

Article V Conventions
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“The **tree of liberty** must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.” When Thomas Jefferson wrote this he was responding to the news of Shay's Rebellion.

Later in life he concluded that rebellion was still necessary but that blood shed was not since the people through the states now had recourse to challenge a non responsive or abusive Congress through the Article V Convention (AVC). His conclusion was that this remedy could be applied to alleviate abuses by both the executive and judicial branches as well.

The AVC had been argued for in the convention to placate the vehement anti-federalists and was instrumental in gaining some of their eventual cooperation. Real opposition however was mounted during the ratification process. It was during this time that Madison expressed his opposition to a second convention (before ratification). This fact, often misquoted and misapplied, has been used to support opposition to AVCs when Madison in fact was not opposed to the general concept, but thought that it should be used only for “great and extraordinary occasions.”

Since the beginning there have been attempts to exercise the AVC provision (750 to date) but there has been tremendous opposition to it. This comes in the form of simply ignoring the request and of spreading the myth that it was dangerous, the runaway convention myth. There is ample evidence that the first convention was not a runaway for beside the mandate to delegates to amend the Articles of Confederation there was also an additional mandate to provide a federal government that would address the nation's problems which were not addressable under the Articles. Chief among those were the debts engendered by the revolutionary war and the fact that changes to the Articles could not be made without the approval of every state; each state could veto any changes. Some states did not even send delegates or representatives to Confederation Congresses; typically Rhode Island was a consistent no show.

Here is the full quote by Hamilton from the Federalist Papers:

"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 I am myself 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."

Neale (see bibliography) points out that congress (that is the Senate) has proposed and in some cases passed legislation that sets rules and regulations for AVCs. None of these, however, has made it through the house. In my opinion any such resolution or law would be unconstitutional since no such power is given to Congress by the constitution.

Those who hold that Congress can do this rely on Article 1, Section 8, Clause 18, the "necessary and proper clause" in which Congress is given the power to make laws necessary and proper to carry out it's enumerated powers. They cannot rely on this because the AVC language grants no power other than to determine the mode of ratification.

Article V reads "...Congress SHALL call a convention" (emphasis mine). It imposes a duty, an obligation, a chore; it does not grant a power. Therefore the necessary and proper clause does not apply. It is the States that have the responsibility to determine the choosing of delegates, the rules, the procedures, the venue, etc.. In fact it would be most helpful for the first convention to establish these operating principles, possibly even as an amendment.

Those who want an AVC, for whatever reason, should coordinate with other states so as to include all subjects in their request so that together they can meet the 2/3rds requirement. It is still up to the convention to vet each request and, if passed, declare it ready for ratification. The attempts by Congress to gain control of any part of this process is contrary to the intent of the Founders.

Bibliography:,

The Federalist Papers, #85.

Weber, Paul J. and Perry, Barbara A. *Unfounded Fears* 1989, Praeger.

The Article V Convention to Propose Constitutional Amendments:
Contemporary Issues for Congress

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