



The Conservative Campaign for a New Constitutional Convention that Would Hobble the Federal Government

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Since the 1970s, conservatives have invested enormous effort and resources into state-level politics, vastly out-organizing and out-spending progressive groups. Once obscure organizations such as the American Legislative Exchange Council (“ALEC” for short) have taken center stage in U.S. politics – successfully pushing for right-leaning laws in dozens of state legislatures. ALEC and like-minded groups understand that they can project power nationally if their allies dominate state legislatures.

Consider the Redistricting Majority Project (or “REDMAP”), a project designed to produce Republican majorities in state houses in time for redistricting following the 2010 census. REDMAP spent huge sums on state legislative races. After victories, newly elected Republican legislators quickly authorized gerrymandered congressional districts, with clear partisan payoffs. Even though Democratic candidates won 1.1 million more votes nationally in 2012, Republicans secured a 33-seat majority in the U.S. House of Representatives.

Now conservative groups want to use their dominance of state politics to change the U.S. Constitution in radical ways. If they are successful in an Article V movement to persuade enough state legislatures to support calls for a new Constitutional convention, such a gathering could propose amendments designed to cripple, permanently, the federal government’s regulatory and fiscal powers.

The Current Campaign for an Article V Constitutional Convention

Article V of the U.S. Constitution provides two methods for enacting amendments. In the first approach – used so far in U.S. history for all twenty-seven of the existing Constitutional amendments – two-thirds of both houses of Congress vote for a proposed amendment, which then goes for consideration by state legislatures. Three-fourths of the states must agree to the proposed amendment for it to be adopted.

The Founders included a second method to ensure that Congress could not block amendments that might threaten its institutional interests. State legislatures can enact “applications” requesting a convention, and if two-thirds of them do so, Congress must “call” a convention. The convention, not Congress, then would propose amendments. Ratification of those proposals would still require three-fourths of the states to agree.

No effort to trigger an Article V convention has ever succeeded, but today several conservative groups hope to change that. Perhaps the most extreme is the Citizens for Self-Governance, which has received significant funding from wealthy conservatives including the Koch Brothers, the DeVoses, and the Robert and Rebekah Mercer family foundation. If Citizens for Self-Governance gets its way, a new convention would propose amendments to the U.S. Constitution mandating a balanced federal budget, eliminating all existing federal tax laws, and – in general -- reversing gains in congressional authority established since the New Deal and World

War II.

Another approach, seemingly more narrow, is propelled by the Balanced Budget Amendment Task Force and the Compact for America, both supported by ALEC. This kind of amendment would cripple Congress's power to meet a budgetary shortfall through tax increases. Although seemingly more modest, the Compact's ambitions are basically the same as those of Citizens for Self-Governance. If the federal government cannot spend more than it takes in, and cannot raise taxes, extreme cuts would necessarily follow – and the federal government's role in U.S. governance and social welfare would shrink dramatically.

Unanswered Legal Questions

Should a new Constitutional convention be convened, conservative groups hope to control the convention's procedure as well as its agenda. Success would depend on answers to a number of procedural questions:

- **How would convention delegates get apportioned and selected?** Scholars and lawyers have assumed that the number of a state's delegates would depend roughly on its population, and that voters would elect delegates. But the Compact for America proposes that each state's governor, speaker of the house, and president of the senate attend as delegates. Republicans presently control both houses in thirty-two states and governorships in thirty-three states, so this would ensure a supermajority of conservative delegates.
- **How would voting work at the convention?** Scholars who have examined this question in the past have proposed something roughly consistent with the one-person, one-vote rule: California would receive many more votes than Wyoming, to ensure that its 39 million residents get the same representation as Wyoming's 600,000. Conservative groups, however, want each state to have a single vote, giving a Wyomingite 65 times more representation than a Californian. Although the 26 smallest U.S. states represent less than 18 percent of its population, they could form a majority.
- **Once the convention begins, could delegates consider any proposal? And who would have final say?** Could the original calls for the convention – enacted by Republican legislators – limit the agenda? If Congress apportions delegates according to state population, or if the convention proposes eliminating the Electoral College, can opponent groups sue? Or would federal courts refuse to hear these political questions?

The Continuing Threat

By one count, legislatures in 28 of the necessary 34 states have passed Article V resolutions. Progressives have started to react. Just days after Arizona passed its recent Article V resolutions, New Mexico voted to rescind its earlier resolution. Maryland and Nevada soon followed suit. But the threat of a new convention will remain, and conservative experts have spent years devising plans like those in ALEC's "Article V Handbook for State Lawmakers." Progressives need to have well-supported legal arguments ready to go. They must understand that the path to national power often goes through the states.