

Testimony of Chad Gump
Government Oversight Committee Ohio House of Representatives
Columbus, Ohio
Legislative Hearing on HJR-3

Chairman Peterson, Vice Chair Thomas, Ranking Member Humphrey, and members of the committee, my name is Chad Gump and I am from North Canton, Ohio, House District 49. My remarks today will refute two commonly repeated claims from those who oppose states amending the US Constitution.

The first claim is that “There are absolutely no rules for an Article V Convention outlined in the Constitution.”¹ This claim is rooted in the fact that the Constitution does not explicitly spell out rules for governing how an Article V Convention should operate. By extension, without rules anything could happen at an Article V Convention, including a repeal of the Bill of Rights and replacement of the Constitution.

Professor Robert Natelson explains in his Marquette Law Review article published in 2020² that the Constitution contains many undefined terms, including the word “convention” and norms by which they are to operate. He explains,

“... competent constitutional scholars do not assume a phrase has no meaning merely because the Constitution and the framers' records do not define it. ... The usual reason for the lack of definition is that the term was so well understood that there was no need to explain it. Illustrative are phrases such as ‘the Writ of Habeas Corpus’, ‘original Jurisdiction’, and ‘Trial ... by Jury.’ Although neither the Constitution nor the framers’ records define those phrases, we know their precise meaning because other Founding-era sources tell us.”

Said differently, the founders didn’t waste precious space in the Constitution to explain what a multi-state convention was and rules for governing them because that information was common knowledge at the time.

Professor Natelson further explains that rules for conducting multi-state conventions had well-established precedent from no fewer than 11 multi-state conventions held after the signing of the Declaration of Independence. These rules included the following:

1. State legislatures selected commissioners to attend multi-state conventions. Commissioners were required to follow their legislature’s instructions, remain within their authority, and were subject to recall for non-compliance.
2. The first order of business at a multi-state convention was to elect convention officers, establish committees and set procedural rules.
3. Voting was done by state, one vote per state. A majority of a state’s delegation determined how the state would cast its vote.
4. The rule of decisions was the majority of states present and voting.
5. If a majority of states did not endorse a particular solution, the convention did not propose one.

Therefore, the claim that there are no rules for Article V Conventions is clearly false.

¹ <https://www.commoncause.org/our-work/constitution-courts-and-democracy-issues/article-v-convention/>

² Natelson, Robert G. “Is the Constitution's Convention for Proposing Amendments a ‘Mystery’? Overlooked Evidence in the Narrative of Uncertainty.” Marq. L. Rev. 104 (2020): 1.

Another claim that opposition frequently makes is that The Constitution states that Congress is to call an Article V Convention upon receipt of applications from 2/3 of state legislatures. Since Congress calls the convention, Congress would control the Convention.^{3,4} This claim is intended to imply that Article V Conventions are a waste of time because Congress can take control and run them into the ground. So why bother?

Having thoroughly researched and published on the rich history of multistate conventions in America, Robert Natelson explains that “by the time the Constitution was written, established custom held that a convention call could prescribe to the states and the convention no more than the ‘time, place, and purpose’”^{5,6} Also, “In multi-state convention practice, the means—the rules of decision—were left to the participants: the state legislatures and their respective representatives in convention assembled.”

Professor Natelson further clarifies, “The overriding purpose of the state application and convention procedure is to bypass Congress. If Congress could structure the convention, this would largely defeat its overriding purpose.” Additionally, “If Congress were to dictate to state legislatures how [to] select commissioners, then Congress would invade the incidental authority of state legislatures.”^{3,4}

In summary, we know from a long history of multi-state conventions leading up to the writing of the Constitution that the framers intended Congress to only have the power to specify the time, place and subject matter for the Article V Convention, nothing more. Congress cannot control the proceedings of the Convention, or this would defeat the whole purpose of the Article V Convention to bypass Congress in proposing amendments to the Constitution. Without question, the claim that Congress would control Article V Conventions is false.

Thank you. Do you have any questions?

³ Testimony of Jim Lewis to the Ohio Senate General Government Budget Committee on May 24, 2022

⁴ <https://publiushuldah.wordpress.com/2021/04/24/the-death-blow-an-article-v-convention-to-replace-our-constitution/>

⁵ Natelson, Robert G. *The Law of Article V: State Initiation of Constitutional Amendments* (p. 56). Apis Books. Kindle Edition.

⁶ Natelson, Robert G. "Founding-Era Conventions and the Meaning of the Constitution's Convention for Proposing Amendments." *Fla. I. rEV.* 65 (2013): 615.