



RESCINDING OREGON'S CALLS FOR A CONSTITUTIONAL CONVENTION SUPPORT FOR HB 3625 & HJM 3

Overview

The United States Constitution has been amended 27 times, but never through a new constitutional convention. In each case, Congress passed an amendment, then sent it to the states, where at least three-fourths of state legislatures ratified it. But there is another way. Article V of the Constitution allows for two-thirds of states to call for a whole new constitutional convention to rewrite the U.S. Constitution. This has never been tried, and the rules for how it would work are up for debate. Most legal scholars agree that this would be a dangerous experiment, especially at a time when the country is so politically polarized.

Although states have often passed resolutions calling for an Article V convention, the number doing so on a single subject at any given time has never yet met the two-thirds threshold. **But proponents of an Article V convention are now dangerously close to forcing a constitutional convention on at least one subject, while also arguing in court for combining calls on different subjects to meet the threshold.** If we are to prevent this outcome, some states may need to rescind the old Article V convention petitions still on their books before it's too late.

The Problem

Uncertainties about the Article V process run deep and cut across party and ideological lines. For this reason, legal scholars from both the left and right stand united in opposition to a constitutional convention in today's climate, as a potential threat to every American's constitutional rights and civil liberties. Simply put, there are no rules governing constitutional conventions. A constitutional convention would create an unpredictable Pandora's Box. Nevertheless, Article V convention proponents are dangerously close to forcing a convention on a single subject. Moreover, they've stepped up efforts to mainstream a theory that unrelated petitions can be combined, and they have started testing that theory in court.

The Solution

States like Oregon – that have an accumulation of old Article V petitions still on record – can prevent these old petitions from being unintentionally misused as part of an amalgamated case for what could well become a runaway constitutional convention. Oregon should follow the recent lead of Illinois and New Jersey and rescind old Article V petitions still on record. This is no time to risk experimenting with a constitutional convention to rewrite the U.S. Constitution.

Unresolved Legal Concerns

- What if state petitions are not identical? Would Congress still have to act?
- What if Congress was deadlocked and failed to act on those petitions; could a court step in and order the convention convened?
- If Congress did enact a convention, how would it work?
- Who would choose the delegates and decide how many each state could send?
- Would the convention's work be limited to one subject – like the balanced budget plan or campaign finance reform – or might delegates undertake a wholesale constitutional rewrite?
- And if the convention agreed on one of more amendments, would Congress be required to forward them to the states for ratification?

Legal Left & Right United

A “Constitutional Convention today would be a free-for-all for special interest groups.”

- Former Chief Justice Warren Burger

“There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights.”

- Former Justice Arthur Goldberg

“I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?”

- The late Justice Anonin Scalia

Old Oregon Convention Petitions

Research indicates that Oregon has submitted at least eight such petitions. Unfortunately, legal experts disagree about both the longevity of these petitions and as to whether a convention called for a particular purpose may consider amendments beyond the scope of that purpose. There appears some risk, that past petitions could become part of the basis for calling a convention which addresses issues never contemplated by legislators voting for such petitions.

Citation	Bill #	Year	Subject
H. J. Res. No. 10 (Or. 1864)	HJR10	1864	Slavery
34 Cong. Rec. 2290 (1901)	HJR4	1901	Plenary, Direct election of Senators
35 Cong. Rec. 117 (1901)	SJM11	1901	Direct election of Senators
45 Cong. Rec. 7118 (1910)	SJR7	1903	Direct election of Senators
43 Cong. Rec. 2071 (1909)	HJM2	1909	Direct election of Senators
49 Cong. Rec. 2463 (1913)	SJR2	1913	Anti-polygamy
84 Cong. Rec. 985 (1939)	HJM1	c. 1939	Townsend plan
117 Cong. Rec. 17,056-57 (1971)	HJR1	c. 1971	Revenue sharing