The Case for the Convention of the States

1. Washington DC is Out of Control and Will not Relinquish Power.

The Spending and Debt Crisis

Thomas Jefferson wrote in 1816, "I...place economy among the first and most important of republican virtues, and public debt as the greatest of the dangers to be feared." Congress has ignored these words. Instead, it has abused its power, using entitlement programs to gain votes and catapult the United States into massive debt.

The $17 trillion national debt is staggering, but it only tells a part of the story. If we apply the normal rules of accounting, the federal government possesses a huge additional obligation to pay for vested Social Security benefits and other similar programs. This is why the government cannot tax its way out of debt. Even if they confiscated everything, it would not cover the debt.

The judiciary recites the mantra that the powers of the federal government are limited. The plain fact, however, is that since 1936 no federal court has ruled a Congressional program unconstitutional for exceeding their power to tax and spend for a particular purpose.

Stopping the runaway federal spending is the only solution, but it is one thing Washington, D.C., will never agree to do.

The Regulatory Crisis

Congress and, more importantly, the federal bureaucracy have placed a regulatory burden upon businesses that is complex, conflicted, and crushing. Furthermore, little political accountability exists when agencies—rather than Congress—enact the real substance of the law. Research from economists John Dawson (Appalachian State University) and John Seater (North Carolina State University), reported by the American Enterprise Institute, shows that since 1949 federal regulations have lowered the real GDP growth by 2% and made America 72% poorer.

Congressional Attacks on State Sovereignty

Congress has been taking money from the citizens of states, and then offering that money back to states on the condition that legislators follow the will of Congress. Using these federal grants accompanied by mandates (which are rarely fully funded), Congress has turned state legislatures into their regional agencies rather than truly independent republican governments.

A radical social agenda and an erosion of the rights of the people accompany all of this. While substantial efforts have been made to combat the social engineering and to protect peoples' rights, we have missed one of the most important principles of the American founding.

Who Has the Legitimate Power to Make Law?

The Founders believed that the structures of a limited government would provide the greatest protection of liberty. There were to be specific enumerated powers which the government could not exceed. There were to be checks and balances at the federal level. And everything not specifically granted to Congress for legislative control was to be left to the states.

Collusion among decision-makers in Washington, D.C., has replaced these checks and balances. And the federal judiciary supports Congress and the White House in its ever-escalating attack upon the jurisdiction of the fifty states.

We need to realize that the structure of decision-making matters. *Who* decides what the law shall be is even more important than *what* is decided. The protection of liberty requires a strict adherence to the principle that power is limited and delegated.

Washington, D.C., does not believe this principle, as evidenced by an unbroken practice of expanding the boundaries of federal power. In a remarkably frank admission, the Supreme Court rebuffed another challenge to the federal spending power by acknowledging their approval of programs that violate the will of the Founders:

> This framework has been sufficiently flexible over the past two centuries to allow for enormous changes in the nature of government. The Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses; first, because the Framers would not have conceived that *any* government would conduct such activities; and second, because the Framers would not have believed that the *Federal* Government, rather than the States, would assume such responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role.
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> *New York v. United States*, 505 U.S. 144, 157 (1992).

Those in Washington, D.C., accept as "Truth" the necessity of expanding the role of all three branches of the federal government. Congress enacts laws that are beyond the powers delegated to them by the Founders in the text of the Constitution. The President signs such laws, and the Supreme Court adopts manipulative interpretations of the Constitution to uphold the expansion of federal power.

In 1936, the Supreme Court warned what would happen if we adopt a broad approach for federal spending and control:

> If the spending power is to be limited only by Congress' notion of the general welfare, the reality, given the vast financial resources of the Federal Government, is that the Spending Clause gives 'power to the Congress to tear down the barriers, to invade the states' jurisdiction, and to become a parliament of the whole people, subject to no restrictions save such as are self-imposed.
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> *United States v. Butler*, 297 U.S. 1, 78 (1936).

That was the last time any federal court invalidated a law on the basis that it was an unconstitutional exercise of the power to spend.

It is the runaway spending via the General Welfare Clause that has resulted in today's crushing debt. George Washington advised, "[avoid] likewise the accumulation of debt, not only by shunning occasions of expense, but by *vigorous exertions in time of peace to discharge the debts* which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear." We are watching the exact opposite of George Washington's wishes for this country. Liberty is eroding while debt is escalating.

This is not a partisan issue. Washington DC will *never* voluntarily relinquish meaningful power—no matter who is elected. The only rational conclusion is this: unless some political force outside of Washington, D.C., intervenes, the federal government will continue to bankrupt this nation, embezzle the legitimate authority of the states, and destroy the liberty of the people. Rather than securing the blessings of liberty for future generations, Washington, D.C., is on a path that will enslave our children and grandchildren to the debts of the past.

This is not merely bad policy. It is immoral.

2. The Founders Gave us a Solution: A Convention of the States

> On September 15, as the Convention was reviewing the revisions made by the Committee of Style, George Mason expressed opposition to the provisions limiting the power to propose amendments to Congress. According to the Convention records, Mason thought that "no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case." In response, Governor Morris and Elbridge Gerry made a motion to amend the article to reintroduce language requiring that a convention be called when two-thirds of the States applied for an amendment.
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> *30 Harvard Journal of Law and Public Policy* 1005, 1007 (2007)

There are two methods to propose amendments to the Constitution. Congress is in a perpetual "convention" with the power to propose amendments to the Constitution. The reality, however, is that Congress will never propose an amendment that reduces the power of Washington. That is why the Founders developed a second method to propose amendments.

The Founders knew the federal government might one day become drunk with the abuses of power. The most important check to this power is the Article V provision that gives the states the ability to call a convention for the purpose of proposing amendments to the Constitution.

By calling a Convention of the states, we can stop the federal spending and debt spree, the power grabs of the federal courts, and other misuses of federal power. The current situation is precisely what the Founders feared, and they gave us a solution we have a moral duty to use. Thirty-four state legislatures can propose a return to liberty by passing resolutions containing an application for a Convention of the States. Then the states can hold a convention where amendments can be proposed and debated. Ultimately, amendments that are approved in such a convention can be sent to the 50 state legislatures for ratification. Congress has no ability to stop such a process. The Founders made sure of that.

We are approaching a crossroads. One path leads to the escalating power of an irresponsible centralized government, ultimately resulting in the financial ruin of generations of Americans. The other path leads to the restoration of liberty and an American renaissance.

Which will we choose?

3. How Our Proposal Differs From Other Article V Plans

Rather than calling a convention for a particular amendment, Citizens for Self-Governance (CSG) has launched the Convention of the States Project to urge state legislatures to properly use Article V to call a convention for a *particular subject*—reducing the power of Washington, D.C. It is important to note that a convention for a particular amendment (e.g. a Balanced Budget Amendment) would be limited to that single idea. Requiring a balanced budget is a great idea that CSG fully supports. Congress, however, could comply with a Balanced Budget Amendment by simply raising taxes. We need spending restraints as well. We need restraints on taxation. We need prohibitions against improper federal regulation. We need to stop unfunded mandates.

While the national debt is a crisis of the first magnitude, in many ways it is the symptom rather than the disease. The disease is an improper allocation of power with Washington, D.C., believing its power has no limits. A Convention of the States needs to be called to ensure that we are able to debate and impose a complete package of restraints on the misuse of power by all branches of the federal government.

State applications for a Convention of the States establish a rule of germaneness that will govern the convention. If the applications designate "a balanced budget" as the subject matter, the convention would be limited to drafting that specific amendment. But if the applications call for a convention dedicated to the subject of reducing the jurisdiction and power of the federal government, then only amendments on that subject matter would be germane on the floor of the Convention.

The following are examples of amendment topics that would be germane at a Convention of the States:

- A balanced budget amendment
- A redefinition of the General Welfare Clause (the original view was that the federal government could not spend money on any topic within the jurisdiction of the states)
- A redefinition of the Commerce Clause (the original view was that Congress was granted a narrow and exclusive power to regulate shipments across state lines—not all of the economic activity in the nation)
- A prohibition of using international treaties and law to govern the domestic law of the United States
- A limitation on using Executive Orders and federal regulations to enact laws (since the Congress is supposed to be the exclusive agency to enact laws)
- Imposing term limits on Congress and the Supreme Court
- Placing an upper limit on federal taxation
- Requiring a sunset of all existing federal taxes and a super-majority vote to replace them with new, fairer taxes

It is important to emphasize that these are merely examples of what would be germane. It would be the Convention of the States itself that would determine which ideas deserve serious consideration, and it will take a majority of votes from the states to formally propose any amendments. All amendments to be discussed and ultimately proposed for ratification, however, will be limited to the subject matter of the applications—reducing the power and jurisdiction of Washington DC.

All existing Article V efforts to reduce the power of Washington, D.C., are aimed at particular amendments. Every one of these ideas would be germane at a Convention of the States under the application that CSG has prepared. Mark Levin, who is not only a well-known talk show host but a fine constitutional scholar as well, has recently begun to advocate the calling of a Convention of the States for a group of amendments that he calls the "Liberty Amendments." Of his 11 proposed amendments, 10 would be germane at the Convention of the States using the CSG model application.

American citizens have become so frustrated with runaway federal power that they have begun discussing ideas like nullification and even secession. Such ideas are not only impractical; they could ultimately lead to a violent conflict. We need not turn to such dangerous alternatives. The Founders gave us a legitimate path to save our liberty by using our legitimate state governments to impose binding restraints on the federal government. We must use the power granted to the states in the Constitution.

4. Our Political Plan to Call a Convention of the States

We have built our plan upon the premise that our ultimate goal is to ratify one or more amendments to curtail the abuse of power by the federal government. Thirty-eight states are required to successfully ratify a constitutional amendment.

Thus, we must have a viable political operation that is active in at least 38 states. The CSG strategy views 40 states as the minimum number for an effective political operation.

The strategic advantage of a fresh start on the application process is that we will be building current grassroots operations in all of the states needed to ratify any proposed amendments. If one of the existing proposals (such as the Balanced Budget applications, which CSG also endorses) achieved 34 valid applications, we would have to build a current grassroots political operation in all the states that passed their Balanced Budget applications years ago.

Thus, there is both a legal advantage (clear aggregation) and a political advantage (current grassroots networking) to a fresh start on the application process. Moreover, we will have a greater ability to protect our liberty by addressing the full scope of the problems of Washington, D.C., in a Convention of the States.

Initially, we will focus on 40 states, which have approximately 4000 state house districts. Our goal is to have a viable political operation in at least 3000 of these districts. As it should be, and has always been, local organization will prove to be the best solution to our national crisis.

Our related 501 (c)(4) organization will have 3000 district captains who will organize at least 100 people in each district to contact their legislator to support a convention of the states, and turn out at least 25 people per district at legislative hearings. Legislators can know that if they support a Convention of the States, that our grassroots team will have their backs.

The thing that has been missing from the Article V movement is a widespread grassroots organization. CSG's President, Mark Meckler, was the co-founder of the Tea Party Patriots—one of the largest tea party groups in the country. Michael Farris is joining him on this project, who is the founder of the Home School Legal Defense Association and brings with him over 30 years of grassroots leadership and activism in all 50 states. We are rapidly building not only a staff for this project, but networking with like-minded coalition members who will support this project once they see it up and running.

Other approaches have their advantages. We believe our proposal has the advantages that motivate us to proceed in this fashion. All existing proposals for amendments would be germane under our model application for a Convention of the States. We will work cooperatively with all those who seek to use this process to curtail the abuse of power by Washington, D.C.

5. Why a Convention of the States is the Safest Alternative to Preserve our Liberty

We all know that Washington, D.C., is ignoring the Constitution and is on a path that will continue to destroy our liberty. We contend that a Convention of the States is the only constitutional solution to the runaway government in Washington—the only solution that can restore our liberty and preserve it for posterity. Opponents of the Convention of the States process often argue that such a convention could result in a runaway convention that would radically rewrite our Constitution.

We respectfully suggest one proper way to analyze these competing claims: *Which scenario is more likely to actually happen?*

The most common objection to an Article V convention envisions a doomsday scenario in which delegates disregard the original issue, rewrite the Constitution, and change the entire American system of government. Here are the facts:

1. There have been over 400 applications from state legislatures for an Article V convention in the history of the Republic. No such convention has ever been called because there has never been an application from two-thirds of the states for a *single subject.* This establishes a clear, strong legislative single-subject precedent that would almost certainly be declared binding in the event of a court challenge.

2. In prior Article V litigation it was established that improper changes to the process can be legally challenged by state legislators. This case also held that Congress acted unconstitutionally when it changed the rules of the process in midstream. See, *Idaho v. Freeman,* 529 F.Supp. 1107 (D.C. Idaho 1981) (vacated on the ground of mootness.) CSG's Senior Fellow for Constitutional Studies, Michael Farris, was lead counsel for Washington state legislators in that litigation—the last major Article V case in U.S. history.

3. Most importantly, ratification of any proposed amendment requires the approval of 38 states. It only takes 13 states to vote "no" to defeat any proposed amendment, and the chances of 38 state legislatures approving a rogue amendment are effectively zero.

4. Finally, most opponents of the Convention of the States make the historically false allegation that our Constitution was adopted as the result of an "illegal runaway convention." Such an argument was invented by the enemies of the Constitution. (See the full article in the Appendix: "Was the Constitution Illegally Adopted?"). It defies logic to declare oneself a "defender" of the Constitution while arguing at the same time that it was illegally adopted.

There a multiple lines of defense against a state attempting to pass an amendment that departs from the original subject: (1) A majority of states at the Convention would almost certainly vote such a proposal to be out of order; (2) If such an amendment was proposed, a proper legal challenge would certainly be filed and has a good likelihood of success; (3) It is political certainty that at least 13 states would defeat any such proposed amendment; (4) It is an historical fallacy to argue that we have an established precedent of Conventions changing the rules illegally.

Thus, we are left to evaluate the relative safety of two choices: 1. Allow Washington, D.C., to continue to abuse the Constitution and the rights of the people with the vague hope that someday Washington will see the light and relinquish power. 2. Call a Convention of the States and trust it will behave properly, and that one of the many lines of defense will stop any misuse of the power.

We must evaluate which group is more likely to abuse power: Washington, D.C., or a Convention of the States. That is an easy question to answer. The Convention of the States is clearly the safest alternative.

6. Steps of Action for Legislators

To call a Convention of the States, 34 state legislatures must pass applications on the same subject matter. Governors play no role in this process. A simple majority rule applies unless the state legislature has adopted prior rules requiring a different number.

"Aggregation" is the most important issue for legislators to consider. Will one state's application be counted toward the required 34-vote majority, or will it be considered distinct from those of other states? The great variety of applications for a proposed Balanced Budget Amendment demonstrates the problem. Most legal scholars believe that a handful of such applications will be considered sufficiently distinct to deny aggregation status in a final count.

The best plan is for state legislatures to adopt applications with operative language that is identical or as close to identical as possible. CSG's draft application is contained in the Appendix. While constitutional scholars, legislators, and citizen activists have reviewed this, we will continue to accept comments until November 1, 2013. At that time we will be circulating a final version of the Model Application to all supporting state legislators.

7. Steps of Action for Citizens

Ultimately, the success of an Article V convention depends on the citizens of the United States. Volunteers will be the engine that drives this project. If Americans are willing to sacrifice their time and energy, there is still a chance to halt the tyrannical abuses of the federal government.

There are five basic opportunities for citizens who wish to preserve our liberty through a Convention of the States.

1. Volunteer to contact your legislators to support a Convention of the States.
2. Volunteer to attend a legislative hearing to support a Convention of the States.
3. Agree to volunteer for the next campaign for a legislator/candidate who supports a Convention of the States.
4. Donate to candidates/legislators who support a Convention of the States.
5. Donate to CSG to support this project.

Citizens can find more information at www.conventionofstates.com or www.selfgovern.com.

The Founders gave us the tools to curb the federal abuse of power. It's time we stand up and use them to preserve liberty—not only for ourselves but for posterity.