

FACTS AND MYTHS ABOUT A CONVENTION FOR PROPOSING AMENDMENTS

(This paper is an extract from “Curing Federal Dysfunction by Constitutional Amendment: A Primer” by Professor Rob Natelson, Senior Fellow, Constitutional Jurisprudence, The Independence Institute; This and a wealth of other information on Article V may be found at the Institute’s Article V Information Center.)

Article V is relatively short because there was no need to repeat information that everyone knew. It does not explain the rules of the convention, because those rules were universally understood: There had been many “conventions of the states,” and all had followed much the same procedures. Conventions of the states met during the 19th and early 20th centuries, also—and they followed standard procedures as well.

During the 1960s, however, opponents of reform began a disinformation campaign designed to discourage citizens from demanding a “Convention for proposing Amendments.” Among the disinformation claims were that the gathering would be a “constitutional convention,” that it couldn’t be controlled, and (inconsistently) that it would be controlled by Congress. None of these claims had legal or historical merit.

Rather, the facts are clear: A convention for proposing amendments is a meeting of representatives (“commissioners”) from the 50 state legislatures. The convention is called by Congress, but that call is mandatory when two thirds (now 34) of the state legislatures pass “Applications” demanding a convention on a particular topic or topics. In issuing the call, Congress acts as an agent of the state legislatures. Congress’s power extends only to adding up the calls by topic and specifying the initial time and place of meeting.

The state commissioners then convene to discuss whether they think amendments on the assigned topics are needed. If the commissioners conclude that amendments are needed, they write them and propose them to the states for ratification. Voting at the convention is on a one-vote per state basis. No convention proposal becomes an amendment unless three fourths of the states ratify.