

# VOTE NO

## on SMJ18-005 & HJR18-1015

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### An Article V Constitutional Convention CANNOT Be Limited

- According to former **Chief Justice Warren Berger**, "I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda."
- **Supreme Court Justice Scalia**, called it a "horrible idea" to hold a Constitutional Convention in the age of special interests. "Once you get those together, you never know what they're going to do. You'll get everything but the kitchen sink written into the Constitution."
- **James Madison, Father of the Constitution**, said in his November 2, 1788 letter to Turberville that he "trembled" at the prospect of a second convention, and that if there were an Article V Convention:

*"the most violent partizans", and "individuals of insidious views" would strive to be delegates and would have "a dangerous opportunity of sapping the very foundations of the fabric" of our Country.*

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CO Eagle Forum • PO Box 1646 • Craig, CO 81626  
803-920-4933 direct line • 970-620-4020 home office  
COEagleForum@gmail.com • Find us on Facebook CO Eagle Forum

## **Brilliant men have warned that Delegates to a convention can't be controlled**

- During April 1788, our 1<sup>st</sup> US Supreme Court Chief Justice John Jay wrote that another convention would run an "**extravagant risque.**"
- In **Federalist No. 49**, James Madison said a convention is **neither proper nor effective** to restrain government when it encroaches.
- In his Nov. 2, 1788 letter to **Turberville**, Madison said he "trembled" at the prospect of a 2<sup>nd</sup> convention; and if there were an Article V convention: "the most violent partizans", and "individuals of insidious views" would strive to be delegates and would have "a dangerous opportunity of sapping the very foundations of the fabric" of our Country.
- **In Federalist No. 85 (last para)**, Hamilton said he "dreads" the consequences of another convention because the enemies of the Constitution want to get rid of it.
- **Justice Arthur Goldberg** said in **his 1986 editorial in the Miami Herald** that "it cannot be denied that" the Philadelphia convention of 1787 "**broke every restraint intended to limit its power and agenda,**" and "**any attempt at limiting the agenda [at an Article V convention] would almost certainly be unenforceable.**"
- **Chief Justice Warren Burger** said in his **June 1988 letter to Phyllis Schlafly**: "...there is no effective way to limit or muzzle the actions of a Constitutional Convention... After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda... A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn..."
- **Justice Scalia** said on April 17, 2014 **at the 1:06 mark of this video**: "**I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?**"
- **Other eminent legal scholars have said the same – Neither the States nor Congress can control the Delegates. See THIS.**

Yet convention supporters ridicule these warnings as "fear mongering." And they quote *law professor* Scalia *in 1979, before* his decades of experience as a Supreme Court Justice, to "prove" otherwise.

Ask yourself, "Is it possible that James Madison, Alexander Hamilton, Chief Justice Jay, Justice Goldberg, Chief Justice Burger and Justice Scalia understood something about the plenipotentiary powers of Delegates to an Article V convention which the pro-convention lobby hasn't grasped?"

## **WolfPAC Article V Convention Legislation**

WolfPAC is introducing their Application for an Article V Convention in Legislatures across the country. The ostensible purpose of Wolf-PAC legislation is to circumvent or repeal the United States Supreme Court's opinion in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), by obtaining Amendments to our Constitution which permit the federal government to restrict political speech and campaign contributions by corporations.

### **Arguments against WolfPAC's Article V Convention Application**

1. The federal government does not now have the constitutional authority over the country at large to restrict *any* form of speech, to restrict campaign contributions, or to limit the spending of money. These are not enumerated powers delegated to the federal government. Furthermore, the exercise of such powers is expressly forbidden by the First Amendment.<sup>1</sup>
2. The effect of the amendments suggested by WolfPAC would be to increase the powers of the federal government over The People by delegating to the federal government the power to **prevent** or **restrict** certain groups and combinations of people from speaking in the public square on the critically important area of political speech. And we won't find out, until the amendments are drafted, which groups or combinations of people will be allowed to speak out on political issues and donate money to the causes or candidates they support; and which groups or combinations of people will be prohibited from doing the same.
3. WolfPAC proposals are a major step in eliminating free speech and private use of money in this country
4. Our problem isn't that corporations donate money to political campaigns - our problem is that everyone ignores the Constitution. How many of us know the enumerated powers delegated to the federal government? How many know that our Constitution created a federal government of enumerated powers only? If "We the People" had demanded that Congress restrict itself to the enumerated powers, no one would want to spend large sums to influence federal legislation. Who would pay large sums of money to influence Congress's laws respecting the Bankruptcy

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<sup>1</sup> To the extent that Congress and the federal courts have in the past restricted such speech and contributions, their acts have been unconstitutional as outside the scope of powers delegated by our Constitution, and as in violation of the First Amendment.

Code (Art. I, §8, cl. 4); the patent and copyright office (Art. I, §8, cl. 8); and the standard of Weights and Measures (Art. I, § 8, cl. 5)?!

5. Our federal government is corrupt because it exercises thousands of usurped powers – and special interest groups pay large sums to get unconstitutional legislation favorable to them passed; and unconstitutional legislation unfavorable to them killed.

6. Nothing in Article V or the Constitution limits a convention to a single subject or amendment. The Delegates, as direct representatives of “We the People,” cannot be controlled by federal or state law. Pretended limits are a marketing gimmick by its proponents designed to give Legislators a false sense of security and control so they will vote for a process which will be totally out of their control.

7. An Article V convention is dangerous because the Delegates would have the inherent right to propose whatever changes to our Constitution they want, including replacing our Constitution with a new one which has an easier mode of ratification. [See Declaration of Independence, paragraph 2]

# The Denver Post

## Norton, Super: Gambling with our Constitution



By Helen Norton and David Super | Guest Commentary

April 20, 2018 at 10:40 am

Today, no one can deny the disturbing influence of money in politics. We can see it at the federal level; we can see it in the states. We can see it in what gets done and in what does not. Money's influence in politics was pervasive long before the Supreme Court decided *Citizens United*, but that decision opened the door to even greater political power for well-financed special interests.

Recognizing the problems created by free-flowing campaign cash, however, is quite different from having a viable solution. The Colorado legislature is currently considering legislation (House Joint Resolution 1015 and Senate Joint Memorial 005) to address this problem, but unfortunately this legislation would likely make the problem even worse.

This legislation proposes that Colorado ask Congress to call a convention to propose new amendments to the U.S. Constitution. The legislation's advocates envision a narrow constitutional convention that would consider only an amendment to overrule *Citizens United* and allow Congress to enact more effective campaign finance legislation. We share these proponents' interest in meaningful campaign finance reform, but this is not the way to go about it.

Recall that Article V of the Constitution identifies two methods of enacting constitutional amendments. First, Congress may — by a two-thirds vote in each chamber — propose a specific amendment, and the Constitution is amended if at least three-fourths (38) of the states then ratify that amendment. Alternatively, if at least two-thirds (34) of the states ask Congress to form a constitutional convention to propose and consider amendments, then Congress must call such a convention.

But nothing in the Constitution limits such a convention to the issue or issues for which it was called. In other words, anything and everything could be on the table, including fundamental constitutional rights. Nor are there any guarantees about who would participate or under what rules. Indeed, for these reasons, no constitutional convention has been called since the first in 1787.

First, a convention could write its own rules. Indeed, because the Constitution provides no guidance whatsoever on the ground rules for a constitutional convention, fundamental questions (like how the delegates would be chosen, how many delegates each state would have, and whether a supermajority vote would be required to approve amendments) would be left wide open to political pressures and deal-making. To illustrate the importance of these issues, if those participating in the convention decided that every state will have one vote in the convention and that the convention could approve amendments with a simple majority vote, then the 26 least populous states — which contain less than 18 percent of the nation’s people — could approve an amendment for ratification.

Indeed, in such a highly contentious political environment, delegates could cut deals resulting in amendments covering multiple topics. Although most constitutional amendments have addressed only a single issue, nothing in Article V requires this. Provisions considered radical or damaging, at least in some states, could be attached to highly popular proposals in a single amendment, making their passage more likely.

Second, the Constitution does not give anyone outside of the convention any authority to check or regulate it: The Constitution confines Congress’s role in this process simply to calling the convention and specifying how states will ratify any resulting amendments, and it does not empower Congress to disband a convention that strays from its mandate. The Supreme Court, in turn, has declared that the process of amending the Constitution is a “political question” into which federal courts may not intervene. There is thus no way to predict what constitutional amendments the delegates to a convention might adopt.

Finally, a convention could set its own agenda, possibly influenced by powerful interest groups. In short, once a convention is called, everything in our Constitution would become immediately vulnerable. Wealthy and powerful interest groups would surely see a constitutional convention as an opportunity to enact major policy changes, and are particularly well-equipped to influence the process and press for changes to the agenda. Indeed, some claim already to have 28 of the 34 state resolutions necessary to force Congress to call a convention.

As former Chief Justice Burger wrote, a “Constitutional Convention today would be a free-for-all for special interest groups.” It is precisely because of money’s pernicious influence that

Colorado should not call for an Article V constitutional convention. At constitutional roulette, everyone loses — except well-financed special interests.

*Helen Norton is Professor and Ira C. Rothgerber, Jr. Chair in Constitutional Law at the University of Colorado. David Super teaches law at Georgetown University.*

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