

Sen Garth D. Everett, Chair; Sen. Kevin J. Boyle, Democratic Chair; and Members of the House State Government Committee:

The Declaration of Independence, paragraph 2, expresses the right of the people (i.e. convention Delegates) "to alter or to abolish" our "Form of Government." PA legislators need to know that the subject of the amendment doesn't matter; *it's the Article V convention process that jeopardizes our Constitution!*

Legislators have been assured by COSP that state legislators will control convention Delegates and set the convention rules. *But this isn't true!*

Article V provides that when 2/3 of the state legislatures *apply* for it, *Congress* calls a convention. At that point, it will be out of the State Legislators' hands.

Here's an article which I'm sure will be of interest to you:

<http://www.renewamerica.com/columns/fotheringham/190613> [ad free]

This issue will impact our entire Country, not just Pennsylvania.

**Respectfully,
Beverly Manning
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How the 'COS' cheated Utah

By [Don Fotheringham](#)

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Don Fotheringham

During the 2019 session of the Utah State Legislature, a powerful lobby known as the "Convention of States Action" (COS) succeeded in getting the Republican leadership to maneuver SJR-9 through the Utah Legislature. SJR-9 is COS's application for Congress to call a convention under Article V of the U.S. Constitution.



Utah State Capitol Building

COS claims they want an Article V convention so we can get amendments to the Constitution which "limit the power and jurisdiction of the federal government."

But anyone who has actually read our Constitution knows it already limits the federal government to a very few clearly defined powers.^[1] Our problems arise from the fact that most everyone ignores the existing constitutional limits on federal power.

An Article V convention would be dangerous

So what is the real problem with calling for an Article V convention?

Opponents of an Article V convention warn that if Congress calls a convention, the Delegates, as proxies of the People, would have the inherent power to make unlimited changes in the Constitution – even to establish a new form of government. But the COS lobby assures state legislators that nothing can go wrong because Article V amendments require the approval of three-fourths of the states. They overlook (or cover up) the fact that a new Constitution would have a new mode of ratification, even as the 1787 Convention adopted a new mode, making it easier to ratify the new Constitution.

Our only precedent for a convention came in 1787, when James Madison invoked the Delegates' "transcendent and precious" right to alter or abolish their form of government as the basis for what he and the other delegates did at the Convention. *They ignored their instructions to do nothing more*

than propose amendments to the Articles of Confederation, and drafted a new Constitution, which created a new form of government.

We thank God for the extraordinary character of Washington, Madison, Hamilton, Franklin, and others at the 1787 Convention who used their government-making authority to put the happiness of the people ahead of power and despotism. Can you imagine today's Congress calling an Article V convention run by Nancy Pelosi, Joe Biden, Elizabeth Warren, Jeff Flake, and Maxine Waters?

False promises

The COS lobby works hard to instill a false notion of legislative superiority over the Delegates to a convention. They assure state legislators that they can limit an Article V convention to a single subject, and that they can restrict the convention to specific rules and regulations. Lawmakers who fall for these promises have no concept of their role in the governing process. Legislators are the product of a convention, not its creators. They do not have the power to create or modify the Constitution under which they hold their existence. Legislators have only the power to make statutes – and constitutions are not made by statute. Under Article V, they have only the opportunity to initiate the convention process – nothing more; and Congress has the duty to call it – nothing more.

COS operatives do not want legislators to understand this doctrine, which was clearly understood by our Founding Fathers. It is described in the 1787 Convention record: "It was of great moment he (George Mason) observed that this doctrine should be cherished as the basis of free government."^[2]

Uncontested deception

The lobbyists who push the states for an Article V convention will not show up for an open debate.^[3] Their only hope for capturing the 34 states needed to trigger a convention is **uncontested deception**. In the state hearings, they resort to stratagems and legislative shenanigans to prevent opposing voices from being heard.

To help get their Utah bill passed, the COS put Rep. Ken Ivory on their payroll ^[4] and made Rep. Merrill F. Nelson a celebrity by sending both of them to a "simulated convention" staged by the COS in Williamsburg, Virginia. This mock convention was supposed to "prove" that Article V conventions are safe and controllable.

Utah voters have come to realize that the problem is a disobedient Congress and not a defective Constitution. So during the 2018 legislative session, Rep. Nelson kept his application for an Article V convention secret under a strange category called "Protected Bills." This made it impossible for anyone to read or assess the measure before it was put into the system. Apparently, Nelson's opportune moment never came during the 2018 session and his "protected bill" was kept from public view all that year.



Utah Rep. Merrill F. Nelson

But during the 2019 session, Nelson's bill popped up in the Senate under Sen. Evan Vickers' name

and was introduced as *SJR-9*. Well, that was fine and dandy because the application could now be sent to a committee chaired by Sen. Daniel Thatcher, a passionate advocate of blaming the Constitution for the usurpations of Congress. On February 11, during the Senate's "public hearing" on *SJR-9*, Thatcher allowed four opponents of the bill to speak for no more than two minutes each, while he and Vickers had unlimited time to recite the standard COS line. The Chair prohibited any rebuttal by the opposition.

After witnessing the disgraceful tactics of the Senate committee, I was afraid the hearing in the House would follow the same pattern. So I asked my own Rep. Walt Brooks to see if the House committee Chair, Stephen Handy, would allow me to testify as a special witness on *SJR-9*. The answer was a flat NO. Handy said he had time for only several two-minute statements. Brooks spent a good deal of time trying to get Handy to allow me a fair testimony at the hearing. Finally, Handy agreed to grant me a small amount of extra time. On that promise, on March 4, I made the five-hour trip to Salt Lake and guess what? Handy cut me off in exactly two minutes! He – or whoever rules him – had no intention of holding a fair hearing. But true to the pattern, Vickers and Nelson had unlimited time to recite the baseless clichés prepared for them by the COS. We needlessly lost in the House committee by a vote of 6-5.

The dirty tricks had just begun

The sad part of this affair is the ease with which we could have beaten the COS in a fair pro/con exchange just as we had done the previous year in 24 states! The pressure was on and Utah was the patsy. But the foregoing was not the end of the subterfuge and deception engineered by the COS. The dirty tricks and the astonishing collaboration of the House leadership had just begun.

The most reprehensible part of the big show came on March 5 on the House Floor. After Nelson's impassioned introduction of *SJR-9*, six COS proponents (Reps. Stratton, Strong, Acton, Winder, Ivory, and Snow) quickly arose to speak in favor of the resolution. These were hardly spontaneous arguments, for each representative spoke on a different aspect of the issue without any repetition. Then, before any opposing member could arise, Rep. Duckworth arose and "called the question" to end the debate. The Speaker, Brad Wilson, immediately declared Duckworth's motion "non-debatable" and called for a voice vote to end the debate, and the ayes had it! That was the end of the most corrupt Floor session in Utah's history. *It was rigged to silence all voices against SJR-9!!*

The House then took a vote on SJR-9 and passed it before any of the opposing members (at least 23) could say anything to educate their colleagues or address Nelson's shallow reasons for messing with the Constitution.



Mark Meckler

COS head Mark Meckler's confession

Utah, once the genteel emblem of integrity, is now famous for its parliamentary sins. A few days later, Mark Meckler, head of the COS, was a guest on the Mark Levin Show and bragged about how he got Utah to suspend the rules and call a special vote on his bill. Amazing! I was confused when listening to the audio of the Floor session because I did not understand the silence of our legislators who had vowed to oppose SJR-9. Until Meckler's confession, I had no idea the whole thing – from the fake committee "hearings" to the "non-debatable" Floor show – had been designed from the outset to cut off all voices speaking out against the scheme to call a modern convention.

How COS won the connivance of Utah's leadership and the committee chairmen, I do not profess to know; however, I think such a conspiracy could be carried out by as few as 20 of the 104 members of the Utah House and Senate. That means we yet have a body of strong, faithful representatives who, when fully informed, will rise up to protect our Constitution and honor their oath to support and defend it.

NOTES:

[1] In Federalist No. 45 (third paragraph from end) James Madison, Father of our Constitution, writes:

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce ...the powers reserved to the several States will extend to all objects which ... concern the lives, liberties, and properties of the people, and their internal order ... and prosperity of the State."

[2] The Records of the Federal Convention of 1787, Max Farrand, Vol. II, p.88 (July 23, 1787).

[3] Two years ago, a volunteer supporter of the COS tried to organize a formal debate on the convention issue and asked Rep. Walt Brooks to reserve the auditorium at Utah's Dixie State University so the public could attend and become better informed. He invited Mark Meckler to debate a competent opponent, Publius Huldah, who is a retired trial lawyer, well known for her skilled opposition to the proposed convention. Meckler refused the invitation, so the COS volunteer decided to debate Huldah himself. Meckler instantly forbade any COS volunteer to debate the issue anywhere or with anyone! Meckler can win only by cutting off all informed opposition. He does this by smearing his opponents and pre-setting the dials at legislative hearings. Most people have never heard the powerful reasons why America has avoided – for 230 years!! – an Article V convention. That has not been an oversight.

[4] Utah House of Representatives Conflict of Interest & Financial Disclosure (dated January 23, 2017) shows that Rep. Ken Ivory has two employers: Citizens for Self Governance and Convention of States Action (both groups are directed by lobbyist Mark Meckler, who never seems to run out of money).

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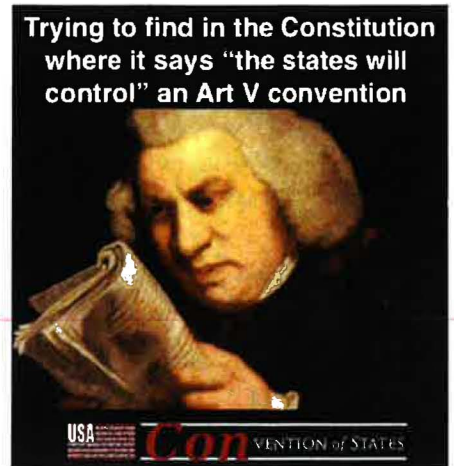
False claims in SR 234 & HR 206 application for an Article V Convention which contradict the US Constitution

The BLACK font in items 1-6 below is the wording in SR 234 (HR 206).

The RED font is what the U.S. Constitution says.

The GREEN font is the Report of the Congressional Research Service.

The BLUE font is my comments.



Constitutional Provisions Respecting an Article V convention

Article V, US Constit., says:

“The Congress, whenever two thirds of both Houses shall deem 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...”

So Congress “calls” the convention. Art. I, §8, last clause, US Constit., says Congress shall have the Power:

“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof.”

So Congress makes *all laws* to organize the convention. That includes determining how Delegates will be selected.

Any Resolution made by the Pennsylvania General Assembly which contradicts these provisions of the US Constitution is **unconstitutional and of no effect**. Article VI, cl. 2, US Constit., says:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

The **April 11, 2014 Report of the Congressional Research Service** shows that Congress understands that the Constitution delegates to Congress *exclusive authority* over setting up the convention. The CRS Report exposes as *false* COS’s assurances that the States would organize the convention. The Report says:

“First, Article V delegates important and exclusive authority over the amendment process to Congress...” (page 4)

“Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; ... (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states; ...” (page 4).

1. The SR 234 (HR 206) application falsely claims [page 2, lines 22 -30 & line 1 on page 3]:

“(1) An application to Congress for an Article V Convention confers no power on Congress other than to perform a ministerial function to call a Convention.

(2) This ministerial duty shall be performed by Congress only when Article V applications for substantially the same purpose are received from two-thirds of the legislatures of the several states.

(3) The power of Congress to call a Convention solely consists of the authority to name a reasonable time and place for the initial meeting of the Convention.”

The Truth: The Constitution doesn't say that! Art. V authorizes the States to *apply* to Congress for *Congress* to call a convention. **That's all the Constitution authorizes the States to do.** The Constitution grants *to Congress* the power to make the laws “necessary and proper” to carry out its power to “call” the convention; & States cannot change this by wishful thinking and by claiming that Congress' powers are merely “ministerial”.

Article V *doesn't confer any power on the States to dictate to Congress how Congress is to count the applications.* Congress has power to **judge the applications** as they deem best. ¹ **The States cannot dictate to Congress how Congress is to exercise a power the Constitution grants to Congress!**

2. The SR 234 (HR 206) application falsely claims [page 3, lines 2-6]:

“(4) Congress possesses no power to name delegates to the Convention, as this power remains exclusively within the authority of the legislatures of the several states.

(5) Congress possesses no power to set the number of delegates to be sent by any state.”

The Truth: Art. V doesn't say that! *Congress* has the power to make the laws “necessary and proper” to “call” the convention, and that includes determining how Delegates will be selected and how many there will be.

Nothing in Art. V (or elsewhere in the US Constit.) requires Congress to permit States to select Delegates. The CRS Report recognizes that **Congress “determ[in]es the number and selection process for its delegates”** - so *Congress* decides how Delegates will be selected. Congress may appoint *themselves* as Delegates.

Furthermore, *if* Congress permits the States to send Delegates, the CRS Report recognizes that **Congress may decide that each State will have that number of Delegates & votes which is equal to its electoral votes** (p. 37, 41). If so, Pennsylvania would get 20 Delegates & votes, and California 55.

3. The SR 234 (HR 206) application falsely claims [page 3, lines 7-12]:

“(6) Congress possesses no power to determine any rules for the Convention.

(7) According to the universal historical precedent of interstate conventions in America, states meet under conditions of equal sovereignty, which means one state, one vote.”

The Truth: The Constitution delegates *to Congress* the power to make the laws “necessary and proper” to “call” the convention – *to organize it*. But once the convention is convened and Delegates assemble, the Delegates alone have the power to make the Rules. On **May 29, 1787**, at the convention called to propose revisions to *our first Constitution* (the Articles of Confederation), *the Delegates made the Rules for their proceedings & voted to make their proceedings secret*.

The “interstate conventions” are irrelevant: They weren’t constitutional conventions called to propose changes to our Constitution! The only relevant historical precedent for a convention called under Article V is the federal convention of 1787 called by the Continental Congress “for the sole and express purpose of revising the Articles of Confederation”; but which resulted in the Delegates’ ignoring their instructions and proposing a new Constitution which created a new Form of government.

As to voting, and as noted just above, **the CRS Report recognizes that Congress may decide that each State will have that number of votes equal to its electoral votes.**

4. The SR 234 (HR 206) application falsely claims [page 3, lines 13-23]:

“(8) A convention convened pursuant to this application is limited to consideration of topics solely specified in this resolution.

(9) This application is made with the express understanding that no amendment which in any way seeks to amend, modify or repeal any provision of the Bill of Rights of the Constitution of the United States is authorized for consideration at any stage.

(10) This application shall be void ab initio if ever used at any stage to consider any change to any amendment within the Bill of Rights.”

The Truth: An Article V convention is a *federal* convention, called by the *federal* government, to perform the *federal* function of addressing our *federal* Constitution. State legislatures have nothing to do with it other than to “apply” to *Congress for Congress* to call the convention. See this Chart.

Furthermore, **Article V shows that *the convention itself* is the deliberative body. State Legislatures may not strip Delegates of their constitutional powers to “propose amendments”**. Article V doesn’t grant to the States any power to control Delegates.

State Legislatures and the Continental Congress couldn’t control Delegates to the federal “amendments” convention of 1787 (where our present Constitution was drafted); and they cannot control Delegates to an Article V convention. That’s because:

- The Delegates are the Sovereign Representatives of *The People*;
- The Declaration of Independence (DOI) recognizes the right of a People to form, modify, or abolish their gov’t.; and
- An Article V convention is a sovereign assembly with gov’t - making or gov’t-changing authority.

So Delegates can, like James Madison in **Federalist No. 40** (15th para), invoke that “transcendent and precious right” recognized in our DOI, to throw off the governments we have and write a new constitution which creates a new Form of gov’t. And since the new constitution will have its own mode of ratification, it’s sure to be approved. This State Flyer shows how we got from our *first* Constitution to our *second* Constitution.

The assertion that a State may “void” its application after the convention has convened is absurd. *Once Congress “calls” the convention, the bell has rung, the States can’t un-ring it.*

5. The SR 234 (HR 206) application falsely claims [page 3, lines 24-28]:

“(11) The General Assembly of the Commonwealth may provide further instructions to its delegates.

(12) The General Assembly of the Commonwealth may recall its delegates at any time for breach of their duties or violation of their instructions.”

The Truth: See response just above. Furthermore, *if* Congress permits the States to select Delegates, the Pennsylvania General Assembly may issue all the instructions it wants to Delegates from Pennsylvania, **and the Delegates are free to ignore them, just as they ignored the instructions from their States for the federal “amendments” convention of 1787** (See Delegate flyer).

And if Delegates make the proceedings secret (as at our *first* “amendments” convention), the States won’t know what’s going on & can’t stop it. If Delegates vote by secret ballot, the States would *never* know who did what.

6. The SR 234 (HR 206) application says [page 3, lines 29 - page 4, line 6]:

“(13) Under Article V, Congress may determine whether proposed amendments shall be ratified by the legislatures of the several states or by special state ratification conventions;...

...the General Assembly of the Commonwealth recommend that Congress choose ratification by state legislatures;...”

That statement is true. The States are free to make recommendations to Congress - but Congress is free to ignore the recommendations. And **SR 234 (HR 206) omits the rest of the story:** As recognized in our DOI, a People always have the “self-evident Right” to assemble in convention and overthrow one gov’t and set up a new one. The DOI is part of the “Organic Law” of our Land, and the Pennsylvania General Assembly has no power to repeal it.

Ignorance and Moral Decline are the Cause of our Problems

All of the “horribles” of which SR 234 (HR 206) complains constitute *violations by the federal gov’t of the existing constitutional limits on their powers*. The federal gov’t has gotten away with this because Americans are generally ignorant of what our Constitution says.

FURTHERMORE: States & local gov’ts are not victims of fed tyranny. They enthusiastically participate in fed tyranny by taking fed funds to implement unconstitutional fed programs. For FY 2017, 35% of the revenue of the Pennsylvania State Gov’t was from fed funds. And that’s a pittance compared to the billions more paid to local gov’ts, NGO’s, research grants, price supports, welfare subsidies, Medicare, social security, etc.. *And all that money, paid into all of the States, year in & year out, is added to the national debt.*

To claim we can fix our problems by amending our Constitution is absurd. Those funding the push for an Article V convention have a different agenda (see Rescission flyer).

Endnote:

¹ E.g., some applications filed with Congress are over 150 years old. Pennsylvania has applications from the early 1900s! Should old applications be counted? Can Congress aggregate the various different applications to get the 34 State total? **Congress has the power to judge the applications and make the laws deciding these issues.**