LWV **Constitutional Amendment Study Guide** (the pint out edition)

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Constitutional Amendment Study Guide

This study of amending the U.S. Constitution is in three parts. The questions in Part I are to develop guidelines for evaluating constitutional amendment proposals. Part II asks about aspects of an Article V Constitutional Convention that may be important in conducting such a Convention. Part III relates to how the League might put these guidelines into practice and asks two overall balancing questions between process and positions.

This Guide is offered to assist Leagues around the country as they discuss the key issues and consider how to answer the Consensus Questions. A companion piece called "Handbook for Successful Consensus Meetings" that talks about how to assemble a study committee and conduct consensus meetings, is also available on the Constitutional Amendment page.

Constitutional Background

In 1787, delegates from twelve of the thirteen states then in existence met in Philadelphia to revise the Articles of Confederation. Instead, they drafted a totally new document, what we know as the U.S. Constitution. It was unanimously ratified by the states. While this all seems very long ago, how the Constitution began and how the 1787 Convention was convened and conducted are cited in the current debate about calling a Convention under Article V.

Here's what Article V of the U.S. Constitution says about amending the 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; . . .

So Article V provides two ways of proposing amendments to the nation's fundamental charter. Congress, by a two-thirds vote of both chambers, may propose constitutional amendments to the states for ratification. OR, the legislatures of two-thirds of the states (34 at present) may ask Congress to call a convention to propose amendments to the Constitution; this is commonly called an Article V Convention. Amendments proposed by either method must be ratified by three-fourths of the states, 38 at present.

The first method has been used by Congress to submit 33 amendments to the states, beginning with the Bill of Rights. Of these, 27 were approved; 26 are currently in effect, while one – the 18th Amendment (Prohibition) — was ultimately repealed by a second amendment, the 21st. The 21st Amendment was also the only one ratified by conventions in the states, rather than by state legislatures. In June 1920, the Supreme Court ruled unanimously that the U.S. Constitution provided for state legislatures, not citizen referendum campaigns, to ratify amendments.

The second method, an Article V Convention, has never been successfully invoked.

League Background

Perhaps it goes without saying that the League of Women Voters believes it is right and permissible to amend the Constitution of the United States when circumstances demand. The League was born from the successful, decades-long effort to pass the 19th Amendment.

The question for us today is: what are the shared values and beliefs within the League – what consensus do we have – regarding the circumstances that might allow or compel the League to endorse a constitutional amendment or an Article V Convention?

If we do find that we have consensus on some of the principles that should guide us, mobilizing the organization to advocacy for or against a particular amendment would fall under the established protocol by which the League determines its advocacy agenda, as laid out in Impact on Issues.

We might support an amendment that was in concert with League positions, but we might not support every amendment that was in concert with League positions. In other words, having a position on the issue is necessary but might not be sufficient for the League to endorse a constitutional amendment.

The first question to ask is whether League positions support the proposed amendment, but even if the answer is an unqualified "yes," we need to examine other factors. The remainder of this Guide helps frame the discussion of those other factors.

Part I Considerations for Evaluating Constitutional Amendment Proposals

In determining whether to support or oppose a particular constitutional amendment or the Article V Constitutional Convention process, the first and most important question is whether the League supports or opposes the subject of the amendment based on League public policy positions. Once League public policy positions are applied, Part I asks, "What are the other values that League members share regarding the purpose of the Constitution and its malleability?" Many believe the Constitution to be a near-sacred document, only to be amended in the most serious circumstances. Do we agree? Under what circumstances is it appropriate to amend the Constitution? What makes a sound and well-crafted amendment proposal?

Foundation Readings

Here are the most important short articles to read in preparation for Part I. Additional, more detailed sources are listed at the end of this Part. Where specific references are relevant to particular questions, they are noted with the

questions below.

• Synopsis of "Constitutional Amendments and the Constitutional Common Law" by Adrian Vermeule.
• Synopsis of "Constitutional Amendmentitis" by Kathleen Sullivan.

Consensus Questions

Here are the consensus questions posed in Part I, with some additional background and points of view:

*** Consensus Question 1.a

1. Which of these should or should not be a consideration in identifying an appropriate and well-crafted amendment?
a) Whether the public policy objective addresses matters of such acute and abiding importance that the fundamental charter of our nation must be changed.
Should Should not No consensus

PRO: Amendments are changes to a document that provides stability to our system and should be undertaken to address extreme problems or long-term needs.
CON: When public sentiment is overwhelmingly in favor of change, restraint based on veneration of the document is misplaced.
Background

This question is asking if we think restraint is a critical element in considering whether to amend the Constitution. Is it important to exercise restraint, amending the Constitution only in the most serious circumstances? Matters are "acute" when they present extreme problems with dire consequences; and they are of "abiding importance" when they affect not only this generation but generations to come.
Specific References for this Question
• "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf , pp. 1-11
• "Constitutional Amendments and the Constitutional Common Law," Adrian Vermeule, 2004, http://www.law.uchicago.edu/files/files/73-av-amendments.pdf, pp, 27-39.
• "Constitutional Amendmentitis," Kathleen Sullivan, The American Prospect, December 19, 2001, http://prospect.org/article/constitutional-amendmentitis

Points of View
Amending the Constitution is one of the most serious and important acts of the people acting through their government. Constitutional amendments are binding for the long-term. The stability that the Constitution provides is one of its key virtues, and that stability will be undermined if the Constitution is amended too often. Hence, restraint is in order; the Constitution is an important unifying document and amendments should address matters of acute and abiding importance, rather than being cluttered with passing concerns. If you agree that these are important considerations, answer "Should."

The Constitution is a tool provided by the framers for bending government to the will of the people and when popular sentiment is overwhelmingly in favor of change, the people should be able to use Article V. Even matters that don't currently seem to be acute or of abiding importance can nonetheless be very significant. The supermajority requirements built into Article V are a high enough hurdle to avoid "clutter." Additional norms for restraint or against change are unnecessary. If you agree with this point of view, answer "Should not."

*** Consensus Question 1.b

b) Whether the amendment as written would be effective in achieving its policy objective.
Should Should not No consensus

PRO: Amendments that may be unenforceable, miss the objective or have unintended consequences will not work to achieve the policy objective.
CON: It's all right to deliberately put something in the Constitution that will need to be interpreted by courts and

legislatures over time.

Background
This question is asking if it is important to consider whether an amendment will work. Can it be readily implemented to achieve its intended policy outcome? Will the courts properly interpret the amendment? If it will not be effective in achieving its policy objective, or may have unintended consequences, then its purpose will not be fulfilled. On the other hand, such an amendment could articulate policy goals that may not be practically attained, but rather that may provide guidance to the courts for deciding future cases or require statutes to bring laws into compliance with the new constitutional principle.

Specific References for this Question
• "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf, pp. 19-20

• "The Missing Right To Vote: What we'd get from amending the Constitution to guarantee it," Heather Gerken, Yale Law School News, http://www.law.yale.edu/news/15643.htm .

Points of View
It is important to consider whether an amendment will achieve its intended policy objectives or will likely fail to do so. This is crucial in preventing unintended consequences and in giving the courts clear, unambiguous direction. Otherwise, judges and legislators are free to ignore or dilute the intention of the amendment. Furthermore, unenforceable amendments, unworkable amendments or amendments that establish unattainable goals can undermine the legitimacy and power of the Constitution – as well as failing to achieve their purpose. If you agree that these are important considerations, answer "should."

Sometimes it is important just to get started, even if an amendment will need to be interpreted by courts and legislatures over time. Even an amendment that won't achieve its intended policy objectives can serve an important purpose in affirming and entrenching fundamental principles. Such amendments may not immediately change the rule of law, but they may give the courts and legislatures direction and a place to start building case law or statutes that allow doctrine to develop over time. If you agree with this point of view, answer "should not."
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*** Consensus Question 1.c

c) Whether the amendment would either make our political system more democratic or protect individual rights.
Should Should not No consensus

PRO: Most amendments have sought to make our system more democratic by extending voting rights, for example, or to protect the rights of minorities from powerful interests.
CON: What has been typical in the past is not a good measure of what's appropriate or necessary today or in the future, especially since there have been relatively few amendments.

Background
This question is asking whether we think the use of the amendment process should be limited to one of two primary goals: (1) to make the structures of government more responsive to the will of the people (e.g. extension of the franchise, direct election of senators); OR (2) to protect or expand individual rights from government overreach (e.g. most of the Bill of Rights). Except for a few housekeeping amendments and those passed under unusual circumstances, nearly all the others have dealt with one or the other of these two fundamentals.
Specific References for this Question
• "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf, pp. 11-14
• "Constitutional Amendments and the Constitutional Common Law," Adrian Vermeule, 2004, http://www.law.uchicago.edu/files/files/73-av-amendments.pdf, pp, 27-39.

Points of View

The majority of amendments to the Constitution to date fall into one or the other of these two categories. Most ordinary policy matters should be resolved through the political process by elected representatives. The failed Prohibition Amendment was proposed to entrench a policy preference of the moment, and it had to be repealed by another amendment. Such amendments limit the range of democratic action for the future and undermine the higher purpose of the Constitution. The emphasis in the Constitution should be on the bigger questions: equality, representation, and liberty. If you agree that these are important considerations, answer "Should."

On the other hand, perhaps the fact that the majority of ratified amendments fall into one of these two classes is merely a result of the fact that there have not been that many amendments or that other important needs have not yet arisen. What constitutes a mere policy preference of the current majority may not be clear without the long lens of history. Which issues are fundamental, versus which are not, may not be all that clear to proponents or opponents at the time. If you agree with this point of view, answer "Should not."

*** Consensus Question 1.d

d) Whether the policy objective can be achieved by a legislative or political approach that is less difficult than a constitutional amendment.

Should Should not No consensus

PRO: Due to the difficulty of amending the Constitution, it is important to consider whether legislation or political action is more likely to succeed than an amendment, in order to achieve the objective and to expend resources wisely.
CON: Important policy objectives should sometimes be pursued through a constitutional amendment even though it may be difficult for it to be enacted and even when other options are available.

Background
This question is asking whether we think the use of the amendment process should be focused on those circumstances where there is no other course of action or where other courses of action have been exhausted, such as executive action, legislation at the state or federal levels, and traditional politics – electing representatives and appointing judges who are committed to supporting the desired reform.
Specific References for this Question
• "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf, pp. 14-17
• "When the Supreme Court is this wrong, it's time to overrule them," Doris Kearns Goodwin & Jeff Clements, Reuters Blog Post June 2, 2015 http://blogs.reuters.com/great-debate/2015/06/02/when-the-supreme-court-is-this-wrong-its-time-to-overrule-them/

Points of View
The Constitution should be amended sparingly, and an amendment cannot be strictly necessary if other avenues exist for accomplishing the same outcome. Using the Constitution to embody specific policy proposals makes those policies more difficult to revise or reverse in the future if circumstances change. Moreover, resources are not infinite and it is important to focus political action on those strategies that are most likely to achieve the policy objective. If you agree that these are important considerations, answer "Should."
On the other hand, a policy objective may be so important that pursuing a number of strategies is the best course of action. When it is unclear what paths are most likely to succeed, we shouldn't consider which ones would be better, a constitutional amendment should be part of the mix. If an amendment is a general policy statement and leaves details and specifics to the courts, then judicial decisions can also play a role. If you agree with this point of view, answer "Should not."

*** Consensus Question 1.e

e) Whether the public policy objective is more suited to a constitutional and general approach than to a statutory and detailed approach.

Should Should not No consensus

PRO: It is important to consider whether the goal can best be achieved by an overall value statement, which will be

interpreted by the courts, or with specific statutory detail to resolve important issues and reduce ambiguity.
CON: Getting action on an issue is more important than how a policy objective can best be achieved.

Background
Some topics are best suited to the detailed and specific approach provided by a statute because important issues need to be clearly resolved and ambiguity could allow the courts to misinterpret. Other topics demand a clear values statement and general provisions that may be subject to evolving judicial interpretations. Most amendments that have been adopted have broad general provisions, in keeping with the pattern set by the first 10 amendments which we know as the Bill of Rights.

Specific References for this Question
• "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf, pp. 27-30.
• Six Amendments, How and Why We Should Change the Constitution, John Paul Stevens, pp. 154-166.
• "Metrics of Constitutional Amendments: And Why Proposed Environmental Quality Amendments Don't Measure Up," J.B. Ruhl, 74 Notre Dame L. Rev. 245 (1999), http://scholarship.law.nd.edu/ndlr/vol74/iss2/1

Points of View
It is important to consider whether a statutory or a constitutional approach is best suited to achieve particular policy goals. Statutes typically set out how a policy should be accomplished. Statutes have specific detail to resolve important issues and reduce ambiguity, and statutes can be more readily changed to meet evolving conditions over the years. Constitutional amendments, on the other hand, are generally written in broad policy terms and set basic values for American government. Interpretation is left to the courts. Some would also argue that converting the Constitution from a statement of political ideals into a list of specific public policies erodes the stature of the Constitution. In addition, policy specifics within the Constitution makes those specifics more difficult to revise or reverse in the future if circumstances change. If you agree that these are important considerations, answer "Should."

In contrast, the more important question may be getting action on the overall policy, rather than the specifics of making the policy work. When Congress or the courts fail to implement an important policy, amending the Constitution may be the only way to make a change. Many state constitutions already have considerable detail. The history behind a constitutional amendment could help guide the courts in correctly interpreting an amendment. If you agree with this point of view, answer "Should not."

*** Bibliography for Part I

• "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf
• "Constitutional Amendmentitis," Kathleen Sullivan, The American Prospect, December 19, 2001 http://prospect.org/article/constitutional-amendmentitis
• "Constitutional Amendments and the Constitutional Common Law," Adrian Vermeule, http://www.law.uchicago.edu/files/files/73-av-amendments.pdf
• Six Amendments and How and Why We Should Change the Constitution, John Paul Stevens, Little, Brown, New York, 2014
• "When the Supreme Court is this wrong, it's time to overrule them," Doris Kearns Goodwin & Jeff Clements, Reuters Blog Post June 2, 2015 http://blogs.reuters.com/great-debate/2015/06/02/when-the-supreme-court-is-this-wrong-its-time-to-overrule-them/
• The Missing Right To Vote: What we'd get from amending the Constitution to guarantee it," Heather Gerken, Yale Law School News, http://www.law.yale.edu/news/15643.htm
• Miracle at Philadelphia The Story of the Constitutional Convention May to September 1787, Catherine Drinker Bowen, Back Bay Books; September 30, 1986

Part II Aspects of an Article V Constitutional Convention

As noted in the Background, Article V of the U.S. Constitution provides two ways of proposing amendments to the nation's fundamental charter. Under one method, called an Article V Constitutional Convention, legislatures of two-

thirds of the states (34 at present) may ask Congress to call a convention to propose amendments to the Constitution. Amendments proposed by this method must be ratified by three-fourths of the states, 38 at present.

An Article V Convention, has never been successfully invoked.
Part II considers whether the League would support such a convention, and if so, under what circumstances.

Foundation Readings

Here are the most important articles to read in preparation for Part II. Additional, more detailed sources are listed at the end of this part. Where specific references are relevant to particular questions, they are noted with the questions below.

• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf
• " The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives," Thomas H. Neale, Congressional Research Service Report R42592, http://fas.org/sgp/crs/misc/R42592.pdf

Consensus Questions

Here are the consensus questions posed in Part II, with some additional background and points of view:

*** Consensus Question 2.a

2. What conditions should be in place for an Article V Constitutional Convention initiated by the states?
a) The Convention must be transparent and not conducted in secret.
Agree Disagree No consensus

PRO: The public has a right to know what is being debated and voted on.
CON: The lack of public scrutiny and the ability to negotiate in private may enable delegates to more easily reach agreement.

Background
This question highlights the importance of the process by which the Convention delegates meet, hold discussions, and make decisions. It is asking whether basic "open meetings" and "freedom of information" rules should be in place for a Constitutional Convention. Under such rules, the formal business of the Convention is open to the public and the press, and the working documents of the Convention are accessible to the public and the press, but private discussions among delegates are also permitted.

Specific References for this Question
• Review: 'The Quartet,' by Joseph Ellis, Details the Constitution's Gang of Four, New York Times, June 29, 2015, http://www.nytimes.com/2015/06/30/books/review-the-quartet-by-joseph-ellis-details-the-constitutions-gang-of-four.html?emc=eta1&_r=0

Points of View
Full knowledge of governmental action is a basic tenet of the democratic process. The American people depend on full disclosure of processes carried out by their representatives in order to be able to govern themselves effectively. Answer "Agree" if you feel that open meetings and FOIA concepts should apply.

On the other hand, some processes are more likely to succeed if they are conducted behind closed doors. Successful governing is the outcome of strategic compromise, and the give and take of the process may happen more readily when it is conducted out of the public eye. This way of proceeding is often implemented for sensitive diplomatic or contractual negotiations. It has also been argued that today's transparency would have made impossible the compromises required to create our current Constitution. Answer "Disagree" if you feel that the Convention deliberations should be allowed to be conducted in secret.

*** Consensus Question 2.b

b) Representation at the Convention must be based on population rather than one state, one vote.
⚫ Agree ⚫ Disagree ⚫ No consensus

PRO: The delegates represent citizens and should be distributed by U.S. population.
CON: The U.S. is really a federation of states that must agree by state to any change in the Constitution.

Background
These are two different ways of proceeding – quite different in the philosophy on which they are based. The first, based on population, provides for each individual citizen – the people – to be represented; the second provides an outcome in which individual states are represented and gives more weight to smaller states.

Specific References for this Question
• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf, p. 37

Points of View
With representation based on population, the one-person, one-vote principle is the guiding rule; it is the appropriate way to represent all the American people in a governing body that has the power to decide to change the Constitution by which this country is governed. This is representative democracy at its fairest. Answer "Agree" if this seems right to you.

Alternatively, representation should not be based on population because the United States is simply a federation of states; hence, it is the states that should be represented in the process no matter what the population of the state. Answer "Disagree" if you think state rights should predominate.

*** Consensus Questions 2.c

c) State delegates must be elected rather than appointed.
⚫ Agree ⚫ Disagree ⚫ No consensus

PRO: Delegates represent citizens and therefore need to be elected by them.
CON: Appointment allows for experts who wouldn't run in an election.

Background
Some governing bodies are elected by the people and other governing bodies are appointed by other elected or appointed officials – by governors or by legislatures, for instance.

Specific References for this Question
• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf, p. 37

Points of View
Election of state delegates is the fairest and most democratic way to identify individuals who will represent and make decisions for all the American people. Answer "Agree" if this is your point of view.

Expertise is vital in a situation where understanding of legal nuances and historical precedents of constitutional law are important; an appointment process is the best way to achieve the needed expertise. Some argue that appointed delegates can be controlled by the appointing body and kept from straying to topics other than those the Convention was called to consider. Furthermore, the structure of the ratification process reflects the founders' view that consideration of proposed amendments is to be by states. So whomever each state chooses to represent that state, and the method by which they are chosen, should be acceptable to the rest of the nation. Answer "Disagree" if you think states should be able choose a method of delegate selection other than popular election.

*** Consensus Question 2.d

d) Voting at the Convention must be by delegate, not by state.
Agree   Disagree   No consensus

PRO: As at the Articles of Confederation Convention, delegates from one state can have varying views and should be able to express them by individual votes.
CON: Because any amendment proposal will go to the states for ratification, voting by state blocs—however the delegates are originally chosen—reflects the probability of eventual ratification.

Background
This means that whatever the method of selection of delegates to the Convention, each delegate would have one vote, and they need not vote by bloc with their state. A state delegation's votes could be divided on any given action.

Specific References for this Question
• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf, p. 37

Points of View
Voting by delegate means that each delegate brings their own judgment and conscience to the process, and need not be bound by the dictates of state interests. This is the way the original Constitutional Convention worked, and it is the way the U.S. House of Representatives works. If this is the way you think it should work for a Constitutional Convention, answer "Agree."

Voting by state reflects the view that the United States is a federation of states and the delegates should be bound to vote as a bloc consistent with that state's position on the question. Political party nominating conventions often vote by state bloc, at least on the first round. If you think delegates should be bound together in state blocs, answer "Disagree."

*** Consensus Question 2.e

e) The Convention must be limited to a specific topic.
Agree   Disagree   No consensus

PRO: It is important to guard against a "runaway convention."
CON: The convention alternative was provided for a time when Congress was not listening, so the delegates should not be constrained.

Background
There are two possibilities: 1) once the Convention is called to order, only one topic may be considered– presumably the one on which 34 states have called for a Convention; or, 2) the Convention once convened can consider any topic that the delegates wish to consider. This second option raises the issue of a "runaway convention," one that could go beyond the issues that prompted the states to call a convention. The 1787 Convention is the only precedent for a convention like one called under Article V. It was called to revise the Articles of Confederation and, in the end, wrote a whole new Constitution.

It is prudent to acknowledge one point on which most observers agree: state calls for a Convention cannot be for a specifically worded proposal. The wording of the proposed amendment must be open enough to allow the Convention to deliberate and craft the amendment to be offered to the states for ratification.

Specific References for this Question
• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf, pp. 20-26.

Points of View

If the Convention can be limited to a specific topic, there will be no fear of a runaway Convention – one in which any issue is legitimate and can be the subject of a proposed constitutional amendment. Such an unlimited Convention could threaten the structure of government, the protection of individual rights, or any other combination of issues. It would not respect the states that called for a Convention because of their concerns about a certain topic. Finally, it is important to remember that the 1787 Convention was called just to "revise" the Articles of Confederation but wrote an entirely new Constitution, one without the Bill of Rights. Answer "Agree" if you think a convention should be limited to a specific topic.

The Article V Constitutional Convention process is a tool provided to the states outside the control of Congress as a means of taking action when Congress is unable or unwilling to do so. In order to be fully effective, Congress should not try to limit the agenda of a Convention. The Convention, once convened, sets its own scope. A Constitutional Convention should have the power to do whatever the delegates wish to do; that is what the founders in Philadelphia did at their Constitutional Convention. If this kind of latitude seems important, answer "Disagree."

*** Consensus Question 2.f

f) Only state resolutions on a single topic count when determining if a Convention must be called.
Agree Disagree No consensus

PRO: Counting state requests by topic ensures that there is sufficient interest in a particular subject to call a Convention, and enhances citizen interest and participation in the process.
CON: There is no requirement for Congress to count state requests by topic and when enough states are unhappy enough to ask for a Convention, it should happen.

Background
Congress has the responsibility to call a Constitutional Convention when two-thirds of the states ask for one, but it is unclear how Congress should count the two-thirds. Should state resolutions calling for a Convention on a specific topic be counted as a request for a Convention on only that topic when determining if 34 state requests have been received? Or should Congress count every state resolution regardless of its substantive content?

Specific References for this Question
• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf, pp. 20-26.

Points of View
Counting state requests by topic respects the will of the states that call for a Convention on a particular topic rather than combining very different requests to get a result that could be inconsistent with a state's intent. Counting by topic also increases the possibility that the Convention would be limited to that topic, and ensures that there truly is sufficient interest in the topic to call a Convention. If Congress counts only those state resolutions that relate to a specific topic, then it is more difficult to get to the required two-thirds and a Constitutional Convention is less likely. Answer "Agree" if you believe that only state resolutions on a single topic should be counted by Congress.

There is nothing in the Constitution that limits state calls or how they should be counted. The Constitutional Convention process was designed for those times when there is significant discontent, and counting all state calls together better reflects widespread concern even if the concerns are very different. Since a Constitutional Convention should consider whatever issues arise, there is no need for state resolutions to be counted only when they are on the same topic. Moreover, if Congress counts only those state resolutions that relate to a specific topic, then it is more difficult to get to the required two-thirds and a Constitutional Convention is less likely. If this is your perspective, answer "Disagree."

*** Consensus Question 2.g

g) The validity of state "calls" for an Article V Constitutional Convention must be determined by the most recent action of the state. If a state has enacted a rescission of its call, that rescission should be respected by Congress.
Agree Disagree No consensus

PRO: A state legislature should be free to determine its position in regard to an Article V Constitutional Convention. A rescission should be equally acceptable to Congress as a state's call for a Convention.
CON: A state legislature's call for a Convention cannot be overturned because the process may never end.

Background
States can issue their calls for a Convention without a time limit or expiration date, and the calls, once issued, can be considered valid or "in force" indefinitely. After a period of time, long or short, changes in the political climate or in the majority controlling a state legislature might cause a state to change its mind about such a call and try to take it back or rescind the call. Should those rescissions be counted by Congress when tallying whether the required 2/3 threshold has been reached?

Specific References for this Question
• " The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives," Thomas H. Neale, Congressional Research Service Report R42592, pp. 18-19. http://fas.org/sgp/crs/misc/R42592.pdf

Points of View
If states are not allowed to take back their calls, then the accumulation of calls counting toward the 2/3 threshold does not really reflect the view of a super-majority of states at the same point in time. It is merely a matter of accretion, with some of those calls representing an historical artifact of a sentiment no longer held. Whichever point of view is favoring the call merely has to wait through time to capture the majority in their legislature – no matter how fleeting – and once they've issued the call, it cannot be undone by future action, no matter how much the majority view may have changed. States should be allowed to rescind their calls. If this is your view, answer "Agree."

Once a state issues a call for a Convention, that call forms the basis of action by other states. As the movement for a Convention gains momentum, new states coming on board rely on the actions of the other, early-adopting states in making their decisions whether to join. Furthermore, if states are allowed to take back their calls, they may be more likely – or more cavalier – in issuing the call in the first place. States should have to think twice and three times about calling for a Constitutional Convention; and once the call is issued, it should stand for all time because the process is ongoing. If this is your view, answer "Disagree."

*** Consensus Question 3

3. Should the League oppose an Article V Constitutional Convention to propose amendments to the U.S. Constitution because of unresolved questions about the powers and processes of such a convention?
☐ Should ☐ Should not ☐ No consensus

PRO: The Constitution is too important to trust an unknown or uncontrollable process. It is unclear whether conditions or safeguards regarding powers and processes for a Convention can be successfully put in place.
CON: A Convention is intended to be an unrestrained process to propose amendments to the Constitution.

Background
There is a debate among scholars as to whether a Constitutional Convention can be controlled in any way. Those who believe it cannot be controlled are afraid of a "runaway convention:" one that could go beyond its original purpose and alter the Constitution in any way it chose. Other people are uncertain whether the powers and processes of a convention can be controlled and worry about the magnitude of the risk. Still others are convinced that the Convention would be bound by its "call" or that Congress would have the power to impose some controls. Finally, there is the view that control does not matter – a Constitutional Convention is intended to be an unrestrained process. There is no consensus on how these questions would be answered. Congress has not passed any legislation to clarify, and the U.S. Supreme Court has refused to hear cases related to amendment procedures, calling such questions "political" and not ones for the Court to consider.

Specific References for this Question
• Proposing Constitutional Amendments by a Convention of the States; A Handbook for State Lawmakers, Robert G. Natelson for ALEC (American Legislative Exchange Council), http://www.alec.org/wp-content/uploads/article-five-handbook-1.pdf

• "States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment or Other Issues," Michael Leachman and David A. Super for the Center on Budget and Policy Priorities, http://www.cbpp.org/files/7-16-14sfp.pdf

Points of View

There is simply no way to be sure that the scope of an Article V Constitutional Convention can be limited. Indeed, the precedent suggests it cannot. Neither the states nor the Congress have any authority to control a convention – it will be governed by its own rules. The courts do not intervene in "political" questions, which this certainly is. The result? An unlimited Convention could threaten the structure of government, the protection of individual rights, or any other basic constitutional tenet of our democracy. In addition, even if one is uncertain whether a "runaway convention" is avoidable, the risks associated with that potential result are too great to support the convention approach. If you agree, answer "Should."

Most proponents of an Article V Constitutional Convention are comfortable that the Convention would not deal with issues beyond its call. They are satisfied that the scope of the Convention can be limited. Some feel that limits can be set by the States, others believe that Congress could maintain control by refusing to send an amendment on to the states for ratification or that the ratification requirement by ¾ of the states is a safeguard. Still others are unconcerned about an unrestrained convention process. If you agree, answer "Should not."

*** Bibliography for Part II

• "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress," Thomas H. Neale, Congressional Research Service Report R42589, http://fas.org/sgp/crs/misc/R42589.pdf

• " The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives," Thomas H. Neale, Congressional Research Service Report R42592, http://fas.org/sgp/crs/misc/R42592.pdf

• "Proposing Constitutional Amendments by a Convention of the States: Rule Governing the Process," Robert G. Natelson for ALEC (American Legislative Exchange Council), Tennessee Law Review, Vol. 78, p. 693, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1904649

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• "Balancing the Budget in a Conventional Way," Milton S. Eisenhower, Wall Street Journal, January 17, 1985, http://www.metamind.us/cc/6/d1.pdf

• The Ultimate Argument Against an Article V Constitutional Convention, Larry Greenly, The John Birch Society, http://www.jbs.org/legislation/the-ultimate-argument-against-an-article-v-constitutional-convention

• Proposing Constitutional Amendments by a Convention of the States; A Handbook for State Lawmakers, Robert G. Natelson for ALEC (American Legislative Exchange Council), http://www.alec.org/wp-content/uploads/article-five-handbook-1.pdf

• Miracle at Philadelphia The Story of the Constitutional Convention May to September 1787, Catherine Drinker Bowen, Back Bay Books; September 30, 1986

Part III Balancing Questions

Part III relates to how the League might put the guidelines from Part I and Part II into practice and asks two overall balancing questions between process and positions. Should the evaluation guidelines from Part I and the process criteria from Part II always be applied or may they be set aside in the overall context of any particular amendment proposal?

Consensus Questions

Here are the consensus questions posed in Part III, with some additional background and points of view:

*** Consensus Question 4.a

4. Should the League consider supporting a constitutional amendment that will advance a League position

even if:
a) There are significant problems with the actual amendment as proposed?
🚹 Should consider 🚹 Should not consider 🚹 No consensus

PRO: Our positions have been studied and agreed to. If other organizations are supporting an amendment in a policy area we also support, we might participate even though it is inconsistent with the evaluation guidelines we support under Part I.
CON: If the League has a consensus on the evaluation guidelines outlined in Part I, then the League should not campaign on an amendment when it is inconsistent with those standards, even though the League supports the policy outcome.

Background
This question is asking whether we might want to allow for circumstances where our commitment to a policy outcome could overcome the evaluation guidelines developed in Part I. Would we ever relax the considerations for determining an appropriate and well-crafted amendment to try to achieve a desired policy outcome?

Points of View
Some believe the League could support a constitutional amendment as a way of advancing the general topic of a proposed amendment even if there may be significant problems with the amendment itself. They argue that a constitutional amendment can provoke debate and draw public attention to the topic, and that the debate might help advance the issue in Congress, the states, or the courts. A proposed amendment can serve as a grassroots organizing device, even if the amendment itself might be flawed or have little chance of passage. If you agree, answer "Should consider."

Others argue that the League should support a proposed constitutional amendment based on the amendment itself, and that the League should not campaign for an amendment when it may be ineffective, counterproductive, conflict with other constitutional values, or have little chance of passage. They suggest that the League's reputation for knowledgeable action means that supporting an amendment that has significant problems is inconsistent with League values. If you agree, answer "Should not consider."

*** Consensus Question 4.b

b. It is being put forward by a procedural process the League would otherwise oppose?
🚹 Should consider 🚹 Should not consider 🚹 No consensus

PRO: Our positions have been studied and agreed to. If other organizations are supporting an amendment in a policy area we also support, we might participate even though it is inconsistent with the process criteria we support under Part II.
CON: If the League has a consensus on the process criteria outlined in Part II, then the League should not campaign for an amendment when the process being proposed is inconsistent with those standards, even though the League supports the policy outcome.

Background
This question is asking whether we might want to allow for circumstances where our commitment to a policy outcome could overcome our commitment to good process, as developed in Part II. Would we ever relax our standards about whether and how an Article V Convention should be called and conducted in order to try to achieve a desired policy outcome?

Points of View
Some argue that dire circumstances and a paralyzed Congress might mean the League should use whatever tools are at our disposal. They believe circumstances could be so damaging and intransigent that the League could support calling an Article V Convention even if there are objections to using the Article V Convention in general or if there are objections to the way that the Convention is being called and controlled. They argue that the threat of a Convention may help advance the issue in Congress, the states, or the courts, and that even if a Convention is called using a flawed process, the high ratification threshold provides a safeguard against the worst outcomes. If you agree, answer

"Should consider."

Others argue that the League should not take the stance that the ends justify the means; we should not abandon our commitment to democratic process just because we find the outcome attractive in a particular case. If you agree, answer "Should not consider."

*** Bibliography for Part III

- "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," The Constitution Project at the Century Foundation, http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf , pp. 1-11
- Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution, Mary Frances Berry, Indiana University Press, 1988