

Dispelling the “Runaway Convention” Myth

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The biggest obstacle to a successful Term Limits Convention will be policymakers and concerned citizens who believe such a convention has the power to “run away” and open up the entire Constitution for revision. Under these wild scenarios, the Bills of Rights gets repealed and tyranny is foisted onto the American people. These fears have been seeded into many Americans’ minds by groups like the John Birch Society and Eagle Forum.

First, it’s important to note that those who subscribe to runaway convention thinking aren’t less patriotic or doing so with wicked aims. Most do support term limits and other ideas that have been floated inside the Article V sphere. Our disagreement is on how to get there.

After consulting with the top experts, we’ve concluded that the arguments for runaway convention are without merit and not supported by the evidence.

Exhibit A in this discussion is America’s very long and documented history of conventions. In the hundreds of state and interstate conventions that have taken place here in the founding era and beyond, none have ever run away. On rare occasions a delegate would suggest departing from the agenda, but that person would get nowhere because checks and balances were built-in, as they are here.

A common internet meme calling the Philadelphia Convention of 1787 a runaway is based on poor scholarship. The false narrative goes like this: Convention delegates only had the authority to amend the Articles of Confederation (America’s first Constitution), but ignored that and threw the Articles on the scrap heap. Hence, it’s said they jumped over their boundaries and ran outside the law.

In reality, 10 of the 12 state delegations at that convention had broad authority which included the ability to adopt a new Constitution. This was made explicit by the instructions their states gave them. Congress did *recommend* the Convention stay limited, but it was merely advice that bound no one legally.

Far from a runaway, the 1787 Convention was yet another example of an American convention doing exactly what it was told to do, whether broad or narrow.

Another defect in the runaway reasoning is identifying the stage at which unlawfully expanding the agenda is possible. If the state applications specify radical amendments, then that’s not running away – it’s attempting to create an entire convention based on bad ideas.

Once the Term Limits Convention applications get to Congress, there is no wiggle room for legislators to insert agenda items. Their role of convention caller is ministerial, and they are only allowed to choose between two options for ratification.

Delegates to the convention – who can be recalled and even imprisoned by their states -- have some discretion, but it’s limited to amendments within the subject area chosen by 34 states. The

topic of term limits is so clear and unequivocal that it cannot be construed to include amendments on other subjects.

Our state applications are “revoked, withdrawn, nullified and superseded to the same effect as if it had never been passed” if they are used for the purpose of calling a convention with an agenda not limited to congressional term limits.

Any departure then, by either the delegates or Congress, would be unlawful and subject to judicial review. If groups come forward with lawsuits challenging an amendment to come out of convention, the courts can mediate that dispute.

The ultimate safeguard in Article V, however, is its very high bar for ratification. Remember: the convention itself has zero power to amend our Constitution. Its only power is to suggest amendments to the states, who hold the real power. Before any amendment becomes law, three-quarters of states (38) must ratify it. Even groups with popular – though not universal – ideas avoid using the Article V approach for this reason. Their issues don’t have the backing term limits does and so they’ve concluded it would be a waste of time.

If popular groups on the left and the right don’t think their amendments could be ratified, how then could anyone ratify a radical amendment that everybody hates?

It just couldn’t happen. Notwithstanding the career-destroying scrutiny of hijacking a convention, there are just too many safeguards in place to allow fanaticism.

One final theory worth addressing is the notion that Congress will take over the convention to send its favorite radical amendments to the states. This is invalid for one obvious reason: Congress doesn’t need a convention to do that. Under our Constitution, Congress can already send any amendment it wants to the states with a simple two-thirds vote.

This effectively deflates convention critics’ favorite argument, by demonstrating that the powerful runaway convention they fear already exists and is called Congress. The Term Limits Convention, by contrast, is 1) less powerful than Congress, 2) more safeguarded and 3) carefully designed to rein in Congress rather than give them more power.

Sources:

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