

The perils of an Article V constitutional convention

No control, great risk to freedom and representative government

By Mike Owen, Iowa Policy Project

Throughout our nation's history, Americans have been able to depend on the Constitution to be at once our guidepost and our ultimate arbiter of disputes over the bounds of authority. Resolutions now before the Iowa Legislature — ostensibly for specific purposes — actually could put our entire Constitution at risk.

What is Article V?

The Constitution does provide in Article V for states to call for a convention to address changes to the Constitution. However, the authority came with no rulebook. In fact, as many have noted, the original Constitution was called by states to amend the Articles of Confederation that had established a weak national governing structure following the American Revolution. Rather than accept that charge, the

Rule 1: There are no rules

convention set its own course and wrote an entirely new governing document that has stood the test of time. And it has been amended in an orderly manner as circumstances — and the nation — demanded. Twenty-seven amendments to the Constitution have been made, from the first 10 establishing a Bill of

Rights, to others such as abolishing slavery, establishing voting rights for women and 18-year-olds, repealing Prohibition, barring congressional pay raises during a current term, and providing for an orderly transition of power in the event of a President incapable of serving or a need to fill a vacancy for vice president. As needs have been identified, and support established for change, the Constitution has evolved.

Changes would have to be ratified by states. However, this does not protect against rash decision-making by a rogue convention; a convention could make new rules for ratification, or make its own rules to govern how or whether future changes could be made.

*I certainly would not want
a constitutional
convention.*

*Whoa! Who knows what
would come out of it?"*

— Former Justice Antonin Scalia
(nominated by President Reagan)

*'The Convention could
make its own rules and
set its own agenda.*

*Congress might try to
limit the Convention to
one amendment or one
issue, but there is no way
to assure that the
Convention would obey."*

— Former Chief Justice Warren Burger
(nominated by President Nixon)

In Iowa

There are joint resolutions in both the [Iowa House \(HJR12\)](#) and [Senate \(SJR8\)](#) calling for a constitutional convention. They would have to pass in identical form. Both have very broad language for an Article V convention “to propose amendments to the Constitution of the United States that impose fiscal restraints, and limit the power and jurisdiction of the federal government, ...” It is hard to imagine any federal authority that would not fit under that language — in other words, all bets are off for which issues might be considered.

The vast uncertainties are indisputable. A fiscal note on [HJR12](#) from the nonpartisan Legislative Services Agency notes the uncertainties with such a convention: “The fiscal impact of HJR12 cannot be determined as it unclear how a constitutional convention would be administered, assuming the required number of states successfully petitioned Congress to initiate such a convention. In addition, it is uncertain how many Iowa delegates would be appointed to attend, how much the delegates would be compensated, or how long a convention would last.”¹

This is not a home-grown movement, but one pushed by national forces — it is a priority of ALEC, the American Legislative Exchange Council, a corporate friendly bill mill for model legislation it puts in state lawmakers’ hands to get passed in their states. Only two organizations, both ideologically right-wing organizations, including the out-of-state “Convention of States,” have registered in favor of the resolution — while an ideologically diverse mix of organizations are registered against it.

This is not a partisan issue. While the Iowa House approved its resolution on party lines in March 2017, the move has failed in a floor or committee vote in seven Republican-controlled state legislatures (Kansas, Idaho, South Dakota, North Carolina, Utah, New Hampshire, Wyoming) in 2017 or 2018.

Convention of States is a Constitutional Convention. Scholars have noted that convention advocates appear to have adopted a specialized language in which the term “constitutional convention” is reserved for conventions that write constitutions from scratch, not conventions that amend existing constitutions. One of these scholars, David A. Super of Georgetown University Law Center, has noted that there is no authoritative support for this definition. But even if one accepts this peculiarly narrow terminology, what Convention of States proposes is, in fact, a constitutional convention. Once convened under Article V of the Constitution, this convention could propose any amendments it pleased, including the wholesale replacement of our existing Constitution. In any event, the distinction is meaningless, as the convention is proposed under Article V, and as noted, there are no rules set in the Constitution for such a proceeding.

**Rule 2:
It’s not an
‘Iowa thing’**

**Rule 3:
Practical
concerns
cross party lines
and ideology**

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¹ Iowa Legislative Services Agency, Fiscal Note on HJR12, March 19, 2018. <https://www.legis.iowa.gov/docs/publications/FN/955813.pdf>