



Answering False and Incomplete Statements about an Article V Convention

Purpose and Introduction. The Article V convention is strongly opposed by several different groups and political entities. In particular, Common Cause has published a series of statements with the intent to deceive and misinform Colorado State Legislators. Colorado Common Cause opposes a call for a constitutional convention, regardless of the amendment being proposed, for the following reasons:

1. THREAT OF A RUNAWAY CONVENTION: There is nothing in the Constitution to prevent a constitutional convention from being expanded in scope to issues not raised in convention calls passed by the state legislatures, and therefore could lead to a runaway convention.

Colorado COSA Response. It will not be a constitutional convention. It will simply be a convention to propose amendments to the U.S. Constitution as described in Article V. In 11 of 12 state commissions to call a convention in 1787, there was the charge to develop a more “adequate” federal government / constitution. Thus, there was an inherent charge to develop a government that was better than the Articles of Confederation, and the 1787 convention remained within the bounds of these state commissions. The current state applications to call an Article V convention are “limited to proposing amendments to the U.S. Constitution.” It is a much smaller scope than the 1787 convention.

2. LACK OF CONVENTION RULES: There are no rules governing constitutional conventions. A constitutional convention would be an unpredictable Pandora’s Box; the last one, in 1787, resulted in a brand-new Constitution. There’s a significant danger that opponents of certain civil liberties could change the scope of the convention and undermine basic rights long protected by the Constitution.

Colorado COSA Response. Article V does not describe how the convention should be conducted just like Article I does not describe how the U.S. Congress conducts its legislative procedures. U.S. Congress simply developed its own legislative procedures based on the common historical practices of the day. The Article V convention rules will be very similar to legislative rules established in many of the state legislatures. For example, Colorado Senate Rule 40 (Parliamentary Authority) states the “Mason’s Manual of Legislative Procedure shall govern the Senate,” and a vast majority of the 50 state chambers have also adopted it. Finally, the 1787 convention did not allow a Bill of Rights to be introduced by some delegates to become part of the new constitution because it was beyond the scope of the states’ commissions. Thus, any discussion related to changing individual rights (e.g., freedom of speech) at the Article V convention will also be beyond its scope just like the 1787 convention.

3. UNCERTAIN RATIFICATION PROCESS: A convention could re-define the ratification process (which currently requires 38 states to approve of any new amendments) to make it easier to pass new amendments, including those considered at the convention. This happened in 1787, when the convention changed the threshold necessary for ratification.

Colorado COSA Response. From September 1787 to March 1788, all 13 state legislatures approved the new methodology that required 9 of 13 states to ratify the new Constitution through a state level convention as stated in Article VII, and it was necessary to approve the new methodology before final ratification. Eventually, all 13 states did ratify the new Constitution. When a convention meets to propose amendments to the Constitution, the proposed amendments still have to be ratified by three fourths of the states (38 of 50).

4. INFLUENCE OF SPECIAL INTERESTS: An Article V convention would open the Constitution to revisions at a time of extreme gerrymandering and in an environment of unlimited political spending. It could allow special interests and the wealthiest to re-write the rules governing our system of government.

Colorado COSA Response. The Article V convention process includes several safeguards to protect the integrity of the Constitution. Any proposed amendments must be ratified by three-fourths of the state legislatures or state conventions, ensuring a broad consensus that is difficult for special interests to manipulate. Additionally, the commissioners to the convention are chosen by the states, and there are currently 12 states with bills or resolutions that establish criminal penalties on their chosen commissioners for violating any authorities / instructions granted to them.

5. THREAT OF LEGAL DISPUTES: No judicial, legislative, or executive body would have clear authority to settle disputes about a convention, opening the process up to chaos and drawn out legal disputes that threaten the functioning of our democracy and economy.

Colorado COSA Response. The Article V convention process is designed with clear constitutional guidelines that provide a structured path for amendments. While legal disputes may arise, the Constitution outlines specific mechanisms to address and resolve these issues efficiently. For instance, Article V requires that any proposed amendments be ratified by three-fourths of the state legislatures or state conventions. Additionally, the Supreme Court has the authority to interpret constitutional disputes, providing a judicial check on the process. These safeguards ensure that the potential for legal challenges do not overshadow the critical need for states to propose necessary amendments.

6. APPLICATION PROCESS UNCERTAINTY: There is no clear process on how Congress or any other governmental body would count and add up Article V applications, or if Congress and the states could restrain the convention's mandate based on those applications.

Colorado COSA Response. The Clerk of the United States House of Representatives maintains Article V convention applications (<https://clerk.house.gov/SelectedMemorial>), and it counts those state applications **with the same scope and purpose.** Legal interpretations, such as those from the Supreme Court in *Dillon v. Gloss* and *U.S. v. Sprague*, affirm that Congress must honor state applications and call a convention accordingly. These safeguards maintain the integrity of the Article V convention.

7. POSSIBILITY OF UNEQUAL REPRESENTATION: It is unclear how states would choose delegates to a convention, how states and citizens will be represented within a constitutional convention, and who would ultimately get to vote on items raised in a convention

Colorado COSA Response. Throughout U.S. History, all conventions used the “equality of the states” rule (1-state, 1-vote), and it was the practice during the 1787 convention. States determine their own commissioner selection process and the rules for them to follow. For example, states determine their own “internal quorum rule” such as 3 of 5 commissioners must agree for the overall 1-state vote (i.e., similar to Virginia in 1787 convention). The “equality of the states” rule is still evident in today’s Constitutional practice in the U.S. Senate and through the amendment requirement where three-fourths of the states (38 of 50) must ratify any proposed amendments.

Concluding Remarks. *The Colorado COSA Team can provide more in-depth historical background and data to any questions related to these several areas.*