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The Article V Convention to Propose Constitutional Amendments: Current Developments

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November 15, 2017

Congressional Research Service
7-5700
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R44435

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Summary

Article V of the U.S. Constitution provides two procedures for amending the nation's fundamental charter: proposal of amendments by Congress, by a vote of two-thirds of the Members of both houses, and proposal by a convention, generally referred to as an "Article V Convention," called on the application of the legislatures of two-thirds (34) of the states. Amendments proposed by either method must be ratified by three-fourths (38) of the states in order to become part of the Constitution. This report provides information for Members of Congress and congressional staff on current developments in Congress, the states, and the relevant advocacy and policy communities concerning the Article V Convention alternative.

From the 1960s to the 1980s, supporters of Article V Conventions mounted vigorous but ultimately unsuccessful campaigns to call conventions to consider amendments related to diverse issues, including school busing to achieve racial balance, abortion restrictions, apportionment in state legislatures, and, most prominently, a balanced federal budget.

After more than 20 years of comparative inaction, the past decade has seen a resurgence of interest in, and support for, the Article V Convention alternative. Congress has responded to this development, particularly requests for broader public availability of state applications for a convention. In the 114th Congress (2015-2017), the House of Representatives provided for registration and public availability on the Clerk of the House's website of state memorials related to the convention issue received since the beginning of that Congress. The rules, which remain in effect for the 115th Congress, direct the chair of the Judiciary Committee to provide new convention applications and rescissions of previous applications to the Clerk for publication. They also authorize publication, at the chair's discretion, of applications for a convention previously forwarded to Congress.

Relevant legislation has also been introduced in the 115th Congress. On March 27, 2017, Representative Luke Messer introduced H.R. 1742, the "Article V Records Transparency Act of 2017." This proposed legislation would direct the National Archives to make an organized compilation of all state applications and rescissions of applications for an Article V Convention currently held in its various collections. The Archives would also be directed to transmit physical and electronic copies to the Judiciary Committee chairs of the Senate and House of Representatives. One relevant constitutional amendment has also been introduced to date in the 115th Congress, H.Con.Res. 73. This measure, introduced by Representative Messer on July 26, 2017, would "effect" the Compact for America's Interstate Compact for a Balanced Budget, summon an Article V Convention, and propose the amendment approved by the convention to the states for ratification.

Non-governmental advocacy groups across a broad range of the political spectrum continue to campaign for conventions to consider various amendments. Some of the issues and sponsoring organizations include a revival of the balanced budget amendment convention proposed in the 1970s-1980s (Balanced Budget Amendment Task Force); an interstate compact to call a convention and propose—and prospectively ratify—a balanced budget amendment (Compact for a Balanced Budget); an amendment or amendments to restrict the authority of the federal government (Convention of States); and an amendment to permit regulation of corporate spending in election campaigns, which is intended to nullify parts of the Supreme Court's decision in *Citizens United v. Federal Election Commission* (Wolf PAC).

Activity continues in the states. According to one source, approximately 175 applications for one or more of the several pending Article V Convention variants have been introduced in the legislatures of 40 states to date in 2017. At the time of this writing, the Balanced Budget

Amendment Task Force claims 28 applications, many of which originated in the 1970s and 1980s; the Convention of States claims 12; and the Compact for America and Wolf PAC each claim five.

Two additional CRS Reports address other aspects of this issue. CRS Report R42589, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, identifies and analyzes the contemporary role of Congress in the Article V Convention process in greater detail. CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* examines the procedure's constitutional origins and history and provides an analysis of related state procedures.

This report will be updated as warranted by events.

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Introduction

Article V of the U.S. Constitution provides two alternatives for amending the nation's fundamental charter: proposal of amendments to the states by vote of two-thirds of the Members of both houses of Congress,[1] and proposal by a convention called as a result of applications from two-thirds of the states, the "Article V Convention." From the 1960s to the 1980s, supporters of Article V Conventions mounted vigorous but ultimately unsuccessful campaigns to call conventions to consider such issues as school busing to achieve racial balance, restrictions on abortion, apportionment in state legislatures, and a balanced federal budget. Since approximately 2010, after more than 20 years of comparative inaction, the Article V Convention alternative has drawn a new generation of supporters. Advocacy groups across a broad range of the political spectrum are pushing for conventions to consider various amendments. This report provides information for Members of Congress and congressional staff on current developments in Congress, the states, and the advocacy community on the Article V Convention alternative. Two companion reports provide more exposition and analysis of this issue: CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress*; and CRS Report R42589, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*.

Current Status of State Applications for an Article V Convention

In recent years, measures proposing applications for one or more of the alternative Article V Convention proposals have been introduced in many states. David F. Guldenschuh, an attorney and scholar of the Article V Convention process who is associated with the Heartland Institute (which supports the Article V approach),[2] reported that as of August 1, 2017, 175 applications had been introduced in the legislatures of 40 states during their 2017 sessions.[3] To date in 2017, three states have submitted applications for a convention to consider a balanced budget as proposed by the Balanced Budget Amendment (BBA) Task Force.[4] Four states have joined the Convention of States Project,[5] and one has applied for the Compact for America's Compact for a Balanced

[1] This is traditionally interpreted to mean a two-thirds majority of Members present and voting, rather than of the whole number of Members in each chamber.

[2] The Heartland Institute describes itself as "a national nonprofit research and education organization [whose] mission is to discover, develop, and promote free-market solutions to social and economic problems." Heartland Institute, "About Us," https://www.heartland.org/about-us/index.html.

[3] David Guldenschuh, "August 1, 2017 Edition of the Article V Convention Legislative Progress Report," http://articlevcaucus.com/wp-content/uploads/2017/08/17-0801-AVC-Progress-Report.pdf; Guldenschuh, "The Article V Movement: A Comprehensive Assessment to Date and a Suggested Approach for State Legislators and Advocacy Groups Moving Forward," Heartland Institute, November, 2015, p. 23, https://www.heartland.org/publications-resources/publications/the-article-v-movement-a-comprehensive-assessment-to-date-and-suggested-approach-for-state-legislators-and-advocacy-groups-moving-forward.

[4] Arizona and Wyoming: Guldenschuh, "August 1, 2017 Edition of the Article V Legislative Progress Report"; Wisconsin: Jessie Opoien, "Wisconsin Becomes 28th State to Call for a U.S. Constitutional Convention," *Capital Times*, November 7, 2017, http://host.madison.com/ct/news/local/govt-and-politics/election-matters/wisconsin-becomes-th-state-to-call-for-u-s-constitutional/article_d1df5fb0-58ac-5812-a3a3-f2eec08510f2.html.

[5] Arizona, Missouri, North Dakota and Texas: Guldenschuh, "August 1, 2017 Edition of the Article V Convention Legislative Progress Report."

Budget.[6] At the same time, Guldenschuh identified four states that had passed resolutions rescinding one or more applications submitted at an earlier time.[7] The present status of the most prominent Article V Convention campaigns following state action through 2017 follows. Convention advocacy groups listed below are identified in greater detail later in this report.

- Balanced Budget Amendment Task Force (balanced federal budget amendment) claims 28 applications, including related "legacy" applications of the 1970s and 1980s.[8]
- Convention of States project (amendments restricting authority of U.S. government) lists applications from 12 states.[9]
- Wolf PAC (amendment repealing corporate personhood provisions of the Supreme Court's *Citizens United* decision) lists applications from five states.[10]
- Compact for America (balanced federal budget amendment via an interstate compact) lists applications from five states for its Compact for a Balanced Budget interstate compact and Article V Convention.[11]
- U.S. Term Limits (term limits for Congress amendment) lists one state application.[12]
- Citizen Initiatives—Countermand Amendment (amendment providing state veto of federal laws, regulations, court decisions) lists one state application.[13]
- Single Subject Amendment PAC (amendment to require public laws to include only one subject) lists one state application.[14]

The Article V Convention Since 1960: Its Rise, Decline, and Contemporary Resurgence

Proposals for an Article V Convention are as old as the republic. According to one estimate, more than 700 have been filed since 1789, most of which have been proposed since 1900.[15] They have

[6] Arizona.

[7] Maryland, New Mexico, Nevada and Texas.

[8] BBA Task Force, "2017 Campaign Report," http://bba4usa.org/report/. States that have applied for a convention on the BBA Task Force model include Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. Wisconsin: Opoien, "Wisconsin Becomes 28th State to Call for a U.S. Constitutional Convention." The issue of legacy applications is examined earlier in this report under "What Is the Standard for a Valid Application?"

[9] Guldenschuh, "August 1, 2017 Edition of the Article V Convention Legislative Progress Report." Applicant states: Alaska, Arizona, Arkansas, Florida, Georgia, Indiana, Louisiana, Missouri, North Dakota, Oklahoma, Tennessee, and Texas.

[10] Ibid. Wolf PAC applicant states: California, Illinois, New Jersey, Rhode Island, and Vermont.

[11] Ibid. Compact for a Balanced Budget applicant states: Arizona, Arkansas, Georgia, Mississippi, and North Dakota.

[12] U.S. Term Limits applicant state: Florida. U.S. Term Limits, "Term Limits Convention—Florida Action Page," https://www.termlimits.com/florida/.

[13] Citizen Initiatives—Countermand applicant state: Alaska. Heartland Institute, "Alaska Lawmakers Call for Countermand Amendment Convention," https://www.termlimits.com/florida/.

[14] Single Subject Amendment PAC applicant state: Florida. Single Subject Amendment, "Florida House Memorial 261," http://singlesubjectamendment.com/florida-house-memorial-261/.

[15] Statistics provided by Friends of the Article V Convention (FOAVC) and are available on the FOAVC website at (continued...)

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included applications for a general convention and petitions for a convention to consider single-subject amendments in an estimated 47 issue areas.[16] In the second half of the 20th century, two campaigns for Article V Conventions approached the constitutional threshold of applications from two-thirds of the states, 34 at present. Mounted largely between 1964 and 1983, they concerned politically sensitive issues: apportionment in state legislatures,[17] which gained 33 state applications between 1964 and 1969, and an amendment requiring a balanced federal budget under most circumstances, which gained 32 applications between 1975 and 1983. After reaching these high water marks, the reapportionment proposal lost momentum following the death of its leading advocate,[18] while the balanced budget amendment campaign stalled in the face of growing opposition. The Article V Convention alternative returned to relative obscurity for more than 20 years. Between 1988 and 2010, 17 state legislatures passed resolutions rescinding their earlier calls for a convention. In some cases, these resolutions rescinded *all* previous Article V applications, while others specifically cited a convention for a balanced budget amendment.[19]

Late in the first decade of the 21st century, interest in the Article V Convention revived among a range of advocacy groups. Originally linked to the Tea Party movement and organizations generally characterized as conservative and populist,[20] the most widely advocated convention subjects included an amendment or amendments to require a balanced federal budget, restrict the federal debt, and set general limitations on the authority and activities of the federal government.[21] The Article V Convention's appeal spread, however, as self-identified progressive movements, such as Occupy Wall Street,[22] began to advocate a convention for such purposes as overturning parts of the Supreme Court's *Citizens United*[23] decision, changing the definition of corporate personhood, or banning allegedly restrictive state voter identification requirements.[24] The convention option is arguably attractive on several grounds: It springs unquestionably from the "original intent" of the founders, the need for state applications suggests widespread popular

(...continued)

http://foa5c.org/file.php/1/Articles/AmendmentsTables.htm. It should be noted that (1) these figures are not official but were compiled by FOAVC, an organization that advocates an immediate convention, and (2) an officially recognized inclusive compilation of all state applications does not exist at the time of this writing.

[16] Ibid. Some of the issues addressed in state applications included repeal of the 16th (income tax) and 18th (prohibition) Amendments, limitation on federal taxes, and prohibition of busing to achieve racial balance in schools, among others.

[17] Advocates sought to circumvent the Supreme Court's decision in *Reynolds v. Sims* (377 U.S. 533 (1964)) that districts in both chambers of state legislatures must be generally equal in population. The amendment would have permitted states to use factors other than strict equality of population in redistricting one chamber of their legislatures.

[18] Senator Everett M. Dirksen of Illinois (1896-1969).

[19] According to the FOAVC website, between 1988 and 2010, Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Montana, New Hampshire, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah and Wyoming rescinded Article V applications. See FOAVC website at http://foavc.org/file.php/1/Amendments. In recent years, however, Alabama, Florida, and New Hampshire have submitted new applications for a convention to consider a BBA. The author gratefully credits Gregory Watson, Legislative Assistant with the Texas Legislature for assistance in verifying this list.

[20] Rebecca Shabad, "Tea Party Express Pushes for Balanced Budget Amendment," *The Hill*, January 15, 2015, http://thehill.com/policy/finance/232279-tea-party-express-launches-campaign-for-a-balanced-budget-amendment.

[21] Reid Wilson, "Conservative Lawmakers Weigh Bid to Call Constitutional Convention," *Washington Post*, April 4, 2015, http://www.washingtonpost.com/politics/conservative-lawmakers-weigh-bid-to-call-for-constitutional-convention/2015/04/04/b25d4f1e-db02-11e4-ba28-f2a685dc7f89_story.html.

[22] #Occupy Wall Street, NYC General Assembly, "Article V Constitutional Amendment Convention," April 1, 2012, http://www.nycga.net/2012/04/article-v-constitutional-amendment-convention/.

[23] 558 U.S. 310 (2010).

[24] John Celock, "Article V Constitutional Convention Could Offer Advantage for Progressive Causes," *Huffington Post*, April 1, 2013, http://www.huffingtonpost.com/2013/04/01/article-v-constitutional-convention_n_2992831.html.

grass-roots origins, and the prospect of proposing amendments directly to the states offers an alternative to what some have characterized as a legislative and policy deadlock at the federal level.

The revival of the Article V Convention option is arguably reflected in the actions of state legislatures. According to the Balanced Budget Amendment Task Force, an Article V Convention advocacy group, since 2010, 15 states have reversed earlier rescissions of convention applications.[25] Conversely, since 2016, five states have rescinded their earlier convention applications, suggesting the growth of "second thoughts" in some states.[26]

Key Issues in Brief

What Is the Standard for a Valid Application?

A number of questions have been raised concerning the standard for a valid Article V Convention application.

Scope

One issue centers on the permissible scope of state applications. What sort of convention application meets Article V's constitutional requirements? Did the framers of Article V contemplate state applications for (1) a general convention; (2) a convention to consider a single issue, such as a balanced budget amendment; or (3) a convention to consider a specific amendment, the text of which has been included or identified in the petition? Or does it give sanction to all of these alternatives?

Some observers hold that only applications for a "general" convention, those that do not cite a specific policy issue or amendment, are valid. Other commentators maintain that state applications for an Article V Convention must address the same issue in order to be counted toward the two-thirds threshold established by the Constitution. Most scholars agree that applications proposing a specifically worded amendment would not meet the constitutional standard.[27] Congress has, however, received applications calling for an Article V Convention that would consider a particular, specifically worded, amendment. The practice was most common in the 1980s, utilized by the campaign for a convention to consider a balanced budget amendment. A number of states during that period included the text of the proposed amendment in their applications. At present, the following organizations, "Compact for America," "Single Subject Amendment," and "Restoring Freedom" all propose conventions to consider specifically worded amendments, notwithstanding the opinion expressed by the House Judiciary Committee in 1993

[25] BBA Task Force, "BBA Campaign History," http://bba4usa.org/campaign/.

[26] Miles Rapoport, "The March Toward a Constitutional Convention Slows to a Crawl," *American Prospect*, April 12, 2017, http://prospect.org/article/march-toward-constitutional-convention-slows-crawl.

[27] In 1993, the House Judiciary Committee concluded that an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid. The committee held that such an approach robs the Convention of its deliberative function, which is inherent in Article V language stating that the Convention's purpose is to "propose amendments." If the state legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become, instead, part of the ratification process. See U.S. Congress, House of Representatives, Committee on the Judiciary, *Is There a Constitutional Convention in America's Future?*, 103rd Congress, 1st session, committee print, serial no. 1 (Washington: GPO, 1993) p. 7.

that an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid.[28]

Contemporaneity

Another question concerns the issue of timeliness or contemporaneity: is a state application for a convention valid forever, or does it have a limited "shelf life"? If so, how long does this period of validity last? Some argue that state applications are valid for seven years, the same length of time as the ratification window established in the 20th century for most amendments proposed by Congress.[29] Others suggest a shelf life of two to four years for state applications.[30] Conversely, the great majority of Article V Convention supporters generally assert that state applications are valid indefinitely, and that Congress has no authority to set a deadline.[31]

Rescission

A further issue centers on the question of whether states have the constitutional authority to repeal or rescind earlier applications for an Article V Convention. Over the years, some state legislatures have passed resolutions retracting either one, some, or all of their previous applications. For instance, as noted earlier, between 1988 and 2010, an estimated 17 states passed such resolutions, although some have since rescinded their rescissions.[32] Do states have the authority to rescind applications for an Article V Convention? Opinion is divided: some hold that the application process is only preliminary, and that states may withdraw their applications, so long as the two-thirds threshold has not been crossed.[33] Others dispute this assertion, maintaining that that an application carries the same weight as a state's ratification of a proposed constitutional amendment, and that an application cannot be revoked or rescinded.[34]

Self-Cancelation

In the past, especially in connection with the late-20th century movement for an Article V Convention to consider a balanced budget amendment, states also frequently added self-canceling clauses to their applications rendering them null and void if Congress proposed an amendment incorporating the application's stated goals.

Convention Advocates Assert Broad Application Validity

Many supporters of the Article V Convention claim that these various distinctions are immaterial, and that all state applications are equally valid, whether they propose a general convention, a

[28] Ibid.

[29] Ibid., p. 10.

[30] "Proposed Legislation on the Convention Method of Amending the United States Constitution," Note, *Harvard Law Review*, vol. 85, no. 8 (June 1972), pp. 1619-1621.

[31] FOAVC, "Frequently Asked Questions: What does 'contemporaneous' mean as it relates to counting applications?," http://foavc.org/file.php/1/Articles/FAQ.htm#Contemporaneous.

[32] See above at footnote 19.

[33] Dwight Connely, "Amending the Constitution: Is This Any Way to Call for a Constitutional Convention?," *Arizona Law Review*, vol. 22, no. 4 (1980), pp. 1033-1034.

[34] FOAVC, "Frequently Asked Questions: Rescission," http://www.foa5c.org/mod/resource/view.php?id=2. Some observers, however, assert that states have the right to rescind ratifications of constitutional amendments prior to the certification that an amendment has been ratified by three-fourths of the states.

convention to consider one or more policy issues, or one to consider an amendment containing a specific text. The framers, they maintain, deliberately avoided specific requirements for state applications to be counted toward the two-thirds threshold. One advocacy group, Friends of the Article V Convention (FOAVC), maintains that one application is as good as another, that applications are valid indefinitely, and that states cannot rescind their applications. It further asserts that as soon as Congress had received applications of any sort from two-thirds of the states in the union at that time, it had a constitutional obligation to call a convention. By their calculation, 49 of the 50 states have submitted an Article V petition at some point since 1789, and that Congress should have called a convention not later than 1911.[35]

How Many Applications Are Required? How Many Have Been Submitted?

All parties accept the constitutional requirement that an Article V Convention can be summoned only after the legislatures of two-thirds of the states (34) have submitted applications. As noted in the previous section, however, beyond that baseline, consensus begins to break down. Some convention advocates insist that Congress is obligated to call a convention immediately. FOAVC, cited earlier in this report, identifies over 700 applications on its website, filed from 49 states.[36] Other groups suggest that the 34-state threshold has yet to be met for a convention to consider proposals in specific areas. Of currently active Article V Convention advocacy groups, the Balanced Budget Amendment Task Force claims the most, 28 applications.[37]

Does an "Official List" of Applications Exist?

Another issue frequently cited by convention advocates is the existence, or lack thereof, of an "official list" of state applications for an Article V Convention. According to the National Archives, state applications have traditionally not been collected in a central repository, but are scattered through the holdings of the Center for Legislative Archives, generally filed with committee papers, and arranged by the Congress in which they were received.[38] FOAVC has criticized this practice, asserting that "Congress has failed miserably (most likely by design) at its duty to track and keep a count of all Article V Convention applications (so that they will know when two thirds of the states have met the prerequisite number for a peremptory Article V Convention)."[39] Beginning in 2013, Article V Convention activists accelerated their campaigns for an official congressional count of state applications,[40] including petitions to both the House and Senate.[41]

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[35] FOAVC, "Frequently Asked Questions: Article V Application Tables," http://www.foa5c.org/file.php/1/Articles/Table_Summarizing_State_Applications.pdf.

[36] FOAVC, "Frequently Asked Questions: Images of Article V Applications," http://www.article-5.org/file.php/1/Amendments/index.htm.

[37] BBA Task Force, "2017 Campaign Report," http://bba4usa.org/report/.

[38] Letter from Rodney A. Ross, National Archives and Records Administration, Center for Legislative Archives, March 12, 2007. Available from the author.

[39] FOAVC, "Congress Defies Article V of the U.S. Constitution by Ignoring Hundreds of Article V Applications from 49 of All 50 states," http://foavc.org/file.php/1/Amendments.

[40] FOAVC, "Article V.org Seeks Official Congressional Count of Convention Call Applications," http://www.foavc.org/reference/file47.pdf.

[41] House: *Congressional Record*, daily edition, vol. 159, no. 150 (October 24, 2013), p. H6775, Petition no. 55. Senate: *Congressional Record*, daily edition, vol. 159, no. 113 (August 1, 2013), p. S6204, POM-120.

The House of Representatives established new procedures governing state actions concerning an Article V Convention in the 114th Congress, which continue in effect in the 115th Congress. A rules change directed the chair of the House Judiciary Committee to designate for public availability all such new memorials received from the states, and at the chair's discretion, any memorial submitted by the states prior to the 114th Congress. The resolution also directed the Clerk of the House of Representatives to make the designated memorials publicly available in electronic form, organized by state and year of receipt.[42] In addition, H.R. 1742, the "Article V Records Transparency Act of 2017," introduced in the 115th Congress by Representative Luke Messer, would require the National Archives to make an organized compilation of all state applications for, and rescissions of applications for, an Article V Convention. Upon completion, the Archivist of the United States would transmit physical and electronic copies to the chairs of the Judiciary Committees of the Senate and House of Representatives for public availability.[43] If this legislation were enacted and implemented, the proposed compilation would arguably meet the requirements demanded by the convention advocacy community over many years. Both congressional initiatives are examined at greater length later in this report.

Selected Article V Convention Advocacy Groups

The Article V Convention option is currently promoted by multiple advocacy organizations which embrace different approaches to the issue and propose conventions to consider amendments in various issue areas. This section identifies selected organizations that promote an Article V Convention, lists them in alphabetical order, and provides brief analyses of their specific agendas.

The author of this report has been unable to identify at the time of this writing any public policy and issue organizations that focus specifically on *opposition* to the Article V Convention alternative. A number of established policy advocacy groups, however, have criticized or issued position papers expressing their disapproval. These include, but may not be limited to, the John Birch Society, the Center on Budget Policy and Priorities, Eagle Forum, and Common Cause. Activities and positions of these groups are examined later in this report at the heading "Current Activity in the Policy and Advocacy Community."

ArticleV.org

ArticleV.org[44] traces its origins to the Occupy Wall Street movement of 2011-2012. It emphasizes the use of social media for communication among supporters and describes its mission as "educating Americans on the reasons to bring about an Article V convention," and persuading them to "[a]pply their energy to pressure Congress to call for a Convention."[45] It does not appear to support or advocate either an amendment in a specific policy area or a specifically worded amendment, but offers a broad range of alternative amendments, accompanied by the admonition, "[m]ay the best amendments win."[46]

[42] H.Res. 5, "Adopting Rules for the 115th Congress," https://www.congress.gov/bill/115th-congress/house-resolution/5/text?q=%7B%22search%22%3A%5B%22adopting+rules+for+the+115th+congress%22%5D%7D&r=1.

[43] H.R. 1742, "Article V Records Transparency Act of 2017," https://www.congress.gov/bill/115th-congress/house-bill/1742?r=1.

[44] ArticleV.org, "About Us," http://articlev.org/oxwall/.

[45] ArticleV.org, "Who Is ArticleV.org?," http://articlev.org/oxwall/.

[46] Ibid.

Balanced Budget Amendment Task Force—BBA

The Balanced Budget Amendment (BBA) Task Force advocates "a convention under Article V of the U.S. Constitution to exclusively consider a Federal Balanced Budget Amendment."[47] Established in 2010, the BBA Task Force includes earlier unrescinded "legacy" applications for a balanced budget amendment convention submitted during the 1970s-1980s in its count of valid state petitions and could arguably be considered as a successor to this earlier Article V Convention movement, although it does not describe itself as such. It also campaigns actively for additional state applications.[48] At the time of this writing, the BBA Task Force claims 28 applications, the largest number of any convention advocacy group.[49] It may be noted, however, that some of these, dating to the 1970s and 1980s, might be questioned on the grounds of contemporaneity, an issue discussed earlier in this report.

Citizen Initiatives—Countermand Amendment

Citizen Initiatives promotes the use of the Article V Convention alternative to achieve "single subject" amendments on a range of public issues.[50] It is self-described as "a facilitator, serving State Legislatures by coordinating Convention calls for proposed amendments by assisting in the passage of Delegate Resolutions by Legislatures in the Convention and ratification process."[51] At the time of this writing, Citizen Initiatives lists one state application for a convention to consider the Countermand Amendment, which would authorize the states to override federal legislation, executive orders, or court orders whenever the legislatures of 60% (30) of the states agree to such a veto.[52]

Compact for America's "Compact for a Balanced Budget Amendment"

A different approach to the Article V Convention question was advanced in 2013 by the Compact for America (CFA), a domestic nonprofit "501(c)(4)" corporation.[53] The organization's Compact for a Balanced Budget Amendment is an interstate compact,[54] which it asserts would transform

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[47] BBA Task Force, "Our Mission," http://www.bba4usa.org.

[48] BBA Task Force, "Active Article V BBA Applications," http://nebula.wsimg.com/ca4282cedfc80cf582e69f265611e5ee?AccessKeyId=499EF5BCFD5720FCE35C&disposition=0&alloworigin=1.

[49] BBA Task Force, "2017 Campaign Report," http://bba4usa.org/report/. States that have applied for a convention on the BBA Task Force model include Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, Wyoming. See also Wisconsin's November 7, 2017 application: Opoien, "Wisconsin Becomes 28th State to Call for a U.S. Constitutional Convention."

[50] For a list of proposed amendments endorsed by this organization, see Citizen Initiatives, "Reclaiming America Through Single Issue Amendment Conventions," http://citizeninitiatives.org/index.htm.

[51] Citizen Initiatives, "Mission Statement," http://citizeninitiatives.org/mission_statement.htm.

[52] Heartland Institute, "Alaska Lawmakers Call for Countermand Amendment Convention," https://www.termlimits.com/florida/.

[53] CFA, "The Solution," http://www.compactforamerica.org/solution.

[54] An interstate compact, under the broadest understanding, is a contract between or among two or more consenting states. See *Texas v. New Mexico*, 482 U.S. 124,128 (1989) (noting that a "Compact is, after all, a contract.") (quoting *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 285 (1959) (Frankfurter, F., dissenting)). The Supreme Court, interpreting the compacts clause of the Constitution (Article I, Section 10, clause 3), has held that a state may enter into an interstate compact with any other state so long as the agreement is not "directed to the formation of any combination tending to increase the political power in the States, which may encroach upon or interfere with the just (continued...)

"the otherwise cumbersome state-initiated amendment process under Article V into a 'turn-key' operation."[55] The Compact includes a comprehensive program that its advocates claim meets all the requirements necessary to (1) apply for and convene a convention; (2) provide rules and operating procedures for the convention; (3) convene the convention; (4) present, approve, and propose a pre-drafted amendment for transmission to the states; and (5) provide for prospective state ratification of the amendment. The single action of the requisite number of states agreeing to the Compact would, its proponents argue, set in motion the convention process through a series of "conditional enactments," each of which would trigger the next step in the process, ultimately leading to ratification. Proponents claim the interstate compact device would speed up the process so that a convention could be called, convened, and adjourned and an amendment proposed and ratified within 12 months.[56]

The Compact seeks to anticipate and prescribe procedures for various elements in the Article V Convention process. A state's act of agreement to the Compact would constitute its application for an Article V Convention, the sole purpose of which would be to propose an amendment whose text is prescribed in the Compact. Participating states also agree to observe the Compact's provisions governing the convention's composition and rules of procedure. By agreeing to the Compact, states also commit themselves to "prospective" ratification of the proposed amendment. One distinguishing feature of the compact is its self-termination provision. The compact effectively limits itself to a seven-year lifespan: if it fails to gain membership by the requisite 38 states within seven years after the first state joins, the compact terminates, and is "repealed, void *ab initio*, and held for naught."[57]

Since the CFA initiative would use an interstate compact as its vehicle for the convention, and since the Constitution requires congressional approval for such a compact, CFA provides model legislation for a concurrent resolution that could be used by Congress to call the convention.[58] H.Con.Res. 73, a concurrent resolution incorporating the Compact for a Balanced Budget, was introduced in the 115th Congress on July 26, 2017, by Representative Luke Messer. At the time of this writing, five states have joined the Compact for a Balanced Budget.[59]

Convention of States—COS

The Convention of States is a project of Citizens for Self-Governance (CSG).[60] In its "Jefferson Statement," CSG calls for an Article V convention for "the sole purpose of proposing

(...continued)

supremacy of the United States." See *Virginia v. Tennessee*, 148 U.S. 503,519 (1893).

[55] Goldwater Institute, "Compact for a Balanced Budget," http://goldwaterinstitute.org/article/compact-for-a-balanced-budget/.

[56] Nick Dranias, "Introducing Article V 2.0: The Compact for a Balanced Budget," Heartland Institute, March 2016, p. 7, https://www.heartland.org/_template-assets/documents/publications/03-30-16_dranias_update.pdf.

[57] CFA, "Compact for a Balanced Budget Model Legislation," "Model Resolution That Activates the Compact," http://www.compactforamerica.org/legislation.

[58] Nick Dranias, "The Compact for America's Laser-Focused Article V Convention Is Clearly Constitutional," FOAVC, http://www.foavc.org/reference/CFALegal.pdf.

[59] Alaska, Arizona, Georgia, Mississippi, and North Dakota have joined the compact. See CFA, "The Solution."

[60] The parent organization seeks to educate and mobilize grassroots support for measures that would "reduce centralization of government ... educate citizens on the role of states and the constitutional limits on the federal government ... support government transparency ... and disperse budget responsibility to the appropriate level of state or local government." COS, "Mission and Four Pillars of Self-Governance," https://selfgovern.com/four-pillars-self-governance/.

amendments 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."[61] The resultant Convention of States project emerged in 2014. This organization distinguishes itself from some other convention advocates by the fact that it calls for a convention for a *general purpose*, rather than a specific policy issue. This is the consideration and proposal of amendments to limit the authority of the federal government. The convention, therefore, would be authorized to propose a range of amendments related to this primary goal. Some of the following have been suggested: a balanced budget amendment; redefinition of the general welfare and commerce clauses of the Constitution; prohibition of the application of international treaties and law to govern domestic law in the United States; limitations on presidential executive orders and federal regulations; term limits on Congress and the Supreme Court; an upper limit on federal taxation; and sunsetting all existing federal taxes and a super-majority vote requirement to replace them.[62] Reflecting the Tea Party experience of some of its founders, COS emphasizes grassroots organization, planning for "a viable political operation that is active in a minimum of 40 states."[63] At the time of this writing, the legislatures of 12 states have applied for a convention on the COS model.[64]

Friends of the Article V Convention—FOAVC

The Friends of the Article V Convention (FOAVC), a self-identified nonpartisan group, has advocated the convention option since its founding in 2007.[65] FOAVC supports the Article V Convention process, but it does not campaign for a convention to consider a specific amendment or a specific subject, such as the balanced budget. As noted previously, FOAVC's website maintains[66] that all state applications are valid indefinitely, that rescissions are not valid, and that Congress should have called a convention as early as 1911.

Restoring Freedom

RestoringFreedom.org, a self-identified nonpartisan, nonprofit corporation chartered in Texas in 2009, originated the "National Debt Relief Amendment." This organization calls for states to apply for an Article V Convention to consider a specific proposal, under which any increase in the national debt would require the approval of a majority of the legislatures of the 50 states (26 or more) prior to enactment.[67] As noted elsewhere in this report, the constitutionality of state applications for conventions to consider particular specifically worded amendments has been widely debated.

[61] COS, "The Jefferson Statement," http://www.conventionofstates.com/the_jefferson_statement.

[62] Convention of States Action, "The Strategy," http://www.cosaction.com/strategy.

[63] Ibid.

[64] Convention of States Action, "States with Passed Article V Resolution," https://www.cosaction.com/tx_states_with_passed_article_v_resolution. Applicant states for a COS convention are Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Louisiana, North Dakota, Missouri, Oklahoma, Texas, and Tennessee.

[65] ArticleV.org, "Article V Realities with Bill Walker," https://www.youtube.com/watch?v=M0m9w7x5cfM.

[66] FOAVC, "Frequently Asked Questions," http://www.article-5.org/file.php/1/Articles/FAQ.htm.

[67] RestoringFreedom.org, "The Amendment," http://restoringfreedom.org/the-amendment/.

The House of Representatives and Senate Explained

Congressional Procedure

A Practical Guide to the Legislative Process in the U.S. Congress

Richard A. Arenberg

Foreword by Alan S. Frumin

TheCapitol.Net

Single Subject Amendment

Single Subject Amendment describes itself as a "527 organization and more specifically a Super PAC which is registered with the federal Elections Commission."[68] It proposes an amendment that would limit the content of bills introduced in Congress to a single subject. Noting that 41 states have single-subject provisions in their constitutions, it maintains that a parallel federal requirement would "ensure accountability and transparency. Logrolling, earmarks, and pork barrel spending would be curtailed."[69] Unlike most other Article V Convention groups, this organization advocates proposal of a relevant amendment by *either* of the two methods prescribed in the Constitution: by congressional resolution or by convention called on applications from the states.[70] Consequently, it supports H.J.Res. 25, a single-subject amendment introduced in the 115th Congress on January 12, 2017, by Representative Tom Marino. This proposed constitutional amendment would require that each bill, resolution, or vote that must be submitted to the President should "embrace no more than one subject" which must be "clearly and descriptively expressed in the title."[71] Single Subject Amendment lists one state application for an Article V Convention at the time of this writing.[72]

U.S. Term Limits

U.S. Term Limits has advocated term limits for elected officials at all levels of government, including Members of Congress. It has supported term limit amendments introduced in Congress—generally three terms for Representatives and two for Senators—since it was established in 1991.[73] In 2015, the organization announced it was expanding its activities to support an Article V Convention for the purpose of proposing a term limits amendment applicable to Congress.[74] At the time of this writing, one state has applied for a term limits amendment convention.[75]

Wolf PAC

As with ArticleV. org, Wolf PAC emerged roughly contemporaneously with the Occupy Wall Street movement of 2011-2012.[76] This organization advocates an Article V Convention to propose an amendment that would reverse what it refers to as the "corporate personhood" aspects of the Supreme Court's *Citizens United v. Federal Elections Commission* decision.[77] The Wolf PAC convention application passed by California's legislature declares that "money does not constitute

[68] Single Subject Amendment, "Mission and Purpose," http://singlesubjectamendment.com/mission-and-purpose/.

[69] Single Subject Amendment, "About the Single Subject Amendment," http://singlesubjectamendment.com/.

[70] Ibid.

[71] H.J.Res. 25 has been referred to the Subcommittee on the Constitution and Civil Justice of the House Judiciary Committee. No further action has been taken at the time of this writing.

[72] Single Subject Amendment PAC applicant state: Florida. Single Subject Amendment, "Florida House Memorial 261," http://singlesubjectamendment.com/florida-house-memorial-261/.

[73] U.S. Term Limits, "About U.S. Term Limits," https://www.termlimits.com/about/.

[74] U.S. Term Limits, "How the Term Limits Convention Will Work," https://www.termlimits.com/how-the-term-limits-convention-will-work/.

[75] U.S. Term Limits, "Term Limits Convention—Florida Action Page," https://www.termlimits.com/florida/.

[76] Katerina Nikolas, "Wolf PAC.com: Proposal to Prevent Corporations [from] Buying Politicians," *Digital Journal*, November 9, 2011, http://www.digitaljournal.com/article/314120.

[77] 558 U.S. 310 (2010).

free speech and may be legislatively limited" that "the rights that [corporations] enjoy under the United States Constitution should be more narrowly defined" and that corporations "should not be categorized as persons for purposes related to elections and ballot measures."[78] Wolf PAC's plans also include extensive use of social media and online grassroots organizing in support of its objective.[79] At the time of this writing, five states have applied for a convention to consider Wolf PAC's proposals.[80]

Current Developments in Congress

The Article V Convention issue continues to receive attention in the 115th Congress, including (1) the aforementioned establishment of House of Representatives procedures for receipt and publication of state applications for a convention, (2) introduction of a proposed concurrent resolution to effectuate the Compact for America's Compact for a Balanced Budget, and (3) introduction of proposed legislation to authorize an official compilation by the National Archives of all Article V Convention applications received from the states.

Publication of State Applications by the Clerk of the House of Representatives

In the 114th Congress, the House of Representatives established new procedures for the receipt and publication of state memorials related to the convention issue, including both applications for a convention and rescissions of previous applications. This requirement was continued for the 115th Congress in Section 3(d) of H.Res. 5, which provides rules for the House and reads as follows:

> Providing for Transparency With Respect to Memorials Submitted Pursuant to Article V of the Constitution of the United States.—With respect to any memorial presented under clause 3 of Rule XII purporting to be an application of the legislature of a State calling for a convention for proposing amendments to the Constitution of the United States pursuant to Article V, or a rescission of any such prior application—
>
> (1) the chair of the Committee on the Judiciary shall, in the case of such a memorial presented in the One Hundred Fourteenth Congress, and may, in the case of such a memorial presented prior to the One Hundred Fourteenth Congress, designate any such memorial for public availability by the Clerk; and
>
> (2) the Clerk shall make such memorials as are designated pursuant to paragraph (1) publicly available in electronic form, organized by State of origin and year of receipt.[81]

This action sets procedures for the systematic retention and public availability of state memorials pertaining to an Article V Convention by the House of Representatives, beginning with those received in the 114th Congress. It arguably meets requests for an "official count" of state

[78] See California Joint Resolution No. 1, Resolution Chapter 77, June 27, 2014, Clerk of the House of Representatives, http://clerk.house.gov/legislative/memorial-pdfs/2014/Memorial-201401-CA.pdf.

[79] Wolf PAC, "The Plan," http://www.wolf-pac.com/the_plan.

[80] Wolf PAC applicant states: California, Illinois, New Jersey, Rhode Island, and Vermont. David Guldenschuh, "August 1, 2017 Edition of the Article V Convention Legislative Progress Report," http://articlevcaucus.com/wp-content/uploads/2017/08/17-0801-AVC-Progress-Report.pdf.

[81] H.Res. 5, "Adopting Rules for the 115th Congress," https://www.congress.gov/bill/115th-congress/house-resolution/5/text?q=%7B%22search%22%3A%5B%22adopting+rules+for+the+115th+congress%22%5D%7D&r=1.

applications, at least going forward in time. The Clerk's website began to record state applications in February 2015.

At the time of this writing, the website has recorded 134 applications from 46 states for an Article V Convention. Although some are notifications of recent action taken by state legislatures, others are duplicate referrals of applications forwarded to Congress as long ago as 1960. Applications for conventions were submitted that address a wide range of policy concerns, including a constitutional convention to consider some of the following proposals: a balanced federal budget, guaranteed and unrestricted sharing of federal income tax revenues with the states (revenue sharing), restrictions on abortion, restrictions on school assignment by race, a package of amendments to restrict federal government authority, changing the definition of corporate personhood with respect to contributions to campaigns for federal office, a line item veto for the President, term limits for federal elected office and for federal judges, prayer in schools and other public places, and various other issues.[82]

The Clerk's website has also recorded 21 rescissions from 20 states at the time of this writing. These include state resolutions rescinding all applications, applications for a convention to consider a balanced budget amendment, an application for a convention to consider an amendment authorizing states to apportion one house of their legislatures without respect to population differences among districts, and applications for a general Article V Convention.[83]

115th Congress Legislative Proposals

Two proposals directly related to the Article V Convention movement have been introduced to date in the 115th Congress.[84]

H.R. 1742—Article V Records Transparency Act of 2017

On March 27, 2017, Representative Luke Messer introduced H.R. 1742, the Article V Records Transparency Act of 2017 in the 115th Congress.

This bill would direct the Archivist of the United States to compile and transmit to Congress a list of all applications for, or rescissions of applications for, an Article V Convention to consider constitutional amendments. The compilation would be cataloged by year of submission and state, and the Archivist would also be directed to report on any missing applications or rescissions. The bill would establish a five-year schedule for this initiative based on when an application was transmitted to Congress, beginning with the most recent, and concluding with the earlier applications. The committees on the judiciary of the House and Senate would be directed to make the compilation permanently available to the public and update the compilation as necessary. The bill would also recommend procedures to be followed by the states when submitting applications and would provide direct funding and grants for the compilation program to the National Historical Publications and Records Commission at the National Archives.

[82] See Office of the Clerk of the House of Representatives, "House Documents, Selected Memorials," http://clerk.house.gov/legislative/memorials.aspx.

[83] Ibid.

[84] In addition, a range of amendments have been introduced that would attain the goals of various convention advocacy groups, including a balanced federal budget, repeal of certain provisions of the Supreme Court's *Citizens United* decision, term limits for Senators and Representatives, and a requirement that laws may address only a single issue.

H.R. 1742 was referred to the House Judiciary Committee, the Oversight and Government Reform Committee, and the Rules Committee on March 27 and to the Judiciary Committee's subcommittee on the Constitution and Civil Justice on April 21.

If enacted and implemented, the compilation authorized in H.R. 1742 would arguably respond to the demands for a comprehensive list of state convention applications advanced by convention advocates over many years.

H.Con.Res. 73—Compact for a Balanced Budget

On July 26, 2017, Representative Luke Messer introduced H.Con.Res. 73, entitled "Effectuating the Compact for a Balanced Budget," in the 115th Congress.[85] At the time of this writing, he has been joined by 10 cosponsors.[86]

If passed, this resolution would be the vehicle for the Compact for America's Compact for a Balanced Budget, which was examined earlier in this report.

The measure's language states that it "effectuates" the Compact for a Balanced Budget, but some observers might question why the measure does not contain other language affirmatively declaring congressional approval of the compact, as provided for in the Constitution.[87] It does affirmatively state that Congress calls the convention as contemplated under the compact, with a lifespan of not more than one year, and that Congress will refer to the states an amendment conforming to the compact's requirements. As noted earlier in this report, the compact incorporates a series of "conditional enactments" in which the states that join the compact would establish the convention, which itself would consider a specifically worded balanced budget amendment, which, if approved, the member states would further commit themselves prospectively to ratify.

H.Con.Res. 73 was referred to the House Judiciary Committee on July 26, 2017, and subsequently referred to Judiciary's Subcommittee on the Constitution and Civil Justice and the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, both on August 17, 2017.[88]

115th Congress—House Judiciary Committee Hearing, July 27, 2017

On July 27, 2017, House Judiciary Committee Chairman Bob Goodlatte convened a hearing of the full committee to consider a balanced budget amendment.[89] Although the hearing focused on amending the Constitution by means of a congressional proposal to the states, one Member and

[85] H.Con.Res. 73, 115th Congress, "Effectuating the Compact for a Balanced Budget," https://www.congress.gov/bill/115th-congress/house-concurrent-resolution/73?q=%7B%22search%22%3A%5B%22compact+for+a+balanced+budget%22%5D%7D&r=1. This measure is identical to H.Con.Res. 26, introduced in the 114th Congress by Rep. Paul Gosar.

[86] In order of their sponsorship, they are Reps. Kevin Cramer, Gregg Harper, Jody B. Hice, Trent Franks, Steven M. Palazzo, Paul Gosar, Tom Graves, David Schweikert, Mo Brooks, and Jeff Duncan.

[87] Article I, Section 10, clause 3, "No State shall, *without the Consent of Congress* ... enter into any Agreement or Compact with another State" (emphasis added).

[88] For additional information and a policy and legal/constitutional analysis of the Compact for a Balanced Budget, see CRS congressional distribution memorandum, "The 'Compact for a Balanced Budget' An Interstate Compact to Propose a Balanced Federal Budget Amendment via the 'Article V Convention' Process," by Thomas H. Neale and Andrew Nolan, February 13, 2015, available to Members of Congress and congressional staff from the authors.

[89] U.S. Congress, House Judiciary Committee, "The Need for the Balanced Budget Amendment," hearing, July 27, 2017, https://judiciary.house.gov/hearing/need-balanced-budget-amendment/.

one witness did refer to the Article V Convention process. Representative Steve Stivers noted the BBA Task Force's promotion of a convention in the states, particularly the Wisconsin legislature's then-pending action to apply for a balanced budget amendment convention.[90] In addition, Nick Dranias, president and executive director of the Compact for America Educational Foundation, presented testimony on efforts by the Compact for America to promote its Compact for a Balanced Budget through the vehicle of an Article V Convention.[91]

114th Congress Legislative Proposals

H.J.Res. 34—Authorizing Consideration of a Specific Amendment by an Article V Convention

H.J.Res. 34, introduced in the 114th Congress on February 13, 2015, by Representative John Culberson, proposed an amendment advocated by an Article V support group, Single Subject Amendment, identified earlier in this report. The resolution proposed a constitutional amendment that would have added to the original Article V Convention language. It would have authorized states to apply for, and for Congress to convene, a convention to consider "an identical amendment," which refers to a specifically worded amendment. This measure would resolve a frequently debated question as to whether an amendment of this type would be eligible for consideration in an Article V Convention.[92] Sometimes referred to as the "Madison Amendment,"[93] supporters assert that by sanctioning a convention to consider a specifically worded amendment, this proposal would eliminate the possibility for a "runaway convention"[94] by limiting it to consideration of only the amendment applied for by the states.[95]

H.Con.Res. 26

This concurrent resolution was introduced in the 114th Congress by Representative Paul A. Gosar on March 19, 2015. It would have effectuated the Compact for a Balanced Budget and was identical to H.Con.Res. 73, as introduced in the 115th Congress. No action was taken beyond referral to the House Judiciary Committee's Subcommittee on the Constitution and Civil Justice.

Current Developments in the States

In recent years, measures proposing applications for one or more of the alternative Article V Convention proposals have been introduced in many states. David F. Guldenschuh, an attorney and scholar of the Article V Convention process associated with the Heartland Institute,[96] reported

[90] Testimony of Rep. Steve Stivers, House Judiciary Committee hearing, July 27, 2017, https://judiciary.house.gov/wp-content/uploads/2017/07/Rep.-Stivers-Testimony.pdf.

[91] Testimony of Nick Dranias, House Judiciary Committee hearing, July 27, 2017, https://judiciary.house.gov/wp-content/uploads/2017/07/Dranias-Testimony.pdf.

[92] See earlier in this report under "Scope."

[93] Not to be confused with the 27th Amendment, also sometimes identified as the Madison Amendment.

[94] "Why the Madison Amendment?" The Madison Amendment website, at http://madisonamendment.org/index.html. A runaway convention is generally defined as one that goes beyond its original mandate to consider amendments in areas that were not included in the state applications through which it was summoned.

[95] H.J.Res. 34 was referred to the House Judiciary Committee's Subcommittee on the Constitution and Civil Justice. Rep. Henry Cuellar was a cosponsor.

[96] The Heartland Institute describes itself as "a national nonprofit research and education organization [whose] mission (continued...)

that as of August 1, 2017, 175 applications had been introduced in the legislatures of 40 states during their 2017 sessions.[97] As noted earlier in this report, to date in 2017, three states have submitted applications for a balanced budget amendment as proposed by the BBA Task Force effort,[98] four have joined the Convention of States Project,[99] and one has applied for the Compact for America's Compact for a Balanced Budget.[100] Guldenschuh also identified four states that had passed resolutions rescinding one or more applications submitted at an earlier time.[101] Most recently, on November 7, 2017, the Wisconsin legislature completed action on an Article V application for a convention to consider the BBA Task Force's proposed balanced budget amendment, thus raising that organization's asserted total to 28.[102]

Current Developments in the Policy and Advocacy Community

Organizations that both support and oppose an Article V Convention have mounted activities intended to build support for their preferred approach to the convention.

Selected Article V Convention Advocate Activity

In March 2017, the Arizona legislature passed a measure inviting states to a convention that would plan and recommend rules and procedures for an Article V Convention to consider a balanced federal budget amendment. It would also recommend to Congress the criteria for determining the date and location of such a convention once the constitutional threshold of state applications has been reached.[103] In response, official delegations from 19 states and unofficial groups representing three other state legislatures met in Phoenix, Arizona, between September 12 and September 14, 2017, to consider planning issues for an Article V Convention and set non-binding rules for a convention.[104]

In September 2016, the Convention of States held a "simulated" convention in Williamsburg, Virginia. Meeting from September 21-23, unofficial delegates representing all 50 states adopted amendments in the following policy areas: require a balanced federal budget under most conditions; provide term limits for Congress; limit "federal overreach by returning the Commerce Clause to its original meaning"; provide a congressional veto of federal regulations; require a

(...continued)

is to discover, develop, and promote free-market solutions to social and economic problems." Heartland Institute, "About Us," https://www.heartland.org/about-us/index.html.

[97] Guldenschuh, "August 1, 2017 Edition of the Article V Convention Legislative Progress Report," and "The Article V Movement: A Comprehensive Assessment to Date and a Suggested Approach for State Legislators and Advocacy Groups Moving Forward."

[98] Ibid.: Arizona, Wisconsin, and Wyoming.

[99] Ibid.: Arizona, Missouri, North Dakota, and Texas.

[100] Ibid.: Arizona.

[101] Ibid.: Maryland, New Mexico, Nevada, and Texas.

[102] Opoien, "Wisconsin Becomes 28th State to Call for a U.S. Constitutional Convention."

[103] Arizona legislature, 2017 session, House Concurrent Resolution 2022, http://www.azleg.gov/legtext/53leg/1R/bills/hcr2022c.htm.

[104] Alia Beard Rau, "Phoenix Constitutional Convention Gives Birth to a New Nation, Planners Say," AZcentral.com, September 15, 2017, http://www.azcentral.com/story/news/politics/arizona/2017/09/15/phoenix-constitutional-convention-gives-rebirth-new-nation-planners-say/664206001/.

super-majority to increase or establish new federal taxes; repeal the 16th (income tax) amendment; empower the states by a three-fifths vote to "abrogate any federal law, regulation, or executive order."[105]

In December 2015, the State Legislators Article V Caucus newsletter reported that the BBA Task Force joined with the National Federation of Independent Business and the Tea Party Express to conduct state legislator education programs in several states that may consider BBA Task Force applications in their future legislative sessions.[106] The same issue reported that U.S. Term Limits, a policy advocacy group established in 1992 to promote term limits for all levels of elected officials, had initiated a campaign for an Article V Convention to consider an amendment to limit U.S. Representatives to six two-year terms, and U.S. Senators to two six-year terms, for a total of 12 years of service.[107]

Between July 23 and 25, 2015, the Balanced Budget Amendment Task Force sponsored a meeting to discuss convention procedures and coordinate pro-convention group activities. This meeting was held concurrently with that of the American Legislative Exchange Council (ALEC) which provides a forum for state legislators and private sector leaders to discuss and exchange information on state policy issues. ALEC focuses on issues such as "free markets, limited government and constitutional division of powers between the federal and state governments," and has a prepared handbook for state legislators on the Article V Convention process.[108] According to one source, ALEC finalized model rules for convention procedures at a December meeting.[109]

Also in July 2015, the Convention of States founded a "Convention of States Caucus" for pro-convention state legislators. The caucus was expected to propose draft rules for an Article V Convention at the ALEC San Diego meeting.[110] The issue of rules to govern a convention—who should make them and what they should include—has been controversial: "convention procedures" bills introduced in the late 20th century asserted Congress's responsibility for setting rules and regulations for a convention, but some advocates of the process claim Congress has no role in the process beyond calling the convention.[111]

In January 2015, the CFA's Compact for a Balanced Budget Commission was established to provide an organizational framework and institutional presence for the compact and its member states.[112]

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[105] COS, "COS Simulation," September 21-23, 2016, https://www.conventionofstates.com/cossim.

[106] State Legislators Article V Caucus, "BBA Group Partners with NIFB and Tea Party Express," December 2015, http://articlevcaucus.com/news/december-newsletter-2/.

[107] State Legislators Article V Caucus, "Article V Term Limits Group Gathering Steam," December 2015, at http://articlevcaucus.com/news/december-newsletter-2/.

[108] For additional information on ALEC, see ALEC website at http://www.alec.org/about-alec/frequently-asked-questions/.Handbook available at http://www.alec.org/publications/article-v-handbook/.

[109] State Legislators Article V Caucus, "ALEC Task Force Approves A5 Convention Rules," January 2015, http://articlevcaucus.com/news/january-newsletter-2/.

[110] COS, "Convention of States Launches Legislative Caucus and Web Site at American Legislative Exchange Council Meeting, July 23-24," July 23, 2015, http://www.conventionofstates.com/convention_of_states_project_launches_legislator_caucus.

[111] For additional information on this question, see CRS Report R42589, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, by Thomas H. Neale, at pp. 32-33.

[112] Compact for a Balanced Budget Commission, "What Is the Compact for a Balanced Budget Commission?," http://www.balancedbudgetcompact.org/#!the-project/ceu8.

By Bradford Fitch

Includes U.S. Constitution and Declaration of Independence

Citizen's Handbook

To Influencing Elected Officials

Citizen Advocacy in State Legislatures and Congress

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Selected Article V Convention Opponent Activity

At the same time, opposition to the Article V Convention continues to be voiced by public policy advocacy organizations representing a broad segment of the political spectrum.

In 2011, the Heritage Foundation[113] cautioned against a convention:

> [A]n Article V convention is not the answer to our problems. The lack of precedent, extensive unknowns, and considerable risks of an Article V amendments convention should bring sober pause to advocates of legitimate constitutional reform contemplating this avenue. We are not prepared to encourage state governments at this time to apply to Congress to call an amendments convention.[114]

More recently, however, a 2016 Heritage study appeared to be noncommittal on the subject, balancing concerns about a "runaway convention" with "the need to maintain an overriding focus on holding Congress and the President, and, by extension, federal agencies accountable for the decisions they make today."[115]

Eagle Forum, which describes itself as a "pro-family" conservative public interest organization, founded and headed for many years by the late Phyllis Schlafly,[116] has consistently opposed an Article V Convention since at least 1986, on the grounds that it could "jeopardize our most basic liberties enshrined in the Constitution and the Bill of Rights."[117] In July 2017, "PS [Phyllis Schlafly] Eagles," a break-away group, also voiced opposition, asserting that anonymous financial supporters of a convention were pursuing a "hidden agenda of globalism and open borders, views that they conceal with broad platitudes like 'limit the power and jurisdiction of the federal government.'"[118]

In January 2017, the Center on Budget Policy and Priorities cautioned against both a balanced budget amendment and an Article V Convention, asserting that "state lawmakers considering such resolutions (applying for a convention) should be skeptical of claims being made by groups promoting the resolutions ... that states could control the actions or outcomes of a constitutional convention. A convention would likely be extremely contentious and highly politicized, and its results impossible to predict."[119] The center defines itself as "a nonpartisan research and policy institute" pursuing "federal and state policies designed both to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways."[120]

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[113] The Heritage Foundation is a self-identified "research and educational institution ... whose mission is to formulate and promote conservative public policies." Heritage Foundation, "About Heritage," http://www.heritage.org/about.

[114] *The Daily Signal*, "Don't Be Fooled by Article V Conventions," February 10, 2011, http://dailysignal.com/2011/02/10/dont-be-fooled-by-article-v-conventions/.

[115] John Malcolm, "Consideration of a Convention to Propose Amendments under Article V of the U.S. Constitution," Heritage Foundation, February 19, 2016, http://www.heritage.org/the-constitution/report/consideration-convention-propose-amendments-under-article-v-the-us.

[116] Eagle Forum, "About Us," http://www.eagleforum.org/misc/descript.html.

[117] Eagle Forum, "New Threat of Constitutional Convention," December 10, 2013, http://www.eagleforum.org/publications/alerts/2013-archives/new-threat-of-constitutional-convention.html. See also Eagle Forum, "National Issues, Constitution," http://eagleforum.org/national-issues.html.

[118] PS Eagles, "Coalition Letter Against Convention of States," September 20, 2017, http://www.pseagles.com/Coalition_letter_against_Convention_of_States.

[119] Michael Leachman and David A. Super, "States Likely Could Not Control Convention on Balanced Budget or Other Proposals," Center on Budget and Policy Priorities, updated January 18, 2017, https://www.cbpp.org/research/states-likely-could-not-control-constitutional-convention-on-balanced-budget-amendment-or.

[120] Center on Budget and Policy Priorities, "Our Mission," http://www.cbpp.org/about/mission-history.

The John Birch Society, which describes itself as seeking "to bring about less government, more responsibility, and—with God's help—a better world[,]"[121] has, by its own reckoning, opposed the Article V Convention for 30 years[122] and expressed opposition to the Compact for America since that proposal was announced.[123] The society claimed most recently that pro-convention groups such as Wolf PAC are funded indirectly by philanthropist and political activist George Soros.[124]

On April 4, 2017, Common Cause, which describes itself as "a nonpartisan grassroots organization dedicated to ... open, honest, and accountable government that serves the public interest, promote[s] equal rights, opportunity, and representation for all, ... an independent voice for change and a watchdog against corruption and abuse of power[,]"[125] issued a statement by 230 public interest organizations declaring opposition to an Article V Convention and urging states to rescind their applications for a convention. It warned of the dangers of a runaway convention and noted, "There are no rules and guidelines in the U.S. Constitution on how a convention would work, which creates an opportunity for a runaway convention that could rewrite any constitutional right or protection currently available to American citizens."[126] Earlier, in December 2015, Common Cause issued a position paper opposing an Article V Convention. The report observed that convention advocates cover a broad range of the political spectrum, but declared that "Common Cause strongly opposes an Article V convention, even as we strongly support a constitutional amendment to reverse *Citizens United*."[127] Specifically the report asserted that no existing judicial, legislative, or executive body would have authority over a convention; that lack of pre-existing procedures could lead to political manipulation of a convention; and that a convention could not be limited to a single issue, and that it might propose "additional changes that could limit or eliminate fundamental rights or upend our entire system of government."[128]

Concluding Observations

The Article V Convention alternative for amending the Constitution has enjoyed a revival in interest over the past decade. It has gained the support of activist organizations that embrace a broad range of the political spectrum, from the Tea Party to Occupy Wall Street and places in between. Its partisans appear to be active and committed, and the progress of some of these organizations toward their goal continues. It remains uncertain, however, whether any of them can attain the constitutional threshold of 34 convention applications.

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[121] John Birch Society, "Our Mission," http://www.jbs.org/about-jbs.

[122] John Birch Society, "Conservatives Who Oppose an Article V Convention," January 27, 2014, https://www.jbs.org/jbs-news/news/item/16488-conservatives-who-oppose-an-article-v-convention.

[123] Joe Wolverton, II, "Compact for America Proposal Could Increase Federal Power," *The New American*, February 3, 2014, http://www.thenewamerican.com/usnews/constitution/item/17538-compact-for-america-proposal-could-increase-federal-power%20.

[124] Joe Wolverton, II, "Socialists and Soros Fight for Article V Convention," *The New American*, January 15, 2014, http://www.thenewamerican.com/usnews/constitution/item/17402-socialists-and-soros-fight-for-article-v-convention.

[125] Common Cause, "About Us," http://www.commoncause.org/about/.

[126] Common Cause, "Constitutional Rights and Public Interest Groups Oppose Calls for an Article V Constitutional Convention," April 14, 2017, http://www.commoncause.org/issues/more-democracy-reforms/constitutional-convention/constitutional-rights-and.pdf.

[127] Common Cause, "The Dangerous Path: Big Money's Plan to Shred the Constitution," May 2016, http://www.commoncause.org/issues/more-democracy-reforms/constitutional-convention/dangerous-path-report.pdf.

[128] Ibid.

Several factors may contribute to this condition. One observer, attorney David Guldenschuh, suggests that the proliferation of advocacy groups may actually dilute support for the overall concept as they compete for the limited time and attention of state legislators. The same observer notes that the more complex "multi-subject" strategies pursued by some groups may further vitiate the force of their arguments. A single-issue approach, he suggests, might enjoy a greater chance of success.[129] For example, the Balanced Budget Amendment Task Force, which advocates a convention that would consider only one issue—a balanced federal budget requirement—claims 28 applications, although 17 of these are "legacy" applications that filed more than 30 years ago and whose validity may be open to challenge. By comparison, no other Article V Convention advocacy group can claim more than 12 applications at this time. In addition, it is worth noting that the balanced federal budget amendment is arguably the best known and most widely supported of these proposals: Survey research results show consistent public support for a federal balanced budget amendment since at least 1994.[130]

Guldenschuh also cites what he claims is an apparent lack of coordination, noting that "different advocacy groups have somewhat supported each other in states where multiple resolutions have been introduced, [but] their overall failure to work together is causing confusion among legislators and hurting the effort's overall success rate."[131]

Further, it is arguable that the Article V Convention remains largely an internet or social media phenomenon, where it enjoys multiple websites and frequent postings among diverse elements of the advocacy community, both pro and con. By comparison, however, traditional media coverage is comparatively sparse, and, notwithstanding the aforementioned public support for a balanced federal budget amendment, the convention alternative does not appear to command widespread attention or support among the general public at this time.

The number of state applications for a convention has grown in the past two years. While only the BBA, with 28 applications, including its "legacy" states, is within striking distance of the constitutional threshold, the Convention of States added four applications in 2017, bringing its total to 12 states. These gains, however, have arguably been balanced by four states that rescinded earlier applications in 2017. Going forward, advocates may assert that applications by the state legislatures will continue at the same pace. Conversely, it could also be argued that the movement's progress could lead to the same sort of "second thoughts" that slowed, and then stalled, the BBA campaign of the 1980s. To this may be added constitutional questions concerning state applications that would likely be raised if or when a convention call seemed imminent. For instance, are state applications submitted over 30 years ago still valid, and, what is the constitutional status of state actions to rescind their earlier applications?

Ultimately, it may be argued that the constitutional process is working as the founders planned. The Article V Convention device was intended to provide an alternative method of amendment, but it was also intended that a convention should enjoy a broad national consensus of support and meet similarly exacting standards as those that apply to amendments proposed in Congress. While the current campaign has generated considerable interest and advocacy among convention advocates, its awareness and support among the wider community appears to be limited. In order

[129] David Guldenshuh, "An Interim Recap of Article V Legislative Activity," State Legislators Article V Caucus, July 2015, http://articlevcaucus.com/news/july-newsletter-2/.

[130] According to the Roper Center, public support for a BBA has never dropped below 61% since 1994 and was recorded at 74% in 2014. Roper Center, "The Public and Proposed Constitutional Amendments: We Love You, You're Perfect, Now Change," http://www.ropercenter.uconn.edu/the-public-and-proposed-constitutional-amendments-we-love-you-youre-perfect-now-change-2/.

[131] Guldenschuh, "An Interim Recap of Article V Legislative Activity."

to succeed, the convention alternative would arguably need to attain the breadth of public awareness and active support necessary to meet the Constitution's demanding requirements.

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