CONVENTION of STATES ACTION
MARYLAND

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Stephen Patten
1574 Quiet Meadow Way
Hampstead, MD 21074

Rules and Executive Nominations Committee, Maryland House of Delegates

Dear Madam Chairwoman:

I have the great honor of being the State Director of an all-volunteer organization that boasts more than 22,000 Maryland supporters across all legislative districts. More than 5,000 of those supporters have joined our ranks in the past year … we are a rapidly growing movement. While there are many reasons why we are growing at such an unprecedented rate, I'm writing to address one in particular.

The myths and urban legends that have been swirling around the Article V Convention of States Amendment process for many years have been debunked … and people across this great Nation are realizing this. I list the falsehoods with denotation to the scholarship that has been done around each premise below:

1. "How do we know how a Convention of States will work?"

In the century leading up to the ratification of the Constitution, the Founders held at least 32 multi-state conventions.[1] The function of a convention and the rules that would govern it were well understood by the Founders. This is no doubt part of the reason for the brevity of Article V. Congress or any other national body did not set the rules for these conventions, but by the convention delegates themselves, subject always to the instructions issued by their respective states.

In the years since, the states have held at least four more multi-state conventions. In each instance the procedural rules at the convention closely followed established historical precedent: the states appointed their own delegates; the states decided how many delegates to send; each state was always apportioned one vote, which was cast by a majority of delegates from that state; and the delegates selected the Chair and any other officers.[2]

[1] Robert G. Natelson, Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments," 65 FLA. L. REV. 615, 620 (2013).

[2] Id. at 686–90; see also Robert G. Natelson, Proposing Constitutional Amendments by Convention: Rules Governing the Process, 78 TENN. L. REV. 693 (2011).

2. “Congress would control the rulemaking process?”

Congress has repeatedly tried to assert authority over a convention and failed every time. Between 1967 and 1993 Congress considered 41 separate pieces of legislation that would set rules for a convention. Every single one was defeated. Even Congress itself has shown grave concern about asserting federal control over a convention.

The whole reason the Framers voted to put the convention provision in Article V was to ensure that the states could bypass Congress and the federal government if they became too powerful.[3] Giving Congress rulemaking authority for the convention flatly contradicts the express intent of the Framers at the Constitutional Convention. Moreover, it makes no sense to say that Congress controls the convention process. Congress already has authority under the Constitution to propose amendments on its own initiative. The only reasonable reading of Article V is that states have ultimate control over the convention process.

This is why, historically, an Article V convention was called “a convention of the states,”[4] because the states controlled the convention. Even the Supreme Court has recognized that an Article V convention is “a convention of the states.”[5] It is a contradiction in terms to assert that a convention of states would be controlled by Congress. A convention of states is controlled by the states.

[3] 2 RECORDS OF THE FEDERAL CONVENTION 629–30 (Max Farrand ed., 1911). Madison recorded that the vote was unanimous. Id. at 630.

[4] This phrase has deep historical roots. Virginia filed the very first application under Article V of the Constitution in 1788. The application called for “a convention of the states.” 1 ANNALS OF CONG. 258–59 (J. Gales ed., 1834) (H.R., May 5, 1789) (reproducing Virginia’s 1788 application for a convention). New York used the same term in the second application less than a year later. H.R. JOURNAL, 1st Cong., 1st Sess. 29–30 (1789) (reproducing New York’s application for a convention).

[5] Smith v. Union Bank, 30 U.S. (5 Pet.) 518, 528 (1831).

3. “The Federal Government ignores the Constitution now, why would such a Federal government adhere to an amended Constitution?”

Federal officials don’t “ignore” the Constitution so much as “lawyer” around it. For instance, they claim that the power to tax and spend for the “general welfare” gives Congress power to tax and spend for any purpose whatsoever. This is but one example … and where does this power of interpretation being wielded by politician and judges come from? It’s called the The United States Constitution: Interpretation and Analysis” and it is 3000 pages of Supreme Court rulings and interpretations.

Therefore, the Federal government IS following the “Constitution.” Amendments at a Convention of States today will be written with these politicians and judges in mind. There will be no doubt as to the meaning of new amendments, and no possibility of alternate interpretations.

4. The “Runaway Convention” … also referred to as a “Con-Con” or Constitutional Convention.

This entire objection to an Article V Convention of States, based in the premise that the US Constitution was illegally adopted and hence (the governing document of this republic for the last

234 years) is NOT legitimate. Proponents of this objection to an Article V Convention of States make two claims:

I. The delegates were instructed to merely amend the Articles of Confederation, but they wrote a whole new document.

II. The ratification process was improperly changed from 13 state legislatures to 9 state ratification conventions.

The claim that the delegates disobeyed their instructions is premised on the idea that Congress called the Constitutional Convention. It is claimed that Congress instructed the delegates to solely amend the Articles of Confederation. A review of legislative history clearly reveals the error of this claim.[6]

The Articles of Confederation called for approval of any amendments by Congress and ratification by Annapolis Convention document and a clear majority of States stated that any amendments coming from the Constitutional Convention would have to be approved in this same manner—by Congress and all 13 state legislatures. The reason for this rule can be found in the principles of international law. The States were sovereigns. The Articles of Confederation were, in essence, a treaty between 13 sovereign states. Normally, the only way changes in a treaty can be ratified is by the approval of all parties to the treaty. However, a treaty can provide for something less than unanimous approval if all the parties agree to a new ratification process before the change in process is effectual. When the Convention sent its draft of the Constitution to Congress, it also sent a recommendation for a new ratification process. Congress approved both the Constitution itself and the new process.[7]

[6] Michael Farris, Harvard Journal of Law & Public Policy "Defying Conventional Wisdom: The Constitution Was Not the product of a Runaway Convention." Vol. 40, No. 1, April 2017, (80, 89-90, 97).

[7] Id. at 101-114.

I would be remiss to not point out the great dichotomy the so-called constitutionalists have put themselves in using this argument. Those that claim the original Constitutional Convention of 1787 was a 'runaway' and employ this as an approach to deface an Article V amendments convention, are contending that the Constitution was illegally adopted … these are very conflicted persons. I stand with the integrity of the Constitution.

I ask that you and the members of the Rules and Executive Nominations Committee find HJ0006 as favorable to move forward for further debate. I thank you for your time and for you service to our state.

Sincerely,

Stephen Patten
Constituent of District 5
State Director, Convention of States Action Maryland
stephen.patten@cosaction.com
443-871-5332