

United States of America

# CONSERVATIVE PARTY<sub>SM</sub>



## **ONE ANSWER is ARTICLE V** United States Constitution

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; ...

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### **ACKNOWLEDGMENT**

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We are grateful to FOAVC for the generous amount of time extended by them in editing the factual statements used with their permission. While FOAVC freely promotes and supports any effort to cause an Article V Convention call, such support should not be construed as an endorsement for the Conservative Party USA, its party platform or any candidate for office, nor did we seek such endorsement from FOAVC.

Conservative Party USA  
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**ONE ANSWER is ARTICLE V**

It is now the year of 2009. And undisputed is that voters nationwide are venting their anger about the secular and progressive direction the three branches of the Federal government have taken the past 80 years, and is now peaking in the present administration of President Barack Obama.

A liberal pundit was asked recently if the voter unrest demonstrated at local political gatherings presented problems for those now in positions of political power. His answer was “no” because conservative type activists were like bees, “they get agitated, sting and die.” Unfortunately that is an accurate present-day condition and revealed in that assessment is the Liberal strategy of letting Conservative voters vent their anger on their elected and non-elected bureaucrats, only to have the bureaucrats dismiss out of hand the “voice of the people.”

This current voter unrest has happened because the Washington scene is now thoroughly corrupt, a very accurate choice of a words. The dictionary defines corrupt as, “Changed from a state of uprightness, correctness, truth, etc., to a bad state; depraved.” Our mainstream voters know this to be true and the Conservative Party USA knows this also, however, what should be the action plan to rectify the social and financial injury to the American public by the existing political corruption?

The first step to restore Constitutional governing which is most easily understood by voters is to select and elect new candidates to public office. The Conservative Party USA totally supports this effort, but suggests that danger lies ahead. The election process heavily favors the incumbent, in other words, it’s a “stacked deck” as gamblers would describe an unfair set of odds. Still, the Conservative Party USA will seek and support candidates in the traditional way.

The second remedial step is to turn back to our constitutional roots. C. S. Lewis, 1898-1963, a noted Irish author and scholar, and an outstanding Oxford academic offered this advice. “If you’re on the wrong road, progress means doing an about-turn and walking back to the right road; and in that case the man who turns back soonest is the most progressive man.”

The Conservative Party USA submits to you that the most progressive political remedy to today’s fiscal and social mess is to totally turn back “soonest” to the noble documents, all the documents, offered up by the Founding Fathers of this great nation. The fact of the matter is they have already planted the method of turning back in Article V of the Constitution.

This current-day “mess” has grown to its present state because the three branches of the Federal government over time have feed us the premise that the Constitution is “old” and because the problems today are of a modern age they could not have been anticipated in 1787. False!

The Constitution is a partnership agreement between the several states to “hire” a manager (Federal Government). Agreements are kept current by an amendatory process. The agreement doesn’t change in its entirety, only the part amended. The partners may agree to increase the manager’s wage, but the partnership agreement remains intact. The amendment process of the U.S. constitution gives voice to the people of the current times a way to “amend” it.

The first section of Article V deals with the amendment process that is employed by Congress. It is their responsibility to listen to the voice of the people, and if Congress “deem it necessary”...shall propose amendments...” However, what happens if Congress is corrupt and refuses to abide by its oath to consider when amendments are deemed necessary and does nothing. Our nation’s Founding Fathers were well versed in political shenanigans, and anticipated a recalcitrant Congress. Their solution was the second section of Article V.

The section is very simple and clear, “on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments...” The state legislative amendment initiating power is not an inferior power because Article V continues by stating the “...in either case (meaning either Congressional or State) shall be valid to all intents and purposes, as part of this Constitution...”

The unfortunate fact is the same corrupt Congress that has advanced the secular and progressive laws so foreign to middle-America is the same corrupt Congress that violates its oath to follow and defend the Constitution.

### **Our Plan**

**The Conservative Party USA will continue advance candidates to public office who will, by their oath of office, follow and defend the Constitution.**

**The Conservative Party USA will educate voters to understand that they, through their state legislatures, “own” the amendment process to amend the Constitution and must demand that Congress comply with its Constitutional duty to call a convention when required by the states.**

What follows hereafter in this presentation is rebuttal information for our readers when they encounter false arguments about why Article V has been violated by Congress. The Conservative Party USA does not in any way consider this treatise a legal rebuttal. That will come at the appropriate time. What is presented here is information about how best to, “re-establish the limits and boundaries of the Government as set forth in the Constitution of the United States.

Think about it! Here is the path shown to us by our Founding Fathers to circumvent Congress and present amendments to the Constitution initiated at the state level.

Many political groups, notably those of the extreme political right such as the John Birch Society, have attempted to discredit the public information regarding an Article V Convention. This public information, contained within the volumes of the Congressional Record, is located in most public libraries. Much of it is in the form of photographic copies of public documents. These public documents can be obtained through any public library or through government resources available to any member of the public. Some of the public information is in the form of federal court records, copies of which are on the Internet or in any public law library. All public information used in this pamphlet essay is independently verifiable by anyone, anytime, anywhere using sources completely out the control of the Conservative Party or FOAVC.

As the public information regarding an Article V Convention can easily be verified independently by anyone wishing to do so, the authenticity of the public records used as reference herein is beyond dispute. Thus, the authenticity of the primary claim by Article V Convention advocates all 50 states have submitted 750 applications for a convention call is beyond dispute. The terms of Article V of the United States Constitution are plain: Congress is obligated to call an Article V Convention as the two-thirds numeric count of applying states required in Article V has been satisfied meaning if 34 states submit 34 applications, Congress must call a convention.

Also not in dispute is evidence based on court records, government admissions, historic documents and other public information that such a call is “peremptory.” The term “peremptory” is a legal term in use both in 1789 as well as today whose meaning has remain unchanged: “imperative; final; decisive; absolute; conclusive; positive; not admitting of question, delay, reconsideration or of any alterative. Self-determined; arbitrary; not requiring any cause to be shown.” (Black’s Law Dictionary).

**Next: The Federalist No. 85, Concluding Remarks, Alexander Hamilton , August 16, 1789 to the People of New York.**

*“In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed.*

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

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

Based on these facts, the conclusion is plain, obvious and indisputable: The states have applied; the Constitution demands a convention call; Congress must call an Article V Convention.

What often is disputed is whether two thirds of the states have applied for a convention call at any time. One of the filed applications in the public record is a Joint resolution of the Legislature of the State of Wisconsin. This application, filed in 1929, lists 35 states that had applied for a convention as of that year. This number is one more than is necessary for a convention call even today. In 1929, as there were only 48 states in the Union, the Constitution required the application of only 32 states. Since 1929, even more states have applied for a convention call submitting hundreds more applications.

**Based on the documented public record, legitimate calls to a convention is authentic, many times over.**

In a federal lawsuit before the Supreme Court in 2006, the attorney of record (the Solicitor General of the United States) for the named defendants (all members of Congress) acknowledged formally and officially that a convention call was based on a simple numeric count of applying states. He acknowledged a convention call was "peremptory" with no other terms or conditions meaning the applications were for a convention call rather than a specific amendment issue.



“The Solicitor General also acknowledged that in refusing the call for an Article V Convention as required by the Constitution, the members of Congress were in criminal violation of their oaths of office.”

It is important to note that public record proves beyond any question that even if convention applications were required to be for the same amendment issue (which they are not) the states have submitted sufficient applications on at least three different amendment issues to satisfy even this constitutionally invalid standard. In short, even if there were terms and conditions attached to a convention call (which there are not) the states have satisfied them.

The fact is with 750 authentic applications submitted from all 50 states, and with the Constitution only requiring 34 applications from 34 states, this means the states have applied for a convention call at least 20 times over. The Constitution requires the states only apply once for a convention call, not 20 times over in order for Congress to call one.

Congress has failed its oath of office at least twenty times.

Another argument by those favoring the government have the right to veto the Constitution by not calling a convention when required to do so is the state legislatures do not possess “the ultimate power of ratification” and instead, it is Congress that decides on ratification. This argument attempts to mix the fact that Congress chooses the method of ratification for a proposed amendment with the fact that it is the states which dispose, either by vote of state convention or legislature, on the proposed amendment itself. Thus, while Congress decides by which method, convention or legislature, a state decides on a proposed amendment, it remains the to the state to decide whether or not an amendment will, in fact, be ratified. Thus, the states do possess “the ultimate power of ratification.” A simple reading of Article V proves this fact.

Another argument made by opponents to the Constitution is that an Article V Convention will be, in fact, a constitutional convention and will impose a new constitution on the United States as well as removing all rights currently enjoyed by Americans. This will be imposed by creating a new ratification procedure within the new constitution thus by-passing Article V. This argument is based on the myth the 1787 Constitutional Convention was a “runaway” convention in that it ignored the law of the land in place at that time, the Articles of Confederation, and created a new ratification procedure within the proposed new Constitution.

The historic record disproves this argument. In sum, that record proves that the 1787 convention was not a “runaway” but instead acted within full compliance of the national law in effect at that time. Further, not one of the 750 applications submitted by the states requests removal of a single right currently enjoyed by Americans. Indeed, the public record shows the states have asked for *additional* rights for the American citizen beyond what they currently enjoy today.

Another argument advanced by opponents to obeying the Constitution is that Congress would select the delegates to a convention and would use this power to control a convention. Rulings of the Supreme Court make this impossible. In *Hawke v Smith*, the court said, “It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed.” 253 U.S. 221 (1920). Further, in *United States v Sprague*, 282 U.S. 716 (1931) the court states, “The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true.” Based on these two court decisions, it proper to state Article V contains no implied powers. Therefore, Congress is not empowered to take any other action regarding an Article V Convention except to issue an Article V Convention call.

In sum, unless it is specifically stated in Article V, neither the courts nor the legislatures can change the terms of Article V. Article V does not assign Congress the power to determine the method for selecting delegates to an Article V Convention nor is such power assigned to Congress in any other part of the Constitution.

Therefore, under the terms of the Tenth Amendment this power of determination automatically reverts to the states and to the people.

Opponents of the Constitution have said the portion of *Hawke v Smith* discussing the election of convention delegates, “convention must be made of ‘deliberate assemblages representative of the people’” does not apply to Article V convention delegates because the court was referring to ratifying conventions and not “constitutional” conventions.

These opponents however fail to refute the primary constitutional basis for the assertion that convention delegates shall be elected; the equal protection clause of the Fourteenth Amendment. A long string of Supreme Court cases establish all citizens within a legal class be treated equally under the law. *Smith v Hawke* did not exclude amendment convention meaning that all conventions must be treated equally. As ratification conventions must be elected, so therefore must amendment conventions be elected.

Further, Article V Convention delegates and members of Congress form a legal class. They are the only citizens empowered to propose amendments to the Constitution. All members of Congress are elected. Under the terms of the 14<sup>th</sup> Amendment, therefore, Article V Convention delegates must be elected.

In sum, unless it is stated in Article V, neither the courts nor the legislatures can change the terms of Article V. Article V does not give Congress the power to “determine the method for selecting delegates to the Constitutional Convention under Article V. As such, under the terms of the Tenth Amendment, this power determination automatically reverts to the states and to the people. We hold that one cannot refute Article V Convention delegates will be elected by stating that the court’s statement in *Hawke v Smith* that “convention must be made of ‘deliberate assemblages representative the people’” is incorrect as the court was “referring to ‘ratifying conventions,’ not constitutional conventions.”

Disputes fail to refute the primary basis on which is made this assertion: under the terms of the Fourteenth Amendment and its “equal protection under the law” clause, a long string of Supreme Court cases have established all citizens within a legal class must be treated equally. *Smith v. Hawke* did not exclude amendment conventions. The 14th Amendment mandates all conventions be equally treated.

Therefore as ratification convention delegates are elected, the 14th Amendment mandates Article V Convention delegates are elected. Beyond this, convention delegates and member of Congress form a legal class. They are the only citizens empowered to propose amendments to the Constitution. All members of Congress are elected. Under the terms of the 14th Amendment, therefore, Article V Convention delegates must be elected. Because critics do not refute this part of the assertion, they are thus acknowledging it is to be true.

The final argument of opponents to the Constitution is the so-called “Burger Letter” allegedly written by former Chief Just Warren Burger expressing his objection to a “constitutional convention.” This letter was “discovered” by a member of the John Birch Society, long time opponents of the Constitution and an Article V Convention. Extensive research of this so-called letter reveals it most likely is a phony.

Burger is on public record as supporting an Article V Convention; quotes of “facts” stated in the letter do not match historic record; the supposed recipient of the letter, a fellow political extremist has refused to release all information about the letter; records of the recipient regarding the letter refer to “other” Burger letters rather than the so-called “Burger Letter.”

It is indisputable Congress has never cataloged, tracked nor compiled the applications for an Article V Convention call. The Congressional Record shows applications submitted to both the House and Senate but they are scattered among thousands of pages of material. Unfortunately, the House has never published copies of the actual texts of the applications submitted by the states, as the Senate has. As no compilation of the applications exists, it is impossible to tell without text comparison which House applications are duplicates of which Senate applications. Therefore all that can be accurately stated is the 50 states have submitted 750 applications for a convention call. FOAVC was the first organization to compile the actual texts of the applications into a single reference source, on its web page at [www.foavc.org](http://www.foavc.org).

If Congress had done its required constitutional duty there would be no need to for anyone outside of Congress to do anything regarding compiling applications as obviously, in order to fulfill its constitutional duty a compilation of the applications by Congress would be required so that Congress would know when it had to issue a convention call.

As there is no public summation record, one feels obligated to present the public record as it is, without contrivance or assumption and to cite it accordingly. Therefore as the House has not published the texts of the applications all that be stated is all 50 states have submitted 750 applications for a convention call. Based on available public record there is no way to conclusively prove or demonstrate anything more beyond this fact.

The 750 applications in public record are approximately 20 times the number of applications required for a convention call. Even if the number is halved to allow for Senate and House applications being one in the same, the resulting number of 375 applications is still 10 times the number required. Congress is still peremptorily required to call a convention.

### **Conclusion**

**Public record indisputably proves a convention call is peremptory on Congress. Public record proves a sufficient number of states have submitted applications for an Article V Convention call to compel Congress to issue such a call for a convention. As the obligation is peremptory, there is no possible evidential objection to Congress fulfilling its constitutional obligation regarding the calling of an Article V Convention.**

**Therefore, the Conservative Party USA will make a best effort to educate and peaceably organize the American electorate to demand that Congress fulfills its oath of office regarding Article V of the United States Constitution.**

## CONSERVATIVE PARTY USA

The Conservative Party mission is to promote and protect individual rights and freedom, limit the scope of government, maintain the division of power amongst the executive, legislative and judicial branches of government, and re-establish the limits and boundaries of the Government as set forth in the Constitution of the United States.

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"Through their state legislatures and without regard to the federal government, the people can demand a convention to propose amendments that can and will reverse any trends they see as fatal to true representative government." .

President Dwight D. Eisenhower  
On Article V