

HO #2

HCR 5002

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Can an Article V convention be limited?

Proponents:

1. There have been many Article V applications on a variety of issues.
2. There have been no conventions.
3. Therefore, applications must be submitted according to like subjects in order to be counted.
4. Since only convention applications with like subjects will be counted toward the 2/3rds requirement.
5. Therefore, only those subject matters can be considered at the convention

Precedent:

The 1787 convention was called for the purpose of amending the Articles of Confederation. Instead, it wrote a new constitution. Some have argued that this convention was a Constitutional Convention and not a limited convention. However, looking at Congress's instructions, one can see that they did not have writing a new constitution in mind. They wrote their delegates were authorized to amend the Articles of Confederation which was their constitution.

"Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union.

Black's Law Dictionary

American system of government. *Tietzel v. Southwestern Const. Co.*, 48 N.M. 567, 154 P.2d 238, 242.

Constitutional convention. A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Art. V of U.S. Const. provides that a Constitutional Convention may be called on application of the Legislatures of two-thirds of the states.

Constitutional court. A court named or described and expressly protected by Constitution or recognized by

Declaration of Independence:

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

Constitution:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;

Supreme Court:

Leser vs Garnett – But the function of a state legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the federal Constitution, and it transcends any limitations sought to be imposed by the people of a state.

Dillion vs Gloss – An examination of Article V discloses that it is intended to invest Congress with a wide range of power in proposing amendments. . . . “As a rule, the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require, and Article V is no exception to the rule.”

U. S. TERM LIMITS, INC v. THORNTON – Contrary to petitioners' assertions, the power to add qualifications is not part of the original powers of sovereignty that the Tenth Amendment reserved to the States. Petitioners' Tenth Amendment argument misconceives the nature of the right at issue because that Amendment could only “reserve” that which existed before. As Justice Story recognized, “the states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution does not delegate to them. . . . No state can say, that it has reserved, what it never possessed.” 1 Story §627. . .

In that National Government, representatives owe primary allegiance not to the people of a State, but to the people of the Nation. As Justice Story observed, each Member of Congress is “an officer of the union, deriving his powers and qualifications from the constitution, and neither created by, dependent upon, nor controllable by, the states. . . . Those officers owe their existence and functions to the united voice of the whole, not of a portion, of the people.” 1 Story §627. Representatives and Senators are as much officers of the entire union as is the President. States thus “have just as much right, and no more, to prescribe new qualifications for a representative, as they have for a president. . . . It is no original prerogative of state power to appoint a representative, a senator, or president for the union.” *Ibid.* [n.16]

Congressional Research Service

Congress, however, has historically sought to provide for limited conventions when it has considered this question. Once valid applications have been received from 34 states, it has maintained, the call for an Article V Convention must come from Congress, and Congress has the authority to limit the subject of amendments to be considered. It is at this step that Congress has asserted in the past, but not provided in legislation, its power to set limits as to the convention's agenda. This suggests a delicate balance of authority: the states are authorized to apply for a limited convention, but only Congress can guarantee, by law, that a convention so summoned will confine its recommendations to the issues within its mandate.