Chapter 10
Constitutional Reform

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10 Principles of Constitutional Reform

1. The national government is out of control..
2. Constitutional reform is the solution.
3. Fear of a runaway convention is unfounded.
4. Choose amendments carefully.
5. Agree on convention procedures ahead of time.
6. Require Congress to balance its budget.
7. Consider the Compact approach.
8. Require congressional approval of major regulations.
9. Require due process for all administrative law proceedings.
10. States can refuse to enforce federal laws.

Introduction

Limits on the size and power of the national government intended by the Founding Fathers and placed in the Constitution have been violated repeatedly and with devastating consequences. The national government has grown to the point that it is now a clear and present danger to American life, liberty, and happiness.

The national debt currently stands at nearly $19.8 trillion. National entitlement programs are all on paths to bankruptcy, some as soon as this year. Many states and cities face their own impending financial cliffs. Government debt is a "ticking time bomb" that threatens to destroy

people's savings, the economy, and America's leadership in the world. The regulatory state is similarly out of control.

The U.S. Supreme Court and Congress are unable or unwilling to protect the Constitution from these assaults. The strategy used by concerned patriots of confronting Leviathan issue-by-issue or program-by-program has produced many successes, but it has failed spectacularly to rein in *total national government spending, borrowing, and regulating.* While we rightly celebrate victories at the state level or blocking one or two national programs and repealing one or two regulations, countless other programs expand and regulations get enacted. We win some battles but we are clearly losing the war.

Fortunately, Article V of the U.S. Constitution defines a process by which both Congress and the states themselves can offer amendments to deal with crises and challenges that are beyond the scope of the existing political regime. Since Congress today will not act to limit its own power, the states should call for a convention for the purpose of amending the Constitution. There are several active campaigns proposing balanced budget amendments as well as other changes that would rein in abuses by the national government and place the country back on sound fiscal footing**.**

Recommended Readings: Friedrich A. Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1960); John R. Vile, *The Constitutional Convention of 1787: A Comprehensive Encyclopedia of America's Founding* (Santa Barbara, CA: ABC-CLIO, Inc., 2005).

1. The national government is out of control.

The system created by the Founders to rein in the national government is now broken. The national government has unlimited power to tax, regulate, and borrow.

The Founders thought they had created a federal system of government in which the national government would be small and the states would conduct most of the nation's government business (Buckley 2015). That system has failed to keep the growth of the national government in check.

The Founders' Plan

The Constitution enumerated the national government's powers in Article 1, Section 8 and reserved, in the Tenth Amendment, all other powers to the people or to the states. Language in the preamble to the Constitution and again in Article 1, Section 8 limited the national government to using its power to "promote the general Welfare," not the narrow interests of specific groups of individuals or regions.

By forbidding direct taxation in Article 1, Section 9 (repealed by the Sixteenth Amendment in 1913), the Founders envisioned a national government with too little of its own revenue to take over the duties reserved to the states. The grant to Congress of the power to tax in Article 1, Section 8 specifies taxes can be used only to "to pay the Debts and provide for the common defense and general Welfare of the United States." Redistribution of income and other social engineering goals are prohibited by their exclusion from this grant of power. By arranging for the states to appoint Senators (Article 1, Section 3, repealed by the Seventeenth Amendment in 1913), the Founders thought they were creating a branch of Congress that would act out of self-interest to resist attempts to expand the national government.

This system of constitutional prohibitions and checks and balances worked well during the nation's first century. In 1913—the fateful year that saw the Sixteenth and Seventeenth Amendments adopted—national government expenditures were only 2.5 percent of Gross National Product (GNP). Real per-capita expenditures by the national government, in 1990 dollars, were only $79.56 in 1895.

A Government Out of Control

Freed by the Sixteenth and Seventeenth Amendments from constitutional checks and balances, and by Supreme Court rulings that removed other important prohibitions on its use of power, the national government started to grow. Today, it is a government out of control.

After a brief spike during World War I, per-capita spending fell again during the 1920s, but spending has soared since the 1930s. Writing in 2014, the Mercatus Center's Veronique de Rugy reported, "After adjusting for population and inflation, federal outlays have, with a few exceptions, grown at a staggering pace since 1945. The first Truman budget spent $5,039 per capita. Government spending per capita decreased for the next two years and in 1948 hit a historic low of $2,214—a low that has not been matched in six decades. Today's spending per capita is more than five times this amount, at $10,970" (de Rugy 2014).

In 1900, the federal government consumed less than 5 percent of the nation's total output of goods and services. By 2009 it had reached

24.4 percent, its highest level since the height of World War II in 1945. In 2016, its share was about 21 percent (Federal Reserve Bank of St. Louis 2017).

During the 55 years between 1961 and 2016, Congress chose to balance the budget only five times. In 2009, the federal deficit hit a record high of $1.419 trillion, more than three times the previous record of $458 billion. The $458 billion all-time record high before the Obama years is now the new normal. Congressional overspending at least through 2021 is still projected to be well over $400 billion annually (CBO 2017).

In the last fiscal year under President George W. Bush, the country's debt was just under $10 trillion. With the Obama spending requests passed by Congress, that debt more than doubled, reaching $20 trillion, now surpassing the country's GDP. Obama added more to America's national debt than all prior presidents combined, from George Washington to George W. Bush (Boyer 2015).

The Regulatory State

The dysfunction of the national government also can be seen in the uncontrolled growth of the regulatory state. The National Association of Manufacturers (NAM) put the burden of federal regulations alone at more than $2 trillion in 2012 (Crain and Crain, 2014). If the regulatory compliance burden were lifted, NAM found 63 percent of manufacturers would use funds they save for investment—growing the economy—and 22 percent would put those funds into employee initiatives.

It has increasingly become the habit of Congress to pass vague and contradictory laws, and leave it to the executive branch to work out the details. While there is a process for promulgating new rules, many times the regulations are not subject to that process. Worse, the runaway regulatory regime is often insulated from effective legal checks. Citizens do not have the right to challenge many regulations in the courts.

The Root of the Problem

The root of the problem lies in the Constitution itself, a magnificent document without any doubt "the most wonderful work ever struck off at a given time by the brain and purpose of man," as William Gladstone wrote in 1878. But it is not immune to the contrivances of generations of men and women set on finding ways to evade its restrictions on their power, prestige, and access to the wealth of others. As Thomas Jefferson warned, "the natural progress of things is for liberty to yield and government to gain ground."

The system created by the Founders to rein in the national government is now broken. The national government has unlimited power to tax, regulate, and borrow. The courts have failed to interpret

and enforce key provisions of the Constitution that limit the powers of Congress and the executive branch. State governments, no longer represented in the U.S. Senate, have become addicted to "revenue sharing," losing their independence and hence their ability to check the growth of the national government.

Recommended Readings: Peter Ferrara, *America's Ticking Bankruptcy Bomb* (Washington, DC: Broadside Books, 2011): F.H. Buckley, *The Once and Future King: The Rise of Crown Government in America* (Washington, DC: Encounter Books, 2015).

2. Constitutional reform is the solution.

Anticipating that the national government would attempt to slip the bonds they had placed on it in the Constitution, the Founders created two roads to constitutional reform.

The Founders never intended for the national government to grow so large that it would challenge the states for leadership in so many arenas. James Madison wrote in *Federalist 45*, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which the last the power of taxation will, for the most part, be connected" (Hamilton *et al.* 2014).

Anticipating the national government would attempt to slip the bonds they had placed on it in the Constitution, the Founders created two roads to constitutional reform. A new social movement is arising across the nation calling for the use of these tools to rein in an out-of-control national government. Legitimate and increasingly successful groups that exist solely for the purpose of pursuing constitutional reform include the Assembly of State Legislatures, Balanced Budget Amendment Task Force, Compact for America, Convention of States, Friends of Article V Convention, and State Legislators Article V Caucus.

Congressional Amendments

Throughout our country's history, constitutional amendments have been enacted with the purpose of curbing the power of the national government. Indeed, the first 10 amendments, the Bill of Rights, is a landmark attempt in human history to limit the power of government and to protect individual liberty.

The Eleventh Amendment forbids the federal courts from adjudicating lawsuits against any state government brought by citizens of another state or foreign country. The Fourteenth Amendment provided equal protection of the law for former slaves after the Civil War. Over time, the equal protection clause has been the basis of many court cases limiting government power and abuses. The Twenty-Second Amendment provided a two-term limit for presidents, in response to President Franklin Delano Roosevelt winning four terms in office (Annenberg Classroom, n.d.).

Passing amendments through Congress is the primary method of amending the Constitution. Constitutional amendments proposed by Congress are introduced through a joint resolution. Both the House and the Senate must approve the resolution by a two-thirds vote. The National Archives and Records Administration (NARA) then receives a copy for processing. Staff at NARA's Office of the Federal Register (OFR) process the resolution before distribution to the states. Legislative history notes are added to the amendment during processing.

Amendments proposed by Congress do not take effect unless approved by the states. OFR delivers to each governor a letter describing the proposed constitutional amendment. Governors introduce the amendment to their respective legislatures for consideration. Both houses of a state's legislature must approve a joint resolution in order for the proposed amendment to be considered for ratification. Three-fourths of the state legislatures must approve a proposed amendment in order to achieve full ratification. Although the U.S. Constitution does not expressly require the states be given a deadline within which to approve proposed amendments, the U.S. Supreme Court has ruled Congress has the authority to establish a deadline. Seven years is common; the deadline must be stated either in the body of the amendment or in the resolution proposing it.

OFR receives a copy of the amendment from each state after approval; it is OFR's responsibility to determine the sufficiency of the states' approval of the amendment. An amendment goes into effect as soon as it reaches the three-fourths of the states threshold. Once certified by the Archivist of the United States, it officially becomes an article of the Constitution.

All 27 of the amendments to the U.S. Constitution have taken this path. The last amendment—the 27th, prohibiting any law that increases or decreases the salary of members of Congress from taking effect until the start of the next set of terms of office for Representatives—was ratified on May 18, 1992. It was originally submitted by Congress to the states for ratification on September 25, 1789**.** The ratification period thus took 202 years, seven months, and 10 days.

Article V Convention of the States

In today's highly partisan political environment, it is unlikely Congress will ever consider constitutional amendments meant to curb its own power. This places the task in the hands of state elected officials.

Article V states in full:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the First Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

In a 1920 case title *Hawke* v. *Smith*, which concerned voter approval of the Eighteenth Amendment (Ohio History Central n.d.), and a 1921 case titled *Dillon* v. *Gloss* (FindLaw n.d.(a)), which concerned time limits for ratifying constitutional amendments, the U.S. Supreme Court affirmed the authority of the states to call amendment conventions. Similarly, in a 1931 case titled *United States* v. *Sprague*, which dealt with whether the Eighteenth Amendment had been properly ratified, the Court was emphatic that "[A]rticle 5 is clear in statement and in meaning, contains no ambiguity and calls for no resort to rules of construction. … It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the application of the legislatures of two-thirds of the States, must call a convention to propose them" (FindLaw n.d.(b)).

Once dismissed as too impractical or too risky, constitutional reform under Article V has emerged as a valid and even indispensable tool for the kind of changes to public policy that are needed. Six states passed a total of seven Article V resolutions or bills in 2015, and all 50 states either saw bills introduced or recently adopted Article V resolutions. The Constitution requires Congress to call a convention if 34 states submit matching applications, and 38 states would have to ratify the proposed amendment for it to become part of the Constitution.

Alaska, Arizona, Georgia, Mississippi, and North Dakota have passed the Compact for a Balanced Budget (Guldenschuh 2017). The measure, spearheaded by Compact for America, calls for an Article V convention to vote on a proposed amendment requiring a balanced federal budget, through an interstate compact agreement that simplifies the procedures for calling a convention. Twenty-nine states have passed single-subject applications for an Article V convention calling for a balanced federal budget (*Ibid.*).

Ten states have passed a multiple-subject resolution sponsored by Convention of States calling for an Article V convention (*Ibid.*). The proposal includes term limits for Members of Congress and reducing federal regulations in addition to a balanced budget amendment. As of April 2017, 15 state legislatures were actively considering this resolution (*Ibid.*).

Three times in American history, pressure from states forced Congress to propose amendments states wanted, because Congress wanted to avoid an Article V convention. The three cases were the Bill of Rights itself, the Seventeenth Amendment (popular election of senators), and the Twenty-Second Amendment (presidential term limits). National lawmakers fear such conventions might lead to even greater control over Congress and its current spending and regulatory habits, and so endorse constitutional amendments as a way to preempt them (American Opportunity Project 2017).

Policy Agenda

The most promising and permanent way to deal with the current spending and regulatory abuses of the national government is in the Constitution. Amending the Constitution by a joint resolution of Congress or by an Article V convention of the states could restore the original bonds on the national government—for example, by repealing the Sixteenth and Seventeenth Amendments—or by creating new ones, such as a balanced budget amendment or an amendment imposing term limits on members of Congress. In America's current situation, this seems the only way to confine government to its limited powers and stop runaway spending and regulations.

Recommended Readings: Alexander Hamilton, John Jay, and James Madison, *The Federalist Papers and Other Essays* (Mineola, NY: Dover Publications, 2014); Thomas E. Brennan, *The Article V Amendatory Constitutional Convention: Keeping the Republic in the Twenty First Century* (Landover, MD: Lexington Books, 2014).

3. Fear of a runaway convention is unfounded.

Patriots should not hesitate to use the tools the Founders gave them to restore the constitutional order the Founders thought they were creating for posterity.

What if a convention of states is held for the purpose of voting on a specific constitutional amendment, but its delegates decide to rewrite the entire Constitution instead? What if the convention is taken over by "fake delegates" recruited by reclusive billionaires, whether conservative or liberal or otherwise, who vote to remove from the Constitution protections for cherished rights such as the First Amendment (freedom of speech) and Second Amendment (firearms ownership)? These fears of a "runaway convention" helped defeat the balanced budget amendment in the past and are being circulated by opponents of constitutional reform today.

A Convention Can Be Limited

The principal reason a "runaway convention" scenario is highly unlikely is because the call for the convention can be limited to proposing a single or few amendments. Virtually all campaigns now underway for constitutional reform propose such limited conventions. One effort, the Compact for America, was designed very specifically to confront and extinguish fears of a "runaway convention."

How do we know states can limit a convention to proposing one or only a few amendments? First, the plain language of Article V does not exclude single-amendment conventions, and a common-sense interpretation of the language would say the Founders intended to create an avenue for consideration of single amendments. The Founders were aware of conventions of states preceding the writing of the Constitution and assumed future ones would follow their precedents. (If they didn't assume this, they would have specified nontraditional procedures in the

Article, and they did not.) The conventions of states the Founders knew of were invariably limited to one or only a few subjects and their delegates were faithful to pledges to limit their deliberations to those subjects. (For more about those conventions, see Principle 6.)

Constitutional scholars see a second reason to believe the courts would rule states have the right to limit the call for a convention to one or only a few amendments. Robert Natelson explains, "the central purpose of the state application and convention procedure—to grant state legislatures parity with Congress in the proposal process—would be largely defeated unless those legislatures had the same power Congress does to define an amendment's scope in advance" (Natelson 2014). The Founders would have opposed an interpretation of Article V that placed a large procedural obstacle in front of the states but not Congress.

A third reason we know a convention can be limited to one or a few amendments is historical practice *after* ratification of the Constitution. Nearly all of the Article V applications made by the states in the past were limited to a particular subject. (See the Article V Library 2017.) All of those state legislators over all of those years believed they had the authority to call for conventions on a single or few amendments. It seems highly unlikely they were all wrong.

The fate of these applications is also significant. Why didn't Congress call a convention when 34 applications were received? If a convention cannot be limited, the fact that the applications call for different amendments would not have stopped them from combining disparate applications. A convention of the states hasn't already been called only because Congress and the courts believe a convention of the states can be limited to one or a few amendments.

Finally, writings at the time of the founding make it clear the Founders intended for the Article V convention route to be a relatively easy way to amend the Constitution. In *Federalist* No. 43, James Madison wrote Article V "guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults." In *Federalist* No. 85, Alexander Hamilton wrote there was "no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."

The Federalists sold the Constitution to the public by saying Article V conventions could be used routinely to fix any problems found in the Constitution after ratification. During the New Jersey ratification debates, the *New Jersey Journal* wrote the Constitution included "an easy mode for redress and amendment in case the theory should disappoint when reduced to practice" (cited by Dranias 2016). Similarly, during the Connecticut ratification debates, Roger Sherman wrote, "If,

upon experience, it should be found deficient, [the Constitution] provides an easy and peaceable mode of making amendments" (*Ibid.*).

After the Convention

The biggest restriction on the power of a convention of states is not how it can be called or whether it can or cannot be limited to proposing one or a small number of amendments. It is that its power is only to *propose* and not to enact. The plain language of Article V makes this clear: A convention may be held for the purpose of "proposing Amendments" to the Constitution, but no more.

Whatever a convention proposes must be "ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof" before it can take effect. In other words, nothing a convention of states does can take effect unless approved by legislators or voters in 38 states. It is inconceivable today that voters or legislators in 38 states would agree to give up essential liberties such as those of free speech or firearms ownership. On the contrary, surveys show high levels of popular support, often at levels greater than 80 percent, for a balanced budget amendment, term limits, and better protection of private property rights.

Policy Agenda

More than a few well-intentioned and thoughtful patriots oppose constitutional reform out of fear of a "runaway convention." Love of the Constitution quite rightly leads to opposition to attempts to change it except for the most urgent reasons and through mechanisms the Founders would have approved. The Founders approved of amending the Constitution following proposals adopted through joint resolution by Congress or approved by conventions of states followed by approval by voters in 38 states. Patriots should not hesitate to use the tools the Founders gave them to restore the constitutional order the Founders thought they were creating for posterity.

Recommended Readings: Edwin Meese II, *et al., The Heritage Guide to the Constitution* (Washington, DC: The Heritage Foundation, 2005); Michael Farris, *Answering the John Birch Society Questions about Article V*, Convention of States, May 2016.

4. Choose amendments carefully.

The surplus of good ideas for amendments makes a focused and sustained effort difficult.

Many writers have been composing and vetting their ideas for constitutional amendments for many years. One of the challenges the constitutional reform movement faces is a surplus of good ideas, which makes a focused and sustained effort difficult. Patriots are advised to do their homework, to find out if an organization already exists that has worked through the details of drafting an amendment and sharing it with legislators and activists. Some of the best groups working in this area are identified in the directory at the end of this chapter.

It's Not a Constitutional Convention

For years, opponents of an Article V convention have called it a "constitutional convention" and claimed it would put the current Constitution in jeopardy and perhaps replace it (Newman 2015). This is inaccurate. As the previous principle makes clear, a convention of states is not a constitutional convention. It is an "amendments convention," a constitutional way to bypass Congress and propose amendments to the Constitution directly to the people.

Organizations that support an Article V convention should avoid using the term "constitutional convention," since this fans fears that the entire Constitution might be subject to changes. Legislators should understand the difference between the two terms in order to improve communication with constituents and facilitate a stronger working relationship with organizations that promote such legislation.

Convention supporters should be alert especially for distorted language in the media and public forums that confuse and frighten citizens about the convention's purpose. Such distortions are commonplace in the legacy media and were even on display in the *Washington Post* and *New York Times* some five decades ago (Natelson 2017a).

Composing Amendments

In *Article V: A Handbook for Legislators,* Natelson argues legislators should evaluate a proposed amendment by these measures: Does it return America to its founding principles? Will it promote a significant effect on public policy? Is the amendment proposal widely popular? Is it a

subject most legislators, regardless of political party, can understand and appreciate? (Natelson 2013b).

Natelson discourages states from issuing a single convention application with multiple subjects, since applications for a convention with multiple subjects will win the approval of only as many states as support the least popular of the multiple subjects. This makes it less likely to meet the 34-state threshold (Natelson 2013b). "One at a time" should be the rule. After the first convention of states takes place, the next one will be much easier and faster to convene … and then the next, and the one after that.

Natelson also suggests a "correspondence committee" be formed, composed of a representative from each legislature that issues an application for a convention, so they can communicate regularly on the status of the amendment and help supporters in other states get their applications approved. State legislators are keenly interested in hearing from their peers on the consequences, positive or negative, of endorsing legislation or taking controversial stands. A correspondence committee can help make sure the message they hear is accurate and positive.

Guidelines for Writing Amendments

In a more recent publication, Natelson (2017b) suggested the following guidelines for drafting a constitutional amendment:

- The proposal should be written in a manner consistent with the Constitution's text as currently understood. One should not draft as if one were writing a new, free-standing document.

- The Constitution is fairly concise, so complying with its style requires the amendment not be too long. Moreover, lengthy amendments face obstacles to ratification by feeding public suspicion and offering more targets for attack.

- To the extent possible, the amendment's central terms should consist of words and phrases appearing elsewhere in the Constitution.

- The language should minimize opportunities for manipulation to evade or otherwise thwart the intent behind them.
- The wording of exceptions (e.g., "emergencies") should not be such as to allow exceptions to become the norm.

- Although all parts of the Constitution may come under judicial scrutiny, the amendment should minimize the chances of judicial intervention.

- The amendment should not prejudice the outcome of unrelated constitutional controversies.

- The amendment should not contain ineffective or counterproductive provisions.

- The amendment should not include irrelevant material that impedes creation of the coalition necessary to ratify.

Recommended Readings: Mark R. Levin, *The Liberty Amendments* (New York, NY: Threshold Editions, 2014); Robert G. Natelson, *Article V: A Handbook for State Lawmakers* (Washington, DC: American Legislative Exchange Council, 2013).

5. Agree on convention procedures ahead of time.

If a convention is to be successful, states must cooperate in the application process and planning convention operations.

There is no specific language in the Constitution defining how an Article V convention of states should be conducted, but constitutional scholars say agreement on procedures can be achieved by looking at the proceedings of past conventions.

A History of Conventions

Since the adoption of the Constitution in June 21, 1788, when New Hampshire became the ninth state to ratify the Constitution, the Constitution has been amended 17 times (not counting the original 10 Amendments proposed at the constitutional convention itself), but never via an Article V convention of states. While this has sometimes been raised as a reason to oppose calling a convention today, it overlooks a

long history of state conventions that offers legal and procedural precedents for patriots to learn from.

Robert Natelson has identified 21 inter-governmental conventions that took place before Independence, 11 after Independence but before ratification, and five that occurred after ratification, for a total of 37 conventions (Natelson 2016). According to Natelson,

> Universally-accepted protocols determined multi-government convention procedures. These protocols fixed the acceptable ways of calling such conventions, selecting and instructing delegates, adopting convention rules, and conducting convention proceedings. The actors involved in the process—state legislatures and executives, the Continental and Confederation Congresses, and the delegates themselves—each had recognized prerogatives and duties, and were subject to recognized limits.
>
> These customs are of more than mere Founding-Era historical interest. They governed, for the most part, multi-state conventions held in the nineteenth century as well—notably but not exclusively, the Washington Conference Convention of 1861. More importantly for present purposes, they shaped the Founders' understanding of how the constitutional language would be interpreted and applied (Natelson 2013c).

Guidelines for Successful Conventions

Based on his studies of past conventions, Natelson identified six important rules of organization for any document outlining convention operations:

- *Identification of the presiding officers of a convention and how they will be selected*. Who will be responsible for the overall operation of the convention, calling it to order, ensuring the debate moves smoothly, and administering oversight of committees?

- *Selection of delegates and limitations on their conduct*. How many delegates will be selected from each state and who is responsible for selecting the delegates?

- *Voting rules*. Each state will have one vote on amendments. If states appoint more than one delegate, will the state's vote be based on a majority vote or a supermajority of its delegates?

- *Order of business and conduct of debate*. What agenda will guide the state delegations in properly carrying out their business on the convention floor? What are the rules of debate?

- *Payment of expenses for delegates attending the convention*. Should the delegates themselves, their sponsoring organizations, or each state cover their convention expenses?

- *Standing committees*. What issues should they cover? The Assembly of State Legislatures, which promotes a convention, suggests standing committees cover administration, convention research, communications to Congress and the states, credentials, printing and publications, rules, and style (Assembly of State Legislatures, 2015). Citizens for Self-Governance calls for six: administration, credentials, rules, federal jurisdiction, fiscal restraints, and term limits.

In *Article V: A Handbook for Legislators,* Natelson notes legislative instructions come from the legislature or the legislature's designee, such as a committee, the executive, or another person or body. Although state convention applications should not specify exact wording for an amendment, a state could instruct its commissioners not to agree to any amendment that did not include particular language (Natelson 2013b).

In a manner somewhat similar to Natelson, David Long, writing for the National Conference of State Legislatures in 2013, identified eight key concepts legislatures should address, either in the convention application itself or in specific legislation, concerning delegates (Long 2013):

- *Legislative instructions*. Each state must provide official instructions to convention delegates, outlining the official procedures from the state before, during, and after the convention.

- *Delegate selection.* Each state must outline qualifications for convention delegates in addition to the procedures for selecting them. Some important provisions to consider are minimum age, residency, and registered voter requirements. The qualifications also should specify who, if anyone, is prohibited from serving as a delegate. Georgia, for example, enacted a delegate selection bill in 2014 prohibiting registered lobbyists and federal elected officials from being considered as delegates (Georgia 2014).

- *Recall of delegates*. Each state should enact procedures for recalling delegates who fail to follow the legislative instructions they receive after their appointment.

- *Selecting alternate delegates when regular delegates are being chosen*. This ensures a replacement delegate can be provided in a timely manner in the event of a recall.

- *Ban on delegates proposing unauthorized amendments*. This provision is designed to prevent a "runaway convention" scenario. The instructions to delegates must limit them to consideration of authorized amendments only (ALEC 2013).

- *Require all delegates to take an official oath*. Legislators are required to take an oath of office, and the same requirement should apply to delegates to a convention.

- *Civil or criminal penalty for any delegate who violates the delegate instructions*. States will differ on whether civil or criminal sanctions should be applied for violating official legislative instructions, with each state referring to its official criminal codes to determine appropriate penalties and sanctions.

- *Advisory committees.* Each state should form an advisory group to help delegates navigate whether their actions fall within the scope of the convention. Such advisory groups typically are a three-judge panel, usually consisting of the chief justice of the state supreme court, the chief judge of the state's intermediate appeals court, and a chief judge of a circuit or district court.

Recommended Readings: Russell L. Caplan, *Constitutional Brinksmanship: Amending the Constitution by National Convention* (Oxford, England: Oxford University Press, 1988); William Fruth, *Ten Amendments for Freedom* (Palm City, FL: POLICOM, 2010); Robert G. Natelson, "The Article V Convention Process and the Restoration of Federalism," *Harvard Journal of Law & Public Policy* **36** (3): 955–60.

6. Require Congress to balance its budget.

High on the list of possible amendments should be one requiring Congress to balance its budget.

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Call for an Amendment Convention

BBATF worked with the American Legislative Exchange Council (ALEC) to produce the following model application for states calling for a convention to propose a balanced budget amendment (ALEC 2015):

> **Application for a Convention of the States under Article V of the Constitution of the United States:**
>
> *WHEREAS,* the Founders of our Constitution empowered State Legislators to be guardians of liberty against future abuses of power by the federal government; and
>
> *WHEREAS,* the federal government has created a crushing national debt through improper and imprudent spending; and
>
> *WHEREAS,* the federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent; and
>
> *WHEREAS,* the federal government has ceased to live under a proper interpretation of the Constitution of the United States; and
>
> *WHEREAS,* it is the solemn duty of the States to protect the liberty of our people— particularly for the generations to come—by proposing Amendments to the Constitution of the United States through a Convention of the States under Article V for the purpose of restraining these and related abuses of power;

BE IT THEREFORE RESOLVED BY THE LEGISLATURE OF THE STATE OF _____:

SECTION 1. The legislature of the State of _____ hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.

SECTION 2. The secretary of state is hereby directed to transmit copies of this application to the President and Secretary of the United States Senate and to the Speaker and Clerk of the United States House of Representatives, and copies to the members of the said Senate and House of Representatives from this State; also to transmit copies hereof to the presiding officers of each of the legislative houses in the several States, requesting their cooperation.

SECTION 3. This application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on the same subject.

Language of a BBA

Constitutional scholars disagree on how a balanced budget amendment should be phrased. The phrasing recommended by the Compact for a Balanced Budget campaign appears in Principle 7. Robert Natelson (2017b) has offered the following model language:

Section 1. Every measure that shall increase the total of either the public debt of the United States or the contingent public debt of the United States shall, after complying with the requirements of the seventh section of the first article of this Constitution, be presented to the legislatures of the several states; and before the same shall take effect, it shall be approved by a majority of legislatures in states containing a majority of the population of the United States as determined by the most recently completed decennial enumeration pursuant to the third clause of the second section of the first article. Each state legislature shall have power to determine its own rules for considering such measures.

Section 2. "Contingent public debt" means the secondary public liabilities of the United States. Any measure to increase total contingent public debt shall be presented to the state legislatures separately from any measure to increase total public debt.

Section 3. Any purported increase in total public debt or contingent public debt after the effective date of this article not approved in compliance with this article shall not be deemed money borrowed on the credit of the United States pursuant to the second clause of the eighth section of the first article nor valid public debt under the fourth section of the fourteenth article of amendment.

Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution within seven years from the date of its submission to the state legislatures or conventions in accordance with the fifth article of this Constitution. This article shall become effective six months after ratification as an amendment to the Constitution.

Other Efforts

In addition to a balanced budget amendment (BBA), the Convention of States project calls for term limits on members of Congress, reduction of federal regulations, a redefinition of the "General Welfare clause," and procedures for overturning unconstitutional decisions by federal judges (Convention of States n.d.).

One interesting BBA approach comes from Congress itself. Sens. Chuck Grassley (R-Iowa) and Mike Lee (R-Utah) in 2017 introduced Senate Joint Resolution 7, which would prohibit "total outlays for a fiscal year from exceeding total receipts for that fiscal year or 18% of the U.S. gross domestic product unless Congress authorizes the excess by a two-thirds vote of each chamber. The prohibition excludes outlays for repayment of debt principal and receipts derived from borrowing. The amendment requires a two-thirds vote of each chamber of Congress to levy a new tax, increase the rate of any tax, or increase the debt limit" (U.S. Congress 2017a).

Recommended Readings: Lewis K. Uhler, *Setting Limits: Constitutional Control of Government* (Washington, DC: Regnery Publishing, 1989); Robert Natelson, "A Proposed Balanced Budget Amendment," *Policy Brief,* The Heartland Institute, July 17, 2017.

7. Consider the Compact approach.

One approach to constitutional reform differs from the rest and deserves special attention.

One approach to constitutional reform differs from the rest and deserves special attention. It is the Compact for a Balanced Budget, the work of attorney and legal scholar Nick Dranias and his organization, Compact for America (CFA) (Dranias 2016).

Faster, Safer, Better

CFA's Compact for a Balanced Budget uses an interstate agreement to make the Article V convention process faster, safer, and better. It is *faster* because without it the process for calling a convention of states requires at least 100 legislative enactments and five years of legislative sessions. It is *safer* because the interstate agreement contains provisions that even convention skeptics admit would minimize the chances of last-minute obstacles or a "runaway convention." It is *better* because it can be used over and over again to propose amendments without having to build each amendment effort from the ground up.

Dranias points out the non-compact Article V approach requires at least two-thirds of state legislatures pass resolutions applying for a convention (34 enactments), a majority of states must pass laws appointing and instructing their delegates (26 enactments), Congress must pass a resolution calling the convention, the convention must meet and propose an amendment, Congress must pass another resolution to select the mode of ratification (either by state legislature or in-state convention), and finally, three-fourths of the states must pass legislative resolutions or successfully convene in-state conventions that ratify the amendment. All of this takes time, often multiple legislative sessions, and all the while, opponents of the constitutional reform effort are lobbying to slow down approvals or rescind applications already in hand.

The Compact approach to Article V consolidates everything states do in the Article V convention process into a single agreement among the states that is enacted once by three-fourths of the states. Everything Congress needs to do is consolidated in a single concurrent resolution passed just once with simple majorities and no presidential presentment.

The Compact is able to pack the Article V convention process into just two overarching legislative vehicles by using something called "conditional enactments." For example, using a conditional enactment,

the Article V application contained in the Compact goes "live" only after three-fourths of the states join the compact (three-fourths, rather than two-thirds, is the threshold for activating the Article V application because the Compact is designed to start and complete the entire amendment process). The Compact also includes a "nested" legislative ratification of the contemplated balanced budget amendment, which goes live only if Congress selects ratification by state legislature rather than in-state convention.

Of particular interest to constitutional reform skeptics, the Compact approach identifies and specifies in advance the authority of the delegates from its member states, establishes, the convention ground rules, limits the duration of the convention to 24 hours, and requires all member state delegates to vote to establish rules that limit the agenda to an up-or-down vote on a specific, pre-drafted balanced budget amendment. It disqualifies from participation any member state—and the vote of any member state or delegate—that deviates from that rule. It further bars all member states from ratifying any other amendment that might be generated by the convention.

The Compact's Balanced Budget Amendment

While the Compact approach could work for any constitutional amendment, Dranias started with a balanced budget amendment because it tops the list in surveys of what constitutional amendments people are likely to support. The amendment in its entirety reads:

> *Section 1.* Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.
>
> *Section 2.* Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.
>
> *Section 3.* From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved

by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability;

> "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.
>
> *Section 7.* This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

* * *

The Compact has been adopted by five states: Alaska, Arizona, Georgia, Mississippi, and North Dakota (Guldenschuh 2017). The Compact for a Balanced Budget Commission—an interstate agency dedicated to organizing a convention for proposing a balanced budget amendment composed of representatives from the first three states to join the compact—has been meeting since 2015 (Dranias 2016). In March of that year, it introduced House Concurrent Resolution 26, calling on Congress to fulfill its role in the amendment process (*Ibid.*).

Recommended Readings: Nick Dranias, "Introducing Article V 2.0: The Compact for a Balanced Budget," *Policy Study* (second edition), The Heartland Institute, March 2016; Harold R. DeMoss Jr. *et al.,* "Clearly Constitutional: The Article V Compact," *Policy Brief* No. 11, Compact for America, August 22, 2016.

8. Require congressional approval of major regulations.

Congress should have to vote to approve regulations that impose heavy burdens on businesses and taxpayers.

The federal regulatory process is out of control. Federal regulators now have the power to dictate regulations by reinterpreting laws in ways never intended by Congress. Regulators are developing a new style of government: Instead of governing democratically through the legislative process, regulators rule undemocratically through edicts issued by bureaucrats in Washington. President Barack Obama epitomized this

approach when he declared he would use his pen and his phone to rule when Congress declined to approve his agenda.

Enormous Costs

Government regulations impose an enormous burden on people and the economy. A 2014 study by the National Association of Manufacturers estimated,

> Federal regulations cost a whopping $2.028 trillion in 2012. While the average American company pays $9,991 per employee, per year, to comply with these federal rules, the average manufacturer pays even more: $19,564 per employee each year. The costs are even higher for small manufacturers (those with less than 50 employees), who spend $34,671 per employee, per year, complying with federal regulations (Crain and Crain 2014).

"Tip of the Costberg," a report issued in December 2014 by the Competitive Enterprise Institute, estimates the annual cost of regulations at $1.885 trillion a year. According to the report,

> Unmeasured costs, and in particular, "regulatory dark matter," the "costs of benefits" and citizens' loss of liberty imply that if we're missing regulation, we are missing the biggest part of government's role in the economy, perhaps society itself. In addition to the burden of specific regulations is the uncertainty created by the capricious nature of the regulatory process. Regulatory uncertainty seriously lowers the rate of economic growth and the creation of new jobs (Crews 2014).

Federal spending and workers devoted to developing and administering regulations also reveal the growth in the regulatory state. Susan Dudley and Melissa Warren give a historical perspective: "In the final year of the [President] Dwight D. Eisenhower administration (FY 1960), regulatory agencies employed a little more than 57,000 people and spent $533 million (equivalent to $3 billion in 2009 dollars)." But Obama's final budget "proposes expenditures of $70.0 billion ($61 billion in 2009 dollars) on regulatory activities in FY 2017, and a staff of almost 279,000. In the 58 years tracked in this report, fiscal outlays for administering regulation have increased more than 20-fold (after adjusting for inflation) and staffing has increased by a factor of five" (Dudley and Warren 2016).

Reining in Regulation

Regulations, like laws, should have the consent of the governed. The Regulations of the Executive In Need of Scrutiny (REINS) Act, passed by the House of Representatives in 2017, would require major new federal regulations be approved by Congress before going into effect (U.S. Congress 2017b). The REINS Act would be an excellent first step, but passage is by no means certain. Even if passed and signed into law, it could be undone or repealed by future Congresses. A clear constitutional limit on the abuse of regulatory power is required (Hamburger 2014).

The Regulation Freedom Amendment, backed by more than 500 state legislators, provides, "Whenever one quarter of the Members of the U.S. House or the U.S. Senate transmit to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation" (American Opportunity Project 2017). Any regulation would be subject to review and approval by Congress if at least 109 members of the House or 25 Senators call for such a review. It also can cover regulations that threaten all liberties, like free speech or religious freedom.

As of March 2017, 21 state legislative chambers had passed resolutions urging Congress to propose the Regulation Freedom Amendment (Yack 2017). A 2014 survey conducted by McLaughlin and Associates showed more than two-to-one voter support for a constitutional amendment to require major new federal regulations not take effect unless explicitly approved by Congress (McLaughlin and Associates 2014).

As the public's discontent with federal regulatory abuses increases, states should take action to support constitutional regulatory reform to help restore the checks on executive branch power intended by the authors of our Constitution.

Recommended Readings: Philip Hamburger, *Is Administrative Law Unlawful?* (Chicago, IL: University of Chicago Press, 2014); Susan Dudley and Melinda Warren, "Regulator's Budget from Eisenhower to Obama: An Analysis of the U.S. Budget for Fiscal Years 1960 Through 2017," The Regulatory Studies Center with the Weidenbaum Center on the Economy, Government, and Public Policy, May 2016.

9. Require due process for administrative law proceedings.

Constitutional clarification is needed to ensure all citizens can fully challenge regulations restricting their liberty.

The suffering of citizens at the hands of regulators begs for a second amendment solution, one that protects U.S. citizens' rights to due process, promised under the Fifth Amendment, during administrative law proceedings (Justia n.d.).

Lawmakers at the national and state levels have increasingly relinquished their authority to government agencies. The rules, regulations, and laws by which citizens must abide are often imposed bureaucratically rather than legislatively. The Founders did not foresee such law-making by unelected bureaucrats, and the Fifth Amendment does not clearly provide for due process in matters of agency rule-making (EPIC 2015).

Few Rights in Non-judicial Proceedings

The Administrative Procedure Act of 1946 outlines the process of challenging administrative rules of the national government and affords the right to judicial review (Cornell University Legal Information Center n.d.). Any agency decision is subject to judicial review, but the statute of limitations is a mere six years. In addition, the burden of proof to determine whether an agency action is unconstitutional is very high: The court must find an agency action was "unlawfully withheld or unreasonably delayed" and must also deem the action to have been arbitrary, capricious, an abuse of discretion, contrary to constitutional rights, in excess of statutory jurisdiction without proper observance of procedure required by law, and unsupported by substantial evidence in the Code of Federal Regulations (EPIC 2015).

Three court decisions in particular have given national and state government agencies broad, expansive power to make decisions without judicial review:

- In 1877, the Supreme Court in *McMillen* v. *Anderson* found judicial review is not required for administrative proceedings (U.S. Supreme Court 1877).

- In 1941, the Court in *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.* found administrative proceedings for state agencies that promulgate new rules do not require judicial review (U.S. Supreme Court 1941).

- In 1978, the Ninth Circuit Court of Appeals ruled in *Moore* v. *Johnson* that it is not unconstitutional to deny judicial review for administrative proceedings. The court ruled the Department of Veterans Affairs could reassign patients to different facilities without the need for judicial review (Google Scholar n.d.).

Needed Reforms

Heritage Foundation Research Fellow Robert Moffitt has suggested the national government return to oral proceedings governed by an administrative law judge and create a congressional Office of Regulatory Review to ensure regulations promulgated by federal agencies are subject to judicial review (Moffitt 2011). Moffitt describes failed attempts in the past by Congress and the president to gain control of the administrative rulemaking process. Such reform attempts can be blocked by the court.

Congress was turned away twice by the nation's highest court in asserting its power in the administrative rulemaking process. In *Buckley* v. *Valeo*, the Court found the Federal Elections Commission is authorized to issue administrative rules on campaign finance and election activities without congressional oversight (Case Briefs 1976). In *Bowsher* v. *Synar,* the Court found the Comptroller General of the United States violated the separation of powers clause of the U.S. Constitution by executing laws to control the budget deficit during the Reagan era (Oyez 1985).

Constitutional protection of due process rights can prevent politicians from changing laws and policies regarding administrative rules and non-judicial proceedings at will. A constitutional amendment also could check the power of independent agencies by allowing full congressional oversight. Our system of government is built on the fundamental principle of checks and balances. A constitutional guarantee of due process for administrative law proceedings would restore that critical check on administrative rule-making by Congress and government agencies.

Recommended Readings: Robert A. Levy and William Mellor, *The Dirty Dozen: 12 Cases that Gave the Supreme Court Expansive Power* (Washington, DC: Cato Institute, 2010); Mark R. Levin, *Plunder and Deceit* (New York, NY: Threshold Editions, 2015).

10. States can refuse to enforce federal laws.

States need to understand when they can stand up for the Constitution against the national government.

Throughout America's history, there have been conflicts between the national and state governments over which level of government properly has authority over various issues (Chumley 2014). The Founders anticipated this and viewed it as an important check on the abuse of power by both levels of government. However, During President Barack Obama's two terms in office, his administration used the power of administrative rules and executive orders to impose its agenda in such areas as environmental regulation, K–12 and higher education, and health care without congressional oversight or the consent of the states.

States can fight back, but only to a limited degree. Constitutional scholar and Cato Institute chairman Robert Levy explains, "State officials need not enforce federal laws that the state has determined to be unconstitutional; nor may Congress mandate that states enact specific laws." He cites as an example the 1997 case of *Printz* v. *United States*, in which the Supreme Court ruled the federal government could not command state law enforcement authorities to conduct background checks on prospective handgun purchasers (Levy 2013).

Levy warns "states may not block federal authorities who attempt to enforce a federal law unless a court has held that the law is unconstitutional." This principle goes back to the *Marbury* v. *Madison* case of 1803, in which the Supreme Court ruled "It is emphatically the province and duty of the judicial department to say what the law is." Further, Levy explains "individuals are not exempt from prosecution by the federal government just because the state where they reside has legalized an activity or pronounced that a federal law is unconstitutional."

Recent State Actions

An example of using the state legislative process to reassert constitutional rights is the Firearms Freedom Act, legislation designed to give state law enforcement officers the authority not to enforce any new gun control laws from the national government (Firearms Freedom Act 2015). The legislation arose in response to the Sandy Hook school shooting in 2012, when many citizens feared the national government

would pass stricter gun control laws or otherwise violate Second Amendment rights. Eight states have enacted the Firearms Freedom Act as of 2015, and the legislation has been introduced in 26 additional states.

Citizens of the states are also beginning to use popular referenda to instruct their own governments when not to enforce federal laws. For example, in 2014 Arizona voters approved Proposition 122, an amendment to that state's constitution prohibiting all state and local governments from using taxpayer resources to fund administration, cooperation, or enforcement of any action or program of the national government the Arizona legislature or voters deem unconstitutional (Ballotpedia 2014). In 2016, North Dakota could have become the second state to consider such a state constitutional amendment, but the measure was not approved by the state Senate and thus did not make it to the ballot (Ballotpedia 2016).

States using amendments to their own constitutions to refuse to cooperate in enforcing federal laws and regulations that their legislatures or voters deem unconstitutional should aim for one of two goals: to empower state government officials to opt out of such federal laws and regulations; or to give the state legislature the authority to decide which federal laws and regulations are to be treated as unconstitutional.

Nullification

While states can refuse to enforce laws they deem unconstitutional, this is not the same as the theory of nullification, which claims the states have the power to declare federal laws unconstitutional and therefore null.

The idea that states can nullify federal laws was first introduced in the Kentucky and Virginia resolutions in response to the Alien and Sedition Acts. It had the support of Thomas Jefferson, a leading Founder, but it was not part of the ratification debate and receives no support in the text of the Constitution. James Madison, in *Federalist* No. 46, wrote the people have the natural right to revolt against a government and establish another, but that this is an extraconstitutional step that amounts to revolution and should not be invoked unless all constitutional remedies had been exhausted (Dranias 2016).

Today, nullification refers to a state law declaring one or more federal laws void within the boundaries of the state. The state may or may not make the nullification ordinance conditional. It may or may not impose criminal or civil penalties on persons attempting to enforce the nullified law. Robert Natelson wrote in a February 3, 2014 article titled "Struggling with Nullification," "Once the pure state compact theory falls, it is very hard to justify nullification (narrowly defined) as a constitutional remedy. It remains instead a remedy reserved by natural

law for when the Constitution has wholly failed—in other words, in situations justifying revolution."

* * *

Governors and state legislators have a duty to fight back against the expansion of national government authority beyond its proper constitutional bonds. In past years, the states have surrendered too much authority and responsibility to the national government, allowing it to grow out of control. States can refuse to enforce federal laws they consider unconstitutional, but they cannot nullify those laws outright. That is the province of the U.S. Supreme Court.

Recommended Readings: Robert A. Levy, "Yes, States Can Nullify Some Federal Laws, Not All," *Investor's Business Daily,* March 18, 2013; Robert Natelson, "Struggling with Nullification?" Tenth Amendment Center, February 5, 2014.

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Additional Resources

Additional information about constitutional reform is available from The Heartland Institute:

- The Heartland Institute's Center for Constitutional Reform was created to highlight individuals and organizations working to find solutions to our nation's constitutional problem. It does not endorse one particular path to constitutional reform, but supports and seeks constructive debate on all efforts to restore constitutional order. Its website at http://www.heartland.org/constitutional-reform/ provides the latest news and commentary about constitutional reform and links to key allies. Read headlines, watch videos, or participate in the conversation using Twitter (@usconstreform) and Facebook.

- PolicyBot, The Heartland Institute's free online clearinghouse for the work of other free-market think tanks, contains thousands of documents on constitutional reform issues. It is on Heartland's website at https://www.heartland.org/policybot/.

- *Budget & Tax News*, *Environment & Climate News*, *Health Care News*, and *School Reform News*—all monthly publications from The

Heartland Institute—cover constitutional reform issues as they relate to those specific topics. Print subscriptions are available at store.heartland.org; subscribe to the digital editions at www.heartland.org/subscribe.

Directory

The following national organizations offer additional resources about constitutional reform. This list continues to grow; for the most up-to-date list, visit the website of Heartland's Center for Constitutional Reform at http://www.heartland.org/constitutional-reform/.

American Legislative Exchange Council, http://www.alec.org

American Opportunity Project, http://www.americanopportunityproject.org/

Article V Legislators Caucus, http://www.articlevcaucus.com

Assembly of State Legislatures, http://www.theasl.org

Balanced Budget Amendment Task Force , http://www.bba4usa.org

Ballotpedia, http://www.ballotpedia.com

Citizens for Self-Governance, http://www.selfgovern.org

Compact for America, http://www.compactforamerica.org

Convention of States, http://www.conventionofstates.com

Convention USA, http://www.conventionusa.org

Goldwater Institute, http://www.goldwaterinstitute.org

Heartland Institute, https://www.heartland.org/

Independence Institute's Article V Info Center, http://www.articleVinfocenter.com

National Federation of Independent Businesses, http://www.nfib.org

Our American Constitution, http://robnatelson.com/

Tenth Amendment Center, http://www.tenthamendmentcenter.com

U.S. Term Limits, http://www.termlimits.org