

# DELEGATES TO AN ARTICLE V CONVENTION CAN'T BE CONTROLLED BY STATE LAWS

By Publius Huldah  
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Our Declaration of Independence (2nd para) sets forth our long forgotten Founding Principles that:

- All men are created equal.
- Rights come from God.
- People create governments to secure God-given rights. The first three words of our Constitution throw off the European model where political power originates with the State; and establish the new Principle that WE THE PEOPLE are the “pure, original fountain of all legitimate political authority” (Federalist No. 22, last sentence).
- When a government seeks to take away our God given rights, we have the right to alter, abolish, or throw off that Form of government.

These are the Principles which justified our Revolution against a King.

These are also the Principles which permit us today to throw off our Form of government by discarding our existing Constitution and replacing it with another one. This is why the language at Article V of our Constitution, which authorizes Congress to call a convention “for proposing amendments”, does not restrict Delegates to merely “proposing amendments”: **Delegates are invested with that inherent *pre-existing sovereign right*, recognized in our Declaration, to abolish our existing Form of government (our Constitution) and propose a new Constitution.**

This has happened once before in our Country. I'll show you.

## **The Federal Convention of 1787: Federal and State Instructions to Delegates**

Pursuant to Article XIII of [The Articles of Confederation](#), the Continental Congress resolved on [February 21, 1787](#) (p 71-74) to call a convention to be held at Philadelphia

**“for the sole and express purpose of revising the Articles of Confederation”.**

The Continental Congress authorized each of the then 13 States to appoint Delegates to the convention. Twelve of the States<sup>[1]</sup> made laws respecting the appointment of Delegates and issuing instructions to Delegates. Ten States instructed their Delegates to propose alterations to the Articles of Confederation; and only two (North Carolina and New Hampshire) gave instructions which arguably permitted their Delegates to do more than propose alterations to the Articles of Confederation.<sup>[2]</sup>

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But the Delegates *ignored* the federal and State limitations and *wrote a new Constitution*. Because of *this inherent authority of Delegates*, **it is impossible to stop it from happening at another convention.**

The Delegates also instituted an easier mode of ratification. Whereas Article XIII of the Articles of Confederation required approval of all of the then 13 States before an amendment could be ratified; **Article VII of the new Constitution provided** that only 9 States were required for ratification of the new Constitution.

### Why is an Article V Convention Dangerous?

So! Do you see?

If we have a convention today, there is **nothing** to stop Delegates from proposing a new Constitution with its own new method of ratification.

New Constitutions are already prepared and waiting for a convention. Here are three:

- Fifty years ago, the Ford & Rockefeller Foundations produced the [Constitution for the Newstates of America](#). **It is ratified by a referendum called by the President** [Art 12, Sec. 1]. If we have a convention, and Delegates propose the Newstates Constitution, it doesn't go to the States for ratification – it goes directly to the President to call a Referendum. The States are dissolved and replaced by regional governments answerable to the new national government. Read the Newstates Constitution and tremble for your country.
- The Revolutionary Communist Party, USA has a [Constitution for The New Socialist Republic in North America](#).
- The [Constitution 2020 movement is funded by George Soros](#) and supported by Marxist law professors and Marxist groups all over the Country, Cass Sunstein and Eric Holder. They want a Marxist Constitution and they want it in place by the year 2020. It further appears that Soros is funding much of the current push for an Article V convention.

### Warnings from the Wise

Brilliant men have warned ***against*** an Article V convention. It is ***immoral*** to dismiss their warnings:

- **Alexander Hamilton** writes of “the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded...” [Federalist No. 85](#) (9th para)
- **James Madison** writes in his [Nov. 2, 1788 letter to Turberville](#) that he “trembled” at the prospect of a second convention; and that an Article V Convention would give “the most violent partizans” and “individuals of insidious views” “a dangerous opportunity of sapping the very foundations of the fabric” of our Country. In [Federalist No. 49](#), he shows that the convention method is NOT GOOD to correct breaches of the federal constitution because the People aren't philosophers – they follow what influential people tell them! And the very legislators who caused the problem would get themselves seats at the convention so they could control the outcome.

- **Former US Supreme Court Justice Arthur Goldberg** reminds us in his [Sep. 14, 1986 article in The Miami Herald](#), that at the convention of 1787, the delegates ignored their instructions from the Continental Congress and instead of proposing amendments to the Articles of Confederation, wrote a new Constitution. **He warns that “...any attempt at limiting the agenda [of the convention] would almost certainly be unenforceable.”**
- **Former US Supreme Court Chief Justice Warren Berger** warns in his [June 1988 letter to Phyllis Schlafly](#) that **“there is no effective way to limit or muzzle the actions of a Constitutional Convention”**; **“After a Convention is convened, it will be too late to stop the Convention if we don’t like its agenda”**; and **“A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn...”**

### Can State Laws Control Delegates?

Convention supporters say we don’t have to worry about any of the above because States can make laws controlling their Delegates.

*Really?* James Madison, Father of our Constitution and a consistent *opponent* of the convention method of proposing amendments, didn’t know that. Two US Supreme Court Justices didn’t know that. **They said there is no effective way to control the Delegates.**

But in case you are uncertain as to who is telling you the Truth – and who isn’t - I will show you how easily State laws which pretend to control Delegates can be circumvented.

Let’s use [House Bill 148, recently filed in the New Hampshire Legislature](#), to illustrate this:

Section 20-C:2I. of the New Hampshire bill says:

“No delegate from New Hampshire to the Article V convention shall have the authority to allow consideration, consider, or approve an *unauthorized amendment* to the Constitution for the United States of America.”[italics mine]

Section 20-C:1 V. of the bill defines “unauthorized amendment” as:

“any amendment outside the scope permitted by the Article V petition passed by the general court of New Hampshire”.

What is wrong with this?

- It doesn’t prohibit New Hampshire Delegates from proposing or approving anew Constitution.
- Article V of the US Constitution provides that Amendments will be proposed at the convention. Any state laws contrary to Article V must fall under the supremacy clause at Article VI, US Constitution.
- New Hampshire Delegates can’t restrict Delegates from other States.
- It ignores the inherent sovereign authority of Delegates to throw off both their State governments and the federal government by proposing a new constitution with whatever new mode of ratification they want. **Remember!** Under the

proposed Newstates Constitution, the States are dissolved and replaced by regional governments answerable to the new national government.

And if the States already know what amendments they want, they should tell their State congressional delegations to propose them in Congress. This is the method James Madison always advised.

Section 20-C:2II. of the New Hampshire bill says:

“Any vote taken by a delegate from New Hampshire at the Article V convention in violation of paragraph I of this section shall be null and void. Any delegate making this vote shall be immediately disqualified from serving as a delegate to the Article V convention.”

What is wrong with this?

- What if the Delegates vote to keep their proceedings secret? At the federal convention [on May 29, 1787, our Framers made rules restricting publications of their proceedings.](#)
- What if the Delegates vote by secret ballot? As long as some vote “for” and others vote “against” every proposition, there is no way to tell who did what.

Section 20-C:2III. of the New Hampshire bill says:

“Every delegate from New Hampshire to the Article V convention called for by the Article V petition shall be required to take the following oath:”

“I do solemnly swear or affirm that to the best of my abilities, I will, as a delegate to the Article V convention, uphold the Constitution and laws of the United States and the state of New Hampshire. I will accept and will act according to the limits of the authority as a delegate granted to me by New Hampshire law, and I will **not vote to consider or approve any unauthorized amendment to the Constitution for the United States of America.** I understand and accept any penalties that may be imposed on me by New Hampshire law for violating this oath.” [boldface mine]

Does one need to comment on the efficacy of Oaths of Office in our degenerate times? Article II, §1, last clause, of our Constitution requires the President to take an Oath to “preserve, protect and defend the Constitution of the United States”; and Article VI, last clause, requires everyone in the federal and State governments to take an oath to obey the Constitution.

Who today honors his Oath of Office?

Section 20-C:2IV. of the New Hampshire bill says:

“Any delegate who violates the oath contained in paragraph III of this section shall be subject to the maximum criminal penalty under RSA 641:2.”

Any criminal defense attorney worth her salt can figure out how to get around this one:

- As shown above, if the proceedings of the convention are kept secret, or Delegates vote by secret ballot, one would never know if any one Delegate violated his oath. Defense counsel would get any attempted criminal prosecution of any particular Delegate dismissed at a pretrial hearing.
- Congress can pass a law granting immunity from prosecution to the Delegates.
- The Delegates can insert a clause in the new constitution granting themselves immunity from prosecution.
- If the new constitution abolishes the States, as does the Newstates Constitution, there is no State left to prosecute Delegates.
- The local prosecutor is the one who decides whether he will prosecute any criminal offense under his jurisdiction. Politics are a deciding factor in deciding whether to prosecute. Remember Eric Holder refused to prosecute Black Panthers who intimidated white voters at a polling place?

Do you see? James Madison, Justice Arthur Goldberg, and Justice Warren Burger were right: It is **impossible** to restrict the Delegates.



### Everything to Lose, Nothing to Gain

If there is a convention today, George Washington, James Madison, Ben Franklin, and Alexander Hamilton won't be there to protect you. Who will the Delegates be? **You don't know.** Do you trust them?

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Our Framers never said that when the federal [and State] government violate the Constitution, the remedy is to amend the Constitution they violate. They never said the remedy is to file a lawsuit and let federal judges decide.

They expected us to act as they did – with “manly firmness”<sup>[3]</sup> - and resist unconstitutional acts of the federal and state governments. Our Constitution doesn't need “fixing” – it needs to be read and enforced by our votes; and failing that, by *manly opposition* - resistance - nullification.

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#### **Endnotes:**

1. Rhode Island boycotted the Convention. See RI's Statement of Reasons in document at 2 below
2. For the texts of the States' instructions to their Delegates and a helpful commentary, go to Principled Policy Blog [HERE](#).
3. The 7th paragraph of the Declaration of Independence says: "He has dissolved Representative Houses repeatedly, **for opposing with manly firmness** his invasions on the rights of the people." [boldface mine]

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