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What are the risks of an Article V convention of states?

Some people, including some well-respected national organizations, caution against seeking a convention of states to propose the 28th Amendment, fearing that such a convention could “run away” and propose amendments unrelated to getting dark money out of politics. Wyoming Promise has carefully considered that possibility, but has concluded that the risk of such a “runaway convention” is extremely small; that there are safeguards built in to prevent any damage from occurring to our system of government; and that the risk of Congress doing nothing is too great. Therefore, our Free and Fair Elections initiative does include a call for an Article V convention of states.

1. How can the Constitution be amended?

Article V has two methods: Congress can propose an amendment, or a “convention of states” can. Such a convention would be called when 2/3 of the states (34 states) call for it.

2. Is it possible for a convention called by the states to run away?

Very unlikely. We’ve never had a national convention to propose amendments, but hundreds of state conventions have been held to amend state constitutions and none of them have ever “run away.” The closest thing we have ever had to a national convention is the Electoral College every four years, and it has never “run away.”

3. Article V has no rules for how the convention would be conducted. Doesn’t that mean it could write its own rules and do whatever it wants?

This is a very common misconception. The fact that Article V does not provide rules does not mean that there are no rules; you just have to look for the rules elsewhere. And there are plenty of places where rules can be found.

For example the Due Process Clause of the 5th and 14th Amendments requires notice and an opportunity to be heard. If 34 states called for a convention to do one thing, and the convention decided to do something else, the legislators and voters who called for the convention would not have their voices being heard.

Another outside rule: in all 50 states, if a person appoints somebody else to be his agent to do something, the agent can only do that one thing. If the agent exceeds the authority given, the action by the agent is void. Thus, if either the legislature or the voters appoint delegates to a convention and delegate to them the power to do one thing (vote on an amendment declaring that only human beings have political rights), the delegates have no authority to go beyond that delegated authority and do anything else.

4. The constitution doesn't say anything about a "limited convention." So how can you be sure that a convention would be limited to just one topic?

Many scholars have studied this and agree that a convention could be limited, and that the courts would have the power to prevent a runaway. For example, in 1987, then-Attorney General Edwin Meese thoroughly examined the issue and concluded both that an Article V convention could be limited to one issue, and that a court could prevent a convention from doing things beyond its authorized purpose. A special report by the American Bar Association in 1973 reached similar conclusions.

5. Can states enforce the limitations they place on an Article V convention?

Yes. For example, in March of 2017 the Wyoming legislature adopted a new state statute which governs how Wyoming delegates to an Article V convention would be appointed. Importantly, the legislation also **strictly limits the power of those delegates to vote on matters**. Specifically, the new state statute says that Wyoming delegates are only allowed to vote on "authorized amendments," meaning amendments within the call for a limited convention. If a delegate voted on "unauthorized amendments" (*i.e.* amendments on topics not called for), (a) those votes would not count, (b) the delegate could be removed from the delegation, and (c) the delegate could be charged with a felony punishable by up to 5 years in prison for having cast that vote.

Thus, if an Article V limited convention tried to run away, it is very unlikely that any Wyoming delegate would be running with them!

A similar bill has been approved in Indiana already, and several other states are considering similar bills to prevent runaway conventions.

6. I don't know. There just seem to be so many things to be worked out that I'm still kind of afraid of this whole idea.

There are many unknowns for sure. But one thing we do know: if we do nothing, nothing changes, and the already horrible situation of money in politics will only get worse. Doing nothing is not an option. But remember: we still have the fail-safe protection of the ratification process. In the highly unlikely event that a convention does run away and does propose amendments beyond the scope of its call, any amendment it proposes would *still* have to be ratified by 38 states before it could become part of the Constitution. No radical amendment would likely get ratified.

Relying on Congress to propose an amendment to get money out of politics is not a very likely solution since it is the entity most addicted to money in politics. Article V was put into the Constitution for exactly this situation: where Congress is the problem, or won't act, the people have a way to take matters away from Congress and do things directly. This is such a time.

The risk to our democracy from money in politics is manifest: we must correct it. The risk of an Article V convention misbehaving is vanishingly small; the risk of Congress doing nothing to correct the problem is very large. This is why Wyoming Promise strongly advocates for an Article V solution. Article V is not a perfect solution because of the various unknowns we just discussed, but let's not let the perfect be the enemy of the good. Article V is a very good solution.

Let's not act out of fear. Let's lead with courage.