

How the States Amend the U.S. Constitution



Under Article V of the U.S. Constitution, the states can propose amendments for ratification. This requires two-thirds of the state legislatures (34/50) to pass resolutions that call for a convention to propose an amendment for ratification by three-quarters of the states (38/50). Despite the extremely high bar set by these voting thresholds, the safety of this process has been attacked by those who oppose its use.

For most of American history, state legislators trusted the convention process. Proof can be found in the 375+ convention calls passed between 1789 – 1983¹. The Idaho legislature itself passed 9 convention calls between 1901 – 1980 to propose such reforms as a Balanced Budget Amendment and an amendment that would reverse *Roe v. Wade*.

So, what happened? During the 1960s & 70s, the left-leaning *New York Times* and *Washington Post* launched a sustained and false attack² on the convention process via dozens of articles using the *runaway convention myth* to call into question its safety. They did so because right-leaning state legislatures had launched three convention campaigns to propose amendments that would reverse three left-leaning SCOTUS decisions (*Prayer in Schools*, *Roe v. Wade* & *Baker v. Carr*).

Sadly, by the mid-1980s, most state legislators had turned against the convention process due to these left-leaning media attacks. That didn't change until modern Article V campaigns and proponents began to push back. The truth is that the Article V convention is by far the safest legislative process under the U.S. Constitution with six steps that are impossible to circumvent.

The Six Safe-guarded Steps to Amend the U.S. Constitution via Convention

- ❑ **Safeguard 1.** Thirty-four states apply for a convention. Two-thirds of the state legislatures (34) must pass matching resolutions that apply for a convention to propose one or more amendments.
- ❑ **Safeguard 2.** Congress issues a convention call. Congress must count the state applications, verify that there are 34 that call for a convention to propose the same amendment or amendments, then (1) set the time/place for the convention and (2) the amendment or amendments that can legally be discussed and proposed.
- ❑ **Safeguard 3.** The states commission their convention delegations. Each state legislature must commission its convention delegation by specifying the number of delegates, who they are, the amendment or amendments they are authorized to discuss, a delegate oath, a means to monitor/recall delegates (who violate their oaths), alternate delegates and legal penalties for any delegate who is recalled. Fifteen states have passed laws that formalize the delegate selection process including legal penalties for delegates that try to bring up an unauthorized amendment.
- ❑ **Safeguard 4.** The states meet in convention to propose the amendment. The convention delegations from all 50 states open the convention by (1) adopting its procedural rules, and (2) electing its president, vice president and secretary. Following that, they proceed to draft, debate and propose the authorized amendment via a simple majority vote (26/50 states). Each state, regardless of its size, gets one vote. We know this from Article V and historic precedent.
- ❑ **Safeguard 5.** Congress selects the mode of ratification. First, Congress decides whether a proposed amendment was authorized by the 34 state applications (in step 1) and its own convention call (in step 2). If not, the amendment is discarded. Second, Congress decides whether ratification will be carried out by the state legislatures or special-purpose state ratification conventions. Third, it sends the amendment to the states for ratification.
- ❑ **Safeguard 6.** Thirty-eight states adopt the amendment. Three-quarters of the states (38) must ratify the amendment before it becomes a part of the U.S. Constitution.

The convention process, with 39 checks on its power (Congress + ratification by 38 states), is far safer than the legislative processes at the state or federal level because they only have 1 check on their power: a veto by the executive.

Article V of the U.S. 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.”

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