

Why Petition for an Article V Amendment Convention?

The Massachusetts We the People Act for a U.S. Constitutional Amendment and Amendment Proposing Convention

Only an Amendment to the U.S. Constitution Can Reclaim Democracy for “We the People”

A series of U.S. Supreme Court decisions has given powerful special interests constitutional rights and has overturned campaign finance laws. This has resulted in control of the government by the wealthy elite. Winning an amendment is the only lasting way to “overturn” these Supreme Court decisions. Without an amendment, attempts by Congress or state legislatures to rectify this situation will themselves be overturned by the Supreme Court.

Article V of the Constitution Provides Two Ways to Propose an Amendment to the Constitution

Either 2/3 of Congress can vote to propose an amendment, or 2/3 of the states can petition for a convention of states for the purpose of proposing an amendment. Either way it's proposed, the amendment must be ratified by 3/4 of the states in order to become part of the Constitution.

We the People Act is Pending in the Massachusetts Legislature

The We the People Act urges the use of both avenues to get an amendment proposed. It first calls on Congress to pass an amendment containing the two key planks we need.¹ If after six months Congress fails to act, this bill becomes a call for an Article V Amendment Convention. This convention petition contains a number of strict safeguards on its use by Congress and on the scope or topic of the amendment to be considered by the convention.

Congress Can't Be Trusted to Fix the Problem

Congress recently earned an abysmal 10% approval rating.² Americans know its members are dependent on money from wealthy donors and corporations to fund their re-election campaigns and that they vote accordingly. Research at Princeton and Northwestern Universities confirms that laws passed by Congress reflect the preferences of wealthy elites and powerful special interests rather than the needs of average citizens.³

1 <https://malegislature.gov/Bills/190/S379>

2 August 2017 Quinnipiac University Poll <https://poll.qu.edu/national/release-detail?ReleaseID=2477>

3 <http://www.vox.com/2014/4/18/5624310/martin-gilens-testing-theories-of-american-politics-explained>

The Amendment Convention Process Is a Constitutional Safeguard for Representative Democracy

The amendment-proposing convention process is one of the vital checks and balances included in the original Constitution. It was included by the Framers in case Congress ever became corrupted and detached from the will of the American people.

While historically the common path to amending the Constitution has been through Congress, the Framers recognized the need for a fail-safe in the event that Congress was part of the problem. This important role falls to state legislatures, through their power to call a convention for proposing amendments. States are the essential backup in the system outlined in Article V, able to bypass an unresponsive Congress. The convention route is a tool that allows state legislators, who are less removed from their constituents and less dependent on money from wealthy donors and special interests, to represent the people when popular sentiment finds no voice in Congress.

Calling for an Amendment Convention is a Proven Way to Put Pressure on a Reluctant Congress to Act

History has shown that – faced with the credible threat of a convention – members of Congress have always responded by moving forward with amendments that reflect the concerns of the states petitioning for the convention. Four of the last 11 amendments, as well as the 10 amendments in the Bill of Rights, began with states applying for a convention to propose those amendments. This means that most amendments (14/27) to the Constitution historically have begun with state level campaigns calling for a convention. The historic role of state petitions for an amendment-proposing convention of their own has been to push Congress to propose the desired amendment themselves.

Most famously, and in a time similar to our own, the 17th Amendment was proposed by Congress when the states got within 1-2 state applications of calling for a convention. In the early 1900s the old system of state legislatures appointing U.S senators was widely viewed as systemically corrupt and anti-democratic. After decades of calls for reform, including amendment proposals that had broad support in the House but languished year after year in the Senate, the popular movement calling for direct election of senators turned to state legislatures and began racking up formal calls for a convention. It was not until the states stood poised to cross the two-thirds threshold and trigger a convention that the Senate finally agreed to act, and in 1912 the 17th Amendment established the direct election of senators.

State Legislatures Are Taking the Lead to Reclaim Democracy for “We the People”

To date, the legislatures of California, Illinois, New Jersey, Vermont, and Rhode Island have passed legislation to petition for an Amendment Convention for this purpose. And now it is time for Massachusetts to lead as well.

Myth and Reality Concerning an Article V Amendment-Proposing Convention

Because an amendment convention has never been formed under Article V and the process is not defined in the Constitution, it's relatively easy to stoke fears that a convention might fall under control of extremist elements. However, there is a substantial body of legal research and historic precedent that supports the argument that there are significant safeguards for a state-called amendment-proposing convention. We review some of these sources below in response to fears about what could happen.

***Myth:* An Article V convention could completely rewrite the Constitution.**

***Reality:* Article V of the Constitution states, "...on the application of the legislatures of two thirds of the several states, [Congress] shall call a convention for proposing amendments."**

Article V only provides for an amendment-proposing convention empowered to propose amendments, not a constitutional convention empowered to throw out the entire U.S. Constitution and replace it with a new one.

A convention called under Article V should be properly referred to as an "amendment-proposing convention," not a "constitutional convention."

The only constitutional convention ever held was in Philadelphia in 1787, and it replaced the Articles of Confederation with the Constitution. At the time, there was no Constitution or Article V. The Founders assumed the Constitution would have to be amended at times, which is why they included Article V in the Constitution.

The constitutional requirement of state ratification is also a firm safeguard against a "rewrite" or amendments without very broad consensus.

Any proposed amendment must be ratified by 3/4 of the states, which is 38 of the 50 states. (The ratification safeguard.)

It takes only 13 states to block ratification. So if 12 states (50-38) vote "no" the amendment is ratified. But if a 13th state votes "no," that leaves only 37 states and the amendment is one vote short of ratification. And if just one legislative chamber of a 13th state votes "no", ratification is also blocked.

Nothing too far right or left can make it through this ratification safeguard. Currently, there are far more than 13 states with one chamber solidly controlled either by Democrats or Republicans. In fact, after the 2016 election, Democrats have the majority in 32 chambers of state legislatures (counting both houses and senates) and Republicans have the majority in 67 chambers.⁴

⁴ https://ballotpedia.org/Partisan_composition_of_state_legislatures

The ratification requirement means that only the most populist proposals with support across ideological and partisan lines will make it into the Constitution. According to Harvard Law Professor Lawrence Lessig, *"There is no chance that thirty-eight states would ratify what I've called a 'crazy' amendment. Because it is precisely when an amendment becomes 'crazy' – meaning, precisely when an amendment triggers some strong partisan reaction – that it becomes impossible for such an amendment to be ratified."*⁵

The only issue that commands voter consensus on both sides of the partisan divide is the near-universal recognition that money is seriously corrupting our political process — and an amendment is needed to re-balance the power between average citizens and moneyed special interests. In 2017, 96% of Americans believe money in politics creates dysfunction in the political system.⁶ Super-majorities of citizens across the country support the reversal of the Supreme Court decision in *Citizens United v. FEC*, including Democrats, Republicans, and Independents.⁷

***Myth:* The convention could change the state ratification requirement.**

***Reality:* No, a convention by itself cannot change the ratification requirement in the Constitution.**

Article V of the Constitution is clear: State-initiated conventions can only propose amendments. Then to be adopted, the amendment must be ratified by 38 states.

Consider the unlikely scenario that an amendment convention of state delegates somehow exceeded their mandate and did propose an amendment to weaken the state power in the Constitution for amendment ratification. Historically, states have always fought for power; i.e., states' rights. It is highly unlikely that state governments would give away their power to ratify amendments to another body or agree to lessen their power in future amendment processes.

Any wealthy and powerful interests seeking to remove state control of the ratification requirement would first have to win the election of state legislators with this centralist viewpoint. The only way to thwart such a power grabbing effort is to win a US constitutional amendment that restores our ability to regulate big money in elections and establishes equal representation as our goal — as soon as possible!

***Myth:* There is no way to limit the scope or topic of the convention. There is the danger of a “runaway convention” or one that could be hijacked by partisan or big-moneyed interests.**

***Reality:* A convention can be limited by the state petitions to one specific issue or topic. These limitations can be enforced by the states, the Congress, the courts, and the delegates.**

5 Lessig, “Lawrence (2015) “Republic, Lost: the Corruption of Equality and the Steps to End it.” New York: Twelve/Hachette Book Group; Preface, p. 18

6 https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/10/28/National-Politics/Polling/release_497.xml

7 September 2015 Bloomberg poll

The U.S. Department of Justice, American Bar Association, and constitutional scholars agree that the convention scope can be limited by the petitioning states.

The U.S. Department of Justice (DOJ), in a thorough study on the topic of limiting Article V convention topics, states: "...we conclude that the Constitution provides authority for the enforcement of limitations through the states, the Congress, the courts, and the delegates. We also conclude that political constraints would provide an additional means of enforcement."⁸

The DOJ report quotes many constitutional scholars, including this from Professor A.E. Bonfield, who is a graduate of Yale Law School, and until 2016 taught constitutional law at Iowa College of Law:

*"The argument that an Article V convention is sovereign and therefore beyond control is specious. The convention is but a constitutional instrumentality of the people, deriving all its powers from Article V ... an agreement that a convention ought to be held is required among two-thirds of the state legislatures before Congress is empowered to convene such a body. If the agreement contemplates a convention dealing only with a certain subject matter, as opposed to constitutional revision generally, then the convention must be logically limited to that subject matter. To permit such a body to propose amendments on any other subject would be to recognize the convention's right to go beyond that specific consensus which is the absolute prerequisite for its creation and legitimate action."*⁹

This next quote is from John T. Noonan Jr., a federal judge for 32 years, appointed by Ronald Reagan, and graduate of Harvard Law School:

*"The language of the Constitution is clear. Congress is to call a Convention on the application of the legislatures of the States. Congress is not free to call a Convention at its pleasure. It can only act upon the States' application; and if it can only act upon their application it cannot go beyond what they have applied for. If they apply for a Convention on a balanced budget Congress must call a Convention on a balanced budget. It cannot at its pleasure enlarge the topics. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of Congress on the subject which the States have set out and Congress has called the Convention for."*¹⁰

In 1973, an American Bar Association Study Committee report on this subject stated:

"Central to any discussion of the convention method of initiating amendments is whether a convention convened under Article V can be limited in its authority. There is the view, with which we disagree, that an Article V convention would be a sovereign assemblage and could not be restricted by either the state legislatures or the Congress in its authority or proposals.

⁸ DOJ Report, page 34

⁹ DOJ Report Appendix, Professor Arthur Earl Bonfield, *The Dirksen Amendment and the Article V Convention Process*, 66 (Mich. L. Rev. 1968), 949, 994.

¹⁰ DOJ report Appendix Professor John Noonan, University of California School of Law, Testimony Before California State Assembly, February 15, 1979

And there is the view, with which we agree, that Congress has the power to establish procedures which would limit a convention's authority to a specific subject matter where the legislatures of two-thirds of the states seek a convention limited to that subject....From the language of Article V we are led to the conclusion that there must be a consensus among the state legislatures as to the subject matter of a convention before Congress is required to call one."¹¹

Over the years, states have passed hundreds of calls for an Article V convention to propose amendments on various topics. Most of these calls have neither expired nor been rescinded. However, Congress has never convened an Article V amendment-proposing convention. Why? Because never have 2/3 of the states called for an amendment-proposing convention on the same topic. Congress's authority to convene an amendment-proposing convention derives from applications passed by the legislatures of 2/3 of the states. Therefore, the language in those applications defines the scope of the convention. Any amendment proposed at a convention that is outside the scope of the topic specified in the states' applications authorizing the convention would be ruled out of order.

***Myth:* The Massachusetts We the People Act could be counted by Congress toward calling an open topic convention, or counted with other topic convention calls.**

***Reality:* The We the People Act strictly limits the topic of the convention and also forbids Congress to count this Massachusetts petition toward calling a convention on any other topic or scope.**

The Massachusetts We the People Act only calls for a “*limited convention for the exclusive purpose*” of proposing the amendment specified in the bill. It also places very strict limits on the use of its convention call, (1) by not allowing Congress to even count the petition until 33 other states submit petitions for the same limited topic as Massachusetts, and (2) unless Congress restricts the convention scope to the same limited amendment proposal.¹²

All the other states that have passed bills like the We the People Act – Vermont, Rhode Island, California, New Jersey, and Illinois – have limited their convention petitions to the specific topic of overturning the Supreme Court “*Citizens United vs FEC*” decision on campaign finance, in order to achieve fair elections.

Furthermore, state legislatures that have passed petitions seeking other types of U.S. constitutional amendments, such as a federal balanced budget amendment, have also restricted their petitions to that amendment topic. So, petitions from other states for a convention that many in Massachusetts are worried about also do not call for nor allow an open topic convention. State legislatures of all political leanings have demonstrated their intent to restrict such amendment-proposing conventions to the topic they support.

By passing the We the People Act, the Massachusetts legislature would NOT increase the likelihood of an open topic convention, nor would it help the right wing get a convention for proposing other amendments.

11 Report of the ABA Special Constitutional Convention Study Committee, American Bar Association , July 1973

12 <https://malegislature.gov/Bills/190/S379>

Myth: Article V of the Constitution does not provide any rules for an amendment convention, so there is no mechanism for a state to ensure that a delegate votes only on amendments within its scope or votes according to the state's instructions.

Reality: While it is true that Article V itself does not specify rules for an amendment-proposing convention, there are several levels of strong safeguards to limit delegates to the topic of the state convention calls.

The U.S. Department of Justice report points out:

"The Senate has twice (1971, 1973) unanimously passed a Constitutional Convention Procedures Act, and the Senate Judiciary Committee has unanimously reported out bills on two other occasions (1984, 1985)... All four of the bills were based on the conclusion that the Congress must call a limited constitutional convention if the requisite number of states apply."¹³

Congressional bills have addressed the procedural framework for a convention, including standards for state application, size of convention, delegate apportionment, delegate qualifications, terms of convention, ratification procedures for proposed amendments, and provisions for judicial review.¹⁴

Also, the DOJ report states:

"Of the four agents who have power to enforce the limitations of a limited constitutional convention, the state legislatures are likely to be the most vigilant. A convention is called for the purposes of the states. The agenda of a convention is prescribed by them. It is their consensus that causes the convention to come into being. Thus, the states can be expected to be most intolerant of any proposals from a convention that violated the terms of its convening."¹⁵

There is considerable case law governing the behavior of delegates at conventions. Delegates are chosen for a single purpose, and are agents of the state. Therefore if a delegate voted for an out-of-scope amendment, that vote could be invalidated by a court. In addition, delegates who have been instructed to comply with limitations defined in their state's application would have a strong legal incentive to abide by those instructions.

Furthermore, more than 200 conventions have happened at the state level to consider amendments to state constitutions. Not one of these has ever exceeded the scope of its mandate.

The We the People Act calls for delegates to the convention to be half elected citizens and half state and local elected officials. It specifies that no current or former federal elected or appointed officials can be delegates.

¹³ DOJ Report, page 42

¹⁴ Neal, Thomas, "Article V Convention to Propose Constitutional Amendments: Issues for Congress," Congressional Research Service, 03/29/2016, page 20

¹⁵ DOJ Report, page 34

Conclusion: The Greatest Danger Is Inaction

America has become an oligarchy, where the desires of the wealthiest few dictate government policy. The Supreme Court has thwarted our ability to limit the impact of billionaire money on our elections, and the longer that we wait to overturn it, the more that officials, who are elected by this big money dominated system, will seek to undermine true democracy.

The over-arching risk to our future and to that of our children is the risk of failing to fix our broken democracy; and the only constitutional recourse available to the people, when Congress won't propose the amendment we need, is the amendment convention process.

Every Generation of Americans has Amended the Constitution. Now, It's Our Turn!

The Constitution of the United States has been amended 27 times, at least once by every generation of Americans. We currently live in one of the longest stretches of time between amendments since the founding of our country. Previous generations of reformers, such as the Abolitionists and Suffragists, proved capable of scaling the imposing precipice.

The Greatest Responsibility of Our Generation is to Restore Sovereignty to “We the People”!

We can help achieve this goal by passing the [We the People Act](#) in Massachusetts, thereby turning up the pressure on Congress to propose a 28th Amendment to end the corrupting influence of private money on public elections, and end corporate manipulation of our Constitution to overturn democratically enacted laws protecting our health, safety, environment, and democracy.

78 percent of the American public wants this to happen.¹⁶

For more information, see www.WethePeopleMass.org

¹⁶ September 2015 Bloomberg poll