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## A Message from Kenneth Chestek, Associate Professor of Law, University of Wyoming, and Chair of Wyoming Promise, Concerning an Article V Limited Convention of the States to Amend the U.S. Constitution

Dear Fellow Wyomingites:

I do understand the fear that many people have concerns about a "runaway convention" under Article V of the U.S. Constitution. However, while I know that the risk of such an event is not zero, I believe it is vanishingly small. However, the risk that Congress simply ignores a call to propose an amendment is very great.

Here's why I think the risk of a runaway convention is extremely small. People think that, because there has never been a convention to propose amendments before, the convention would be able to write its own rules, and in the process claim for itself more power than it was actually given. I find it extremely unlikely that state delegates, selected to do one thing (write an amendment about dark money), would disobey the appointing authority and try to do more than they were authorized to do.

I am a lawyer and a law professor; I teach a course in which statutory interpretation is a major topic. To me, this is not a big Constitutional mystery. This is a straightforward statutory interpretation problem. We have well-defined rules on how to resolve statutory ambiguities. Here's how I think the problem would be solved:

1. Article V of the U.S. Constitution is ambiguous, and therefore in need of interpretation. It allows for two methods of amending the Constitution: (a) Congress can propose an amendment, or (b) a convention of states can be called by 2/3 of the states for the purpose of writing amendments. (IMPORTANT NOTE: the words "constitutional convention" DO NOT APPEAR anywhere in Article V. People who want to scare you into thinking that these conventions could run away love to talk about "constitutional conventions," as if the entire constitution would be put at issue in such a convention. But those words are not part of the Constitution.)
2. The two possible meanings of Article V are that (a) the convention could propose multiple amendments to the Constitution, or (b) the convention could propose a single amendment to the Constitution. The second possible meaning (a limited convention) is completely consistent with the language of Article V. Thus the question arises, may states call for a limited convention?
3. Congress clearly has the right to propose individual amendments. In its history, it has proposed multiple amendments (e.g. the Bill of Rights, the Reconstruction amendments), as well as single

amendments (basically all of the others). If the convention of states option is read to provide a means for voters to act when Congress won't, then the rights of the voters ought to be co-extensive with the rights of Congress: to propose either a group of amendments or single amendments.

4. The most basic principle of statutory interpretation, in every state, is the "plain meaning rule." That is, when a court is faced with interpreting what a legislative text means, it first looks to the plain meaning of the text. Since Article V has no "plain meaning" (as I just said, it is ambiguous), the courts would look to extrinsic evidence. In this case, the extrinsic evidence would be the further legislative enactments by the 34 state legislatures that called for a convention of states.
5. If all 34 calls for a convention of states say essentially the same thing (i.e. "we want a limited convention to do only one amendment"), the "plain meaning" is pretty clear: the convention delegates appointed by each state have been given limited power (propose only the one amendment). I cannot imagine any court ruling that the delegates can exceed the clearly limited power given to them by each state.

Thus, I think if a convention attempted to "run away," it could only do so if delegates claimed more power than they were given. And I think any court would be very likely to intervene to prevent that from happening. (Note that an opinion from then-Attorney General Edwin Meese back in the 1980s reached the same conclusions: a limited convention is legal, and a court would have the power to limit the convention to the specified subject.

But think about this, too: Even if the unthinkable happens, and a convention does run away, we are still not without remedy. If a convention proposes some crazy amendment, we the people still have the right to not ratify the proposed amendment. That is our fail-safe. For the reasons stated above, I think it is highly unlikely that we would ever get there, but even if we did, we still have the ultimate power to reject crazy amendments.

Let me conclude by returning to my first point. I think the risk of a runaway convention is extremely small. But the risk that Congress will ignore a request by the states to propose this amendment is very great. Calls by states asking Congress to do something do not bind Congress; it can ignore the requests with impunity. And think about the nature of the problem we are trying to solve: Congress is not listening to its constituents. Rather, it is listening to big donors. Big donors will not want this amendment to pass, so they will lobby hard to prevent Congress from proposing it at all.

The convention of states provision was put into Article V specifically to provide a remedy for when Congress is unresponsive. That is the situation facing us, and why we think the call for a convention of states must be invoked in order to actually get this amendment proposed.

Sincerely,

Ken Chestek  
Wyoming Promise