

CONSTITUTIONAL AMENDMENT STUDY

The members of this year's study committee hope that you will participate in the first of this year's studies, on Amending the Constitution. Nationally some LWV members have called for consideration of a Constitutional Convention to deal with the issue of campaign finance. But would this be a good idea? If so, how should the convention process be handled? Those are our questions.

In this issue of *The Voter* you will find a Discussion and Reading Guide on this topic, as well as the Consensus Questions we will consider in October. Our task until then is to inform ourselves through the Constitution Day program and readings. If you have never participated in a LWV study, this is the process through which LWVUS determines its positions – from the grassroots level.

Your participation matters!

Constitutional Amendment Study: Discussion and Reading Guide

Background Information on Amending the Constitution

Article V of the U.S. Constitution provides **two ways of proposing amendments**. Amendments proposed by either method must be ratified by three-fourths of the states, 38 at present.

1. **Congress**, by a two-thirds vote of both chambers, may propose constitutional amendments to the states for ratification.
2. **Legislatures of two-thirds of the states** (34 at present) may ask Congress to call a **convention** to propose amendments; this is commonly called an Article V Convention.

The first method has been used to submit 33 amendments to the states, beginning with the Bill of Rights. Of these, 27 were approved, 26 are currently in effect, and one – the 18th Amendment (Prohibition) — was repealed. The second method, an Article V Convention, has **never** been successfully invoked, although states have submitted numerous petitions to Congress to call a convention.

In the 1970s the American Bar Association studied the convention process and made the following recommendations:

- Congress should establish **clear guidelines and timelines** for a convention through legislation consistent with Article V, rather than waiting until a “crisis.” This should include provision for independent judiciary review of the process and outcomes.
- Any convention should be **limited to the single topic** stated in the petition. This would avoid a general or what some fear would be a “runaway” convention.
- **Delegates to the convention should be elected by the people** and should be **proportional** to each state's population (similar to the House of Representatives). (John D. Feerick, *Amending the Constitution Through a Convention*. *American Bar Association Journal* March, 1974, Volume 60, pp. 285-288)

However, Congress has not adopted such recommendations, and the process remains very vague. Experts hold very different views on the possibility of a convention.

The study will explore the process for proposing an Article V Convention in order to determine whether LWVUS would support such a convention and if so, under what circumstances.

Questions to Consider

As you listen and read, consider the following to prepare for the consensus meeting. How would the convention process work? How *should* it work?

- What is or should be the role of Congress in the process? (Continued on next page)

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- How can/should delegates be selected by the states? By the legislature? Appointed, and if so by whom? Election? Can states have different selection systems? Different numbers of delegates?
- How should delegates be apportioned? By state population? By state, with each state having the same number of representatives?
- Convention action
 - Should the convention be limited to considering a single topic?
 - Does each state have one vote or is voting based on population?
 - Who sets the rules of procedure, including voting by state or by individual delegates –majority or super majority vote?
 - Can the convention hold secret sessions?
 - When does the convention end?
- Ratification
 - Is Congress required to send any amendments proposed by an Article V Convention to the states for ratification?
 - If the Convention proposes multiple amendments, can the states ratify selectively?
 - Who pays? Can the President block an Article V Convention by vetoing any appropriation for the Convention's work?
- Court review: What, if anything, should be reviewed by federal or state courts?

Before the October consensus meeting, you can inform yourself by:

- Looking at the following video and readings. Each one has a link for easy access.

James Madison Montpelier Center. Amending the Constitution. Brief (7 min.) video on the history of the amendment provisions. <https://vimeo.com/125476244>

Synopsis of “Constitutional Amendments and the Constitutional Common Law.” A summary of a longer article (link is provided in the synopsis) **favoring** the possibility of a Constitutional convention. <http://forum.lwv.org/member-resources/article/synopsis-%E2%80%9Cconstitutional-amendments-and-constitutional-common-law%E2%80%9D>

Synopsis of “Constitutional Amendmentitis.” A summary of a longer article (link provided in the synopsis) **opposing** the movement toward a Constitutional convention. <http://forum.lwv.org/member-resources/article/synopsis-%E2%80%9Cconstitutional-amendmentitis>

For more extensive information:

Constitutional Amendment Study Guide. LWVUS has posted an extensive (24 pages plus links to documents) to accompany the consensus questions. <http://forum.lwv.org/member-resources/article/constitutional-amendmentstudy-guide>

The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress. Thomas H. Neale, Specialist in American National Government Congressional Research Service April 11, 2014 (43 pages). This article, prepared by the Congressional Research Service, focuses on the procedural issues that Congress might face invoking an Article V convention. It covers recent developments, including the balanced budget amendment. <http://fas.org/sqp/crs/misc/R42589.pdf>

The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress. Thomas H. Neale, Specialist in American National Government Congressional Research Service, October 12, 2012 (22 pages) This article, prepared by the Congressional Research Service, places the Article V convention in historical perspective. It addresses historical and current efforts to invoke a convention, as well as the role of the states in the process. <http://fas.org/sqp/crs/misc/R42592.pdf>

Constitutional Amendment Consensus Questions

The questions are grouped into three Parts. For each question we will decide
1) Should/Agree, 2) Should Not/Disagree, or 3) No Consensus.

Part I - Considerations for Evaluating Constitutional Amendment Proposals

1. Which of these should or should not be a consideration in identifying an appropriate and well-crafted amendment?

a) Whether the public policy objective addresses matters of such acute and abiding importance that the fundamental charter of our nation must be changed.

PRO: Amendments are changes to a document that provides stability to our system and should be undertaken to address extreme problems or long-term needs.

CON: When public sentiment is overwhelmingly in favor of change, restraint based on veneration of the document is misplaced.

b) Whether the amendment as written would be effective in achieving its policy objective.

PRO: Amendments that may be unenforceable, miss the objective or have unintended consequences will not work to achieve the policy objective.

CON: It's all right to deliberately put something in the Constitution that will need to be interpreted by courts and legislatures over time.

c) Whether the amendment would either make our political system more democratic or protect individual rights.

PRO: Most amendments have sought to make our system more democratic by extending voting rights, for example, or to protect the rights of minorities from powerful interests.

CON: What has been typical in the past is not a good measure of what's appropriate or necessary today or in the future, especially since there have been relatively few amendments.

d) Whether the policy objective can be achieved by a legislative or political approach that is less difficult than a constitutional amendment.

PRO: Due to the difficulty of amending the Constitution, it is important to consider whether legislation or political action is more likely to succeed than an amendment, in order to achieve the objective and to expend resources wisely.

CON: Important policy objectives should sometimes be pursued through a constitutional amendment even though it may be difficult for it to be enacted and even when other options are available.

e) Whether the public policy objective is more suited to a constitutional and general approach than to a statutory and detailed approach.

PRO: It is important to consider whether the goal can best be achieved by an overall value statement, which will be interpreted by the courts, or with specific statutory detail to resolve important issues and reduce ambiguity.

CON: Getting action on an issue is more important than how a policy objective can best be achieved.

Part II - Aspects of an Article V Constitutional Convention

2. What conditions should or should not be in place for an Article V Constitutional Convention initiated by the states?

a) The Convention must be transparent and not conducted in secret.

PRO: *The public has a right to know what is being debated and voted on.*

CON: *The lack of public scrutiny and the ability to negotiate in private may enable delegates to more easily reach agreement.*

b) Representation at the Convention must be based on population rather than one state, one vote.

PRO: *The delegates represent citizens and should be distributed by U.S. population.*

CON: *The U.S. is really a federation of states that must agree by state to any change in the Constitution.*

c) State delegates must be elected rather than appointed.

PRO: *Delegates represent citizens and therefore need to be elected by them.*

CON: *Appointment allows for experts who wouldn't run in an election.*

d) Voting at the Convention must be by delegate, not by state.

PRO: *As at the Articles of Confederation Convention, delegates from one state can have varying views and should be able to express them by individual votes.*

CON: *Because any amendment proposal will go to the states for ratification, voting by state blocs—however the delegates are originally chosen—reflects the probability of eventual ratification.*

e) The Convention must be limited to a specific topic.

PRO: *It is important to guard against a “runaway convention”.*

CON: *The convention alternative was provided for a time when Congress was not listening, so the delegates should not be constrained.*

f) Only state resolutions on a single topic count when determining if a Convention must be called.

PRO: *Counting state requests by topic ensures that there is sufficient interest in a particular subject to call a convention, and enhances citizen interest and participation in the process.*

CON: *There is no requirement for Congress to count state requests by topic and when enough states are unhappy enough to ask for a convention, it should happen.*

g) The validity of state “calls” for an Article V Constitutional Convention must be determined by the most recent action of the state. If a state has enacted a rescission of its call, that rescission should be respected by Congress.

PRO: *A state legislature should be free to determine its position in regard to an Article V Constitutional Convention. A rescission should be equally acceptable to Congress as a state's call for a convention.*

CON: *A state legislature's call for a Convention cannot be overturned because the process may never end.*

3. Should the League oppose an Article V Constitutional Convention to propose amendments to the Constitution because of unresolved questions about the powers and processes of such a convention?

PRO: *The Constitution is too important to trust an unknown or uncontrollable process. It is unclear whether conditions or safeguards regarding powers and processes for a convention can be successfully put in place.*

CON: *A convention is intended to be an unrestrained process to propose amendments to the Constitution.*

Part III – Balancing Questions

4. Should the League consider supporting a Constitutional amendment that will advance a League position even if:

a) There are significant problems with the actual amendment as proposed?

PRO: *Our positions have been studied and agreed to. If other organizations are supporting an amendment in a policy area we also support, we might participate even though it is inconsistent with the evaluation guidelines we support under Part I.*

CON: *If the League has a consensus on the evaluation guidelines outlined in Part I, then the League should not campaign on an amendment when it is inconsistent with those standards, even though the League supports the policy outcome.*

b. It is being put forward by a procedural process the League would otherwise oppose?

PRO: *Our positions have been studied and agreed to. If other organizations are supporting an amendment in a policy area we also support, we might participate even though it is inconsistent with the process criteria we support under Part II.*

CON: *If the League has a consensus on the process criteria outlined in Part II, then the League should not campaign for an amendment when the process being proposed is inconsistent with those standards, even though the League supports the policy outcome.*

Comment Section (max. 500 words)