment other than that which is the subject of the applications (Balanced Budget Amendment).

Additionally the rules protect the sovereignty of the States as each State, no matter its population, will stand equality with all.

The structure of voting regarding quorums and proposing an amendment prevents the "minority" from controlling the convention process and its output, the amendment itself.

Commissioner Selection Resolution

While commonly referred to as "delegates," the proper name for those representing a State at a convention is "commissioner" as the individuals receive a "commission" from the legislature. The commissioners form a delegation which speaks for the state.

The delegation is the agent for the legislature. It has certain latitude regarding deliberation but must place its principal's (the legislature) interest first.

Leading up to a convention, each legislature will pass a resolution regarding its delegation. The resolution will address all or some of the following issues:

1. The number of commissioners (should be an odd number) and alternates.
2. The individuals who will serve as commissioners.
3. A definite term of service.
4. An oath of office.
5. A method of recalling a commissioner or the entire delegation.
6. Specific instructions to the delegation.

Since the delegation and the commissioners are the agents of the legislature, the specific instructions given to the delegation defines the limits it has regarding policy issues during the convention deliberations. The specific instructions might include some of the following:

1. The delegation shall vote for the "essential rules" for a convention.
2. The delegation or individual commissioner shall not participate in any discussion or vote for any amendment subject aside from that of a Balanced Budget Amendment.
3. The delegation shall not vote for any amendment which does not restrict Congress from raising taxes.
4. The delegation is instructed to vote for amendment language which provides for deficit spending to finance the extraordinary costs of armed conflict.

While the legislature can add a large number of instructions, in doing so it does not want to so severely limit its delegation that it cannot effectively participate in the deliberations of the convention.

Prepared for State Legislators considering an application for a convention of state legislatures on the single topic of proposing a Balanced Budget Amendment to the Constitution of the United States

Published by the

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March 28, 2017

Testimony of ACLU of Wisconsin
In Opposition to Senate Joint Resolution 18, 19, and Senate Bill 107
Joint Committee on Financial Services, Constitution and Federalism

Chair Craig and Members of the Committee:

Thank you for the opportunity to provide testimony in opposition to Senate Joint Resolution 18, 19, and Senate Bill 107, which petitions Congress to call a constitutional convention to amend the constitution to force the government to balance the federal budget. The ACLU of Wisconsin is deeply concerned about the dangerous and unintended consequences that are likely to result from calling a constitutional convention for the first time in the history of our republic.

A constitutional convention places our entire form of government and all of our carefully crafted freedoms and liberties at great risk.

In the entire history of our republic, a constitutional convention has never been convened, and with good reason. To do so is a radical act that places our entire Constitution at risk. Over the past ten years, however, numerous bills have been circulated among state legislatures calling for a convention.

Under Article V of the Constitution, there are two methods to amend the constitution. While a constitutional convention has never been convened, the other method of approving a specific amendment by two-thirds of the House and senate and three-fourths of the states has been repeated 27 times.

While the idea of a constitutional convention may sound desirable and perhaps even necessary, the problem is that a convention is likely to create far worse problems than its proponents aim to solve.

This is because, most importantly, a constitutional convention **may not** be confined to a single subject, nor is there any way to protect against a convention rewriting our nation's founding document wholesale. This means that those calling for various rights-limiting constitutional amendments in years past[1] will undoubtedly advocate for additional changes on subjects as varied as gun control and reproductive rights.

- There are no standards governing the conduct and procedures of a constitutional convention.
- There is no way to ensure that delegates will truly represent the will of the people.
- There is no mechanism for ensuring that the rules governing the convention's conduct are fair.

The delegate selection process is not spelled out in the constitution. If each state has the same number of delegates and it takes a simple majority to pass an amendment, then the 26 smallest states—which make up less than 18 percent of the U.S. population—could pass an amendment. This is undemocratic.

A convention could choose proportional representation like in the House of Representatives, in which case California would receive approximately 53 more votes than Wyoming.

The ACLU finds the prospect of such a convention particularly troubling in light of the fact that many of our contemporary policymakers have strayed far from the wisdom of our Founders, particularly in the realm of checks on government power. We live in an age when national security is often used as the basis for the violation of individual rights. In order to challenge abuses of power, such as the overreaching of the NSA and executive branch secrecy, we all too often have to call on our Founders' wisdom, rooted in our Constitution and Bill of Rights. Such wisdom should not be lightly abandoned simply because we are frustrated and disillusioned by politics, particularly when we have no idea exactly which direction such a decision will take us.

Despite the efforts of this package of proposals, states cannot limit the agenda of a Constitutional Convention. A Constitutional Convention would open up the Constitution to whatever amendments its delegates chose to propose, just as the convention that produced the current Constitution ignored its original charge, to amend the Articles of Confederation, and instead wrote an entirely new governing document. In fact, ratification fails to be a safeguard. Conventions have the authority to change the process for ratifying amendments.

What we are here to warn you against, is the mistaken belief that a federal constitutional convention is the remedy to what ails our political system. Rather than placing our Constitution and all of the protections contained therein at risk, we strongly urge you to vote against this package of bills.

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[1] To give a few examples, the ACLU has lobbied against a Flag Desecration Amendment (criminalizing expression), a School Prayer Amendment (giving school officials authority to mandate how, when and where students pray), and a Federal Marriage Amendment (denying same-sex couples marriage rights).

LEAGUE OF WOMEN VOTERS®
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March 28, 2017

To: Senate Committee on Federalism and Interstate Relations
Assembly Committee on Financial Services, Constitution and Federalism

Re: Opposition to an Article V convention for the purpose of passing a balanced budget

The League of Women Voters of Wisconsin opposes any proposal seeking to convene a Constitutional Convention for the purpose of adding a balanced budget amendment to the U.S. Constitution. We respect people's concerns about rising federal debt levels, but amending U.S. Constitution is the wrong way to deal with that problem. Moreover, a Constitutional amendments convention is a particularly dangerous path to take.

There are three key reasons to reject this proposal: 1) it imperils all citizens' rights protected in the Constitution; 2) it weakens our ability as a nation to respond to unforeseen emergencies; and 3) it robs states, like ours, of the ability to meet the changing needs of our cities and counties.

A Constitutional amendments (Article V) convention could go in many different directions, regardless of Wisconsin lawmakers' efforts to restrict the role of our own state's delegates. It would put at risk every citizen right that is protected in the Constitution.

Moreover, and equally important, inserting a balanced budget requirement into the Constitution could have drastic economic consequences. The League believes efficient and economical government requires not only adequate financing but also some flexibility in order to serve the citizenry through good times and bad. Requiring a balanced budget would put the federal government in a position where it could not respond to an economic recession or a national disaster or emergency without increasing tax revenue. In an emergency, our nation would have to raise taxes, just to meet the needs of its citizens, at a time when fewer people might be working because of a disaster or recession. That is when a tax increase would hurt the most.

Finally, our nation is changing, and that change is taking place in every state and every district. In such a time, we have to be prepared to respond quickly to any crisis and act with resolution after public debate. Our Constitution is more than 200 years old. It has served us well, with individual amendments, to keep up with the ever-changing needs of the American people.

Calling for a Constitutional Convention to pass a balanced federal budget is a reckless proposal, and it should be rejected.

ONEWISCONSINNOW

Testimony Before Joint Hearing on Constitution Convention Resolution
Scot Ross, One Wisconsin Now
March 28, 2017

Unprecedented. It's a word being used often to describe current events in our national politics.

We've seen Republicans block a hearing and vote on a Democratic President's nominee to the United States Supreme Court. There are open federal inquiries into the possible influence of Russia in our elections and collusion with representatives of Donald Trump's campaign. There is a daily stream of news of chaos in the Trump administration and questions about their respect for democracy and individual rights and a world that is as dangerous as ever.

In Wisconsin, a group of state legislative Republicans think that now, 230 years after our first and only constitutional convention, is a good time to rewrite the Constitution of the United States.

What could go wrong?

Plenty, as it turns out. That is why the rush to put Wisconsin among the states adopting resolutions calling for an "Article V" convention to amend our nation's governing document is the wrong plan at the wrong time.

Supporters of a constitutional convention argue there is nothing to fear. They claim that delegates will only be able to debate a single issue, a balanced budget amendment, as provided for in the Wisconsin resolution and resolutions adopted by a sufficient number of states to trigger the convention.

It's simply not true that a convention could be guaranteed to be limited to a single, narrowly drawn topic. A joint resolution of the Wisconsin state legislature does not override the U.S. Constitution. And that Constitution does not limit in any way issues that can be considered once an Article V Constitutional convention has been convened.

Take for example, what happened the last time representatives of the states gathered to discuss the governing documents of our republic in 1787 - the Articles of Confederation were scrapped and the document that we have known for 230 years as the U.S. Constitution was drafted.

And it is a misnomer that the proposed federal budget amendment is a benign fiscal matter. In fact, it is job killing, dangerously short-sighted and simplistic slogan-based policy. The amendment could prevent our federal government from having the ability to use emergency financing to protect the homeland or prevent economic collapse, as happened in crises like World War II and the Great Recession of 2008.

Who knows what would be concocted in back rooms by unelected delegates in this political environment, with big money special interests seeking influence over every aspect of the political process, ideological extremism run amok and unprecedented political division.

Once a constitutional convention is convened, all of the protections of our rights we enjoy as citizens and all of the responsibilities we apportion to the federal and state government are on the table.

Perhaps this explains why all 27 amendments to our constitution that have been adopted have been proposed and passed by the Congress and ratified by the states. And perhaps this is why, bridging the partisan and ideological divide, voices on the right and the left have spoken out against convening a convention.

What we can't afford is the crisis inevitably resulting from convening a rewrite of our nation's governing document in this time of (unprecedented) uncertainty. And what we don't need is our state legislature rushing legislation to put this process in motion.

Now more than ever we need the Constitution we already have to protect our rights and to protect our democracy.

Lastly, I am also alarmed at what has not been raised in this debate: The threat to tens of thousands of jobs in Wisconsin and the threat to our nation's Homeland Security.

Defense contracting employs 24,000 in Wisconsin alone -- just for 200 Wisconsin companies which support aerospace. Add to that places like Oshkosh Corporation, which just received $700 million in new military business, or Marinette Marine.

A balanced budget amendment could result in billions of dollars lost for Wisconsin businesses and the loss of tens of thousands of hardworking Wisconsin jobs. Rewriting the U.S. Constitution is a terrible idea because of the threat American Democracy, the threat to our country's Homeland Security and as it turns out the jobs of tens of thousands of hardworking Wisconsin men and women.

Submitted by Timothy Dake,
WI Grandsons of Liberty

Category/types of conventions

CONSTITUTIONAL Convention (plenary, authorized)

- Federal (limited, drafting)
- State (unlimited *somewhat*, drafting)
- Hybrid (legislative, constitutional, ratificatory, unlimited)
- Civil War Arc (Restoration, Reconstruction, Redemption - drafting)
- Revisory (plenary, drafting)

REVOLUTIONARY (plenary, unauthorized)

SPONTANEOUS (non-plenary, unauthorized)

- Town Hall (informational)

LEGISLATIVE (plenary/semi-plenary, authorized)

- Federal (limited within federal constitution)
- State (limited within federal and state constitutions)
- Interstate Compact (drafting, administrative)
- Nullification (drafting)

SPECIALIZED (non-plenary = limited, authorized)

- Ratificatory (voting)
- Amendatory (drafting)
- Secessionary/Anti-secessionary (drafting)
- Nominating (voting)
- Planning (no output)
    - Statehood
    - Separation/Anti-separation (Anti-division)
    - Convention of states (not the project)

WISCONSIN FAITH VOICES FOR JUSTICE

Committee on Federalism and Interstate Relations Public Hearing

March 28, 2017

Testimony of Rabbi Bonnie Margulis, President, Wisconsin Faith Voices for Justice
Wifaithvoices4justice@gmail.com **608-827-9482**
www.wisconsinfaithvoicesforjustice.org
www.facebook.com/WisconsinFaithVoicesForJustice

Good morning. I am Rabbi Bonnie Margulis, President of Wisconsin Faith Voices for Justice and I am testifying today in opposition to the proposed legislation to Assembly Joint Resolution 21 and Senate Joint Resolution 18, calling for a Constitutional Convention on a balanced budget amendment.

I will leave it to the economists to explain the financial dangers of a balanced budget amendment. I am speaking today as a faith leader and the head of a state-wide interfaith organization that is committed to justice, civil rights, and the separation of Church and State. The danger of a Constitutional Convention is that it opens the door to proposals of all kinds, regardless of the original impetus for the convention.

As a member of the American Jewish community, I am acutely aware of the many ways in which the constitutional separation of church and state has allowed minority faith communities to flourish in this country. Three thousand years of Jewish history shows us that, wherever there is no such separation, minority faith groups suffer. The framers of our Constitution understood this, and had the wisdom to enact the First Amendment guarantee of freedom of religion and to prohibit state-sponsored religion.

Unfortunately, a Constitutional Convention could very well bring forth proposals to undermine this and other First Amendment guarantees, including freedom of the press, speech, and assembly. These fundamental freedoms are the hallmark of what defines us as Americans and what makes this country great. To risk them in a quixotic quest for a balanced budget amendment, itself a dubious proposition, would be at best foolhardy, at worst, dangerous.

For these reasons, Wisconsin Faith Voices for Justice urges you to oppose this legislation.

Wisconsin Justice Initiative

Senate Committee on Financial Services, Constitution and Federalism
Assembly Committee on Federalism and Interstate Relations
March 28, 2017

Testimony of Gretchen Schuldt, Executive Director, Wisconsin Justice Initiative

State legislators should reject efforts to convene a convention to amend the U.S. Constitution, an extremely dangerous step that could endanger basic American rights.

Constitutional changes proposed through a convention are likely to be harmful reactions to the current political divisions in the country that will only divide the country further.

There are no rules set yet for the convention. Wisconsin doesn't know the voting process, how much representation it will have, how a convention would operate, or rules surrounding any resulting ratification process. To buy into a convention of such import without even knowing its operational basics is a risk that this state cannot afford.

The proposed Wisconsin legislation specifically calls for the convention to consider a balanced budget amendment but a State Legislature cannot control what happens or what is considered at a convention. Wisconsin cannot control what other states do -- what happens if some states take a broader view of their convention mission than Wisconsin does? Does Wisconsin opt out of determining the Constitution's future? Or does it vote on a measure its citizens believe should not even be considered?

The legislation calls for any delegate who votes for an unauthorized amendment to be replaced, but it's unclear what impact that would have. Replacement would occur only after a vote is cast, when it is too late to undo any damage. Will convention rules even allow delegate replacements? That is something else we don't know. We should not charge recklessly ahead without knowing what we are running into.

Scholars from across the spectrum agree that a convention, once convened, is a force unto itself. It will be very difficult to control the agenda and individual delegates. People who value freedom of speech and freedom of religion should be concerned about what could happen; those who value their Second Amendment rights should be just as worried.

We don't need a constitutional convention, First, a balanced budget amendment could cripple the country's ability to respond to a national emergency. Second, opening the Constitution to change now would invite mischief and disaster. Wisconsin should say "no" to a constitutional convention.

Thank you for your consideration.

The mission of the Wisconsin Justice Initiative is to improve the quality of justice in Wisconsin by educating the public about legal issues and encouraging civic engagement in and debate about the judicial system and its operation

P.O. Box 100705 Milwaukee, WI 53210 414-331-0724 gretchen@wjiinc.org

Joint Committee Discussing

the Endorsement of a Constitutional Convention

March 28th, 2017

Ladies and Gentlemen of this Committee:

Every one of you took an oath to protect and uphold the United States Constitution. I understand fully your argument that the nation's debt is an existential crisis to our country. Often it is argued that with a per capita debt of $60,000, the nation is being run on credit cards and that no household could be solvent operating like this. However while I agree we need to pay our debts, you ignore that a central pillar to the American Dream is home ownership. And for families with one or two kids, you are suggesting that Americans shouldn't own home.

Debt, like guns, are not inherently bad. They are a tool. And when your roof collapses or your car is no longer repairable in a financially solvent way, debt is the way that most Americans can keep their heads above water.

Our nations schools, roads, and bridges are the leaking roof and the broken car. Preventing our household from ever borrowing says two things. It says that we need to figure out how to live without transportation or shelter from the elements. Or it says that we're not a family anymore and that our house is divided.

You claim to love the Constitution you swore to uphold. But you know as well as I that other states that have endorsed a Const Conv have not narrowed the discussion to the single issue of a balanced budget. You know as well as I do that such a convention could alter the rest of the Constitution that you put your hand on a Bible and swore to protect. What else will get changed? The 1st Amendment? The 2nd? The 4th or 14th. How about the 5th? I know some of you up there might want to keep that one in place, ammiright?

If you truly respect the Constitution, then attempt to send an amendment to Congress the way that all other amendments have been made. (except for the 21st, which repealed the 18th).

This is a lot of ambitious power. Careful for thos wings, Icarus.

Jesse Pycha-Holst

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Testimony Opposing SJR 18 and AJR 21

Jon Peacock, March 28, 2017

Thank you for this opportunity to testify on the resolution calling for a Constitutional convention.

The Wisconsin Council on Children and Families opposes SJR 18 and AJR 21 because a Constitutional convention is an extremely risky and dangerous way to amend the Constitution and to set national fiscal policy.

The Constitution is our nation's founding document and should not be put up for grabs at an unpredictable Constitutional convention. Many constitutional experts have concluded that an Article V convention cannot be controlled and could initiate wide-ranging and potentially perilous changes to the United States Constitution. For example, as Supreme Court Justice Antonin Scalia stated, "*I certainly would not want a constitutional convention. Whoa! Who knows what would come of it*?"

The risk of an out-of-control convention is illustrated by the one and only constitutional convention that was ever called, 230 years ago. The convention in 1787 had a narrow mandate to amend the Articles of Confederation, but rather than following the instructions from state legislatures, that convention wrote an entirely new governing document.

The potential perils are further illustrated by the fact that the 1787 convention didn't only go far beyond the issue the delegates were directed to address, they also rewrote the process for approving constitutional changes. There are no safeguards to ensure the same thing would not happen today.

One or the key problems with Article V is that it is extremely vague, failing to answer fundamental question about the process to be used at a Constitutional convention. For example, how will states' votes be weighed? Will it be one person, one vote; one state, one vote; or something else? And what will be the standard for recommending constitutional amendments? Will it be require a majority vote, a two-thirds vote, or perhaps a three-quarters vote? And who decides what issues are germane?

Yet even if Article V provided clear answers with respect to the procedural questions, or if Congress approves procedures for a convention, we have no assurance that the next Constitutional convention will follow those guidelines. Once it is convened, a convention could follow the precedent in 1787 of rewriting the rules for its own deliberations and also rewriting the ratification process for any amendments they recommend. For example, they could reduce the number of states required for ratification and could combine popular amendments with unpopular harmful ones to make them easier to pass.

These types of risks were explained by former Chief Justice Warren Burger:

> *"[T]here is no way to effectively limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or one issue, but there is no way to assure that the Convention would obey."*

Many other legal scholars have echoed those concerns. For example, Matthew Spalding – the executive editor of the Heritage Foundation's guide to the Constitution – told Pennsylvania lawmakers last year:

> *"I do not believe that an Article V convention is the answer to our problems. The lack of precedent, extensive unknowns, and considerable risks of an Article V amendments convention should bring sober pause to advocates of constitutional reform contemplating this avenue."*

All of those risks help explain why all of the amendments to the Constitution adopted over the last 225 years have gone through a different process – initiated by a super-majority vote in both houses of Congress – rather than a Constitutional convention.

Our other concern about the proposed resolution is that amending the U.S. Constitution is simply the wrong way to go about balancing the federal budget. A balanced budget amendment is likely to make it very difficult for Congress to respond to national disasters and other emergencies. Try to imagine the currently gridlocked Congress coming up with savings to pay for disaster relief or an unexpected military operation.

Putting a balanced budget requirement into the Constitution could have drastic economic consequences during a severe economic downturn. Those downturns significantly increase the need for vital assistance programs, such as Medicaid, food stamps, and unemployment insurance. Since tax revenue usually falls as the need for those programs increases, a balanced budget requirement would necessitate either making cuts to critical safety net programs at the worst possible time, or increasing taxes, also at a very bad time for the economy.

It is sometimes argued that the federal government should have to balance its budget just the way that we have to balance our family budgets. But all of us have had periods in our lives when we needed to make investments that required spending more in a year than we were taking in. It would be foolish for families not to borrow for rational investments like our homes and automobiles, or our children's education. The same principle applies to state and local governments, and especially to the federal government, which plays the critical role of responding to national emergencies and mitigating the effects of severe economic downturns.

In closing, I would stress that the United States Constitution has served our nation well for more than two centuries. The current period of political turmoil and divisiveness should not become the first time in more than 200 years that we throw our Constitution up for grabs.

To: Senate Committee on Financial Services, Constitution and Federalism and Assembly Committee on Federalism and Interstate Relations

From: Glory Adams

Date: March 27, 2017

Re: Constitutional Convention (SJR18, SRJ19, SB107)

Dear Committee Members,

I am against the suggestions to have a Constitutional Convention to create amendment(s) to the Constitution for the following reasons:

First, I am against a Constitutional Convention at this time due to the lack of diversity in government. It is egregious for one ultra conservative group to lord it over the rest of the country particularly as the balance of power has been negatively affected by potentially illegal redistricting in Wisconsin and the US. Before any Constitutional Conventions are held there has to be an assurance that redistricting is legal in all areas so all citizens can have representation.

Second, it is ironic that the amendment in question is a federally balanced budget. Wisconsin does not have a balanced budget. This state is heavily in debt. No matter what kind of accounting is done, debt is debt. How, then, can Wisconsin demand a federally balanced budget when the state isn't balanced? The federal government has borrowed money and they pay the interest, just like the state does. If Wisconsin wants to create such a federal amendment, this state needs to be an example.

Third, why is the legislature wasting time on this when Wisconsin has a myriad of greater problems to solve? How about solving the problem of inadequate road funding or inadequate educational funding, or inadequate funding for counties and municipalities, or examining how the state can work in greater partnership with local government instead of disempowering them, or how to clean up the surface and ground waters of the state, or how to reduce the segregation in Milwaukee, or examining the research that shows the principles of WEDC do not work, etc. I would encourage you to solve Wisconsin's problems before you start telling the federal government how to solve theirs.

Fourth, such an amendment will hogtie the government in crises situations. During World War II the governments of all allied countries had to borrow. If that could not have happened there most likely would not have been an Ally victory. Climate change is going to create a huge series of crises. Water is already rising along the coasts. Every crises costs a huge amount of money. How will the country cope without the ability to borrow? What would have occurred to our entire banking system if the federal government had not borrowed money to bail out banks during the banking crises?

Fifth, the federal government is not in the same situation as a household, state, or municipality. It can create money and it does this all the time.

Sixth, if the federal government cannot go in debt, taxes will sky rocket. Just who is going to make immediate payments to pay for necessary and immediate obligations?

Seventh. I question whether those promoting this bill truly understand how money works on the federal level. As I previously stated, this level of government cannot be equated with a household income and debt.

Without being able to borrow and go into debt our federal government would be made too weak to cope with any huge crises that came along.
That weakness will affect every citizen in America negatively.

Public Comment Regarding: 3-28-17

- Assembly Joint Resolution 20
- Assembly Joint Resolution 21
- Assembly Bill 165
- Senate Joint Resolution 018
- Senate Joint Resolution 019
- Senate Bill 107

Representatives Vorpagel and Schraa

My concern isn't about a balanced budget amendment. It is about the process to introduce that amendment. By choosing a Constitutional Convention, we are risking the foundation of our democracy. It will be very tempting for delegates to propose a 'tweak' here or there to the constitution, or to be pressured by outside forces to make changes. I ask you to carefully consider the risks to our constitution and don't go forward with this request for a Constitutional Convention.

A Constitutional Convention is a threat to our democracy. There is no way to guarantee that parts or all of our existing constitution won't be modified or eliminated. Rights that we currently have, such as the right to free speech, the right to assemble, the right to bear arms, the right to a fair trial, the rights of blacks, women and 18-to-20-year-olds to vote, and many more, could be revised or eliminated. It is possible that our entire constitution would be thrown out and replaced with something totally different.

There is no reason to put our constitution at such risk. There is a far less dangerous procedure to amend our constitution. That procedure has been used successfully for previous amendments.

Thank you,

Karen Gunderson
2136 East Main Street
Madison WI 53704

Dear Rep. Vorpagel,

I am writing to you as Chair of the Committee on Federalism and Interstate Relations to oppose the bills relating to a call for a constitutional convention on a balanced budget amendment to the United States Constitution — Assembly Jt. Resolutions 20 and 21, Assembly bill 165.) I wish to address both the danger of call for a convention and the process AB 165 sets forth for appointing delegates.

Putting aside the merits of the requirement for a balanced budget, which I understand many economists question as tying the hands of the federal government in economic emergency situations, I question the wisdom of taking the constitutional convention route as opposed to the well-trod separate amendment route under Article V of the U.S. Constitution. Since 1793, we have successfully amended the Constitution 27 times by taking the separate amendment route, and such controversial amendments as the ERA were blocked. There seems no good reason to take the convention route now, and there are instead great dangers inherent in the process.

Despite the ostensible attempt to bind the delegates to the single issue, my understanding is that when the rules are drafted by the convention, it could become a wide-open, "runaway" convention seeking to amend any and all sections of the Constitution, whether structural systems or substantive rights. In particular, the checks and balances of our tripartite system could be changed. Many of the rights of the Bill of Rights could be qualified, eviscerated or removed, potentially affecting basic rights such as gun, free speech, assembly and petition rights, equality, press, voting, due process, trial rights and so forth, in short a radical rewrite of the governmental system we treasure and take for granted.

I ask both why take the chance when the alternative route for amendment has served us well for more than two centuries? Further, why the unseemly rush? This arose so quickly that the public is barely aware of the import of this legislation and has not been educated or had the chance to respond. The major news sources in the state have barely had time to report it, much less sound in and allow public discussion. If you know your history, at the beginning of our constitutional system there was a major national debate about the Constitution with Federalists and Anti-Federalists debating it publicly for years. That debate, furthermore, generated one of the great political set of writings in world history, *The Federalist Papers*. The GOP dominated legislature has not seen fit to consider this for the six years; why is this being popped on the public all of a sudden with one single joint hearing? A subject of such potential moment should be more publicly and comprehensively considered. Why would you not want such a great debate on matters of such importance?

Secondly, I question A.B. 165 allowing the seven delegates to be appointed respectively three by the legislative majority leader, three by the senate leader, and one by the governor. With the Republican hegemony, or whatever comes out of the 2018 elections, that subjects the convention to partisan hegemony: the potential general amendment of the Constitution lasting for a long duration, even generations, requires a more representative process than that reflecting the ephemeral politics of the day. I suggest that if there is to be a convention you establish a system for the public election of representatives. Or take some time and have a referendum in the spring or fall of 2018 allowing the public to sound in. A possible change of our governmental system deserves no less.

I trust that you and your fellow legislators, as patriots first and partisans second, will give this a more careful consideration than this inexplicable and unseemly rush to judgment possibly putting the whole system Americans and Wisconsin take for granted at risk. In any case, give the public adequate time to sound in on the wisdom of the balanced budget amendment and the government we want for the long term.

I have been unable to attend the hearing today due to an illness. I respectfully ask that you share this letter with the committee members and, if possible, make it part of the record.

Sincerely,

Peter D. Goldberg
2105 N. Summit Av.
Milwaukee WI, 53202

Wisconsin BPDD

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March 28, 2017

Senate Committee on Financial Services, Constitution and Federalism
Senator David Craig, Chair
State Capitol, Room 104 South
Madison, WI 53708

Assembly Committee on Federalism and Interstate Relations
Representative Tyler Vorpagel, Chair
State Capitol, Room 127 West
Madison, WI 53708

Dear Senator Craig, Representative Vorpagel and members of the committees:

Thank you for the opportunity to provide public comment on the Senate and Assembly Joint Resolutions calling for a Constitutional Convention on a Balanced Budget Amendment. BPDD opposes SJR 018 and AJR 021.

BPDD believes a balanced budget amendment to the U.S. Constitution could affect people with disabilities in many ways. Perhaps the most important would be to force historic cuts to federally-funded programs--including Medicaid, Social Security, housing, education, employment, transportation, and other programs people with disabilities rely on to stay healthy, maintain independence in their own homes and stay out of expensive institutions, participate in the workforce, and be productive members of our community.

A balanced budget amendment could result in thousands of lost jobs, and drastic cuts to public schools, Social Security, Medicare and Medicaid, which would hit children and adults with disabilities, and their families, disproportionately hard.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,

Beth Swedeen

Beth Swedeen, Executive Director, Wisconsin Board for People with Developmental Disabilities

Wisconsin Board for People with Developmental Disabilities
101 East Wilson Street, Room 219, Madison, Wisconsin 53703
Voice 608.266.7826 • Toll Free 888.332.1677 • FAX 608.267.3906
Email: bpddhelp@wi-bpdd.org • Website: www.wi-bpdd.org

Schmidt, Melissa

From: Ted Grob <ted@tedgrobsales.com>
Sent: Tuesday, March 28, 2017 1:28 PM
To: Schmidt, Melissa
Subject: : SJR 18, 19 & SB 107
Attachments: Why a BBA Article V Convention is not a wise idea.docx; ConConBBAResources.doc; JanineHansen.pdf

Dear Melissa: We are against the above resolutions. Please read all the attachments for backround.
Thanks, Ted

We don't need a Balanced Budget Amendment (BBA), or a Constitutional Convention (Con Con) to control spending. For the following reasons:

- The national debt is not the real problem.

- A runaway convention could rewrite the Constitution

- An Article V Convention would play into the hands of the special interests.

- A BBA would legitimize unconstitutional spending by shifting the focus away from whether a certain bill is unconstitutional and toward whether the bill would fit within a balanced budget.

- A BBA would further transform our Republic into a democracy by making the main criterion for approving a proposed bill the degree of popular support that bill has for including it in a balanced budget, as opposed to its constitutionality

The bullets above are further explained in the first attachment above. You can also access an article on this issue here:

https://www.thenewamerican.com/usnews/constitution/item/24554-solving-the-debt-crisis

Please let me know your thoughts on this issue.
Thank you,

Ted & Kay Grob,Jr

Grafton, WI 53024

Ted Grob,Jr.

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1990 Wisconsin Ave., Grafton, WI 53024-2606

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Balanced Budget Amendment Articles and Resources
(Samples)
Scott N. Bradley

The main address for my web page: https://www.freedomsrisingsun.com/

A downloadable booklet (PDF format) opposing con-con's in general from my web site:
https://www.freedomsrisingsun.com/images/ConConBooklet8.5x5.5-LR.pdf

A video page from my web site that has a few pertinent videos:
https://www.freedomsrisingsun.com/index.php/video-gallery

A youtube link to a video on Balanced Budget Amendments:
https://www.youtube.com/watch?v=1LItVsxYFHE

A youtube link to a video on Balanced Budget Amendments:
https://www.youtube.com/watch?v=hIYUZ2dbWic

Following is a sample of a letter I wrote to the Utah Legislature opposing a bill intended to call a convention to pass a Balanced Budget Amendment. Perhaps there are ideas which may be of value in your effort:

Please Reject the Proposed HJR007 Substitute

An Open Letter to Members of the Utah Senate:

The Utah Senate is considering HJR007 Substitute, which was passed by the Utah House. HJR7 Substitute proposes a convention be called by the United States Congress to consider changes to the United States Constitution. It passed the House when a meaningless change was made to the original resolution. The change purports to reserve to the Utah Legislature the option to rescind our call for a convention if, after the United States Congress calls a convention based, in part, on Utah's application for a convention, that convention begins to consider any proposals that are not limited to the supposed bounds established by this resolution. There is no justification for the supposition that this "safeguard" will prevent a convention that may exceed the hopes of a Utah Legislature which passes this resolution, or later recalls Utah's call for a convention and our delegation to that convention.

Once the critical number of 2/3's of the states (34) apply to the U. S. Congress for a convention, the Constitution requires the calling of a convention. There is no legal or historical precedent which would justify the assumption that the convention would disintegrate or dissolve if (after the call is issued and the convention has commenced) a state rescinds its call and/or recalls its delegation. Quite to the contrary, the 1787 Constitution Convention continued to its end without a full contingent of delegates which originally constituted the convention.

If this resolution passes, and a convention is called, and Utah later rescinds its call and/or recalls its delegation, the convention will continue without Utah, or our voice. Foolish, and dangerous! The missile will have been launched.

In recent years the Utah Legislature has faced numerous similar resolutions and has wisely rejected them. After deliberate and extensive discussion, in 2001, in a virtually unanimous vote, the Utah Legislature rescinded Utah's call for ANY type of Constitution Convention (regardless of the obfuscating terminology by which it has been denominated). The reasons for so doing have not changed, and have probably become more urgent due to the increasingly depraved political environment that threatens the foundation of the nation.

Perhaps, in many instances, those offering these calls for a convention are well meaning, but the expectation of an improvement on our current Constitution are at best naive. I have delivered many dozens of presentations against constitution conventions all across the nation; to general public audiences, as well as state legislators, and I have heard hours of rhetoric intended to justify such a convention. When all of the supposed justifications are stripped to their most fundamental level, they boil down to a single argument: "They are violating the Constitution, so we must modify it." And, as a follow-up of this justification, the cry: "We must do something!" Such a position violates all logic, reason, and intelligence. Modifying what is already there and which currently prohibits the egregious behavior will not correct the behavior. Other, safer, constitutional means exist to correct violations and restore the nation's foundational principles.

The current Constitution established a limited government whose powers are few and well defined, with checks and balances intended to prevent abuses we currently suffer. No constitutional power exists to allow the profligate spending which the proposed resolution purports to correct. While HJR7 Substitute is written in extremely general and non specific terms in regards to balancing the federal budget, I have personally reviewed every balanced budget amendment which has been proposed in the last several years, and every one of them is fatally flawed and will not balance the federal budget. Every one of them has easily achieved loopholes that would allow deficit spending to continue unabated. Moreover, most of them would "constitutionalize" behavior that is currently unconstitutional and has currently led to the morass we labor in.

Most of the proposed balanced budget amendments allow spending up to revenue limits (with many loophole allowances), or tied to Gross Domestic Product (GDP) percentages, with no consideration for the limits and bounds already constitutionally placed upon the national government to keep actions (and expenditures) within the few and defined delegated powers. Under the current Constitution, expenditures are ONLY to occur in fulfillment of delegated powers. The power to spend money has nothing to do with the redefined processes suggested in the proposed amendments.

There is a very real danger that any of the balanced budget amendments which are proposed would result in a (constitutional) expansion of the power of the federal government to spend money for whatever it chooses to spend it on, without regard to the enumerated powers that are supposed to keep the national government within the bounds currently established in the existing Constitution, and which are currently being ignored by those who took a sacred oath to abide by the Constitution.

And we must remember that any constitution convention will certainly be made up of delegates who have held (or currently hold) elected office, and who are largely responsible for the decisions to violate the Constitution which have led to the challenges we currently face as a nation. I trust no one in the nation's current political cadre to understand and uphold the magnificent Americanist principles brought forth as this nation was established. Where in the entire nation today can we find even one or two statesmen of the caliber of George Washington, James Madison, Benjamin Franklin, Edmund Randolph, George Mason, James Wilson, and the host of others who established this nation? We deceive ourselves if we

think such people as the American founders will be called to act as delegates to ANY convention we could call today! The political wranglings and efforts of special interests groups anxious to pull the levers of government in favor of their agenda will pollute any outcome of a convention.

The efforts to call a convention to modify the United States Constitution have reached epidemic proportions. Numerous organizations have sprung up in favor of such an undertaking. Virtually all are highly organized, powerfully promoted, and well funded. They have succeeded in obtaining the endorsement of many in positions of prominence. They promote a spectrum of approaches to bring about their intention to change the Constitution.

The various proposals for conventions to modify the United States Constitution are well-polished marketing pieces designed to deflect and deny any suggestions of risk, but they are no guarantee of everybody playing nice and above board. The proposals (including this one) are generally written in a benign style of academic earnest hopefulness, promoting a belief in the hope that the proposed undertaking could possibly take the desired trajectory and have the desired outcome. They are filled with hopeful terms like "should," "could," "might," "possibly," "ought," "probably," "depending," "likely," "reasonable," "promise," "nearly," etc. These are terms that leave "wiggle room" in the outcome. All of the supposition and wishful projections are not sufficient justification for the immeasurable risks potentially associated with losing the document that has been the Charter of the Nation and vouchsafed our liberties for the 226 years since the new government under the Constitution was formed.

The bottom line is: **There is nothing wrong with the United States Constitution! The problem is that the nation has stopped faithfully applying it.** Those who claim to love the Constitution and promote changing it are inconsistent. If they love it they MUST abide by it. Changing the Constitution does not honor it! ALL who hold office take an oath to the United States Constitution. Those who hold office (and will likely sit in the seats of any convention which might be called) are oath-bound to uphold the Constitution. Their actions in violation of the Constitution have led to the difficulties under which the nation currently suffers. All of the challenges currently facing the nation are attributable to violations of the plain English words of the Constitution, and their original application. Those who hold office ignore their oath, violate the Constitution at will, and are to be trusted to correct the resulting problems in a convention that could possibly eviscerate the Constitution of the limits and bounds which are already inherent in the document???!!! One might reasonably ask: "Do we need an amendment that says 'we really mean it this time?'" OF COURSE NOT! The officers who violate the Charter of the Nation now will continue to violate it, even if modified.

And suppose for a moment a convention is called and it limits its actions to a single issue as some propose, and the issue successfully goes through the ratification process by 3/4's of the States. What does that encourage? ANOTHER CONVENTION, AND ANOTHER, AND ANOTHER until the United States Constitution is a tattered rag that bears small resemblance to the original noble document, or it is ultimately scrapped altogether. Either way, We the People lose. And so do our posterity.

The corrective course is for We the People to become a virtuous people, well-schooled in the limits and bounds of the government bequeathed to us at such great cost in the body of the United States Constitution and the Bill of Rights, to educate our fellow-Americans in these principles, to promote them in word and deed, to elect soundly-founded representatives who will abide in their oath of office, and a willingness to correct any variance from the standard by those elected officials (or bureaucrats tasked with the responsibility to faithfully fulfill constitutional laws).

We do not need to "correct" the Constitution. We and our officials must abide by it. By so doing we will

again become the greatest, freest, most prosperous, most respected, and most happy nation on earth.

Please soundly defeat this resolution (and every other effort) to modify our magnificent Constitution.
—Scott N. Bradley
North Logan, Utah
liberty1787@comcast.net

Following is another sample of a letter I wrote to the Utah Legislature opposing HJR007 (a bill intended to call a convention to pass a Balanced Budget Amendment) before it was modified and passed by the Utah House. While very similar to the letter above, perhaps there are a few other ideas which may be of value in your effort:

Please Reject the Proposed HJR007

An Open Letter to Members of the Utah Legislature:

It is my understanding that the Utah Legislature is considering Rep. Kraig Powell's HJR007,which proposes a convention be called by the United States Congress to consider changes to the United States Constitution. In recent years the Utah Legislature has faced numerous similar resolutions and has wisely rejected them. After deliberate and extensive discussion, in 2001, in a virtually unanimous vote, the Utah Legislature rescinded Utah's call for ANY type of Constitution Convention (regardless of the obfuscating terminology by which it has been denominated). The reasons for so doing have not changed, and have probably become more urgent due to the increasingly depraved political environment that threatens the foundation of the nation.

Perhaps, in many instances, those offering these calls for a convention are well meaning, but the expectation of an improvement on our current Constitution are at best naive. I have delivered many dozens of presentations against constitution conventions all across the nation; to general public audiences, as well as state legislators, and I have heard hours of rhetoric intended to justify such a convention. When all of the supposed justifications are stripped to their most fundamental level, they boil down to a single argument: "They are violating the Constitution, so we must modify it." And, as a follow-up of this justification, the cry: "We must do something!" Such a position violates all logic, reason, and intelligence. Modifying what is already there and which currently prohibits the egregious behavior will not correct the behavior.

The current Constitution established a limited government whose powers are few and well defined, with checks and balances intended to prevent abuses we currently suffer. No constitutional power exists to allow the profligate spending which the proposed resolution purports to correct. While HJR007 is written in extremely general and non specific terms in regards to balancing the federal budget, I have personally reviewed every balanced budget amendment which has been proposed in the last several years, and every one of them is fatally flawed and will not balance the federal budget. Every one of them has easily achieved loopholes that would allow deficit spending to continue unabated. Moreover, most of them would "constitutionalize" behavior that is currently unconstitutional and has currently led to the morass we labor in.

Most of the proposed balanced budget amendments allow spending up to revenue limits (with many loophole allowances), or tied to GDP percentages, with no consideration for the limits and bounds already

constitutionally placed upon the national government to keep actions (and expenditures) within the few and defined delegated powers. Under the current Constitution, expenditures are ONLY to occur in fulfillment of delegated powers. The power to spend money has nothing to do with the redefined processes suggested in the proposed amendments.

There is a very real danger that any of the balanced budget amendments which are proposed would result in a (constitutional) expansion of the power of the federal government to spend money for whatever it chooses to spend it on, without regard to the enumerated powers that are supposed to keep the national government within the bounds currently established in the existing Constitution, and which are currently being ignored by those who took a sacred oath to abide by the Constitution.

And we must remember that any constitution convention will certainly be made up of delegates who have held (or currently hold) elected office, and who are largely responsible for the decisions to violate the Constitution which have led to the challenges we currently face as a nation. I trust no one in the nation's current political cadre to understand and uphold the magnificent Americanist principles brought forth as this nation was established. Where in the entire nation today can we find even one or two statesmen of the caliber of George Washington, James Madison, Benjamin Franklin, Edmund Randolph, George Mason, James Wilson, and the host of others who established this nation? We deceive ourselves if we think such people as the American founders will be called to act as delegates to ANY convention we could call today! The political wranglings and efforts of special interests groups anxious to pull the levers of government in favor of their agenda will pollute any outcome of a convention.

The efforts to call a convention to modify the United States Constitution have reached epidemic proportions. Numerous organizations have sprung up in favor of such an undertaking. Virtually all are highly organized, powerfully promoted, and well funded. They have succeeded in obtaining the endorsement of many in positions of prominence. They promote a spectrum of approaches to bring about their intention to change the Constitution.

The various proposals for conventions to modify the United States Constitution are well-polished marketing pieces designed to deflect and deny any suggestions of risk, but they are no guarantee of everybody playing nice and above board. The proposals are generally written in a benign style of academic earnest hopefulness, promoting a belief in the hope that the proposed undertaking could possibly take the desired trajectory and have the desired outcome. They are filled with hopeful terms like "should," "could," "might," "possibly," "ought," "probably," "depending," "likely," "reasonable," "promise," "nearly," etc. These are terms that leave "wiggle room" in the outcome. All of the supposition and wishful projections are not sufficient justification for the immeasurable risks potentially associated with losing the document that has been the Charter of the Nation and vouchsafed our liberties for the 226 years since the new government under the Constitution was formed.

The bottom line is: There is nothing wrong with the United States Constitution! The problem is that the nation has stopped faithfully applying it. Those who claim to love the Constitution and promote changing it are inconsistent. If they love it they MUST abide by it. Changing the Constitution does not honor it! ALL who hold office take an oath to the United States Constitution. Those who hold office (and will likely sit in the seats of any convention which might be called) are oath-bound to uphold the Constitution. Their actions in violation of the Constitution have led to the difficulties under which the nation currently suffers. All of the challenges currently facing the nation are attributable to violations of the plain English words of the Constitution, and their original application. Those who hold office ignore their oath, violate the Constitution at will, and are to be trusted to correct the resulting problems in a convention that could possibly eviscerate the Constitution of the limits and bounds which are already inherent in the

document???!!! One might reasonably ask: "Do we need an amendment that says 'we really mean it this time?'" OF COURSE NOT! The officers who violate the Charter of the Nation now will continue to violate it, even if modified.

And suppose for a moment a convention is called and it limits its actions to a single issue as some propose, and the issue successfully goes through the ratification process by 3/4's of the States. What does that encourage? ANOTHER CONVENTION, AND ANOTHER, AND ANOTHER until the United States Constitution is a tattered rag that bears small resemblance to the original noble document, or it is ultimately scrapped altogether. Either way, We the People lose. And so do our posterity.

The corrective course is for We the People to become a virtuous people, well-schooled in the limits and bounds of the government bequeathed to us at such great cost in the body of the United States Constitution and the Bill of Rights, to educate our fellow-Americans in these principles, to promote them in word and deed, to elect soundly-founded representatives who will abide in their oath of office, and a willingness to correct any variance from the standard by those elected officials (or bureaucrats tasked with the responsibility to faithfully fulfill constitutional laws).

We do not need to "correct" the Constitution. We and our officials must abide by it. By so doing we will again become the greatest, freest, most prosperous, most respected, and most happy nation on earth.

Please soundly defeat this (and every other effort) to modify our magnificent Constitution. I would be pleased to come before any legislative committee, or body of voters, to present material supportive of the positions I have expounded upon herein, expand into numerous other fatal flaws promoted by those desiring to change the United States Constitution, and answer any questions you may have pertaining to this subject.

—Scott N. Bradley
North Logan, Utah
liberty1787@comcast.net

Following is an article I wrote for the New American Magazine some years ago:

A Balanced Budget Amendment?

Scott N. Bradley
As Previously Published
in
The New American Magazine

Do we need a "Balanced Budget" Amendment? NO! A constitutionally-sound informed electorate could quickly bring about the conditions which would allow the nation to balance the federal budget and end deficit spending. Thomas Jefferson wrote: "A nation that expects to be ignorant and free...expects what never was and never will be." The voters must come to understand that it is our responsibility to make certain our representatives honor their oath of office and keep their actions constrained within the scope and bounds established by the

Constitution (no, the Constitution does not say "from each according to his ability, to each according to his need"--that was Karl Marx).

Put simply, if Congressmen were simply to honor their oaths of office to abide by the Constitution, the deficit problem would take car of itself. But were they to fail to do so, the only way the budget would be balanced is through a combination of gimmickry and higher taxes.

Currently, upwards of 80% of expenditures authorized by congress and insisted upon by the executive branch (at the pandering insistence of the voters) violates the United States Constitution. Whether it is unconstitutional military "adventurism" around the world, foreign aid, ever-expanding entitlement programs, redistribution of wealth to States, corporations, communities, or individuals, none of these activities are allowed by the Charter of the Nation. Immediate steps must be taken to curtail these encroachments. "Sunset" clauses must be incorporated into all entitlement programs, and no additional entitlement programs authorized. No Balanced Budget Amendment is necessary if we insist that our elected representatives keep their actions (and expenditures) within the bounds established by the United States Constitution!

In November 2010, using the power of the ballot box, we could have removed ALL of our unfaithful U.S. Congressmen, and 1/3 of our Senators. A year from now we again have the opportunity to do the same thing, and also cleanse the Executive branch.

There are currently a number of proposed Balanced Budget Amendments which have been introduced in the House and Senate. Each of these potential proposed Balanced Budget Amendments contain a number of fatal flaws: First of all, they each allow deficit spending based upon agreement of a 60% or 67% approval of both houses of congress (depending upon the amendment being considered). With this stipulation, sixty senators and 261 congressmen or sixty-seven senators and 292 congressmen may approve a deficit budget. Because most senators and congressmen support the unconstitutional idea of buying votes back home by delivering largess out of the public treasury to their constituents, it is not hard to see how most budget votes will easily attain the required threshold as pork is added to the budget to buy the vote of a senator or congressman so he can buy the votes for himself back home! The practice of adding additional expenditures to buy the votes of reluctant congressmen will continue at an even greater rate than it has in the past. Historically, most budget votes have easily attained a 60% approval threshold because of this egregious unconstitutional vote-buying practice. So, we can see that unless representatives are willing to keep their actions within constitutional bounds most budgets will exceed the available funds, the required threshold of votes will be attained, and the result will be further deficits in spite of the Balanced Budget Amendment.

And if the Balanced Budget Amendment is in place, and when the required deficit-allowing threshold is not attainable, but the majority still want to spend the money they feel they need to spend (usually for items and issues not constitutionally allowed, but for such items as entitlement programs, stimulus packages, etc. and which they think are "important" for them to get re-elected), they will wring their hands in impotent despair and bemoan the fact that the Constitution now requires the budget to be balanced, therefore (since these desired items are so

critically important and the majority of congress agrees to the importance, but they cannot muster the threshold required to increase the deficit) they will be required to raise taxes to cover the expenses, which they may do by meeting another vote threshold. Even those who prefer a tax increase to a budget deficit will at some point reach the breaking point where they will no longer be able to sustain themselves because the government has devoured their entire living ("He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance."—Declaration of Independence). The proposed amendments also allow the national debt ceiling to be raised with approval of 60 senators and 261 congressmen.

Additionally, all of these provisions may be set aside with the approval of 51 senators and 218 congressmen if the United States is involved in a declared war. More astounding, however, is the provision which allows continued deficit spending if 60 senators and 261 congressmen can be frightened into the belief that there is a serious threat to national security and they vote to suspend the Balanced Budget Amendment. If this provision seems reasonable, consider how rare the moments are in recent decades where the fear mongers have not promoted the idea that we are in a constant state of some kind of threat (ala the TSA's grope and nude photo-op every time you fly). Consider the fright-frenzy which led to the passage of the Fourth Amendment-destroying USA PATRIOT Act in 2001 (House vote: 357 yeas, 66 nay; Senate vote: 98 yeas, 1 nay), and its recent renewal (House vote: 250 yeas, 153 nay, 28 not voting---for special favors could eleven more yeas have been bought?; Senate vote: 72 yeas, 23 nay, 5 not voting). The lopsided votes associated with the passage of a host of other freedom-destroying "national security" issues such as the fabricated fear which drove the passage of the 2002 Iraq War Resolution and the Military Commissions Act could also be cited. Food for thought!

In addition, it would be a miracle if the national leadership did not regularly resort to spending "off budget" (which is currently a common practice for "important" expenditures that they do not want to have calculated in the national debt for various reasons).

Today's politicians have buried the nation in debt. They have done this by ignoring the constitutional limits of their power, acting as though they have power to tax and spend for any whim that strikes them. They tax trillions of hard-earned dollars each year from the citizens of this land, only to spend hundreds of billions (and even trillions) more each year than they collect. Sadly, most of the spending is not authorized by the United States Constitution.
There is an additional extreme danger we must associate with the effort to obtain a Balanced Budget Amendment to the Constitution: We may be certain that in the current political world a Balanced Budget Amendment will not garner the constitutionally required 2/3 majority of both houses of congress and ratification of 3/4 of all States to become an amendment. Consequently, as the call for a Balanced Budget Amendment increases in popularity among the good and caring people of the nation, they will become frustrated with congress and call for a constitution convention as provided for in Article V of the Constitution. In 1983 the United States came within two States of calling a constitution convention as the popular outcry for a Balanced Budget Amendment pushed the nation dangerously close to a Constitution-destroying constitutional convention. If that happens, we will lose the entire Constitution, as a new one will be written and brought forth (as happened in 1787 during the only other constitutional

convention this nation has experienced). In the current political environment, with the current lack of soundly-principled statesmen, and with the current state of ignorance among the electorate, we must NOT be led into the trap of a con-con!

The solution is a return to the constraints of power on the federal government which exist within the United States Constitution. The problem is not with the Constitution. The Constitution is not flawed. It does not need to be changed. The problem is that we have stopped applying the Constitution. We do not have to amend the Constitution to solve this problem, and we do not have to risk a con-con to bring things back into proper order. The solution is to begin again to abide within the constraints so carefully defined within the plain English words of the United States Constitution. James Madison stated that the powers of the national government were "few and well defined." Perhaps, when the people of the Nation again understand that fact, the nation's leadership will be compelled to abide by their oath to uphold the Constitution of the United States.

Hopefully, the electorate will become soundly grounded "constitutionalists" who will vigorously insist that their Representatives abide by their oath to uphold the Constitution, and that they will not hesitate to remove from office any and all who violate that strict oath.

An Epidemic of Calls for a Convention to Modify the United States Constitution

Scott N. Bradley
March 2014

For many decades, certain groups have sought to modify, or even replace the United States Constitution through the convention method noted in Article V of the Constitution. Over the years, the purposes and efforts of these constitutional "change agents" have failed to gain traction with grassroots Americans, but that fact has not deterred these self-anointed "leaders" who believe they have the wisdom to re-write the timeless principles of liberty and proper government brought forth by America's Founding Fathers at the time this great nation was established. By-and-large, until the recent highly publicized "celebrity endorsements," the only heat generated in favor of a convention has been among the influential circles they have targeted — including many within several State Legislatures.

Now it seems the highly dedicated advocates of constitutional change have been successful in enlisting high profile media personalities in their cause, and have sought to capture good and caring Americans into their fold through a honeyed media blitz, and by co-opting various concerns that appeal to the diverse groups they court. They manipulate the entire political spectrum. On the one hand they play on the fears of deficit spending carried out by a profligate government. On the other hand, they seek to foster democracy by suggesting the elimination of

9

the Electoral College by amendment, or the removal of the individual God-given right to keep and bear arms protected by the Second Amendment. They are mastering the ploy of "singing the tune" that plies the audience they seek to capture in their web, to facilitate their determination to re-write the Constitution.

In spite of the long term general lack of interest among most Americans in this effort to tamper with the profound wisdom embodied in our Constitution, in recent months the efforts to call a convention to change the United States Constitution have reached epidemic proportions. Numerous organizations have sprung up in favor of such an undertaking. Virtually all are highly organized, powerfully promoted, and well funded. While those who promote this movement to hold conventions have succeeded in obtaining the endorsement of many in positions of prominence, it is still highly questionable whether or not the general population of the United States has any interest in such a convention. Regardless, these advocates promote a spectrum of approaches to bring about their intention to change the Constitution.

The Declaration of Independence recognizes the right of the people to alter or abolish their government and institute new government when their government does not secure the God-given rights they were instituted to preserve. The United States Constitution incorporated in Article V of the Constitution a peaceful means by which that self-evident truth may be carried out.

Under the terms spelled out in the United States Constitution, the Constitution may ONLY be modified by two CONSTITUTIONAL methods. Either 2/3's of both houses of congress forward a proposed amendment to the States for subsequent ratification by 3/4's of the States; or, when 2/3's of the States apply to the United States Congress for a convention, congress shall call a convention for proposing amendments.

Notwithstanding the numerous other methods and nuances promoted by the various proponents fostering their "flavor" of a "convention," a careful reading of Article V of the United States Constitution will assure the honest investigator that ONLY two constitutional methods are defined. There are no other CONSTITUTIONAL ways to bring a convention about under the Constitution. There are innumerable other possible ways to "alter or abolish our government," from outright violent rebellion to a "conferences of the states," but none of them are found under the terms defined within the Constitution. And Article V of the Constitution is the sum and substance of the matter to date. Numerous procedures intended to define the convention process have been proposed over the years, and many are promoted today, but NONE have been codified. And efforts to create a "bullet-proof" codification of binding rules under which a convention (under any name by which it may ultimately be denominated) must be viewed with skepticism.

Many who promote their hoped-for version of a convention wishfully suppose that the States not only hold all power to bring about a convention, but they also hold the power to control and define the make-up of the convention, its rules of engagement, the constituency and voting powers of the delegates, the subject-matter to be acted upon, and any and all other potentially critical elements of the convention.

To understand the folly of such a position, one need only CAREFULLY read the plain English words of the United States Constitution. The powers granted to congress by the Constitution are clearly enumerated. The full power required to carry out those enumerated powers is granted in Article I, Section 8, clause 18, which states: "The Congress shall have power . . . To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department of Officer thereof." This authority assured, for example, that the power granted to congress in Article I, Section 8, clause 5 "To coin Money . . ." could be carried out with the requisite authority to create a mint, staff it, and operate it. That authority to carry out a specified congressional power is also inherent in the power granted to congress in Article V of the Constitution to call a convention once 2/3's of the States have applied to congress for a convention. Congress has the authority to call the convention, and thereby all other powers associated with that call, including the power to control and define the make-up of the convention, its rules of engagement, the constituency and voting powers of the delegates, the subject-matter to be acted upon, and any and all other potentially critical elements of the convention. And it would be foolish to think that the congress would meekly acquiesce that constitutionally-granted power to the States, who only have the power granted in the Constitution to APPLY for a convention. Surely we must assume that the members of congress will trump any potentially contradictory supposed actions of the States with the so-called "supremacy clause" found in Article VI, clause 2 of the Constitution.

Many of the current convention-promoting resolutions before the State legislatures also assume the authority to presume that any such convention which might be brought forth by their application would be carried out in a "one state, one vote" arrangement. In today's democracy-prone environment this scenario would surely be resisted by States with large populations. It is feasible to assume that California would complain if their over 38 million people were placed on the same influence footing as Wyoming's half million residents. These complaints would surely be heard in the United States Congress, and resolved. Perhaps the formula used for the state-by-state distribution of Electoral Votes would be proposed and ultimately approved by congress. This would give California 55 votes, and Wyoming 3.

In addition, many who promote these efforts for State-driven conventions assume that they may, in some manner, strike a preemptive blow against any congressional resistance to their agenda to hold a convention; which they suppose will be carried out within the limits and bounds they predetermine. They promote the idea that this may be accomplished by the States legislatively banding together in a multi-state alliance that will hold a convention for their predetermined purpose. Of course, this is in direct violation of Article I, Section 10, clause 3 which states: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State . . ." It is EXTREMELY unlikely congress will consent to such an agreement or compact between States which is entered into for the express purpose of subverting a power granted to congress!

There is another powerful concern that injects a major "unknown" into any possible scenario of a convention. The truth of the matter is that a convention undertaken to modify the United States Constitution would be an autonomous deliberative body which may (or may not) undertake its proceedings within limited bounds based upon initial instructions it receives upon its calling. The 1787 Convention was constituted by congress "for the sole and express purpose of revising the Articles of Confederation . . ." The Articles of Confederation was the then-existing constitution of the United States, and the definition of "revising" as noted in the charge of the 1787 Convention is "amending." The 1787 Convention clearly understood and recognized their autonomous independence, and the convention set aside the existing constitution and wrote an entirely new one. While the Articles of Confederation had a requirement that ALL States approve ANY changes to the constitution, without the prior input or approval of the States, the Congress, or the People, the men of the 1787 Convention included in the new constitution a lower standard for ratification. When that lower standard of nine States, rather than the thirteen States required under the then-existing constitution was reached, the new constitution was considered fully approved and ratified. Fortunately, the men of the 1787 Convention were good and noble men, well seasoned in the principles of liberty and properly limited government, so the outcome of the convention and ratification led to the United States becoming the greatest, freest, most prosperous, most respected, and most happy nation on earth for many generations.

Even in his day, soon after the Constitution was ratified, James Madison received a suggestion that the nation undertake another convention. The United States Constitution was ratified during the summer of 1788, so after that point in time a convention as defined under Article V (as suggested by some today) would have been the necessary process. In November of 1788 James Madison responded to the suggestion of another convention as follows:

> "If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America, and under all the disadvantages I have mentioned."

Elsewhere I have written:

> "Some will argue that Madison's term "General Convention" means something different than the type of convention which could be called under Article V of the Constitution,

that it means a convention called for the specific purpose of creating a new constitution. However, "general" was often used during the founding era as pertaining to the national government as the general government. If used in that way, the term applies to any national convention to deal with the national constitution. To examine how the Founding Fathers used the term, we may examine how Founding Father Noah Webster defined the term in his1828 American Dictionary, which defines "general" thus:

> "1. Properly, relating to a whole genus or kind; and hence, relating to a whole class or order. 4. Public; common; relating to or comprehending the whole community; as the general interest or safety of a nation."

"Regardless of the exact way he used the term, Madison expresses his concern about how another convention will overstep its charter, become extremely politicized, and become dangerous to the nation. If Madison was concerned about the risks in his day, who would be so foolish to suggest that today we are in a political environment that is better suited to bring forth more sound doctrines of liberty and proper government?

". . . . Where in all the world today may we find even one or two statesmen of the character and understanding exhibited by George Washington, Benjamin Franklin, George Mason, James Wilson, James Madison, and the others who, under the inspiration of God, framed our marvelous Charter of Liberty: The United States Constitution? We will search the world in vain for such individuals. Who, today, will sit in the seats occupied by those who brought forth the Constitution of 1787? NONE I would trust!"

The images of conventions today which are put out for public consumption are toothy "grip and grin" photo opportunities. Cheering, enthusiastic party-faithful crowds are the background fodder for the unity promoted to assure the success of the convention's effort. The truth of the matter is that conventions for political undertaking are often slow motion bare knuckle brawls for power as the various factions wrestle for supremacy. It has been observed that "government is not eloquence, it is not reason, it is force . . ." Conventions for political purposes often are the embodiment of that axiom!

Hundreds of examples could be cited, but think of the skullduggery carried out in the convention environments in which Marx and Engels were selected to compile the Communist Manifesto in 1847, or the 1903 power struggle in the Second Party Congress between the Bolshevik and Menshevik factions, or the Beer Hall Putschs of the National Socialists during the 1920's, or the 1952 railroad job done on the Republicans by the Eisenhower machine when Taft was ousted.

Today's various proposals for conventions to modify the United States Constitution are well-polished marketing pieces designed to deflect and deny any suggestions of risk, but they are no guarantee of everybody playing nice and above board. The proposals are generally written in a benign style of academic earnest hopefulness, promoting a belief in the hope that the proposed undertaking could possibly take the desired trajectory and have the desired outcome. They are filled with hopeful terms like "should," "could," "might," "possibly," "ought," "probably,"

"depending," "likely," "reasonable," "promise," "nearly," etc. These are terms that leave "wiggle room" in the outcome. All of the supposition and wishful projections are not sufficient justification for the immeasurable risks potentially associated with losing the document that has been the Charter of the Nation and vouchsafed our liberties for 225 years.

The old adage applies to the wishful thinking of the proposals for a convention: "If wishes were horses, beggars would ride." All the wishful meandering and pontificating by those promoting a convention will not and cannot be guaranteed.

Regardless of the term by which the constitutional convention undertaking is obfuscated, be it a Constitution Convention, an Article V Convention, an Amendments Convention, a Convention of States, a Conference of the States, or whatever, Article V of the United States Constitution says what it says (read it carefully):

". . . on the Application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing Amendments . . ."

When 2/3's of the States apply, Congress SHALL call a convention. And remember when the 1787 Convention was chartered it was for the purpose of amending the then-existing constitution.

Any variation on what the United States Constitution says in Article V about calling a convention is not constitutional, but may be another way to abolish the government. The bottom line is: There is nothing wrong with the United States Constitution! The problem is that the nation has stopped faithfully applying it. Those who claim to love the Constitution and promote changing it are inconsistent. If they love it they MUST abide by it. ALL who hold office take an oath to the United States Constitution. Those who hold office (and will likely sit in the seats of any convention which might be called) are oath-bound to uphold the Constitution. Their actions in violation of the Constitution have led to the difficulties under which the nation currently suffers. All of the challenges currently facing the nation are attributable to violations of the plain English words of the Constitution, and their original application. It is difficult to imagine that those who currently hold office and ignore their oath, violating the Constitution at will, are to be trusted to correct the resulting problems in a convention that could possibly eviscerate the Constitution of the limits and bounds which are already inherent in the document! One might reasonably ask: "Do we need an amendment that says 'we really mean it this time?'" OF COURSE NOT! The officers who violate the Charter of the Nation now will continue to violate it, even if modified.

And suppose for a moment a convention is called and it limits its actions to a single issue as some propose, and the issue successfully goes through the ratification process by 3/4's of the States. What does that encourage? ANOTHER CONVENTION, AND ANOTHER, AND ANOTHER until the United States Constitution is a tattered rag that bears small resemblance to the original noble document, or it is ultimately scrapped altogether. Either way, We the People lose. And so do our posterity.

The corrective course is for We the People to become a virtuous people, well-schooled in the limits and bounds of the government bequeathed to us at such great cost in the body of the United States Constitution and the Bill of Rights, to educate our fellow-Americans in these principles, to promote them in word and deed, to elect soundly-founded representatives who will abide in their oath of office, and a willingness to correct any variance from the standard by those elected officials (or bureaucrats tasked with the responsibility to faithfully fulfill constitutional laws).

We do not need to "correct" the Constitution. We and our officials must abide by it. By so doing we will again become the greatest, freest, most prosperous, most respected, and most happy nation on earth.

—Scott N. Bradley

Article V Convention: Pouring gasoline on the burning Constitution

By: Janine Hansen

Last week I spoke to Carole Fienberg's Conservative Talk Lunch in Reno about the **dangerous threat of an Article V Constitutional Convention** now being promoted by such, "conservative", elitists as Mark Levin, Gleen Beck, Michael Farris, Mark Meckler, Rush Limbaugh, and Sean Hannity.

Most recently, in the newsletter, I included an article by Phyllis Schlafly about the **threat to our Right to Keep and Bear Arms** from the Article V Constitutional Convention. I have fought this dangerous idea for more than 30 years and serve as the National Constitutional Issues Chairman for Eagle Forum. But now, more than ever before, the extreme hazards of this bad idea been exposed.

A Constitutional Convention will be the greatest political event in the history of our nation since the original Constitutional Convention. Do you think the liberals will sit back and let the Conservatives control the Convention? Are you dreaming?

Just ask yourself: Do we control our city Council, County Commission, State Legislature or Congress? How in the world are "conservatives: going to control a Constitutional Convention of the States" this is the **myth** being promoted by the Convention of the States group… that the people, of course the conservatives, will control a Convention.

A proponent of a Constitutional Convention (ConCon) said to me at the Conservative Talk Lunch, **"That's what's the matter with you. You don't trust the people!"** am I supposed to trust the people who voted for Obama for President? Or perhaps the people who voted or Harry Reid? Did the founding Fathers trust the people? *Absolutely not!* That's why they gave us a Republic not a Democracy and that Republic had lots of checks and balances to restrain the government and the people.

Some Background: **Article V of the U.S Constitution states. "The Congress,** whenever two thirds of both houses shall deem it necessary, shall propose Amendments of this Constitution, or, **on the Application of the Legislature of two thirds of the several States, shall call a Convention for proposing Amendments,** which in either Case shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress… **"Notice that Congress Calls the convention and will set the rules.. not the states.** Can you imagine this happening without dingy Harry Reid's fingers in the pie?

All we know for sure about an Article V Constitutional Convention is what Article V States. There are no precedents because there has never been on called. All else is *speculation.* Proponents tell us that the safeguard is that any amendments coming out of an Article V Convention will have to be ratified by three-quarters of the States. As history tells us, the original Constitutional Convention CHANGED the ratification process in the Articles of Confederation (which required unanimous agreement) to a requirement of only nine states.

A Convention cannot be Limited: Former Chief Justice Warren Burger stated: "I have also repeatedly given my opinion that three is **no effective way to limit** or muzzle the action of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, **it will be too late to stop the convention** if we don't like its agenda…" http://www.eaglefourm.org/topics/concon/pdf/WarrenBurger-letter.pdf

Interesting note: Michael Farris / Mike Meckler's Convention of the States organization is proposing **three** amendments and Mark Levin's book promotes **ten** separate amendments. There can be no legitimate discussion of limiting a convention to a single subject.

How will Delegates be chosen? We don't know. Will there be one vote per state like the original Constitutional Convention? Can you imagine California or New York putting up with that? If delegates are based on population the large liberal states will control the convention. And don't forget recent experiences at Republican and Democrat Conventions. He who has the gavel makes the rules.

Who else is interested in changing the Constitution besides the Conservative Elite?

Liberal Former Supreme Court **Justice John Paul Stevens** recently published a book about the Six Amendments he is promoting. As one of his Six Amendments, **Stevens propose that the Second Amendments should be modifies by adding five words, as follows:** "A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms **when serving in the militia** shall not be infringed." This change adding "when serving the militia" eliminates the individual Right to Keep and Bear Arms. A convention would be a real opportunity for the gun Grabbers.

Moved to Amend is a leftist organization which oppose that the U.S Supreme Court Decision in Citizens United. Move to amend wants to **take away our rights of free speech** by elimination independent expenditures for campaigns and limit camp to government money only (which will silence dissent). They support an Article V Constitutional Convention. This year Vermont became the first state Legislature to pass this radical proposal calling for an Article V Constitutional Convention to implement it. If you go to Move to Amends website, you will see **nine pages of leftist organizations** across the nation supporting this radical idea. "We will win our amendment through Congress or through a **Constitutional Convention (Article V)** ..." http://movetoamend.org/2013-hightlights

Their radical amendment prohibits candidates from spending their own money on their own campaigns. Their claim is that money is not free speech. Really? I guess we can stand on the corner and shout at passing cars with our message, because you won't be able to purchase literature, pay for a website, place ads on TV, put up campaign sings, pay for phone calls or campaign workers or print and mail a newsletter. Screaming on the corner would be about all that would be left to us if we can't spend any money to exercise free speech.

Conservative Republicans who claim to support a Balanced Budget Amendment are blowing smoke!

All state receive a significant portion of their budgets, between 19% and 45% from the federal government. Nevada receives 25.48% of its budget from the federal government. You could look high and low and not find a conservative Republican legislator willing to refuse the federal money and mandates. They want to cut the federal budget but not their states budget! This is why conservatives who say they want a Balanced Budget Amendment are blowing smoke. Legislators, conservative or not, will not vote to reject federal funds and mandates. Do you think they will go to an Article V Convention and vote to cut their own state budgets by 25%? This is why Balanced Amendment won't work.
http://www.statebudgetsolutions.org/ublications/detail/new-datat-reveals-amount-of-federal-aid-to-states-in-2012

BBA supports admit a BBA Article V Convention will raise your taxes, not cut spending.

Fritz Petty John, a former Alaska Legislator, is the Co-Founder of the Balanced Budget Amendment Task Force and currently the Field Director of Lew Uhler's National Limitation Committee. During a meeting of Utah Legislatures Conservative Caucus in a room full of Legislators, Petty John was asked, **"What would prevent the Congress from raising our taxes to balance the budget?"**

Petty John responded by saying, **"They probably will raise your taxes"** but there's nothing wrong with that. It would make people so mad they would throw them out." WOW! The Article V BBA failed at the Utah Legislature. Many Legislators were not willing to support a measure that would result in axes being raised.

I often hear the argument in favor of an Article V Constitutional Convention that everything is so bad that we have to do something. If my house was burning because I had to do something. That's what Article V gives us... the real chance of throwing gasoline on an already burning Constitution.

Therefore, the solution to our twin problems of too high a national debt and too powerful a federal government is not to add a BBA to the Constitution, but rather to support grassroots efforts by independent, private organizations to create a constitutionally informed electorate that would nominate and elect a majority of constitutionalist to Congress and State Legislatures. We the people are the last resort for enforcing the Constitution and thereby securing our rights. We must not enable the powerful special-interest establishment to revise our Constitution in their favor via Article V convention process at this time in our history.

Sidebar: **Why a BBA Article V Convention Is Not a Wise Idea**

• The national debt is not the real problem. The real problem is how "a close network of special interests, public officials, and the media" control the federal government based on their ability to build voting blocs that benefit from the unconstitutional federal programs that they initiate. The fiscally dangerous size of the national debt is a measure of just how effective the special interests are in getting their deficit-spending programs funded. The solution to the debt crisis is to create a constitutionally informed electorate and pay the national debt off by phasing out unconstitutional spending.

• A runaway convention could rewrite the Constitution. An Article V convention has the inherent power to extensively revise or completely rewrite the Constitution based on the precedent of the Constitutional Convention of 1787 and on the right of the people to alter or abolish their form of government (including the ratification procedure) as stated in the Declaration of Independence.

• An Article V Convention would play into the hands of the special interests. The "close network of special interests, public officials, and the media" that control our nation would lead an Article V convention process to revise the Constitution to favor the special interests, and would also massively influence the ratification process to favor the special interests.

• Virtually all BBA proposals include loopholes, such as national emergency exceptions and supermajority exceptions, that would enable Congress to continue approving deficit spending, even if a BBA were to be added to the Constitution.

• A BBA would legitimize unconstitutional spending by shifting the focus away from whether a certain bill is unconstitutional and toward whether the bill would fit within a balanced budget. The BBA Article V convention movement has never been about restoring the spending limitations contained in Article I, Section 8 of the Constitution.

• A BBA would further transform our Republic into a democracy by making the main criterion for approving a proposed bill the degree of popular support that bill has for including it in a balanced budget, as opposed to its constitutionality. A constitutional republic is characterized by the rule of law, while a democracy is characterized by the rule of men and leads to a tyranny of the majority.

The ASSEMBLY *of* STATE LEGISLATURES

Rules for an Article V

Convention for Proposing Amendment(s)

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PREAMBLE

Pursuant to Article V of the United States Constitution, we the delegates of the several sovereign States, grateful to Almighty God, do assemble in this convention of the States, called by Congress, for the purpose of proposing amendments to the Constitution. We pledge to conduct the people's business in a fair, collegial, and impartial manner, to work in good faith, and to honor both the letter and spirit of the Constitution and these rules.

ARTICLE 1 Officers of the Convention and Rules

1.1 List of Officers

Temporary: A temporary presiding President shall be a delegate selected by the State delegation from the State randomly drawn from the first 34 States that passed a resolution calling for a Convention for proposing amendments under the authority of Article V of the United States Constitution.

Permanent: The officers of the Convention shall be a President, a Vice President, a Secretary, a Sergeant-at-Arms, and a Parliamentarian. The President and Vice-President shall be elected by "qualified simple majority" vote of the Convention by secret ballot and shall not be from the same political party. The Secretary, Sergeant-at-Arms, and the Parliamentarian-shall be appointed by the President, in consultation with the Vice-President. No more than one officer shall be selected from the same State.

1.2 Election of President

The election of President shall be conducted by the temporary presiding President.

1.3 Adoption of Rules

1.3.1 Rules Adoption

Immediately following the election of President the delegates recognized with credentials shall determine the rules which will govern the proceedings of the Convention. Adoption shall be by "qualified simple majority." Each State is granted one vote.

1.3.2 Rules Continuity

The rules of the Convention remain in effect until amended or rescinded by the Convention. Upon the convening of a new Convention, the rules of the Convention in effect at the conclusion of the preceding Convention remain in force until superseded by Convention rules adopted in the new Convention.

1.3.3 Amend or Suspend Rules

A motion to suspend or amend the rules may be made at any time when no question is pending; provided the motion pertains to the question before the body. The motion must be seconded, is non-debatable, and sustained by a vote of a "qualified super majority". It yields to all the privileged motions, except a call for the orders of the day and to incidental motions arising out of itself. It cannot be amended or have any other subsidiary motion

applied to it, nor can a vote on it be reconsidered, nor can a motion to suspend the rules for the same purpose be renewed at the same meeting except by unanimous consent, though it may be renewed after an adjournment, even if the next meeting is held the same day. The provision of this section shall not apply to Section 5.6., which shall not be amended or suspended.

1.4 The President

1.4.1 Calling the Convention to Order

The President shall take the chair each day at the hour to which the Convention shall have previously adjourned. The President shall call the Convention to order, and, except in the absence of a quorum, as prescribed by these rules, shall proceed to business in the manner prescribed by these rules.

1.4.2 Duty to Preserve Decorum

The President shall preserve order and decorum, and during debate, the President shall confine delegates to the question under discussion. The President shall have general control of the Convention chamber, unless otherwise ordered by the Convention, and in cases of disturbance or disorderly conduct on the floor or in the public areas outside the bar of the Convention, has the power to order the same cleared.

1.4.3 Points of Order

All questions of order shall be decided by the President, subject to appeal of the Convention. On every appeal, the President shall have the right to assign the reason for the decision. In case of such appeal, no delegate shall speak more than once. All questions and points of order shall be noted by the Secretary with the decision thereon.

1.4.4 Committee Membership

The President shall be an ex officio member of all committees of the Convention to which he or she shall not have been specifically appointed, for the purpose of a quorum and discussion, but shall have no vote unless a duly appointed member of such committee.

1.4.5 Appointments of Committees

The President shall appoint all committees, unless otherwise ordered by the Convention.

1.4.6 Certification of Official Acts

When necessary or required, all official acts of the Convention shall be certified by the President and Vice President and attested by the Secretary, with the date thereof.

1.4.7 General Supervision of Appointees

In the performance of their duties, the Secretary, the Sergeant-at-Arms, the Parliamentarian and all employees shall be under the general supervision of the President.

1.4.8 Vacancy in Office

In the event of a vacancy in the office of President by death, resignation or otherwise, the Convention, by a "qualified simple majority" vote, shall elect a new President.

1.5 The Vice President

1.5.1 Absence of President or Inability to Preside

In the event of the temporary absence or inability to preside as a President, not to exceed two Convention days, the Vice-President shall assume the duties of the President, and the Convention shall, by "qualified simple majority" vote to elect a new Vice President.

1.5.2 Vacancy in Office

In the event of a vacancy in the office of Vice President by death, resignation or otherwise, the Convention, by a "qualified simple majority" vote shall elect a new Vice President.

1.6 The Secretary of the Convention

1.6.1 Journal Record of Proceedings

The Secretary shall keep a journal of the proceedings of the Convention and shall provide to each delegate a copy of the proceedings of the previous day.

1.6.2 Duties of the Secretary

Subject to the control of the President, the Secretary shall be custodian of the records of the Convention. Under the direction of the President, the Secretary shall perform the customary duties of clerks or secretaries of deliberative assemblies, and such other duties as shall be ordered by the Convention or the President.

1.6.3 Numbering of Proposals

The Secretary shall give to every proposal when introduced a number, and the numbers shall be in sequential order.

1.6.4 Preparation of Calendar

The Secretary shall prepare and provide to each delegate each day a calendar of the business of the convention, as provided by these Rules.

1.6.5 Preservation of Records

As soon as possible after the final adjournment of the Convention, the Secretary shall file with the Archivist of the United States for keeping in the manner provided by law the records, books, documents, and other papers of the Convention.

1.7 The Sergeant-at-Arms

Subject to the direction of the President, the Sergeant-at-Arms shall enforce the rules of the Convention. The Sergeant-at-Arms shall be charged with enforcing the rules as to admission of the Convention floor. The Sergeant-at-Arms shall not be required to be a delegate.

1.8 Parliamentarian

1.8.1 Duties

A Parliamentarian shall be appointed by the President and shall be responsible for assisting the President and any other presiding officers and the standing committees in the making of parliamentary rulings.

1.8.2 Credentials and Experience

The parliamentarian shall be a current or former member of the Mason's Manual Commission. The Parliamentarian shall have previously served as the chief or head parliamentarian of a state legislative body. The Parliamentarian shall not be required to be a delegate.

ARTICLE 2 Delegates

2.1 Presentation of Credentials or Commissions

Each delegate shall present a certified copy of a document announcing his or her credentials or commission to the Secretary who shall promptly inform the Chairperson of the Committee on Credentials and enter the delegate's name in the Journal. The Chairperson of the Committee on Credentials shall confirm each delegate's credentials or commission. Unless challenged as provided under Section 2.3, the delegate shall be deemed qualified to serve as a delegate in the Convention. Each State Legislature is responsible for determining the delegate selection process and number of delegates to be sent to the Convention by the respective State.

2.2 Questions of Privilege

The presentation of credentials or commissions of delegates to the Convention and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Convention is voting or ascertaining the presence of a quorum; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed.

2.3 Contest of Credentials or Commissions

No protest or petition concerning the credentials or commissions of any delegate shall be received or considered unless filed with the Secretary within five (5) convention days of the delegate's name being made public through the publication of the Journal. All protests or petitions shall be referred to the Committee on Credentials and Privileges for consideration. The President or Vice President may at any time petition the Committee on Credentials and Privileges to reconsider the credentials or commission of any delegate.

2.4 Absence of Members

No delegate shall absent himself or herself from the sessions of the Convention unless he or she has leave, is ill, or his or her absence is otherwise unavoidable.

2.5 Floor Access and Speaking Privilege

Each state delegation is limited to 10 delegates at any one time to have access to the floor and have speaking privileges.

2.6 Recall Action of Delegate

2.6.1 Recall Authority

The Convention shall recognize the recall authority of each State Legislature to recall the credentials of the delegates from that respective state, and to suspend such delegate's authority attend the Convention. The recall instructions shall be provided to the Convention Secretary in writing in order to be recognized and shall identify the persons, committee, commission or office having recall authority. Upon reception of a recall order originating from a proper recall authority, the Chair of the Committee on Credentials and Privileges shall confirm the recall order, and notify the delegate of the recall order who may within three (3) days of such notice request and receive a hearing before the Committee on Credentials and Privileges regarding the recall order of the delegate which may be rebutted but shall otherwise be presumed valid. If no challenge is filed, the name of the recalled delegate shall be entered into the Journal. Upon receipt of a recall order, the delegate in question shall have his or her convention credentials suspended and floor access revoked unless the delegate's authority is restored.

2.6.2 Suspension of Credentials

The Convention may, by action of its member delegates, vote to suspend the credentials of any delegate. A motion for suspension shall be approved by a three-fourths majority of the state delegations seated pursuant to Article 2.1.

ARTICLE 3 Sessions of the Convention

3.1 Time of Meeting and Procedure

The Convention shall meet at 8:00 a.m. unless otherwise ordered by the Convention.

3.2 Reading of the Journal

Immediately after the President shall have taken the roll call vote, the Journal of the preceding day shall be read by the Secretary, unless dispensed with by the consent of the Convention, and published to the public.

3.3 Order of Business

At meetings of the Convention, the order of business shall be as follows:

1. Call Convention to Order.
2. Prayer.
3. Pledge.
4. Roll Call.
5. Reading of the Journal.
6. Presentation of petitions, memorials and remonstrances.
7. Reports of committees.

8. Introduction and first reading of proposals.
9. Reference of proposals.
10. Motions and resolutions.
11. Orders of the day.
12. Committee notices.

ARTICLE 4 Voting and Quorum Calls

4.1 Voting

4.1.1 Voting by State

In determining all questions in the Convention, all votes shall be taken by State, and each State shall have one vote. Votes may be taken by voice, call of the roll, or by use of an electronic voting system under the supervision of the President at his or her direction. The decision shall be entered in the journal. Any delegation can request a division of the Convention and any delegation has the authority to request a roll call vote.

4.1.2 Qualified Super Majority

In matters requiring a "qualified super majority", this shall be defined as two-thirds of the eligible membership, which at this time is 34 States. Qualified is defined as those States that have met the requirements of Article 2.1.

4.1.3 Qualified Simple Majority

In matters requiring a "qualified simple majority", this shall be defined as greater than one-half of the eligible membership, which at this time is 26 States. Qualified is defined as those States that have meet the requirements of Article 2.1.

4.1.4 Simple Majority

Unless otherwise directed, all other votes and procedural questions shall be decided by the affirmative vote of a "simple majority", defined as greater than one-half of the voting members present.

4.2 Call of the Roll

In determining questions or upon a call of the Convention, the following mode shall be observed: The Secretary shall call the names of the States alphabetically, and the absentees noted, after which the names of the absent States shall again be called.

4.3 Vote Tellers

Each State delegation shall name one person to be the teller for the delegation. The designated teller of that delegation shall report the vote for that state. The delegation of each State shall be the sole judge of determining the vote of the State. In case the vote of the State delegation cannot be resolved for submission, the teller shall declare the vote as an "abstention".

4.4 Third Reading and Final Passage

Final action on any proposed amendment shall be decided by an affirmative vote of at least 36 States. No State shall be allowed to cast or change its vote after the Convention's action on said question is announced by the President.

4.5 Call of the Convention and Quorum

A call of the Convention may be made for the purpose of obtaining a quorum or for the purpose of securing the attendance of absent delegates, even though a quorum be present. A "qualified simple majority", as defined in Article 4.1.3, shall be a quorum to conduct business, but a smaller number may adjourn from day to day and compel the attendance of absent delegates.

4.6 Quorum in Committee of the Whole

A "qualified simple majority", as defined in Article 4.1.3, shall be a quorum for the Committee of the Whole to do business, and if the committee finds itself without a quorum, the chair shall cause the roll of the Convention to be called and thereupon the committee shall rise, the President resume the chair and the chair report the cause of the rising of the Convention and the names of the absentee States to the Convention shall be entered in the Journal.

4.7 Quorum for all other Committees

A "simple majority", as defined in Article 4.1.4, constitutes a quorum. No committee shall take final action on a proposal unless a quorum is present.

ARTICLE 5 Resolutions and Proposals

5.1 Action on Resolutions

Resolutions shall be referred to the proper committee for consideration immediately upon introduction, except those resolutions which relate to the disposition of business immediately before the Convention or adjournments or recesses, and except those that, in the opinion of the President, should be considered at the time of their introduction.

5.2 Time for Consideration

Resolutions reported by a committee shall lay over one (1) day for consideration, after which they may be called up under the appropriate order of business.

5.3 Expenditures

All resolutions authorizing or contemplating the expenditure of money shall be referred to the standing committee on Administration and Accounts, for its report thereon before final action by the Convention.

5.4 Introduction of Proposals

All proposals for an amendment of the present Constitution of the United States of America shall be introduced by one or more state delegations, or by a committee of the Convention either by a proposal or committee substitute for a proposal or a report.

The President may, with unanimous consent, refer Proposals that are of a substantially similar nature to the appropriate committee as a "Consolidated" Proposal. A Consolidated Proposal shall be assigned a new number, shall contain the bundle of Proposals, shall be considered and debated by the assigned committee as a single proposal and the introducers of the individual Proposals shall be listed as introducers on the new Proposal. The original individual Proposals shall be tabled indefinitely.

5.5 Form of Proposals

Each Constitutional amendment proposal shall be printed, endorsed with the signatures of all State delegates introducing it, or by the Chair of the committee introducing it or reporting it. The caption of all proposals shall be:

"Proposal No. _____ in the (year)__ Amendment Convention of the United States of America." Introduced by ____ (a listing of the State(s), delegate(s), or committee)."

Following the caption there shall be a short title concisely stating the general nature of its subject matter, followed by the words: "BE IT RESOLVED THAT THE FOLLOWING PROPOSED AMENDMENT BE SUBMITTED TO THE SEVERAL STATES FOR RATIFICATION AS AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA:"

5.6 Subject of Proposals

5.6.1 Introduction of Proposals

The Convention derives its authority by way of the resolutions to call for a convention pursuant to Article V of the Constitution of the United States passed by at least two-thirds of the Legislatures of the several States. Each State with delegates in attendance may introduce any proposed amendment to the Constitution both consistent with the subject(s) contained in its State's application and subject to this rule. The Convention is limited to proposing only an amendment or amendments to the Constitution of the United States whose subject(s) were specifically included in the resolutions of at least two-thirds of the several States. This Convention has no authority to consider any other subject or entertain any motion to consider any other subjects. Any motion not within the scope authorized by each and every one of the resolutions passed by at least two-thirds of the Legislatures of the several States shall be ruled out of order. Such a ruling shall only be appealed as to whether the motion is germane to the subject of the call.

5.7 Limitation on Introduction of Proposals

After the fifth (5^{th}) day of the Convention, no Constitutional amendment proposal shall be introduced, except on the report or recommendation of a standing or select committee, or by unanimous consent. No delegation is required to submit a proposal.

5.8 Reading on Two Different Days

Every proposal shall be read in its entirety on two (2) different Convention days.

5.9 Regular Order for Proposals

The regular order to be taken by proposals shall be as follows:

1. Introduction, first reading, reference to a committee by the President, and printing of copies of each proposal.
2. Report of committee of the proposal with amendments or a committee substitute, printing of copies, and placing on general orders.
3. Consideration by Convention and action on amendments offered by delegations.
4. Second Reading.
5. Reference to the Committee on Style.
6. Report of the Committee on Style, and printing of copies.
7. Action on report of Style.
8. Reference to the Committee on Style for arrangement of sections, and for form of engrossment.
9. Report of Committee on Style for arrangement of sections, and printing of copies.
10. Order for engrossment and printing. The engrossed copy of the proposal shall be printed in a form designated by the Convention Body.
11. Third reading and final passage without amendment.

ARTICLE 6 Decorum and Debate

6.1 Recognition of Delegates and Right to the Floor

Every delegate rising to speak shall address the President, and no delegate shall proceed until he or she shall have been recognized by the President as entitled to the floor. Two delegates rising at the same time, the President shall name the member who shall be first heard, the other seeking recognition having preference next to speak.

6.2 Disrupting Debate

While a delegate shall be speaking, none shall pass between the delegate and President, or entertain disruptive private discourse with another delegate on the floor with the exception of silent electronic communication.

6.3 Motion to Adjourn or Recess

When a motion to adjourn, or for recess, shall have carried, no delegate shall leave his or her place until adjournment or recess shall be declared by the President.

6.4 Limits on Debate

6.4.1 Right of Delegate to Debate

No delegate shall speak more often than once upon the same question, without special leave of the Convention, and not a second time, until every other state delegation shall have an opportunity to speak on the question. No delegate shall speak for more than twelve minutes upon the same question, and no State delegation shall speak for more than forty-eight minutes total upon the same question. No delegate shall impeach or impugn motives of any

other's argument or vote. No delegate shall be permitted to indulge in personalities, use language personally offensive, or charge deliberate misrepresentation of another delegate.

6.4.2 Closing Debate

So that no member shall abuse his or her privileges, the previous question may be used to close debate on any debatable question. The previous question shall be in the form: "Shall the main question now be put?" It shall only be admitted on written demand of 13 States, and sustained by a vote of a "qualified simple majority", as defined in Article 4.1.3.

6.5 Calling another Delegate to Order

Any delegate, as well as the President, may call to order any other delegate, subject to appeal to the Convention, and the delegate called to order may be allowed to explain his or her conduct or expressions supposed to be objectionable. If there is no appeal, the decision of the President shall prevail. If the decision of the President favors the delegate called to order, he or she shall be at liberty to proceed.

ARTICLE 7 Committee of the Whole

7.1 Standing Order of the Day

Upon a motion supported by a "qualified simple majority", the Convention may resolve itself into a Committee of the Whole for consideration of proposals. It shall be a standing order of the day for the Convention to resolve itself into a Committee of the Whole.

7.2 Chairman

When the Convention shall resolve itself into a Committee of the Whole, the President shall name a Chair to preside in the committee.

7.3 Method of Acting on Proposals

Upon a proposal being committed to the Committee of the Whole, it shall be read by the Secretary and then read and debated by clauses or sections, as determined by the committee. After the report, the bill shall be subject to be debated and amended by clauses or sections on the floor of the Convention before a vote on the question to perfect and print is taken.

7.4 Rules in Committee of the Whole

The rules of the Convention shall be observed in the Committee of the Whole as far as may be applicable.

7.5 Motion to Rise

A motion for the rising of the Committee of the Whole shall always be in order unless a member of the committee is speaking or a vote is being taken, and shall be decided without debate.

7.6 Powers of the Committee of the Whole

The Committee of the Whole shall have the same powers as the Convention to enforce the attendance of members; and the Secretary and Sergeant-at-Arms of the Convention shall be the Secretary and Sergeant-at-Arms of the Committee of the Whole.

ARTICLE 8 Committees of the Convention

8.1 Number and Appointment of Committees

The standing committees of the Convention shall be seven in number. The President shall appoint all committees, unless otherwise ordered by the Convention. Each standing committee shall be chaired by a Chair, appointed by the President pursuant to Article 1.4.5.

8.2 Standing Committees of the Convention and Duties

8.2.1 Committee on Administration and Accounts

The Committee on Administration and Accounts shall consider matters relating to Convention expenditures; set up such safeguards and procedures as may be necessary to protect the Convention and its members in all expenditures which may be made; to provide methods by which all expenditures can be checked and audited; and recommend to the Convention the methods to be used for that purpose. The committee shall further have supervision of the general staff of the Convention and be authorized to prescribe, in addition to those already provided, rules and regulations in regard to their activities and duties. The committee shall prepare and submit to the Convention from time to time appropriation resolutions for the appropriation of funds from the State Assessment Account to the Operations Account, as noted in section 9.4.1, for the operation of the Convention.

In submitting said resolutions, the committee shall accompany the proposal with estimates of the Convention requirements, represented in the proposed appropriations. Subject to the approval of the Convention, the committee shall be authorized to contract for, and purchase such supplies and services as the Convention may require and provide for the proper distribution of the same. It shall be further the duty of the committee to report to the Convention, from time to time, as it may deem desirable, giving the Convention information about the expenditures of the Convention and methods established to protect the same.

8.2.2 Committee on Convention Research

The committee on Convention Research shall assemble, at a conducive location for the purpose of information gathering and research in order to address problems under consideration. This location should have internet access, as well as a private meeting space to preserve confidentiality. From time to time, the committee may recommend the purchase or acquisition of such materials as may be needed by the Convention.

8.2.3 Committee on Credentials and Privileges

The Committee on Credentials and Privileges shall examine the commissions, credentials, and instructions of all delegates to the Convention and report a list of all the delegates who are entitled to serve as members of the Convention. The committee shall further consider matters relating to the floor privileges of members of the Convention.

8.2.4 Committee on Information, Submission, and Address to the States and Congress

The Committee on Information, Submission, and Address to the States and Congress shall present information to the public in a timely manner concerning the proceedings of the Convention. The committee shall also consider and make recommendations to the Convention and Congress as to the method of submission of the proposal(s) of the Convention to the various States after the adjournment of the Convention. The committee shall further prepare and present to the Convention, for its approval, an address to the States and Congress outlining the results of the Convention's work.

8.2.5 Committee on Printing and Publications

The Committee on Printing and Publications shall consider all matters having to do with Convention printing, reporting of the proceedings, and the publications which may be incidental to those proceedings. The committee shall be charged with the responsibility of determining the amount of printing to be done, the nature and character of publications to be made, and, in general, recommend any and all measures which it may deem useful for the economical and proper management of the printing, reporting, and publications of the Convention.

8.2.6 Committee on Rules and Procedures

The Committee on Rules and Procedures shall consider all matters relating to the rules for the Convention.

8.2.7 Committee on Style

The Committee on Style shall examine and correct the proposals which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine the order in which the proposals shall be directed by the Convention to be engrossed for third reading, examine all proposals so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time. The committee shall not have authority to change the sense or purpose of any proposal referred to it, and if any thirteen (13) State delegations shall object in a timely manner to any report of said committee on the ground that said report has changed the sense or purpose of any such proposal, the proposal shall be referred to a select committee consisting of fifteen (15) delegates, which shall include not less than seven (7) of the thirteen (13) State delegations objecting to the report.

8.3 Composition of Committees

The membership of all standing committees and of all other committees, unless otherwise provided by these rules or by the resolution creating them, shall be composed of ten members. No major political party shall be represented on the committee by more than six members, nor shall more than one member be from any one State.

8.4 Administration and Accounts

The Committee on Administration and Accounts shall be composed of two members; the President and the Vice President.

8.5 Reference to Committees

When motions are made to refer any proposal or matter, and different committees are proposed, the question of reference shall be in the following order: a Standing Committee, a Select Committee, the Committee of the Whole.

8.6 Time of Sitting

No committee shall sit during the sessions of the Convention without leave of the Convention.

8.7 Committee Quorum

A majority of the members of a committee constitutes a quorum. No committee shall take final action on a proposal unless a quorum is present.

8.8 Committee Hearings

When any proposal is about to be considered by a committee, the introducers of such proposal shall be notified of the time and place where such proposal shall be considered by such committee. Each committee shall keep a record of the members present when a proposal is finally considered; and this record and the record of the votes cast shall be filed by the Committee Chair with its report.

8.9 Committee Reports

No proposal shall be reported from a committee unless such action is approved by affirmative vote by a "simple majority". The committee report must be signed by the Chair. In the event any committee is evenly divided on any matter pending before it, the Chair shall refer such matter back to the Convention without recommendation.

8.10 Discharge of Proposal

In the event any committee considering proposals shall fail or refuse to report to the Convention on the same within the period of time fixed by these rules, any member delegate may file a request in open convention for a report upon the specified proposal to the floor of the Convention, and in the event the committee shall fail to make a report within three convention days thereafter, the proposal shall be placed on the calendar for consideration.

8.11 Rules of the Convention

The rules of the Convention shall be observed in all committees as far as may be applicable, and each committee shall keep a record of its proceedings.

ARTICLE 9 Miscellaneous

9.1 Guide on Parliamentary Practice

The rules of parliamentary practice laid down in the latest edition of Mason's Manual of Legislative Procedure shall govern in all cases in which they are not inconsistent with the rules and orders of the Convention.

9.2 Communication with Congress and the States

When it is appropriate the Secretary of the Convention shall provide communication with the United States Congress and the States.

9.3 Openness of the Convention Sessions

All general sessions and Committee meetings of the Convention shall be open to the public.

9.4 Funding of the Convention

9.4.1 A State assessment account shall be established and managed by the Committee on Administration and Accounts. An initial assessment of equal shares shall be required of each State for whom delegates are seated pursuant to Article 2.1. Subsequent assessments of equal shares may be requested when deemed necessary by the Committee on Administration and Accounts and approved by the Convention by a simple majority vote.

9.4.2 An Operations Account shall be established to utilize for reimbursement of all expenses of the Convention, and shall be funded from time to time, as deemed necessary.

9.4.3 All accounts are to be managed by the Committee on Administration and Accounts, as specified in Article 8.2.1.

9.4.4 Expenses related to the transportation, housing, and meals of delegates are the responsibility of the sending State.

9.4.5 Any accrued assets of the Convention shall be distributed to a qualified 501(c) (3) non-profit organization after any remaining debts are resolved.

9.5 Close of the Convention

9.5.1 Adjournment

The Convention shall adjourn Sine Die upon either: Communication of a proposed amendment to Congress and the States per Article 9.2. or passage of a motion to adjourn Sine Die by two-thirds of the attending State delegations.

9.6 Article V Applications

9.6.1 Application Lifespan

An individual State's Application shall be considered active until such time as either an amendment is ratified under authority of Article V of the United States Constitution that is the result of a Convention called by Congress on the respective Application, or the Application is rescinded by the respective State Legislature prior to the call of the Convention by Congress.

9.6.2 Counting of Applications

9.6.2.1 The counting of active Applications is the responsibility of the State Legislatures.

9.6.2.2 An Application shall be counted towards the two-thirds of the States requirement under Article V of the United States Constitution that triggers a Call by Congress if it is of the same subject matter as other Resolutions. As each State is sovereign and independent, the verbiage of an Application does not need to be similar nor can an Application be disqualified from being counted with those of similar subject matter because the verbiage is different, unless the Application is so limited.

9.6.2.3 An Application may specify a single, or multiple, subject matters. The Application can also be considered an Open Application if it calls for a Convention for Proposing Amendments and does not name any subject matter for an amendment.

9.6.2.4 When counting Applications towards the required two-thirds number specified in Article V of the United States Constitution, an Open Application shall qualify towards the count of Applications for both Open Applications that have been filed among the States and toward the count of Applications for specific subject matters, as it is the intent of a State in filing an Open Application to convene a Convention under any and all subject matters.

9.6.3 Call of a Convention

Upon reaching the required two-thirds of the States having filed Applications on the same subject matter, as defined above as a combination of specific subject Applications and Open Applications, the State Legislatures having filed these Applications shall deliver to Congress a document of notification for a Call. This document shall include all information necessary for Congress to make the call in a timely and informed manner, consistent with the intentions of the founders per Federalist 85 which states that nothing be left to the discretion of Congress. This includes:

1. The subject matter, if any, authorized in the Applications
2. A list of the States that have filed the qualifying Applications with a copy of each of the respective Applications attached
3. The proposed date and location of convening
4. Any other information the Convention deems necessary

Testimony of Timothy Dake of the Wisconsin GrandSons of Liberty to the Joint Committees of the Assembly's Committee on Federalism and Interstate Relations and the Senate's Committee on Financial Services, Constitution and Federalism. 28 March 2017

Chairmen and committee members, thank you for the opportunity to speak today in favor of the resolutions for an Article V convention for a balanced budget amendment. I am Timothy Dake of Franklin, Wisconsin and I represent the Wisconsin GrandSons of Liberty. We are a grassroots constitutionalist activist group. We work for constitutional adherence, promotion and defense. Article is then clearly an issue within our scope.

When we formed in 2009, we were adamantly and vehemently against an Article V convention believing in the hype that it would runaway, could not be limited and would create a parade of horribles. The way that our group is structured is that each topic has a project manager who has to research and analyze a topic and prepare an Issue Analysis. From that research we debate and develop a Position Statement for the group. For the Article V convention issue, I am that Project Manager.

Our initial position statement was about 9 pages long which is about normal. It covers a specific format that looks at both or all sides of an issue, the relevant court cases, laws and pending legislation as well as government actions taken. When we looked at the data for Article V conventions, we realized that the facts, the evidence did not support our initial position. We were forced to reconsider and change our position to support a convention. As we began to work our way through this building and talk with legislators and staffers, we were posed many questions which we worked to answer. There were so many that in about 2012 we produced this document which many of you may have seen in your offices. It is a collection of the Frequently Asked Questions and Court Cases that deal with Article V conventions.

After the first bill was introduced four years ago, the questions increased from the legislators, staff, our members and the public. We produced more documents and eventually added a page to website just for Article V. Finally we decided that we needed to place everything into a single resource. Those documents became this book, published last month. Nearly 900 pages of research on everything Article V. Our sources include over 500 academic law review and law journal articles, over 100 scholarly history articles, more than 150 academic books and more than 1,000 government documents. Books include such staples as The Federalist Papers, Farrand's Notes on the 1787 Convention and Eliot's Notes on the Ratification of the Constitution, among many others.

This book is the first and only comprehensive reference work on the Article V convention.

I have heard a lot of discussion today about the predicted problems of an Article V convention. I would like to factually refute those claims. To do so requires that I address some foundational definitions:

First is the idea that a constitutional convention, which is a plenary, all powered convention empowered to draft a constitution by a legitimate government is the same thing as an amendatory convention, which is a limited power convention called to do a very specific act, that is to draft and propose an amendment, and nothing more. A constitutional convention is endowed with nearly the full sovereignty of the people to do as the delegates see fit on the people's behalf. An amendatory convention is restricted to the scope of the objective defined in the call to the convention by the legislature. I have asked that a handout be given to you and you should have that in front of you now.

You will note that the handout gives category and type of several conventions. To save time, I will limit my comments to those conventions under consideration. The first is the constitutional convention. After the name is a set of parens with two descriptors for each category of convention. The constitutional convention is plenary, that is fully powered to do what is needed to form a government and draft a constitution. It is also authorized by a legitimate government.

There are four other categories listed. Three of those and the constitutional convention are not my classifications – they come from law books, specifically this one, it is the first classic law book on constitutional conventions and is called "A Treatise on Constitutional Conventions" written by Judge John Alexander Jameson in 1867. I have used Jameson's classification system. Each category is unique in its combination of plenary or non-plenary, authorized or non-authorized. Jameson's classic text was seconded by Roger Sherman Hoar's book on constitutional conventions in 1917. Hoar was a former Massachusetts state senator, assistant attorney general and at the time of publication, a professor at Marquette University in Milwaukee.

You will notice that the Amendatory convention is not a category but a type of another category – the specialized convention. This category is my classification based on the research for this book. Specialized conventions are always non-plenary and authorized. They are a lower energy and limited purpose convention called to do a particular task only. They are not endowed with the full sovereignty of the people and can do only what the call to convention permits. An amendatory convention is limited to the proposal, debate and referral of an amendment idea only. It cannot ratify or enact, it cannot change the Constitution or rewrite it, it cannot modify the ratification method. It can do nothing by make a recommendation.

The opponents of an amendatory convention tell you that an amendatory convention can do all of these things and more. That there are no limits on such a convention and that the convention answers to no one. The tell you that it can rewrite the Constitution, repeal the Bill of Rights, reinstate slavery, take away a woman's suffrage and force us to have roundabouts at every single intersection. That kind of power is actually describing a revolutionary convention by the legal description. It usually exists in the absence of government and has not occurred in this nation since 1861 in the Southern States.

Let me create a visual example. We are all familiar with semi-trucks. We also all know what a two wheeled handtruck is used for. Both of these have the word "truck" in their name and they are used to move goods. One is very flexible in what it can do and has the power to move a lot of things at once great distances. The other is very limited in what it can move and how far. Imagine that you decided to move your household from Madison to San Diego. You could use a semi-truck and do it all in one load. Or you could try to move your dining room table with a handtruck from Madison to San Diego. Just because a constitutional convention and an amendatory convention both have the word "convention" in their names and involve creating or modifying constitutions does not mean that they are equipped to do the same things. One clearly is more powerful and wide-ranging than the other.

One last note on this topic, earlier one person used in their testimony a quote from Justice Scalia from a 2014 National Press Club show were he said "Whoa, we shouldn't have a constitutional convention because who knows what would come out of it." Justice Scalia was a brilliant lawyer and he knew the value of words and used them precisely. He was talking specifically about a constitutional convention and not an amendatory convention. So let's look at a Scalia quote for an amendatory convention:

"The one remedy specifically provided for in the Constitution is the amendment process that bypasses the Congress. I would like to see that amendment process used just once. I do not much care what it is used for the first time, but using once will exert an enormous influence on both the Congress and the Supreme Court. It will establish the parameters of what can be done and how, and after that the Congress and the Court will behave much better."

I love that quote as it goes to the heart of Article V's state-application-and-convention method. Justice Scalia clearly distinguished between the two types of convention, favoring one over the other.

The next topic that I would like to address is the idea that the Grand Federal Convention of 1787 in Philadelphia – and that was its name – ranaway and assumed powers not given to it and that it is a precedent for a future amendatory convention to do the same. There are two parts to this matter, the events at Philadelphia and those that preceded the 1787 convention.

With regard to the Philadelphia convention, did the 1787 Grand Federal Convention exceed its mandate and 1) write a new constitution without authority, 2) change the ratification process, 3) defy the States and Confederation Congress?

Let's consider the state of the nation in early 1787:

The Articles of Confederation were not working out. Debt, national and personal were up and growing. The States were taxing each other. There was no hard money. Bankruptcies and foreclosures were up. Congress was wholly ineffective. The Articles of Confederation and Perpetual Union went into effect with Maryland's ratification in 1781. The first complaints for a revision were in August 1780 when 3 states met in Boston. Then Alexander Hamilton issued a convention call in September 1780. In November 1780 another meeting took place among several state in Hartford. In July 1782 NY called for a convention. 1784, VA and MD concluded that a plenary convention is needed to reform the government. The Massachusetts General Court considered a convention call in 1785. In September of 1786 the "Meeting of Commissioners to Remedy Defects of the Federal Government" met in Annapolis with 5 states attending. The convention report pushed for a convention in Philadelphia in May 1787.

The delegates' commissions to Annapolis for New Jersey authorized them to take up not only commercial matters but also "other important matters necessary to the common interest and permanent harmony of the several States." The formal call to convention came not from Congress but from Virginia and was seconded by New Jersey. One by one the states began to answer and pledge to attend. When Congress finally got around to addressing the topic with a convention call of its own on 21 Feb 1787, six states were already committed to participating and had issued delegate commissions. Another, New York has voted to attend but did not issue the commissions until a few days after February 21st. By then Shays' Rebellion had occurred and the rest of the states saw the need for major changes. George Washington had been writing to anyone and everyone encouraging major changes in the Articles of Confederation. Discussion among the political leaders of the day focused on plenipotentiary power for the Philadelphia convention. Taking the wording from the New Jersey commissions, ten of the twelve attending states granted authority to their delegates "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."

Four of the twelve attending states, fully one third, came prepared with proposals for the overhaul of the federal government. Virginia's Gov. Edmund Randolph proposed the Virginia, or large states, Plan; Charles Pinckney of South Carolina, Attorney General William Paterson introduced the New Jersey, or small states, Plan, and Alexander Hamilton produced the New York Plan.

74 delegates were chosen by the state legislatures, 55 of those served in the 1787 Grand Federal Convention in Philadelphia.

42 of the 55 had served at some point in the Continental Congress, Confederation Congress or both.

15 of the 55 were sitting congressmen in the 8th Confederation Congress. (3 more congressmen were selected but two chose not to serve and one declined his seat in Congress but did serve in the convention.)

39 of the 55 signed the Constitution.

33 of the 39 signers were at some point in the Congress.

14 of the 15 sitting congressmen signed the Constitution.

11 of the 15 sitting congressmen served in their respective state's Article 7 ratification convention.

27 of the 55 delegates served in their respective state's Article 7 ratification convention.

Many delegates had served or were serving in their state legislatures.

To put this information in context, at least one quarter of the 8th Confederation Congress, that is 15 out of 60 congressmen, served in the Philadelphia Convention. Those congressmen debated and voted for the 21 February 1787 resolution to call a convention, then they served in the convention that they had themselves called where they, on behalf of their states and per the commissions issued to them by those states, drafted, debated and proposed a new government and constitution, then they returned to Congress in New York and debated and agreed to send that same constitution to the States for consideration for ratification, and finally, they served in those ratification conventions where they voted to ratify the constitution that they had created themselves.

If they ran away, then they ran away from themselves.

The next topic that I would like to address is the issue of whether an amendatory convention is plenary or whether the convention can impute to itself full sovereignty. Again, there are two issues at play. The first is that of a second plenary convention being suggested in 1787. The Anti-Federalists worked hard within the Philadelphia Convention to obtain another plenary, general convention for the purpose of reworking the Constitution and making changes. The Federalists resisted this effort as they knew that the result would be a splintering of the United States in several regional confederacies. No good would come of a second convention and with the failure of the nation imminent, the Federalists were seeking to preserve the Union during hard economic times.

The second issue at play is potential for any future convention to be plenary – which would then have the power to act as the Philadelphia Convention did to write a new government. For the answers, we can turn to the Prof. Max Farrand's "The Records of the Federal Convention of 1787" published in 1911

and developed from the notes of the thirteen delegates known to have kept notes during the convention – these notes represent one quarter of the delegates.

Discussion of a second plenary convention at the 1787 convention:

23 July 1787 – Gouverneur Morris of PA moved that the plan be sent to a second plenary convention to be considered, amended and established. No seconding of the motion. (Farrand, Vol. II, Madison, p.93)

31 August 1787 – Col. George Mason of VA said that his view is that the state ratification conventions could propose amendments that would be submitted to a second plenary convention which could incorporate them. Not a motion. (Farrand, Vol. II, Madison, p. 479)

10 September 1787 – Gov. Edmund Randolph of VA proposed a resolution that the plan go first to Congress, then the state legislatures, then state ratification conventions where amendments could be made. Finally, the plan would go to a second plenary, general convention for finalization of amendments and alterations. Dr. Franklin of PA seconded the motion. Col. Mason moved successfully to table the motion nem. con. (Farrand, Vol. II, Madison, p. 564)

15 September 1787 – Gov. Randolph again made a motion "that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general convention." Col. Mason seconded the motion and added that with the second convention he would sign the Constitution. Charles Pinckney of SC warned against a second convention. Elbridge Gerry of MA joined the discussion in favor of the second convention. "On the question on the proposition of Mr. Randolph. All the States answered – no." (Farrand, Vol. II, Madison, pp.631-633) From McHenry's notes: "Mr. Randolph moved that it be recommended to appoint a second convention with plenary powers to consider objections to the system and to conclude one binding upon the States. Rejected unanimously." (Farrand, Vol. II, McHenry, p.634)

The matter of holding a second plenary convention was brought up four times: Once as a suggestion, three times as a formal motion with one time having no seconding, one time being tabled and one time defeated unanimously.

Finally, also on 15 September 1787, Roger Sherman of CT made a motion to strike out words from Article V that would result in "leaving future Conventions to act in this matter, like present Conventions according to circumstances." That is, with plenary powers. The vote was 3 Ayes, 7 Noes, and 1 Divided. (Farrand, Vol. II, Madison, p.630)

There would be no future second plenary convention for the immediate consideration of the Constitution and no provision for any future plenary conventions. Any modern plenary convention would be unconstitutional, ultra vires and extra legem. We are left only with specialized conventions as legitimate conventions under the United States Constitution of 1787.

Having covered these fundamental, foundational issues, I would like to turn to the usual three premises that underscore every objection to an Article V amendatory convention.

- "There has never been an Article V convention before"
    - If we take the wording as presented, that there has never been an officially called federal amendatory convention, then that is true. If we take the claim as it is written

then it is anything but true. There were 39 Article V conventions held in 1933-34 for the ratification of the 21st Amendment to repeal Prohibition. There were 15 Article 7 conventions held in 1787-91 to ratify the Constitution. There was a New England states convention held in Hartford in 1814 that debated amendment proposals. The Nashville Conventions of 1850 gathered the southern states and debated an amendment. The closest that we have come to a federal Article V convention was the Washington Peace Conference of 1861 that actually prepared an amendment proposal and sent it to Congress. Three quarters of the states took part, northern and southern and they worked to stave off the Civil War. Unfortunately, it was too late to stop the war. Congress did not act on the proposed amendment. The Locust Convention of 1876 saw 14 states work together. The 1889 convention looked at meat handling. Riparian and riverine conventions such as the Colorado River 1922 have been going on for approximately 200 years. We also have interstate compacts. The Council of State Governments estimates that over 200 compacts are operating. The average state belongs to 37 and Wisconsin belongs to 26. The most recent being the Great Lakes – St. Lawrence River Basin Water Resources Compact formed in 2008. I looked up the compact's record in preparation for today. They met December 8th in Columbus, Ohio. I reviewed their summary minutes and found that they did not attempt to rewrite the Constitution, or repeal the Bill of Rights, or reinstate slavery or anything other than what they are tasked to do. They seemed to be most interested in the diversion of water to Waukesha and never discussed the Constitution. So they missed their opportunity to runaway and rewrite the Constitution. There have been 236 state constitutional conventions, hundreds more planning and statehood conventions for territories, over 80 strictly limited amendatory conventions for the states and territories. Conventions are how we accomplish interstate goals.

- "There are no rules for an Article V convention:"
    - Every convention mentioned had rules. Each follows generally the same process, they convene, they name interim leaders, then select a Rules Committee and then wait for the committee to develop rules before going about their business. There are multiple organizations making and suggesting rules today for and Article V convention. Ultimately each convention will set its own rules. I looked at the proceedings of hundreds of conventions in preparing the book. Each was about the same in terms of process and rules. There are some variances but not many. This legislature has rules and carried over rules from the previous legislature until it developed its own rules. It operated under a continuity clause from the last set of rules and Congress might state in the call that a new convention was under the rules from the 1787 until the new convention adopted its own rules. Congress was not needed to make rules for Article 5 and Article 7 conventions. The Constitution provides the same amount of rules for each, that is, there are none specified in the Constitution. Yet, the 1933-34 conventions operated and did not runaway. Why are we comfortable with no rules for the Article V ratificatory conventions but not the Article V amendatory conventions?
- "We do not know what will happen in an Article V convention so that makes it dangerous:"
    - The Constitution specifies the creation of many bodies and no rules to govern those bodies. There are no rules not just for: Article 5 and Article 7 ratification conventions

but for the Electoral College – although it has worked since 1789, the Courts have no rules but continue to operate, the Executive departments, the Post Office and the Patent Office. But I suspect that when I return home today, there will be bills in the mail box. How did they get there without rules in the Constitution?

There is one more point that I would like to address before concluding. I believe that Rep. Schraa asked several times how Article V and the state-application-and-convention method came to be in the Constitution and why it was there. I heard a number of people say today that the convention method was not supposed to be in the Constitution, that it was a last minute addition. Not true. For each of the four plans introduced at Philadelphia, an amendment process was included and in each the plan involved the States through the legislatures introducing amendments. The congressional method was not discussed until the last six weeks of the convention and then as a compromise.

The provision was important to the Framers. They had completed the Revolution just four years earlier and they were seeking to protect themselves and their rights from an out-of-control, oppressive government. That is how they had seen Parliament a decade earlier. They were unable to amend the unwritten English constitution to protect their rights as Englishmen. Only Parliament could do that. Their voice in Parliament was through the colonial legislatures and Parliament had shut that voice down. The Framers sought to protect their British constitutional rights and when they could not, they revolted. Now they worked to protect their new constitutional rights. On the last day of debate, September 15th, Col. George Mason urged the amendment process to go around an obstinate, obdurate government that would not heed the will of the people and respect their rights. He said that he "verily expected this government to one day become as oppressive as the one that they just threw off." The convention method is there to make sure that the States and the people can go around Congress and the federal government. Congress will never willingly cede power – the convention method of Article V is the only way that the States and the people can control the federal government.

Conclusions:

One of the doctrines of government in our constitution is that of checks and balances. The Supreme Court can strike down a law. The legislature can impeach a president. The president can veto legislation. Each is a check by one branch of government on another. The amendatory convention is the ultimate in the system of checks and balances as it is the only check on the ENTIRE federal government by the people and the States. It is the ultimate weapon for preserving our constitutional rights short of revolution. The power of an amendatory convention is equivalent and identical to that of Congress in the amendment process.

Thank you for this time.