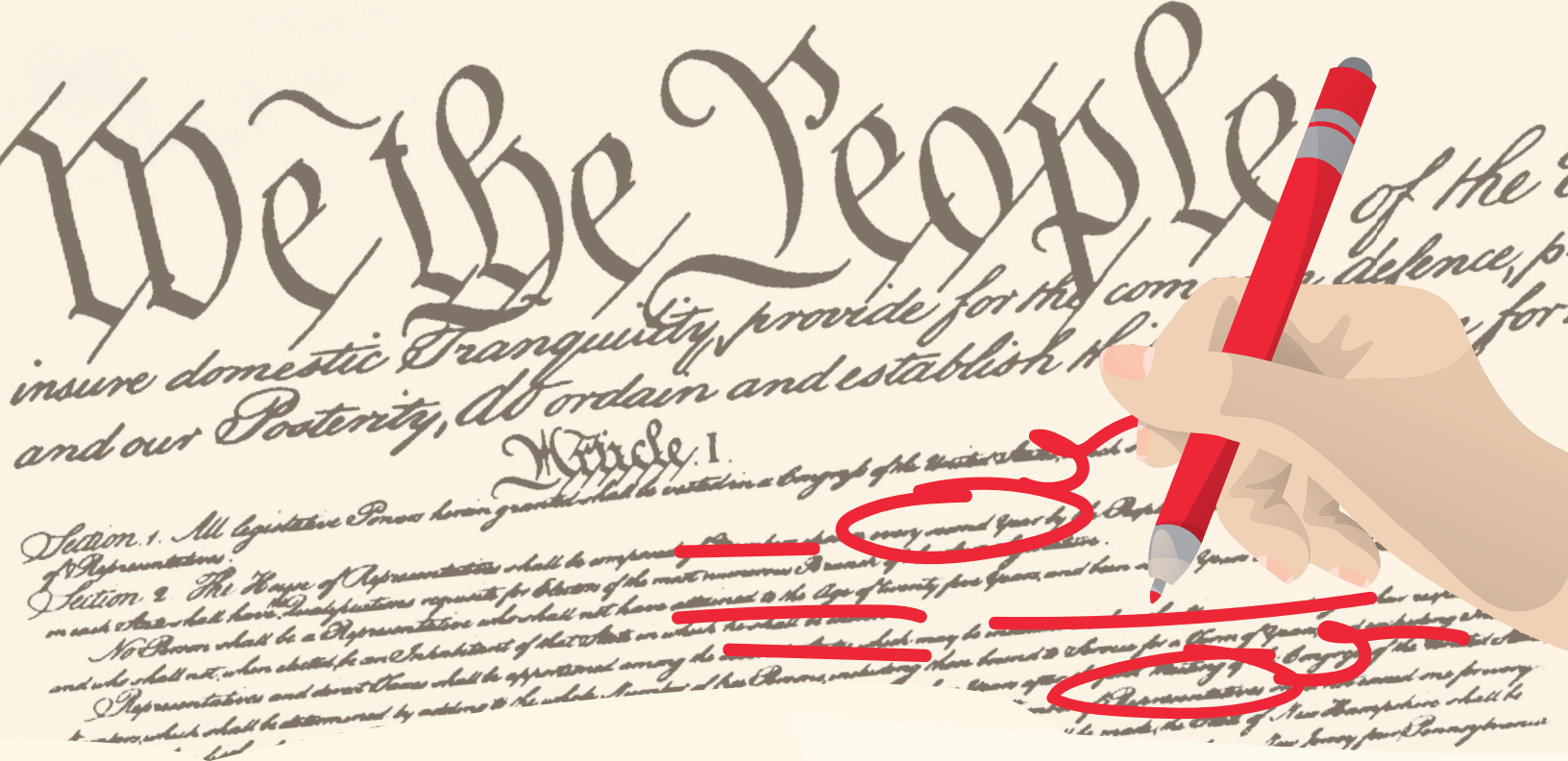
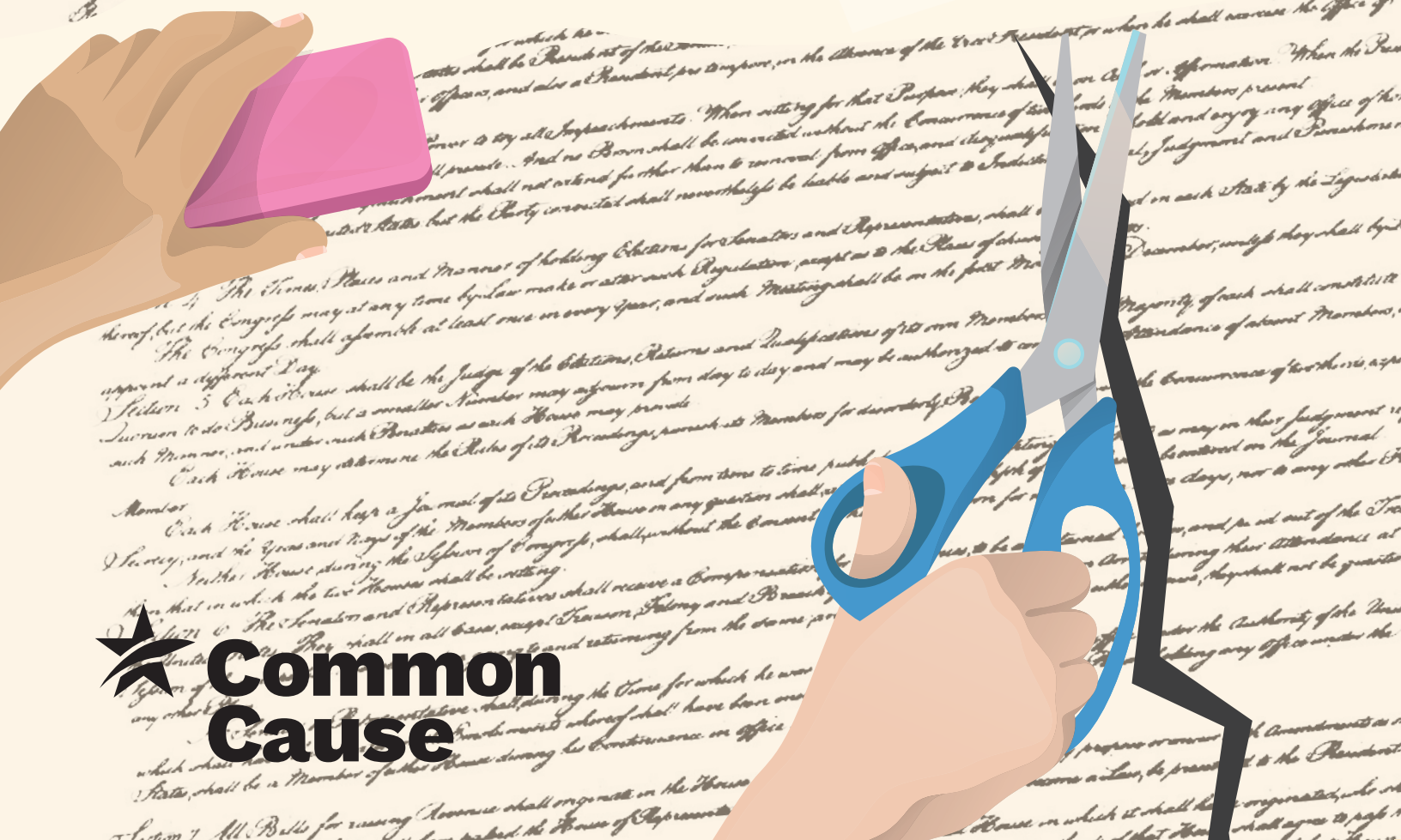




Constitutional Chaos

The Shadow Campaigns Aiming to Unravel Our Freedom



★ **Common Cause**

Acknowledgments

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Mission

Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create an open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. The Common Cause Education Fund supports Common Cause's work through research, litigation, and public education.

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EXECUTIVE SUMMARY

This report is an update to the 2016 Common Cause report [*The Dangerous Path: Big Money's Plan to Shred the Constitution*](#), examining the dangerous efforts by secretive, well-funded special interest groups to push state legislatures around the nation to call for a constitutional convention through a little-known provision in Article V of the U.S. Constitution.

The effort to convene a constitutional convention is backed by wealthy special interests, organizations, and individuals that span the ideological spectrum. This includes right-of-center supporters of new limits on federal power, such as a balanced budget constitutional amendment, as well as backers on the left who support a constitutional amendment to overturn the Supreme Court's decision in *Citizens United v. Federal Election Commission* (FEC), a ruling that reversed decades of well-settled law limiting corporate political spending.

A federal constitutional convention was last held in 1787 when the Constitution itself was drafted. Since then, the U.S. Constitution has been amended 27 times through the first of two processes described in Article V: Congress by two-thirds majorities of both the House and Senate passes the amendment, which must then be approved (i.e., ratified) by three-fourths of the state legislatures. The second, never used path to amend the Constitution laid out in Article V

is for two-thirds of the state legislatures (34) to pass resolutions applying for a new constitutional convention to propose amendments and then send those amendments to the states for ratification (i.e., an Article V convention).

There are too many unanswered questions regarding an Article V convention to risk a free-for-all rewrite of our Constitution. *Could a convention be limited to one issue? What rules, if any, would be in place to govern a convention? What role would outside special interest groups have in influencing a convention's agenda? Who would choose delegates to send to the convention? What would happen in the case of legal disputes about the convention? What role would the courts play? How would votes be delegated by state, and would the American people really be equally represented?*

Simply put, there are no guardrails in place to ensure an orderly course for an Article V convention. Any Article V convention, regardless of the stated purpose going in, runs the risk of



“[T]here is no way to effectively limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or one issue, but there is no way to assure that the Convention would obey.”

— Warren Burger, Chief Justice of the U.S. Supreme Court (1969–1986)⁵⁹

becoming a runaway convention. There is no saying what could happen to any of our rights or what could be traded in an exchange between special interests—who will most definitely have their hands in the process. There is no predicting what could happen and far too many open-ended questions for this to be a good idea.

For all these reasons, Common Cause co-leads the national Defend Our Constitution coalition, which seeks to stop an Article V convention from being called in order to protect all Americans' constitutional rights and civil liberties that would be threatened by such a convention. Holding such a convention runs the very high risk of being taken over by highly polarized politicians and wealthy special interests seeking to cripple federal powers and roll back our rights. At a time when disinformation is running rampant and deliberately being disseminated through various channels, a constitutional convention could be absolutely devastating to our rights and liberties.

This report aims to examine the pro-convention campaigns and who is behind them, and to shed light on the immense dangers of what would happen should these efforts succeed. It will also make the case that a convention could easily exceed any narrow mandate—e.g., a balanced budget amendment (BBA)—and instead undertake a wholesale and highly divisive rewrite of our nation's charter.

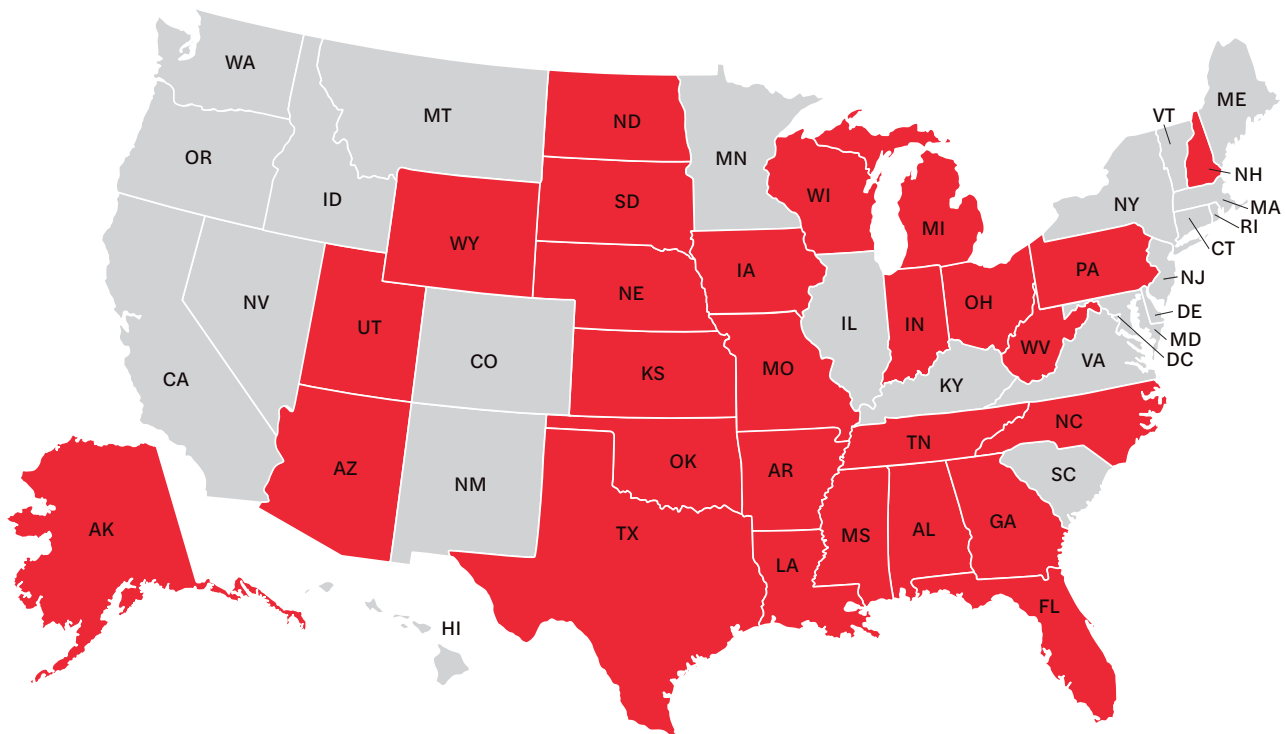
THE THREAT OF AN ARTICLE V CONVENTION

The Constitution, as amended, is America's cornerstone and has long been a model for democratic governance around the world.

However, it is not perfect. The Constitution, as originally ratified, did not prohibit slavery or denial of voting rights on the basis of race or sex/gender. Slavery was outlawed by the 13th Amendment, and broad voting rights were guaranteed by the 15th and 19th Amendments. Only through the first 10 amendments—the Bill of Rights—does the Constitution protect freedoms of speech, religion, and press; the right to bear arms; the right to a quick and public trial when accused of a crime; and freedom from unreasonable search and seizure of our homes and property.

To date, the Constitution has been amended 27 times. The Constitution's built-in process for revision is among its greatest features. The nation's charter would not have lasted so long had we not been able to adapt it to changing times and conditions. But while the founders recognized the Constitution would have to change, they wanted it to endure; they devised mechanisms to ensure that any amendments would require careful deliberation and broad support.

Current campaigns for a Constitutional convention



All of the 27 amendments to date have been enacted through the first process set forth in Article V: passage of the amendment by two-thirds majorities of both the U.S. House and Senate, followed by approval (i.e., ratification) by three-fourths of the state legislatures (presently 38 states).

However, Article V sets out another amendment process—one that has never been used. Congress is required to convene a constitutional convention any time two-thirds of the state legislatures petition for a gathering. Governors, who typically wield veto power over legislatures, are not part of this process.



“Questions about such a convention have been debated for years by legal scholars and political commentators, without resolution. Who would serve as delegates? What authority would they be given? Who would establish the procedures under which the convention would be governed? What limits would prevent “runaway” convention from proposing radical changes affecting basic liberties? ... With these thorny issues unsettled, it should come as no surprise that warning flags are being raised about a constitutional convention.”

— **Archibald Cox, Solicitor General of the United States (1961–1965) and Special Prosecutor for the U.S. Department of Justice (1973)**⁶⁰

Theoretically, any amendment produced by the convention would have to be ratified by three-fourths of the states. Some legal scholars argue the ratification process could itself be changed in a new convention, much like it was in the 1787 convention.

Some supporters of a proposed amendment that would generally require a balanced federal budget want to convene a convention to implement their proposal. These advocates, overwhelmingly conservative and with deep-pocketed allies in the business community, have turned to the convention process after repeated failures to convince Congress to pass an amendment and send it to the states.

By some claims, the balanced budget forces are within striking distance of securing the 34 petitions needed to require Congress to convene a convention. At one point, they claimed to have 32 states on

board, but some states have rescinded petitions passed during the 1970s and '80s.¹ Most agree that the current count is 27 live petitions, meaning proponents of an Article V convention need only seven more states to demand Congress act. The Judiciary Committee of the House of Representatives receives calls for an Article V convention, as well as rescissions in states, and keeps an [archive](#) via the Office of the Clerk of the U. S. House of Representatives.² Meanwhile, there continues to be pressure within states to pass petitions for both the balanced budget proposal and other convention campaigns.

Balanced budget advocates are pursuing several avenues toward a convention. Most of the states involved have passed resolutions independently for an Article V convention, but four states—Alaska, Georgia, Mississippi, and North Dakota—adopted the “Compact for a Balanced Budget Amendment,” which would have been an interstate compact between states. If 38 states were to join the compact, each would submit an identical petition for a convention to Congress, with specific language for a BBA. The compact’s goal was for all 38 states to propose an amendment to the Constitution that would require Congress to pass a balanced budget with specific rules. This compact was set to sunset in April 2021.

Other conservative Article V advocates are pushing for a “Convention of States” (COS) that could undertake a wide range of potential changes in the Constitution. The Compact and the COS are discussed in more detail later in this report.

At the other end of the political spectrum, a group of activists on the far left, mostly Democrats, support a convention to propose an amendment overturning the Supreme Court’s *Citizens United* decision on campaign finance. Advocates have won passage of Article V petitions in four Democratic-controlled state legislatures: California, Illinois, Vermont, and Rhode Island (New Jersey was recently rescinded).

Given how close convention advocates are to calling a convention, some legislators are discussing how a convention would work and be governed. The Assembly of State Legislatures, originally called the “Mount Vernon Assembly,” is a bipartisan group of state legislators charged by participating states with “defining the rules and procedures” for an Article V convention. The group’s inaugural meeting in December 2013 at Mount Vernon, Virginia was attended by “nearly 100 citizen-legislators”.³ It was held one day after the nearby Washington, D.C., winter meeting of the American Legislative Exchange Council’s (ALEC), a corporate lobbying group that has been extremely influential in pushing for an Article V convention, as detailed later in this report. Since then, the Assembly has met in Indianapolis, Indiana, and Washington, D.C., in 2014 and Salt Lake City, Utah, in 2015 to discuss an Article V convention, with more than 100 legislators from dozens of states around in attendance.⁴

Uncertainties about the Article V process run deep and cut across party and ideological lines. The unanswered questions about a convention have led to debate among legal scholars. Among the questions are the following:

- What if the state petitions are not identical? Would Congress still have to act?
- What if Congress was deadlocked and failed to act on those petitions; could a court step in and order the convention convened?
- If Congress acted, how would the convention work?
- Who would choose the delegates and decide how many each state could send?
- Would the convention’s work be limited to one subject—like the balanced budget plan or campaign finance reform—or might delegates undertake a wholesale rewrite of the national charter?
- And if the convention agreed on one or more amendments, would Congress be required to forward them to the states for ratification?

There are dozens of such questions and multiple possible answers to each of them. Supreme Court Justice Antonin Scalia, a conservative icon, once told the Federalist Society that a convention is a “horrible idea,” arguing, “This is not a good century to write a constitution.”⁵

COUNTDOWN TO A CONVENTION

Currently, the campaign closest to meeting the 34-state threshold for an Article V constitutional convention is the BBA campaign. However, there are over 30 organizations working to call a convention. Some of these campaigns are better bankrolled than others or have leaders with larger public profiles, therefore providing a more significant platform to make their case for an Article V constitutional convention. While each campaign has a different agenda, they have one goal in common: opening the Constitution up to revision in a forum that risks being hijacked by powerful partisan, ideological, and wealthy special interests in ways that threaten and could roll back hard-won rights.

Considering those risks, state legislatures can rescind past applications for a constitutional convention. This has been one of the main focuses of Common Cause and coalition allies for the past few years, and at least five states have already changed their minds about the wisdom of the dangerous convention path.

Next, we will explain the various players who are trying to rewrite our Constitution through a dangerous convention. The biggest two campaigns that continue to have resolutions introduced in states across the country year after year are the BBA and the COS. And as you will see in the following sections, some of these campaigns are now defunct, or see little movement in states, while others are well-funded with active campaigns.

BBA Campaign

The campaign for a BBA is the closest call for an Article V convention, with 27 states currently on the books. As you will read in the following sections, this effort is led and funded by the likes of ALEC, Koch Industries, Scott Walker, and Karl Rove.

In testimony to a congressional committee in 1994, former Common Cause chairman and U.S. solicitor general Archibald Cox characterized a proposed BBA as “an act of supreme constitutional irresponsibility.”⁶ That’s because Cox understood that balancing the federal government’s budget is nothing like balancing your own checkbook—and passing a BBA could cripple our ability to govern.

Cox viewed a constitutional-enforced balanced budget requirement as problematic for many reasons. He believed the Constitution was not designed and should not be used to determine fiscal policy and that enforcement of a BBA would be problematic. Who would interpret the amendment? What court is equipped to enforce the amendment? A BBA could also lead to a less transparent budgeting process. Cox concluded that the amendment would likely “undermine confidence in the Constitution by holding out an appearance of guarantees that would soon prove illusory.”⁷

A federal BBA would also have a major impact on the nation’s finances. The Center on Budget and Policy Priorities (CBPP), a Washington, D.C.-based think tank focused on budgetary issues relating to poverty, inequality, and fiscal responsibility estimates a BBA would trigger tax and program cuts that could spark an economic crisis and force significant cuts to Social Security, military retirement

benefits, and other important public services.⁸ The CBPP also warns that the amendment could tie the hands of the federal government from responding to crises such as economic downturn, natural disaster, or war. Going as far back as 1997, when Congress seriously considered a federal BBA, more than 1,000 economists issued a joint statement calling it “unsound and unnecessary.”⁹

Starting in the 1970s, wealthy special interest groups convinced dozens of state legislatures to pass applications for an Article V convention to propose a BBA. By the late 1980s, BBA advocates were just a few states short of reaching the constitutionally required 34 states to call a convention. However, because of concerns about a potential runaway convention, plus an intensified drive to push BBA through Congress, more than a dozen states rescinded their convention calls between 1989 and 2010.

However, by the end of the 2000s, BBA advocates took advantage of three key events as an opportunity to revive the BBA convention campaign focused on reigning in federal spending.

1. The trillions of dollars the federal government spent on recovery bills related to the 2007–2008 financial crisis.
2. The Tea Party movement, a movement within the Republican Party focused on taxes and the national debt, picked up grassroots momentum in 2009 and endorsed more than 40 candidates.
3. The GOP’s successful plan to gerrymander legislative districts to new extremes across the country in 2011.

Since 2010, 17 state legislatures have passed new calls for an Article V convention on a BBA. As of December 2020, BBA proponents claim that 27 states have applications on the books for an Article V convention on a balanced budget—just six states away from the 34 needed to call a convention. However, as discussed later in this report, Common Cause and allies have since reduced that number and taken us further away from the brink of a convention.

The proponents for a BBA convention claim a convention can be limited to just one issue—the BBA. Unfortunately, though, the Constitution provides no guidelines for how a convention would work and what rules, if any, would be in place. The plain language of Article V in no way forecloses the possibility of a runaway convention.

While defenders will argue this is akin to everyday Americans balancing their checkbooks, the analogy provides a false equivalency and is misleading. As well as building reserve funds, state governments often borrow money to finance building roads, schools, and other public projects. Most individuals borrow money to buy a house, a car, pay for college, and pay other expenses they cannot afford with cash on hand, but that makes great financial sense in the medium or long-term. Businesses also routinely borrow money to finance growth. Under a constitutional BBA, the federal government would not be able to borrow to finance a response to a national security threat or boost economic growth.

The push for a constitutional convention on a balanced budget is usually promoted as mere fiscal policy—but it would put all our constitutional rights up for grabs. And now, the proponents for a

BBA convention are exploring new ways to rig the application count to force Congress to call a convention.

Groups such as the Consumer Action for a Strong Economy, Taxpayers Protection Alliance, and FreedomWorks, among others, have written letters to both Senate Minority Leader Mitch McConnell¹⁰ and former Speaker of the House Paul Ryan asking them to advance a constitutional convention. These groups believe that, according to Rob Natelson's math (a scholar discussed later in this report), calls for a convention have reached the necessary number of states needed to proceed. This is an urgent matter, as evidenced by the many people contacting some of the highest officeholders in the nation to make a convention happen.

"I was there in 2015 and voted *for* it, but what I've learned since about what they've talked about has really changed my mind." Senator Jeff Partridge, a Republican South Dakota state senator who originally voted for the convention application for a BBA when it was presented to South Dakota in 2015, spoke those words on the Senate floor about the dangers an Article V convention could pose for the nation.¹¹

Senator Partridge went on to say, "The good senator from Sioux Falls brought up some of the exact reasons that I take pause. The Rules Committee, the Procedures Committee, the actual, all can change and frankly can be lobbied. To think that there's going to be pure as snow legislators that go to some location in the United States and do the absolute right thing for our country, I think is naïve. I think we have to consider that that group of people might be very well intentioned, but also might be pushed around by lobbyists and there might be a whole other set of rules that have to go into it just for lobbying efforts alone."¹²

This testimony by Senator Partridge in South Dakota during a rescission effort of the BBA showed the key issues legislators are grappling with as they try to move forward and work through the past legislative mistakes of their predecessors. South Dakota ended its move for a rescission with a tie vote of 17–17—highlighting just how difficult it is for legislators to know the full breadth of nuance these bills hold.

Nevertheless, the uncertainties surrounding a BBA have not stopped well-financed groups and individuals from pushing the idea, and their plan to pass it through an Article V convention is a radical plan that has the power to rewrite our Constitution.

ALEC

There is one group that has been extremely influential in pushing for an Article V convention. ALEC, a corporate lobbying group operating under the guise of being a charity, has endorsed the Article V BBA campaign and been a key partner in moving it along. As one of the country's largest and most powerful state-based lobbying organizations, ALEC has the influence and power to bring corporate representatives and state legislators together behind closed doors to write and vote as equals on model bills affecting issues including environmental protection, workers' rights, health care, telecommunications policy, and criminal justice.

Business members of ALEC include major corporations such as Anheuser-Busch, UPS, Koch Industries, State Farm, Altria, and Chevron. ALEC also boasts of having over 2,000 individual legislative

members—nearly a quarter of the country’s state legislators.

ALEC is a 501(c)(3) charity, meaning it provides a tax deduction for its corporate sponsors and has limits on how much it can lobby—limits that Common Cause and other organizations allege ALEC routinely violates.

Most recently, in June 2021, Common Cause and more than 300 civil rights, voting rights, investor, labor, environmental, and public interest organizations [sent letters](#) to some of the largest corporate funders of ALEC, urging the companies to cut ties with the organization because of ALEC’s work to push anti-voter laws at the state level.¹³ We had also worked with over 70 groups in May of 2020 after learning ALEC was co-leading a lobbying effort to push the federal government and states to “reopen” despite public health officials’ warnings about COVID-19. The COS group (discussed further later in this report) also pushed “reopen” protests and provided a forum for protesters to plan online.¹⁴

ALEC’s push for an Article V convention has gone mostly unnoticed by the public. ALEC, which has close connections with and receives major funding from the Koch network, has become one of the most effective lobbying tools of conservative Article V convention proponents. ALEC has hosted numerous workshops and panels on the issue and has adopted a sample resolution for a BBA convention as one of its model bills.¹⁵ These models call for a constitutional convention to propose amendments that would require Congress to obtain approval from two-thirds of state legislatures before imposing new taxes, increasing the federal debt or federal spending, or issuing federal spending mandates.¹⁶ ALEC also released an “Article V handbook” to state legislatures to guide them in calling an Article V convention.¹⁷

In addition to these proposals that would radically change how Congress legislates tax and fiscal policy, ALEC has advanced a two-pronged strategy in support of an Article V convention to draft a BBA. The strategy includes the following:

- A push for legislatures to pass model resolutions calling for an Article V convention on a BBA. ALEC has produced at least three model bills advancing this initiative. Since the 1970s, more than two-dozen states have adopted this type of resolution. Pro-convention advocates claim their application count stands at 27 states, just seven short of the 34 required to trigger congressional action.
- A push for legislatures to join the proposed “Compact for a Balanced Budget Amendment.” The compact is an agreement among participating states that rolls the Article V convention application, convention rules, and ratification process into one mechanism.¹⁸

ALEC also [released a model balanced budget resolution](#)¹⁹ with language legislators can easily copy to introduce a BBA resolution in their states. ALEC has laid much of the groundwork needed for states to introduce these bills with all the language needed to make them effective.

Balanced Budget Amendment Task Force (BBATF)

In addition to ALEC, the campaign for an Article V convention on a BBA is primarily led by BBATF, a 501(c)(4) organization and its affiliate, the Center for State-Led National Debt Solutions (CSNDS),

a 501(c)(3) organization. In 2019, former governor Scott Walker (R-WI) became the national honorary chair of CSNDS. Additionally, the organizations list several former elected officials on their board of directors and board of advisors, including former Virginia governor and U.S. senator George Allen, former U.S. senator Judd Gregg of New Hampshire, former Arkansas governor Mike Huckabee, former Idaho governor Butch Otter, former North Dakota governor Ed Schafer, former U.S. senator Ben Campbell of Colorado, and former U.S. senator Norm Coleman of Minnesota.²⁰



“They said, ‘This is intended to reverse 115 years of progressivism,’ and we say, ‘Yes, it is.’”

— **Mark Meckler, Tea Party Patriots Co-founder and Parler Interim CEO**²¹

Based on recent tax filings, neither BBATF nor CSNDS appears to have raised significant funding in the last few years. In fact, in 2018, CSNDS reported that two board members lent the organization money through two interest-free loans totaling over \$60,000.²¹ Despite the lack of funding, both BBATF and CSNDS have used ALEC and state legislators to move their resolutions in states across the country.

BBATF was previously led by Scott Rogers, who later publicly reversed his position and admitted the real threats of a convention. BBATF’s campaign for a convention “became less about reforming our nation’s government, but a vehicle to limit and destroy the power of the federal government,” Rogers said.²² He went on to say, “The movement is about using constitutional change to destroy the power of the federal government in the name of old-fashioned ‘states’ rights. This is nothing but a polished, media-friendly version of the ‘states rights’ advocated by southern racists in the 1960s.”²³

Compact for America

The Goldwater Institute’s former top lawyer, Nick Dranias, now heads a 501(c)(4) nonprofit group called Compact for America. This organization, along with its affiliated Compact for America Education Foundation, which received its 501(c)(3) tax-exempt status in 2014, is promoting a sample resolution, the “Compact for a Balanced Budget Amendment,” nearly identical to ALEC’s “Compact for America” model bill.²⁴ The difference is that “Compact for America” is working to get 38 states to agree to a *compact* for a BBA by having their resolution pass through legislatures and be signed by governors, instead of moving through Congress like the other calls for an Article V convention. Similar to the now seemingly defunct Compact for a Balanced Budget discussed previously, this compact’s goal is for all 38 states to propose an amendment to the Constitution that would require Congress to pass a balanced budget with specific rules. They are working toward the same goal as others looking for an Article V convention, but they are going about it in a different way, working parallel campaigns with those that seek to have Congress call an Article V convention.

They are staffed and led by several former Goldwater Institute employees, business executives, and conservative activists and thinkers. Compact for America has attracted high-profile endorsements from conservatives. So far, only five states—Alaska, Arizona, Georgia, Mississippi, and North Dakota—have adopted the Compact for America initiative.

While Compact for America has only passed in five states, and we haven't seen movement from them in quite some time, they are still aiming for an Article V convention based on a balanced budget. With the heavy hitters and deep pockets they have backing their project, they are still an important group to watch.

Balanced Budget Forever

While this particular “campaign” has seemingly become defunct, with no discernible recent internet footprint, it is included to note the highly visible lawmakers and elites who played a role in creating this campaign to help reengage people on the idea of a BBA.

In December 2014, former Ohio governor John Kasich launched a national tour supporting an Article V convention for a BBA. Kasich, a founding member of ALEC in the 1970s, used the tour to promote his experience in working to balance the federal budget in the 1990s. When the tour was initially launched, Kasich traveled to Arizona,²⁵ South Dakota, North Dakota, Montana, Wyoming, Utah, Idaho, Maine,²⁶ South Carolina, and West Virginia—many of which have now passed BBAs.²⁷

To promote these efforts by Kasich, a 501(c)(4) nonprofit was formed: Balanced Budget Forever. Its incorporation papers show that the Columbus-based group was set up by the law firm Holtzman Vogel Baran Torchinsky & Josefiak,²⁸ which has gained a reputation for representing high-profile secret money political groups. Holtzman Vogel's clients include Karl Rove's American Crossroads organization and several groups in the Koch industries' network of political organizations.²⁹ The firm's managing partner is Virginia State Senator Jill Holtzman Vogel, former chief counsel to the Republican National Committee and an advocate of an Article V convention.³⁰

COS Campaign

The COS proposal, led by Tea Party Patriots co-founder Mark Meckler, Texas megadonor Tim Dunn, and former U.S. Senator Jim DeMint (R-SC), calls for a convention with the broad purpose of limiting the powers of the federal government, imposing fiscal restraints on federal spending, and applying term limits for members of Congress. Embedded within the legislation of this resolution is vague language lawmakers have intentionally placed—thus illustrating the very real possibility of a runaway convention.

Citizens for Self-Governance (formerly the John Hancock Committee of the States and doing business as Convention of States Foundation³¹) advocates a complete change in how the federal government operates. It openly attacks opposing members of Congress and often pushes the views of Fox News and other far-right political pundits on its Facebook page, and on the movement's website, frequently pushing narratives that go far beyond an Article V convention. COS has also attacked the U.S. Supreme Court's 2015 landmark ruling on marriage equality, as well as the 2020 ruling protecting LGBTQIA employees from discrimination based on sex.³² These right-wing activists are hostile to a broad range of existing civil rights and would undoubtedly use an Article V convention to roll back many rights in the Constitution that protect everyone in this country. The people behind the COS proposal are the same people who work with the Tea Party and work with and support Parler (the far-right extremist social media blog)—both of which have condemned the Black Lives Matter movement, spread disinformation about the COVID-19 virus and vaccines, and continue to lie about the last election and the clear outcome. They use these issues to recruit

people to engage in the COS fight to ultimately end these rights and so many more.

This campaign has significant support from a few wealthy donors, including at least \$500,000 from the Mercer family (known for their support of President Trump and Republican candidates³³) back in 2014³⁴ and large contributions from the Koch-connected Donors Trust.

Mark Meckler has been very open about his ideas for what an Article V convention could do. He has told conservative commentator Mark Levin (a fellow supporter) in an interview on Fox News that the Convention of State's goal is to "[reverse 115 years of progressivism](#)."³⁵ A Constitution amended, according to their vision, would radically change our system of federalism, and not in a good way for the American people.

The COS campaign has gathered major endorsements from leading conservative media personalities, elected officials, and special interest groups, including Marco Rubio (U.S. senator),³⁶ Mike Huckabee (former governor of Arkansas),³⁷ Greg Abbott (current governor of Texas),³⁸ Rand Paul (U.S. senator),³⁹ Jeb Bush (former governor of Florida),⁴⁰ Sean Hannity, Pete Hegseth, Allen West, Sarah Palin (former governor of Alaska), Ron DeSantis (current governor of Florida),⁴¹ ALEC, and others.

Not only are they well-funded, but they are preparing for a win. In September of 2016, the COS held a mock convention to come up with proposed amendments to the Constitution. Over 120 state legislators from all over the country convened to pretend to overhaul the U.S. Constitution.⁴²

Since the mock convention, the [Center for Public Integrity](#) has found that legislators in at least 27 states have proposed bills calling for a real Article V convention.⁴³ This convention was funded by secret money—Meckler and his two groups, Citizens for Self-Governance and Convention of States Action, paid at least \$130,000 combined for 81 lawmakers to attend the mock convention.

In total, the mock convention was attended by 137 people, including more than a dozen academics, former legislators, and businesspeople, according to the Convention of States Action.⁴⁴ The results show two things—(1) how they plan to use a convention to import an extreme agenda into the Constitution and (2) how a convention cannot be limited. The changes they proposed would forever alter the federal government and put civil rights and needed programs such as Social Security, Medicare, and Medicaid at risk.

This mock convention clearly showed that many precious rights we have in this country would be at risk with an Article V convention—and this is an experiment we cannot risk with our founding document. The test delegates at this mock convention, who claim that a runaway convention couldn't happen because all states would be there, pretended to play out what it would be like to make decisions for the country and could not stick to a single action or scope. If they can't stick to an agenda for their test that is supposed to show they will stick to an agenda, how can we possibly take the chance with our Constitution?

This is not a partisan issue. An Article V convention could affect rights and liberties cherished by Republicans, Democrats, independents, and minor party members alike.

An article by the [Editorial Board of the Concord Monitor](#)⁴⁵ in early 2020 put it best by saying, "In the words of Harvard professor and constitutional expert Michael Klarman, 'I think a convention

can do anything they want—re-establish slavery, establish a national church. I just don’t think there’s a limit.’ No rules exist to govern delegates to such a convention. They could, for example, outlaw abortion or legalize it. [They could] [c]riminalize homosexual behavior or set religious requirements for holding office.”⁴⁶

The fundamentals on which our current political parties stand are at risk with an Article V convention—the rights that every American holds dear, regardless of political affiliation—will be at risk.

In the last five years, the COS resolution has passed in 15 states: Georgia, Alaska, Florida, Alabama, Tennessee, Indiana, Oklahoma, Louisiana, Arizona, North Dakota, Texas, Missouri, Arkansas, Utah, and Mississippi. In the 2022 legislative session, they were also able to pass resolutions in Wisconsin, Nebraska, and West Virginia—targets of theirs for some time now—bringing the COS count to 18.

Wolf PAC and Its Campaign for an Amendment to Address *Citizens United*

Far left on the political spectrum is a collection of activists pushing for an Article V convention to change campaign finance law. Galvanized by the U.S. Supreme Court’s 2010 *Citizens United v. FEC* decision, these activists favor an Article V convention to propose an amendment that would permit new campaign finance regulations. Led by Harvard law professor Lawrence Lessig, their call for a convention channels frustration with an unresponsive government like those heard on the right. In 2021, Lessig teamed up with Mark Meckler and Citizens for Self-Governance and hosted a conference promoting the idea of a new constitutional convention.⁴⁷



“I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?”

—Antonin Scalia, Associate Justice of the U.S. Supreme Court (1986–2016)⁶²

Other Article V advocates on the left include political commentator Cenk Uygur, who in 2011 founded Wolf PAC, a political action committee dedicated to passing state resolutions calling for a constitutional convention to overturn *Citizens United* and other Supreme Court rulings on campaign finance. According to OpenSecrets, Wolf PAC has raised and spent more than \$3 million since 2010⁴⁸ to pass convention calls in numerous state legislatures, including California, Illinois, New Jersey, Rhode Island, and Vermont.

Professor Lessig, an advocate for a convention, briefly described his views to a popular audience during a television interview with Bill Maher on HBO on October 16, 2015. Professor Lessig told Maher that “people get terrified when you use the word ‘constitutional convention’ because technically a constitutional convention can do whatever the hell it wants. And that’s not what we’re talking about. The Constitution gives us the ability to have a convention for one purpose: to propose amendments.” Whether a convention may only have “one purpose” is widely disputed, as discussed in this report. For example, leading constitutional scholar Professor Laurence Tribe said it is an open, unresolved question whether, among other things, the “convention can set its own rules, independent of Article V,” and change the threshold for ratification—which goes far beyond merely proposing amendments.”⁴⁹

Common Cause fully supports overturning *Citizens United* and other cases that have allowed the undue influence of money in politics. We also support a constitutional amendment as potentially being one path to overturn this court decision. However, we oppose an Article V constitutional convention as the mechanism. And an amendment overturning *Citizens United* is not the only solution that is available to reform our democracy so that people are put first; it must also be part of a larger context of solutions, including public financing of elections, strong disclosure of political spending, election administration modernization, impartial redistricting reform, and other pro-democracy solutions—solutions that do not require a constitutional amendment.

In the 2021 legislative session, Florida, Georgia, Hawaii, Iowa, Massachusetts, Maryland, Minnesota, Nebraska, New York, Oregon, Pennsylvania, South Carolina, and Tennessee were all targeted by Wolf PAC to get applications for a convention on the books.

Collaboration Continues Between the Campaigns

As previously mentioned, there have been mock conventions, with supporters of different campaigns coming together to strategize. And 2021 was no different: in December, the [Academy of States](#) held a conference in San Diego, and sponsors and speakers included ALEC, Wolf PAC, American Promise, the Reagan Project, and the Vote “Americans’ Prosperity First Amendment,” among others.

We have also seen legislators in several states trade votes or vote for an Article V call that they don’t agree with to keep them moving and hope to combine calls at some point. In 2017, we saw legislators trading votes in both Missouri and New Mexico around COS and Wolf PAC, and in 2022, legislators openly talked about trading votes on a variety of issues for a COS vote.

Term Limits Campaign

U.S. Term Limits, a group founded and funded by conservative megadonor Howard Rich, is also leading a campaign for an Article V convention to propose a constitutional amendment to establish term limits for members of Congress. Since 2016, four states have passed Article V convention applications on term limits: Florida, Alabama, Missouri, and West Virginia.

Supreme Court Reform Campaign

There has also been a new and recent trend of applications showing up in states calling for a convention for the purpose of proposing an amendment to the Constitution to fix the membership of the U.S. Supreme Court at nine justices.

So far in the 2022 legislative session, this has shown up in Indiana,⁵⁰ Pennsylvania,⁵¹ and Wisconsin.⁵² While there has been political discourse over the past few years about the size of the court given the appointments made and the handling of confirmations in the Senate, this is a new scope of Article V resolutions being presented by legislators across the country.

THE FUZZY MATH OF AN ARTICLE V CONVENTION

Even with a dramatic advantage in conservative control of state legislatures across the country, the BBA and COS efforts have found it difficult to win the state resolutions needed to get to the 34-state threshold. With frustration mounting, the leaders of the pro-convention movement are attempting to mainstream a fringe legal theory put forward by Rob Natelson in 2018. This theory allows plenary (or generic) calls for a convention to be combined with existing COS and BBA convention calls.

These generic calls for a convention are often not so generic and were passed decades or even centuries ago. New York, Illinois, Washington, and Oregon have applications on their records that are referred to as “plenary” applications. Upon review, these applications are not generic but call for conventions on issues that are no longer relevant—i.e., popular election of senators or opposition to the Civil War.

For example, New York’s application for a convention dates back to 1789 and asks the Senate of that time for a bill of rights to be added to the newly minted Constitution. Although Framer’s eventually added one, this application has not yet been rescinded and has been disingenuously counted in the opposition’s list of states toward the 34-state threshold needed.



“Danger lies ahead. Setting aside the long odds, if California and 33 more states invoke Article V, there’s a risk that we’d end up with a ‘runaway’ convention, during which delegates would propose amendments on issues including abortion, gun rights and immigration.”

— Rick Hasen, Chancellor’s Professor of Law and Political Science at the University of California, Irvine⁶³

BROAD OPPOSITION TO AN ARTICLE V CONVENTION

Because of the threat of a runaway convention and the lack of rules to protect Americans’ constitutional rights, more than 240 public interest, civil rights, government reform, labor, environmental, immigration, and constitutional rights organizations released a statement⁵³ in April 2017 (signers were updated in March 2019) opposing calls for an Article V constitutional convention. Signers of this letter include AFSCME, Campaign Legal Center, Democracy 21, Economic Policy Institute, NAACP, National Disability Rights Network, Sierra Club, National Education Association, SEIU, Greenpeace, the National Women’s Law Center, and Brennan Center for Justice.

The letter to state legislatures everywhere begins with the organizations’ concerns:

Plans to convene a new constitutional convention under Article V of the U.S. Constitution are a threat to every American’s constitutional rights and civil liberties.

Article V convention proponents and wealthy special interest groups are dangerously close to forcing the calling of a constitutional convention to enact a federal balanced budget amendment (BBA). This would be the first constitutional convention since the original convention in 1787—all constitutional amendments since then have been passed first by Congress and then approved by three-fourths of the state legislatures. There are no rules and guidelines in the U.S. Constitution on how a convention would work, which creates an opportunity for a runaway convention that could rewrite any constitutional right or protection currently available to American citizens.

As further stated in the letter, the organizations “strongly urge state legislatures to oppose efforts to pass a resolution to call for a constitutional convention” and “urge state legislatures to rescind any applications for an Article V constitutional convention in order to protect all Americans’ constitutional rights and privileges from being put at risk and up for grabs.”

These are powerful organizational allies who work at the state and national levels to sound the alarm about the dangers of an Article V convention. Common Cause works with these champions of democracy every day to protect our country and our Constitution.

HOW COMMON CAUSE IS WORKING TO STOP A CONVENTION

Polling

Common Cause and our coalition allies worked with J. Wallin Opinion Research to survey voters in a national poll. The sample is stratified, meaning that the demographic composition of our results matches the demographic composition of the region and turnout model that was surveyed.

Polling revealed a majority (59.2%) of Republican voters oppose changing the U.S. Constitution by calling an Article V constitutional convention. Furthermore, evidence in the poll shows the reluctance of Republican voters to take drastic steps to alter this foundational document. Protecting and preserving the rights guaranteed by the Constitution is one of the top three priorities for Republican voters, who view this issue as being significantly more important than traditional conservative totems such as reducing taxes and government finances.

Key takeaways from this polling research include the following:

- Of GOP voters, 70.2% become less likely to support a convention when they learn it could change the rights to free speech, bear arms, freedom of religion, and even our right to vote. Overall, 60.2% of voters become less likely to support a convention after learning this.
- Of Republicans, 70% become less likely to support a convention knowing that the Constitution is one of the most important documents in the world—but some supporters of a convention have openly said they want to use the convention to put every part of the document up for discussion.

- Of GOP voters, 65% become less likely to support a convention when they learn that many conservative organizations oppose a convention.⁵⁴
- Of Republicans, 56.7% feel that calling an Article V constitutional convention is counterproductive toward the goal of protecting American interests and ensuring the safety of our nation.

This opinion research also found that our opposition messaging introduces a high level of uncertainty into the framework of those working to promote the constitutional convention and makes voters unsure if these groups would be able to control a convention if it were called.

On the Ground in the States

Although the 2020 legislative season ended quickly and in an unexpected way, there were still successes across the country and momentum to carry Common Cause and the coalition into the 2021 legislative season.

Along with our successful rescissions described in the following sections, Common Cause and our allies on both the right and left were also able to stop 133 active applications from being passed. Despite their early work in legislatures

and increased funding, the BBATF, the COS, and Wolf PAC were not able to pass any new Article V convention application in any state. U.S. Term Limits was the only win our opponents had when they passed a call in West Virginia—this was the first new application passed in two years. In several states, legislators from both parties outright rejected these applications. With only one of hundreds passing, our public education campaign has clearly had an impact on Republican and Democratic legislators across the country.



“There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights.”

— Arthur Goldberg, Associate Justice of the U.S. Supreme Court (1962–1965)⁶⁴

Colorado

On April 21, 2022, after a three-year campaign, Colorado rescinded all past calls for a convention. The House passed [HJR21-1006](#) unanimously by voice vote, and the Senate passed rescission with strong bipartisan support 29–3.⁵⁵ This is the single most significant legislative event to prevent an Article V convention in the last four years.

New Hampshire

Early in the 2020 legislative session, New Hampshire introduced [HCR 9](#),⁵⁶ which was a crucial step in rolling back the efforts of Scott Walker and other key figures who are supportive of a convention that could potentially risk the constitutionally granted rights and liberties Americans share and enjoy. This resolution would have rescinded all calls New Hampshire has on record for a constitutional convention. However, as the legislation was to be heard on the House floor, the pandemic shut down all legislative action on issues deemed nonessential for pandemic relief.

With the transition in power from Democrat to Republican and the loss of some of our legislative champions in New Hampshire in 2020, our 2021 efforts were put on hold.

New Jersey

New Jersey rescinded all prior calls for a convention in December 2021 through the passage of [SCR 161](#).⁵⁷ The Senate rescinded on a 24–10 vote, and the Assembly vote was 44–21 in favor of rescission. The champions in the Senate and Assembly, Senate President Steve Sweeney and Assemblyman Nicholas Chiaravalloti, jointly published an op-ed noting this as a critical victory for the preservation of our democracy.

January 6th marked the one-year anniversary of the deadly insurrection on our nation's capital. We all know how the foundation of our American ideals and government was besieged by domestic extremists that day. But there's been another quieter, insidious assault on democracy—and explicitly our constitution—being shopped from state-to-state right under our noses. Namely, the call for an Article V Convention, which could not only undermine but even rewrite the U.S. Constitution. We're happy to report that, here in New Jersey, the state Legislature did our part to preserve the democratic process and protect the rights of all Americans. Thankfully, our Senate and Assembly voted overwhelmingly to rescind all applications previously transmitted to Congress calling for a constitutional convention.⁵⁸

CONCLUSION

As Warren Burger (chief justice of the U.S. Supreme Court from 1969–1986) said, “There is no way to effectively limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or one issue, but there is no way to assure that the Convention would obey.”⁵⁹

An Article V convention is still a very real and credible threat to our democracy, made even more complex by the pandemic and the added secrecy of legislatures because of remote hearings and closed sessions. With multiple campaigns working with state leaders and legislatures to pass these resolutions with the help of deep-pocketed secret donors, the fight from these actors is far from over.

As we look at the 2022 legislative sessions and beyond, it is imperative that the public and the leaders who serve them understand the immense risks an Article V convention brings to the Constitution and the republic it was founded on.

ENDNOTES

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