

Constitutional Amendment Study

DEVELOPED BY THE SARATOGA COUNTY LWV



Constitutional Background



Then
and
now

LWW



Article V provides two ways to propose amendments.

- **CONGRESS, BY A TWO-THIRDS VOTE OF BOTH CHAMBERS**
- **LEGISLATURES OF TWO-THIRDS OF THE STATES MAY ASK CONGRESS TO CALL FOR AN ARTICLE V CONVENTION**

Ratification

AFTER AN AMENDMENT IS PROPOSED, IT MUST BE RATIFIED.

- **BY THREE-QUARTERS OF THE STATE LEGISLATURES.**
- **BY THREE-QUARTERS OF RATIFYING CONVENTIONS IN THE STATES.**

Great and Extraordinary Occasions

“The constitutional road to amendment should be marked out and kept open, but should be used only for certain great and extraordinary occasions.”

James Madison

The Bill of Rights

- **Joint resolution passed by the first Congress on September 25, 1789.**
- **Proposed the first set of amendments to the Constitution.**
- **Same ratification process as today.**
- **The original resolution proposed 12 amendments.**

Categorizing Amendments to the Constitution

- **Protection from Federal Government overreach and abuse.**
- **Scope of the national government's authority.**
- **Extending civil rights and liberties to former slaves.**

Categorizing Amendments to the Constitution

- **Changes in terms or methods of electing Presidents, Vice-Presidents and Senators**
- **Expanded the number of persons eligible to vote in national elections.**
- **Two amendments canceled each other out.**

Unsuccessful Amendments

- **Equal Rights Amendment (ERA)**
 - Failed to win $\frac{3}{4}$ of State Legislatures within 7 years
- **Balanced Budget Amendment**
 - Ohio (2013) & Michigan (2014) – first time application
 - 1975 – 1983 32 States
 - Georgia & Tennessee 2014
 - Life span of applications?/Authority to rescind?

Other attempts which never passed Congress

- **Anti-Flag Burning Amendment**
- **Gay Marriage Ban**
- **Religious Freedom Amendment**

This study is in three parts

- I. Develop guidelines for evaluating proposals.**
- II. Aspects of conducting an Article V Convention.**
- III. How to put these guidelines into practice to balance our positions with the process?**

PART I

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

1a. 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.

Should

Should not

No consensus

1b. 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.

Should Should not No consensus

1c. 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.

Should

Should not

No consensus

1d. 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.

Should

Should not

No consensus

1e. 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.

Should

Should not

No consensus

PART II

What conditions should be in place for an Article V Constitutional Convention initiated by the states?

2a. 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.

Agree Disagree No consensus

2b. 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.

Agree Disagree No consensus

2c. 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.

Agree Disagree No consensus

2d. 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.

Agree Disagree No consensus

2e. 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.

Agree Disagree No consensus

2f. 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.

Agree Disagree No consensus

2g. The validity of a state “call” for an Article V 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.

Agree

Disagree

No consensus

3. Should the League Oppose an Article V Constitutional Convention to propose amendments to the U.S. 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.

Agree Disagree No consensus

Part III

BALANCING QUESTIONS

Should the evaluation guidelines in Part 1 and the process criteria from Part 11 always be applied or may they be set aside in the overall context of any particular amendment?

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

Should consider Should not consider No consensus

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

Should consider Should not consider No consensus

Consensus Review



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- Should not consider
- No consensus

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

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

- Should consider
- Should not consider
- No consensus

Thank you for participating.