TEXAS PUBLIC POLICY FOUNDATION

Who's Afraid of an Article V Convention of States?

Answering Opponents' Concerns

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Center for **Tenth Amendment**
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Table of Contents

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Executive Summary

In January, Texas Governor Greg Abbott launched his "Texas Plan"*: Restoring the Rule of Law, with States Leading the Way.* The plan calls on the Texas Legislature to apply for an Article V convention of states to propose amendments to rein in the federal government.

The American people have come to fear the federal government. Gallup polling reveals that 69 percent of Americans regard "big government" as a "greater threat to the U.S. in the future than big business or big labor."

As the federal government has grown, individual liberty and the rule of law have shrunk. If Washington has shown itself unable to extricate Americans from the abyss into which it has thrust them, what is to be done? Governor Abbott's proposed amendments would: "prohibit Congress from regulating activity that occurs wholly within one State"; require Congress to balance the budget; bar administrative agencies "and the unelected bureaucrats that staff them" from making federal law as well as from "pre-empting state law"; empower a two-thirds majority of the states to veto a U.S. Supreme Court decision as well as to override a federal law or regulation; require a "seven-justice-super-majority vote" any time the Supreme Court seeks to "invalidate a democratically enacted law"; limit the federal government "to the powers expressly delegated to it in the Constitution"; and enable state officials to sue in federal court "when federal officials overstep their bounds."

The mechanism for introducing the amendments is found in Article V of the Constitution, which states that Congress "shall call a Convention for proposing Amendments" following "the Application of the Legislatures of two thirds of the several States." The amendments are added to the Constitution if three-fourths of the states approve them.

Who's Afraid of an Article V Convention of States? Answering Opponents' Concerns

> One who asks law to rule, therefore, is held to be asking God and intellect alone to rule, while one who asks man adds the beast. Desire is a thing of this sort; and spiritedness perverts rulers and the best men. Hence law is intellect without appetite.
>
> — Aristotle, *The Politics* 1287a25-33 (Bekker numbers)

> If it be asked, What is the most sacred duty and the greatest source of our security in a Republic? The answer would be, An inviolable respect for the Constitution and Laws—the first growing out of the last. . . . A sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government.
>
> — Alexander Hamilton, 1794

Key Points

- Texas Governor Greg Abbott has pledged Texas' participation in calling for an Article V convention of states to propose constitutional amendments to restore federalism and individual liberty.
- A recent Gallup survey reveals that 69 percent of Americans regard "big government" as a "greater threat to the U.S. in the future than big business or big labor."
- Gallup also reports that Americans name the government as one of the three most important problems facing the country, with 75 percent perceiving widespread corruption in the government.
- Fears of a "runaway convention" of the states are unfounded. Any and all amendments proposed by a convention of states would need the approval of three-fourths of the states (38) for ratification.
- A convention of states is not a "constitutional convention." An Article V convention may only propose amendments. A plenipotentiary convention—a constitutional convention called for a broad and unrestrained purpose—is not authorized by the Constitution.

I know the American People are much attached to their Government;—I know they would suffer much for its sake;—I know they would endure evils long and patiently, before they would ever think of exchanging it for another. Yet, notwithstanding all this, if the laws be continually despised and disregarded, if their rights to be secure in their persons and property, are held by no better tenure than the caprice of a mob, the alienation of their affections from the Government is the natural consequence; and to that, sooner or later, it must come.
. . .

The question recurs, "how shall we fortify against it?" The answer is simple. Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution, never to violate in the least particular, the laws of the country; and never to tolerate their violation by others. As the patriots of seventy-six did to the support of the Declaration of Independence, so to the support of the Constitution and Laws, let every American pledge his life, his property, and his sacred honor;--let every man remember that to violate the law, is to trample on the blood of his father, and to tear the character of his own, and his children's liberty. Let reverence for the laws, be breathed by every American mother, to the lisping babe, that prattles on her lap--let it be taught in schools, in seminaries, and in colleges; let it be written in Primers, spelling books, and in Almanacs;—let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation; . . .

While ever a state of feeling, such as this, shall universally, or even, very generally prevail throughout the nation, vain will be every effort, and fruitless every attempt, to subvert our national freedom.
— Abraham Lincoln, 1838

Introduction: Constitutional Restoration Rising?

On January 8, 2016, Texas Governor Greg Abbott announced his "Texas Plan" (see Appendix A). The Texas plan calls for an Article V convention of states to propose constitutional amendments to rein in the federal government and thereby restore the constitutional balance between Washington, D.C. and the states.

The Texas governor issued his call for an Article V convention because, in his view, it is the last, best constitutional means to restore the rule of law in America. A "republic," in the American context, signifies a representative democracy ruled by law, not by the caprice of politicians. The rule of law distinguishes legitimate government from tyranny and anarchy. However, more than two centuries after the Constitution was ratified, many Americans are questioning whether the country has succeeded at maintaining the rule of law. A Gallup survey, conducted from December 2 through December 6, 2015, revealed that 69 percent of Americans regard "big government" as a greater threat to the U.S. in the future than big business or big labor. Gallup's finding that Americans view "big government [as] the biggest threat to the country in the future... comes at a time when Americans name the government as one of the three most important problems facing the country and when 75 percent of Americans perceive widespread corruption in the government."

Further research by Gallup finds that "only 8 percent of Americans in June [2015] said they have 'a great deal' or 'quite a lot' of confidence in Congress, far below the 24

percent who said they have that much confidence in organized labor and 21 percent in big business." Finally, Gallup discloses that "half of Americans say the federal government poses an immediate threat to rights and freedoms."

Such widespread fear of the power of the federal government, although alarming, is less than surprising. Many Americans have become increasingly disturbed over U.S. Supreme Court decisions that distort the Constitution in order to "discover" new "rights," over presidential Executive Orders that thwart the will of the people and their elected representatives, and over a Congress that abdicates lawmaking authority to unelected, unaccountable Washington bureaucrats. One result of Washington's disdain for the Constitution is the national debt, which has grown from $7.3 trillion in 2004 to over $18 trillion today. By 2019, it is forecasted to reach $21 trillion. Such profligate spending is crippling economic opportunity, not only for this generation, but also for our children and grandchildren. Many Americans therefore fear that the American Dream is dying.

In short, the federal government has grown to Leviathan-like proportions; as its power has expanded, individual liberty and the rule of law have shrunk. If Washington has shown itself unable to extricate Americans from the abyss into which it has thrust them, what is to be done? Governor Abbott's *Restoring the Rule of Law* proposes nine constitutional amendments to curb federal overreach and restore the constitutional balance.

The proposed amendments would: "prohibit Congress from regulating activity that occurs wholly within one State"; require Congress to balance the budget; bar administrative agencies "and the unelected bureaucrats that staff them" from making federal law as well as from "pre-empting state law"; empower a two-thirds majority of the states to veto a U.S. Supreme Court decision as well as to override a federal law or regulation; require a "seven-justice-super-majority vote" any time the Supreme Court seeks to "invalidate a democratically enacted law"; limit the federal government "to the powers expressly delegated to it in the Constitution"; and enable state officials to sue in federal court "when federal officials overstep their bounds" (see Appendix A).

The mechanism he advances for introducing the amendments is found in Article V of the Constitution, which states that Congress "shall call a Convention for proposing Amendments" following "the Application of the Legislatures of two-thirds of the several States." The amendments are added to the Constitution if three-fourths of the states approve them.

Article V's inclusion in the Constitution, argues Abbott, demonstrates that America's Founders knew well the inevitable tendency of centralized power to expand beyond its constitutional limits. Hence, Article V provides states a means of defense.

During his speech, the governor made it clear that his proposals are intended not to end, but to begin, a national debate among the states about how best to restore the Constitution. Doubtless, some will want other amendments, while others will object to some that he has suggested. However, while there will be disagreement over content, and on the road forward, what large majorities do agree on is far more important—that Washington has lost our trust and gained our fear.

Proponents of an Article V convention argue that we have a constitutional means available to us that could help restore trust and confidence in the federal government. But important questions remain. Will supporters be able to achieve the requisite number of states (34) to apply for an Article V convention? This has never happened before in our history. Further, if history was made, and a convention was called, would unintended—and possibly severe—consequences follow?

What a Convention of States Is—and What It Is Not

> *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.*
> — Article V of the United States Constitution

> *[A government that offers] no means of change, but assumes to be fixed and unalterable, must, after a while, become wholly unsuited to the circumstances of the nation; and it will either degenerate into a despotism, or by the pressure of its inequalities bring on a revolution. . . . The great principle to be sought is to make the changes practicable, but*

> *not too easy; to secure due deliberation, and caution; and to follow experience, rather than to open a way for experiments, suggested by mere speculation or theory.*
> — Justice Joseph Story, *Commentaries on the Constitution of the United States*

Should the constitutionally required 34 states submit applications for a convention of states, what happens next? Delegates chosen by each state meet to propose, debate, and vote on proposed amendments to the Constitution. If any of the proposed amendments receives at least a majority vote among the states, this triggers the final step in the constitutional process, which is to submit these approved amendments back to all of the states for ratification.

During the convention, each state, regardless of the number of members composing its delegation, has one vote. State delegations with multiple members must reach at least a simple majority among their members to approve each and every proposed amendment.

As mentioned, 38 states must ratify any proposed amendment in order for it to become part of the Constitution. In all but one case up until now, Congress has designated the state legislatures as the ratifying bodies. However, the Constitution also allows Congress to mandate that the states call ratifying conventions to consider an amendment or amendments. In the latter case, each state holds a popular election for the purpose of picking delegates to its ratifying convention. This method of approval was mandated by Congress in the case of the 21st Amendment, which overturned the 18th Amendment. The 18th Amendment (ratified in 1919) abolished alcohol manufacture and sales nationwide. It was repealed in 1933 by the 21st Amendment.

The Primary Concern Regarding an Article V Convention of States: A "Runaway Convention"

> *As a matter of fact and law, the governing rights of the States are all of those which have not been surrendered to the National Government by the Constitution or its amendments. Wisely or unwisely, people know that under the Eighteenth Amendment Congress has been given the right to legislate on this particular subject, but this is not the case in the matter of a great number of other vital problems of government, such as the conduct of public utilities, of banks, of insurance, of business, of agriculture, of education, of social welfare and of a dozen other important features. In these, Washington must not be encouraged to interfere.*
> — New York Governor Franklin D. Roosevelt, 1930

> *I do not have a lack of trust in the American people. I am the one here who is least terrified of a convention. We have come a long way. We have gotten over many problems. But the fact remains that a widespread and deep feeling of powerlessness in the country is apparent with respect to many issues, not just the budget issue. The people do not feel that their wishes are observed. They are heard but they are not heeded, particularly at the federal level.* — Antonin Scalia, 1979

In "An Article V Constitutional Convention? Wrong Idea, Wrong Time," Cato Institute scholar Walter Olson takes issue with the convention of states movement. He argues, "Yes, the federal government has slipped its constitutional bounds, and yes, that's infuriating. Just don't confuse a plan for talking . . . with a plan for actually changing things, and always beware of a cure that might kill the patient." The killing cure feared most is a runaway convention, in which rogue delegates, perhaps with the complicity of Congress and/or the U.S. Supreme Court, effectively hijack the proceedings, yielding proposed amendments that are anathema to the liberty-promoting purposes pursued by the 34 states that applied for the Article V convention.

This concern is well warranted, and needs to be addressed. A number of constitutional scholars have looked at the possibility that a convention of states might degenerate into a runaway convention. In "The Jefferson Statement," the Convention of States Project seeks to address the concerns of those fearing a runaway convention (see Appendix B). The Jefferson Statement calls our attention to the fact that George Mason, foremost among the Constitution's Framers, anticipated that, in time, the federal government would fall guilty of unconstitutional overreach, undermining the rightful prerogatives of the states and, worse, endangering individual liberty. Hence Mason played a key role in crafting the language of Article V as it finally appeared in the ratified Constitution. For Mason, the states were the last, best hope of pushing back at federal power grabs. According to the signatories of the Jefferson Statement, the convention process is not only "controlled by the states from beginning to end on all substantive matters," but also is constrained to consider only the subject or subjects carried forward by 34 states.

This view of the matter is shared by constitutional law professor, Rob Natelson, who goes far to supply the his-

torical background regarding past multi-state conventions that were held prior to the ratification of the Constitution. Why is such an historical treatment required? Many of the fears over the alleged murkiness of a convention of states, argues Natelson, stem from a lack of historical understanding. In reality, such conventions are far from unique in American history. They were held often in our pre-Constitution past. In the 100 years prior to the ratification of the Constitution, there were "at least 30 multi-government conventions—an average of better than one every four years."

Given this history, "by 1787, the protocols for interstate conventions had become standardized and generally accepted and understood. The procedure began when Congress, a prior convention, or (most commonly) a state drafted a document referred to as a 'call' or 'application.'" As is the case under Article V, the legislature of each state invited to the convention determined whether or not to participate. If the state decided to participate, the legislature determined how its delegates were to be chosen. "Usually, the legislature elected them itself. . . . The legislature or its designee also instructed them." Moreover, "every convention seems to have retained the rule of 'one state/one vote,'" reflecting the "participating governments' status as co-equal semi-sovereignties." Finally, the "authority of a convention of states (or colonies) always has been limited to the scope of the call. State instructions to commissioners might effectively circumscribe it further."

For Natelson, then, the murkiness allegedly surrounding the Article V process is not quite as dense as those fearing a runaway convention might believe.

Dr. Thomas Sowell also has weighed in on this issue. In "Messing With the Constitution," he charges that the reaction to the convention of states movement "has been hostile, out of all proportion to either the originality or the danger of such a convention." Although the convention of states idea has been criticized by some on both the political Right and Left, Sowell finds the latter's critique particularly "ironic": "The irony in all this is that no one has messed with the Constitution more or longer than the political left, over the past hundred years." He cites the sentiments of Woodrow Wilson, who, in his 1908 *Constitutional Government in the United States*, advanced the jurisprudential theory that the Constitution is evolutional. He thus favored the mode of constitutional interpretation that has come to be called "the living Constitution," and which stands as the antithesis to what is called the "originalist" approach to constitutional interpretation, as expounded by the late Supreme Court Associate Justice Antonin Scalia. Generally, those jurists who deem the Constitution evolutional are more apt to uphold laws that expand the power of government, while, generally, originalists have shown themselves to be more leery of increasing governmental power.

The "irony" that Sowell purports to find in the Left's opposition to a convention of states consists in the use to which the "living Constitution" mode of constitutional interpretation has been put: Given the difficulty of passing constitutional amendments, "federal judges—especially Supreme Court Justices—[have] amend[ed] the Constitution, *de facto* and piecemeal, in a leftward direction."

Given that the United States has amended its Constitution 27 times, Sowell asks why "the proposal to call a convention of states to propose—just propose—amendments to the Constitution is considered such a radical and dangerous departure?" He wonders rhetorically, "Is it better to have the Constitution *amended de facto* by a 5 to 4 vote of the Supreme Court? By the unilateral actions of a president? By administrative rulings by anonymous bureaucrats in federal agencies, to whom federal judges 'defer'"?

Agreeing with Sowell that the danger of a runaway convention is reduced by the Constitution's requirement that three-fourths of the states must approve any proposed amendment for it to become part of the Constitution, Matthew Spalding and Trent England go on to argue that, even if a convention of states movement fails to garner the needed 34 states, this may not necessarily spell defeat in the precise sense. They remind us that the movement championing direct election of U.S. senators was "just one state away from an amending convention when Congress proposed the Seventeenth Amendment in 1911." They also point to the fact that, "in the 1980s, state applications for a convention to propose a balanced budget amendment led Congress to vote on such an amendment and pass the Gramm-Rudman-Hollings Act (later declared unconstitutional in part by the Supreme Court) requiring the federal budget to be balanced."

Although they agree that the three-fourths-of-the-states ratification requirement is a "significant limit on the process and likely prevents a true 'runaway' convention from fundamentally altering the Constitution," Spalding and England also worry about the unintended consequences of a convention of states. Why? "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."

The "extensive unknowns" to which Spalding and England point stem in part from the fact that this country has never had an amending convention and therefore has not answered in practice whether a convention of states "can be limited in scope, either to a particular proposal or within a particular subject." During the 19th century, "most calls for amending conventions . . . were general," whereas the recent trend has been to call conventions restricted to a single, explicit amendment. But this has given rise to debate over whether "such attempts violate the very mechanism created by Article V," which states that, after two-thirds of the states make application, Congress "'shall call a Convention for proposing Amendments,' not for confirming a particular amendment already written, approved, and proposed by state legislatures." The latter approach threatens to turn "the convention for proposing amendments into a ratifying convention."

Moreover, argue Spalding and England, it is unclear that "the power of two-thirds of the states to issue applications for a convention restricts, supersedes, or overrides the power of all the states assembled in that convention to propose amendments." Additional unresolved questions include "the many practical aspects of how an amending convention would operate and whether any aspects of such a convention (including going beyond its instructions) would be subject to judicial review."

If Spalding and England are sympathetic regarding the motives driving the convention of states, yet skeptical about its ultimate viability, Noah Rothman, writing in *Commentary*, voices outright opposition: "Contrary to popular belief, there are no rules for such a convention. Congress has tried on over 20 occasions to craft a uniform set of rules governing a convention process, but it has failed every time." Rothman also points to the failure of the Congressional Research Service to "definitively assert that a constitutional convention can have a limited focus, and its review of precedent seems to reinforce the notion that a sovereign convention of the people enjoys broad autonomy from state and federal legislatures." Thus, contrary to Spalding and England, as well as to convention of states proponents, Rothman doubts the assertion that a runaway convention is "simply not possible," because we have "no guarantees that conservative delegates can maintain total control over such a radical process." The result, contrary to the intentions of those who pushed for a convention of states, will be a free-for-all.

The History of Article V

> *In short, the government of each state is, and is to be, sovereign and supreme in all matters that relate to each state only. It is to be subordinate barely in those matters that relate to the whole; and* ***it will be their own FAULTS*** *if the several states suffer the federal sovereignty to interfere in things of their respective jurisdictions.*— John Dickinson, 1788
> (emphasis and capitalization in original)

> *. . . [T]he national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged on the application of the legislatures of two thirds of the States [which at present amount to nine], to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three*

> *fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.*
>
> — Alexander Hamilton (writing under the pseudonym, "Publius"), *The Federalist*, No. 85

The preceding reservations and concerns need to be addressed by any thoughtful defender of an Article V Convention. Professor Rob Natelson attempts this task in a series of essays investigating the history of Article V. Surveying the proceedings and debates at the 1787 Constitutional Convention in Philadelphia, he calls attention to the pivotal role played by Virginia delegate George Mason in driving the final language of Article V. Mason feared that the initial language entertained at the Convention would "enable Congress to block any amendment to correct federal abuse." His point proved persuasive. The language was changed to "provide that a convention rather than Congress draft state-initiated amendments."

Natelson grants the point that Article V does not specifically delineate the composition of an amendments convention. James Madison himself reacted to this lacuna, and this has led to the fears that "its composition is a mystery or that the Constitution leaves the composition for Congress to determine."

But the historical record, argues Natelson, leaves no doubt that the delegates decided that an "amendments convention would be constituted as a convention of the states." Why? To begin, the convention of states model was the only one "known to the Founders." That the convention would be under the control of the states was agreed to by Alexander Hamilton, Tench Coxe, George Washington, and James Madison, among others. Moreover, the first application made under the new Article V, which was submitted by Virginia, named the gathering sought by its application a "convention of states." Finally, during the time of the founding of our nation, New York, Pennsylvania, and Rhode Island submitted a number of resolutions that name an amendments convention a "convention of states."

This view of the matter was subsequently confirmed by the U.S. Supreme Court in 1831 in *Smith v. Union Bank of Georgetown*. In this light, Natelson's answer to the question of why Article V did not explicitly delineate the composition of the convention is, "because there was no need to. The framers' method was not to recite in the Constitution matters that everyone knew." It was common knowledge that an "interstate convention was made up of commissioners in delegations ("committees") from the several states." It also was common knowledge that the states "were equal with respect to suffrage; that state legislatures determined how commissioners were selected and instructed them; that the call could be broad or narrow; and that the convention's authority was limited to the scope of the call."

Hence, the final language of Article V, as James Madison wrote in *Federalist No. 43*, balanced the powers of the states and the federal government through "equally enabl[ing] the general and the State governments to originate the amendment of errors."

Natelson reminds us that, had Article V not been so understood by its framers, the proposed Constitution might never have been ratified. He quotes New York delegate Samuel Jones' rejoinder to the argument of the anti-Federalists that the new federal government created under the proposed Constitution might maliciously misapply its powers: "[It] could not be known to the framers of the constitution, whether there was too much power given by it or too little; they therefore prescribed a mode by which Congress might procure more, if in the operation of the government it was found necessary; and they prescribed for the states a mode of restraining the powers of the government, if upon trial it should be found they had given too much."

Tench Coxe agreed, arguing that "two thirds of the states can always procure a general convention for the purpose of amending the constitution, and that three fourths of them can introduce those amendments into the constitution, although the President, Senate and Federal House of Representatives, should be unanimously opposed to each and all of them."

Natelson's analysis of roughly the first 150 years following ratification of the Constitution adds further evidence to Spalding and England's contention that a convention of states can "fail" and still succeed. Although none of the attempts by states during this century and a half reached the required two-thirds needed to compel the U.S. Congress to call a convention, "they did enjoy some success in forcing constitutional change." In 1788 and 1789, the pressure exerted by Virginia and New York's applications to consider new amendments gave congressional proponents of a bill of rights the leverage they needed to convince their peers that "if Congress did not propose a bill, the states might call a proposing convention." Almost immediately,

Congress took up the issue. The result was the first ten amendments to the U.S. Constitution.

Natelson documents other, more recent examples of states coming together successfully to force change. In the early part of the last century, Western states that shared the Colorado River became concerned that "Congress might impose water use rules on the stream." To address this, they met in a convention, called a "commission," in 1922 to work out the details of an agreement among themselves. These negotiations became codified as the Colorado River Compact.

A little noticed, but "perhaps the most instructive," of the state proceedings that took place during the first 150 years following ratification was the Washington Conference Convention, which took place in1861. As the timing of this meeting suggests, this multi-state meeting sought to craft a constitutional amendment designed to stop what the delegates viewed as a coming civil war. The language of the amendment at which they arrived sought to assure the South that the institution of slavery would be protected where it already existed, but, in agreement with Lincoln's platform, would bar chattel slavery from "most U.S. territories."

Although there was little hope that a divided Congress would embrace this proposal, both president-elect Abraham Lincoln and his predecessor, James Buchanan, counseled states to make applications under Article V to achieve this reform. Then, in January 1861, Virginia called a convention of states for early February to deliberate on a similar proposed amendment. The Washington Conference Convention was attended by 21 states representing "the overwhelming majority of non-seceding states and marks it as the largest general convention in American history."

Alas, Congress did not act on the Washington Convention's proposal, with war coming shortly thereafter. However, the convention, "when considered as an independent proceeding . . . was a success. Despite almost insuperable difficulties, it did not deadlock or shatter in acrimony, but produced a workable compromise. Furthermore, the Washington Conference Convention served as a rehearsal for an Article V convention."

In sum, argues Natelson, there is less murkiness surrounding the Article V process than has been recognized heretofore.

The murkiness is dispelled further when we consider the judicial rulings on Article V that have come down to us over the years. Here Natelson finds that the courts have adhered to "certain rules and principles with remarkable consistency." For this reason—and despite the fact that none of these judicial renderings has been offered in response to an actual convention of states—"the case law offers useful guidance as to the nature of such a convention and its protocols."

Most crucial for Natelson in this regard is the fact that the courts, in interpreting the meaning of Article V, have followed "historical practices and understandings" and sought to read the words of the Article "as the Founders understood them." Hence, the courts have interpreted Article V as a "list of enumerated powers" that have been granted to "named assemblies, both preexisting and *ad hoc*"—Congress, the state legislatures, proposal conventions and ratifying conventions.

This "judicial respect for historical practice" has further implications: "[C]onventions of states always have been subject to the limits imposed by their calls and by legislative authority." Therefore, a convention "may not propose amendments outside the scope of the state applications and congressional call."

For the same reason, no applying state legislature is allowed to attempt to convert "a proposing convention into a ratifying convention by limiting it to an up-or-down vote on predetermined wording." Under Article V, legislatures are empowered only to offer resolutions, not to approve them.

These limitations notwithstanding, the Supreme Court's affirmation that an amending convention is a "convention of states" carries the following ramifications: Each state delegation represents one vote at a convention; each state delegation's composition is determined by its state legislature; each state delegation is "subject to legislative instruction. Although the state legislature may not, in its applying capacity, attempt to micromanage the convention, in its supervisory capacity it may instruct its own committee." In addition, the convention is empowered to draft "its own rules and elect its own officers." Finally, adds Natelson, it is incorrect to interpret the Necessary and Proper Clause as empowering Congress to "regulate the convention." After all, as the historical analysis has shown, the purpose of adding the states as independent initiators of amendment proposals was to allow them, if needed, to "bypass Congress."

This is not to deny, however, that Congress will play an important role, for example, in determining which applications are "void or, if valid, the extent to which they can

be aggregated with more inclusive applications covering the same general subject." The "aggregation" issue becomes more challenging when we consider the fact that a number of state applications previously made "purport to limit the convention to considering only an amendment with prescribed wording. That may render them inherently invalid or inaggregable with more general applications."

Should 34 states ever agree to call a convention on the same subject, it will become the duty of the U.S. Congress to decide whether these applications "truly 'aggregate' with each other." Here Natelson cites the Balanced Budget Amendment, which, according to the Balanced Budget Amendment Taskforce, has garnered 28 states in support. Should this be the first subject of a convention of states, "Congress may have to exercise some discretion," because three of these state applications "purport to limit the convention to prescribed language." Thus Congress will have to decide both whether to "aggregate the two sets" and whether "applications that demand an unlimited convention should be included in the total."

The American Legislative Exchange Council (ALEC) also has weighed in on the rules governing an amendments convention. A "Model Resolution" on the subject was introduced at ALEC in December of 2015 and formally approved in March of this year. Titled "Rules for an Article V Convention for Proposing Amendments," it offers rules seeking to "provide for an orderly assembly which protects the individual rights of each state and the will of the majority of the states attending."

Toward this end, it stipulates that the "only participants at this Convention" shall be "the several States represented by delegations duly selected in such manner as their respective legislatures shall determine." To assure that there will be no runaway convention, it locates the authority for the proceeding in "the applications adopted by at least two thirds of the legislatures of the several States." Therefore, the authority of the convention is "limited to the subjects specified in applications from at least two thirds of the states. This convention, therefore, has no authority to propose an amendment on any other subject."

In a further effort to prevent a runaway convention, it offers a rule governing "rogue" delegates: "The Convention shall provide for disciplining a commissioner or delegation for violating the call of the Convention. . . ." It also follows historical precedent in mandating that "each state [shall] hav[e] one vote." Further, it shall be the prerogative of each state to "determine the internal voting and quorum rules for casting the vote of its delegation." Finally, it follows Natelson's historical analysis in stipulating that "[a]n affirmative vote of a majority of the states present and voting shall be necessary to propose an amendment."

A recent legal opinion issued by E. Scott Pruitt, attorney general of Oklahoma, agrees with the above analysis. Pruitt's "A Brief Reflection on Article V of the U.S. Constitution" addresses the Oklahoma Legislature's consideration of differing versions of joint resolutions seeking to invoke the state's power under Article V to amend the Constitution (see Appendix D). The attorney general's purpose is not to offer an opinion on "the merit of a particular version, but rather to reflect on the legitimacy of what those resolutions propose: a convention of the States."

Under the "plain terms" of Article V, whenever two-thirds of the states apply for a proposing convention "on the same subject or subjects, Congress must set a time and place for the convention." Despite the fact that states have never used this constitutional power up to this point, there is, argues Pruitt, "a great deal of precedent for how such a convention would work." Here he cites the historical evidence that we already have inspected in Natelson's analysis: From the colonial period through 1787, conventions were held 31 times.

> *These historical conventions employed the same fundamental structure, protocol, and practices. For example, States and colonies before them—commissioned representatives referred to as "delegates" or "commissioners" to act on the States' behalf through instructions specifying the extent of the representatives' authority. Employing historical structure, protocol, and practices would ensure that a convention does not operate against a blank slate, but is organizationally sound* (Pruitt, 1).

Granting that concerns over a runaway convention are "understandable," nonetheless, "safeguards exist to protect our Constitution against abuses." To begin, conventions called under Article V may "only propose amendments. A plenipotentiary convention—a constitutional convention called for a broad and unrestrained purpose—is not authorized under the U.S. Constitution." Plenipotentiary conventions have taken place but twice in American history—the Constitutional Convention of 1787 and the convention to form the Southern Confederacy in 1861.

Pruitt's concern in the above passage is to disabuse us of the notion that what, for example, Governor Abbott is calling for is a "constitutional convention." Although an Article V amendments convention is often referred to a "Constitutional Convention," this everyday-language

shorthand is, as we saw above, misleading. Here it is instructive to review an important correspondence between James Madison and Thomas Jefferson that reveals why the Founders understood Article V to refer only to an amendments convention and not a constitutional convention.

Reprinted in Lerner and Kurland's *The Founders' Constitution*, Madison responds to a proposal by Jefferson by first summarizing it: "As the earth belongs to the living, not to the dead, a living generation can bind itself only: In every society the will of the majority binds the whole: According to the laws of mortality, a majority of those ripe at any moment for the exercise of their will do not live beyond nineteen years: To that term then is limited the validity of every act of the Society: Nor within that limitation, can any declaration of the public will be valid which is not express."

Madison's rejoinder to his friend, in part, is this:

> *However applicable in Theory the doctrine may be to a Constitution, in [sic] seems liable in practice to some very powerful objections. Would not a Government so often revised become too mutable to retain those prejudices in its favor which antiquity inspires, and which are perhaps a salutary aid to the most rational Government in the most enlightened age? Would not such a periodical revision engender pernicious factions that might not otherwise come into existence? Would not, in fine, a Government depending for its existence beyond a fixed date, on some positive and authentic intervention of the Society itself, be too subject to the casualty and consequences of an actual interregnum?* (Quoted in Kurland and Lerner, Papers 13:18-21)

Note that a good deal of Madison's rejoinder to Jefferson's proposal for a constitutional convention every 19 years echoes a number of the fundamental concerns voiced by the anti-Federalists in opposing the proposed Constitution. Such criticisms are powerful indeed in the case of a plenipotentiary proceeding, which the 1787 Convention was. But it is less pointed when applied to the amendments convention authorized under Article V. In sum, as Madison's stringent critique of Jefferson's proposal demonstrates, there is good reason to fear a "constitutional convention." But this is not what the Article V movement proposes.

Returning to Pruitt's analysis, he finds that, because convention delegates "act as agents, representatives must remain within the limits of the authority placed on them by their respective States, and if they do not, their *ultra vires* acts [acts taken without legal authority] are not legally binding." In addition, states have it within their powers to "recall their representatives, with enforcement mechanisms for the respective States available via state court proceedings."

Most important for Pruitt is the constitutional requirement that ratification requires that 38 states approve any proposed amendment. "That any proposal coming from a convention of the States must meet that ratification requirement should allay any concerns that unruly and misguided acts of a run-away convention would find their way into and transform the U.S. Constitution."

The Oklahoma attorney general concludes that, up to this point, efforts to restore constitutional limitations through "federal elections and Supreme Court nominations—all efforts premised on reining in Washington D.C. from the inside"—have failed. The Founders anticipated this; hence "Article V exists so that States may restore constitutional limits through their own independent efforts." Citing the Federalist writer, Tench Coxe, the states' power under Article V is "consonant with the philosophy of the Founders." As Coxe observed, "Congress . . . cannot hold any power, which three fourths of the states shall not approve, on experience."

Georgetown University law professor, Randy Barnett, seeks to turn the runaway convention critique on its head, converting it from an anti- to a pro-convention of states argument. "An amendments convention is feared," writes Barnett, "because its scope cannot be limited in advance." We have seen that other defenders of an Article V convention of states argue that the scope of an amendments convention can be limited to a greater extent than its detractors allow. But Barnett grants that the 1787 Philadelphia convention, "convened by Congress to propose amendments to the Articles of Confederation," instead resulted in "the entirely different Constitution under which we now live." But Barnett argues that we should face this fear without blinking. Indeed, "it is precisely the fear of a runaway convention that states can exploit to bring Congress to heel." How?

In making his case for capitalizing on, rather than dismissing, the fear of a runaway convention, Barnett reminds us of points that we have encountered in the work of Natelson, Spalding, and England—that it "was the looming threat of state petitions calling for a convention to provide for the direct election of U.S. senators that induced a reluctant Congress to propose the 17th Amendment, which did just that." Barnett rests confident in the

expectation that Congress—ever jealous of its powers and prerogatives as the constitutionally most powerful branch of the federal government—can be counted on, as it did in the case of the 17th Amendment, to "avert a convention by proposing this amendment to the states, before the number of petitions reaches two-thirds."

In short, for Barnett, the fear of a runaway convention is a sword that cuts in two directions. As such, it can serve to bolster the effectiveness of the reforms that Article V defenders seek to institute through new amendments.

"Contradiction Cannot Command": Defending the Philadelphia Convention against the Charge That It Was a Runaway Convention

Included in the critique of those who fear that a present-day convention of states will degenerate into a runaway convention is a parallel historical indictment: The Constitutional Convention of 1787, some charge, was itself a runaway convention. This accusation was first leveled immediately after the Philadelphia meeting completed its work, and it has persisted to some extent to the present day.

When we review the debates over the ratification of the proposed Constitution, we find that the opponents of ratification, known as the "anti-Federalists," generally feared what one labeled "the frenzy of innovation" sweeping across the thirteen states. They argued that a penchant for change would leave the country "always young in government" (Storing, 7ff.). Primarily, however, they feared that the proposed Constitution threatened federalism.

But these objections were preceded by a more fundamental concern. They argued that the Philadelphia Convention was itself an illegitimate enterprise. The wording by which the Philadelphia gathering had been authorized stated that the delegates would meet "for the *sole and express* purpose of revising the Articles of Confederation" (emphasis supplied). But the men in Philadelphia did far more than that; their proposed Constitution scrapped the Articles of Confederation, which they had no legal right to do.

In addition, the Philadelphia Convention proposed two changes in the ratification process. First, Congress and the state legislatures would be bypassed in favor of specially convened state ratifying conventions. Second, the new Constitution would become the law of the land upon ratification by three-quarters (nine) of the thirteen states. Under the Articles of Confederation, ratification of any proposed amendments required unanimity. Opponents of the proposed Constitution argued that neither of these changes enjoyed any legal foundation.

These illegalities, argued some anti-Federalists, would doom America's constitutional future. "[T]he same reasons which you now urge for destroying our present federal government, may be urged for abolishing the system which you now propose to adopt; and as the method prescribed by the articles of confederation is now totally disregarded by you, as little regard may be shewn by you to the rules prescribed for the amendment of the new system," argued Luther Martin (Storing, 7-8).

These charges, though strong, lost much of their power during the period that the new Constitution was debated. Their strength waned because, after all, the fate of the proposed Constitution now rested in the hands of the people themselves. This blunted the edge of the anti-Federalists' critique.

More to the point, the Constitution's defenders offered a potent, direct rejoinder to the "runaway convention" critique. Yes, they conceded, the congressional resolution authorizing the Philadelphia convention stated that it was "for the sole and express purpose of revising the Articles of Confederation." But the instructions from Congress also included the following: The purpose sought by "revising" the Articles of Confederation was "to render the federal constitution adequate to the exigencies of Government and the preservation of the Union." On this basis, pro-Constitution delegates from Virginia, whose "Virginia Plan" formed the "first draft" of the new Constitution, could make the following argument: An "adequate" government was the end to which the congressional resolution pointed to the Philadelphia convention as the means. All ends are superior to their respective means. Therefore, since the means of merely "revising" the Articles of Confederation would not produce the end of a government "adequate" to Americans' needs, the Constitution's defenders argued that it was justified.

As the late political scientist, Martin Diamond, states the case,

> *[B]oth sides could make an argument upon the basis of the authorizing documents because they contained an ambiguity, indeed a contradiction. And contradiction cannot command. The contradiction lurked in the double injunction laid upon the Convention: Provide an adequately strong union and also preserve the confederal form. But what if such a union required abandoning confederation and forming a national government? Which of the*

> *two parts of the contradictory command would be binding on the Convention then? The nationalist supporters of the Virginia Plan took advantage of the contradiction to defend a plan which ignored the Articles. And the nationalists . . . throughout the Convention took advantage of the contradictory desire of their opponents for both the blessings of close union and those of loose confederal form (23).*

Finally, in the opinion of this writer, the Constitution crafted at the Philadelphia Convention is among the greatest, if not the greatest, governing document produced in history. If it was the child of a runaway convention, then, given the crisis of our overreaching federal government, one is inclined to suggest that we have another "runaway" proceeding.

American Amnesia?

> *But once a convention meets, it could propose any amendments it wants or even a completely redesigned Constitution. There is nothing in the text of Article V of the Constitution which permits Congress or the states to restrict the scope of the convention.*
>
> — John Yoo, 2016

> *[A convention of states] could reinstate segregation, and even slavery; throw out all or much of the Bill of Rights . . . eliminate the Fourteenth Amendment's due process clause and reverse any Supreme Court decision the members didn't like, including the one-man-one-vote rule; and perhaps for good measure, eliminate the Supreme Court itself.*
>
> — Richard Rovere, 1988

> *Gov. Greg Abbott's call today for a "convention of states" to amend the constitution is an invitation to constitutional anarchy. While Article V of the Constitution provides for such a convention, one has never been called. There are no limits on what a convention might do or provisions for how it would operate, how states would be represented or who would represent them. The most likely outcome of the convention is a descent into chaos, damaging our economy and the world's, further shaking Americans' faith in our system of government, and emboldening our adversaries abroad.*
>
> — Common Cause Texas, 2016

As should be clear from the above account, disagreement rages over what the process and results of any future Article V convention of states might entail. Here we return to Natelson's account for a possible explanation of this disagreement. He finds that, during the century and a half following ratification of the Constitution, "leading participants seem to have understood the nature and scope of an amendments convention." However, by the middle of the last century, "this understanding had been lost." Why? "A succession of authors, some otherwise quite distinguished, publicly displayed their unfamiliarity with the subject."

This became evident in the 1960s, when three "corrective amendments" were promoted in opposition to the legislative reapportionment decisions handed down by the Warren Court. At least one of these three amendments was adopted by more than 30 states. In the 1970s, when a number of state legislatures became concerned over federal spending, they applied for an Article V convention to consider an amendment to balance the federal budget. The issue quickly became political: "Many scholars, politicians and activists on the liberal side of the political spectrum opposed all of these amendments."

Chief among those on the left who opposed the Article V movement then was Yale Law Professor Charles Black, whose 1963 and 1972 articles on the subject "excoriated the proposed amendments and a pro-convention congressional bill as a 'threatened disaster' and candidly advocated a course of legal obstruction."

However, argues Natelson, Black's opposition, though heavy on invective, was comparatively light on legal and historical research. Natelson finds Black "unaware of the nature of the convention as a gathering of the states." Black also counseled Congress to "disqualify any application limited to a particular subject, even though interstate conventions nearly always had been limited in scope." In fact, Black held that it was unconstitutional to hold a "limited amendments convention." Why? Because, argued Black, the "Founders had referred to amendments conventions as 'general'—a term that actually referred to the number of states invited, not to the subject matter."

In addition, Black advised that Congress employ its powers under the Necessary and Proper Clause to "control the composition and rules" of an Article V convention of states. But he did so, writes Natelson, "without, apparently, studying the language of the Necessary and Proper Clause." Finally, Natelson charges that Black falsely equated an amendments convention with a "'constitutional convention,' presumably because the latter term implied that the gathering could roam at will."

His mistakes notwithstanding, Black's influence has been powerful. Natelson finds that Black's interpretation was

adopted by Senator Robert F. Kennedy and others in the Kennedy circle, among them, Theodore Sorenson and Arthur Goldberg. Another Kennedy follower, Richard Rovere, shows the influence of Black in his warning to *New Yorker* magazine readers that an Article V convention of states could "reinstate segregation, and even slavery; throw out all or much of the Bill of Rights . . . eliminate the Fourteenth Amendment's due process clause and reverse any Supreme Court decision the members didn't like, including the one-man-one-vote rule; and perhaps for good measure, eliminate the Supreme Court itself."

Natelson's legal and historical analysis, as has been seen, suggests that the arguments of Black et al. are "untenable in light of Article V case law and precedent." However, "writers on the subject had not looked for much Article V law or precedent." As a result, we labor today to disabuse ourselves of a number of misapprehensions, among them, that "an Article V gathering is a 'constitutional convention,' that it is inherently uncontrollable or that it could be controlled by Congress." While "mythology," such interpretations are "still promoted, both by liberals who oppose restrictions on federal power and by paleo-conservatives who worry that any convention would be hijacked by the political left and would completely rewrite the Constitution."

In this we find a political irony: Some on the political Right fear a runaway convention because they have accepted the Left's inaccurate presentation of the Article V process.

"Act Like It": Weighing the Possible Risks and Rewards of an Article V Convention of States

> *Society will develop a new kind of servitude that covers the surface of society with a network of complicated rules, through which the most original minds and the most energetic characters cannot penetrate. It does not tyrannize but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd.*
>
> — Alexis de Tocqueville, 1835

> *Now, to bring about government by oligarchy masquerading as democracy, it is fundamentally essential that practically all authority and control be centralized in our National Government. The individual sovereignty of our States must first be destroyed, except in mere minor matters of legislation. We are safe from the danger of any such departure from the principles on which this country was founded just so long as the individual home rule of the States is scrupulously preserved and fought for whenever it seems in danger.*
>
> — New York Governor Franklin D. Roosevelt, 1930

> *In the typical case we look to the States to defend their prerogatives by adopting 'the simple expedient of not yielding' to the federal blandishments when they do not want to embrace the federal policies as their own.* ***The States are separate and independent sovereigns. Sometimes they have to act like it*** (emphasis supplied).
>
> — Chief Justice John Roberts, Opinion for the Majority, *N.F.I.B. v. Sebelius*, 2012

The preceding account has been crafted with the intention of better familiarizing the reader with the legal, historical, and political dimensions of the debate over whether states should apply for an Article V convention to propose amendments to rein in the federal government. As has been made clear from this account, the disagreement over the possibility and desirability of this movement involves more than the typical Left/Right, Democrat/Republican divides. On the political Right, there is also disagreement over the rectitude of the project. That is to say, there is opposition to the Article V movement even among those ideologically predisposed to agree with, for example, Texas Governor Greg Abbott's claim that all three branches of the federal government have expanded their powers beyond what the Constitution's Framers intended, to the detriment of the rightful prerogatives of the states and the liberties of their citizens.

Is there a justified hope for a rapprochement among the competing camps on the political Right? If so, on what terms? Or, will an Article V convention of states continue to be an unused power granted by the original Constitution?

Of course, no one can answer these questions with any tolerable degree of certainty at this time. But perhaps this analysis of the debate can help to move us toward greater clarity on what precisely are the risks and rewards of either pressing on with or abandoning the Article V convention of states movement.

For opponents of the convention of states movement, the two primary objections to the Article V alternative consist of this: First, Governor Abbott's call for a convention of states has been dismissed as a "long shot." Second, and as we have seen, it is held by some that, were a convention of states under Article V of the Constitution actually to

be called, it would result in the "mayhem" of a runaway convention.

As noted above, these criticisms are raised by some who nonetheless agree all three branches of the federal government have overstepped their constitutional authority. They agree that the U.S. Supreme Court has abandoned the meaning of the Constitution, especially its Interstate Commerce Clause, thereby allowing for federal intrusions into the lives of the states and their citizens that would have made the Founders blanch. The U.S. Congress has allowed, even enabled, these judicial usurpations of its rightful authority (in a democratic republic such as ours, the legislature necessarily predominates, or used to, because it is the branch closest to the people, who are the ultimate source of authority in our democracy, or used to be). And the executive branch has flouted the constitutional authority of the Congress through executive orders as well as through deciding which duly passed laws the administration will support and which it will not—despite the Constitution's requirement that the president "take Care that the Laws be faithfully executed."

As a result, our profligate federal government has not only burdened this generation with catastrophic debt, but also our children and grandchildren (see Appendix E). It has ignored John Adams' cautionary counsel that, "the consequences arising from the continual accumulation of public debts in other countries ought to admonish us to be careful to prevent their growth in our own."

Based on this writer's analysis of the condition in which the country finds itself today, it seems clear that the federal government is unable or unwilling to extricate the country from the abyss into which its power grabs have thrust us. What is left, then, under the Constitution, is the states' power to employ Article V to call a convention of states to propose amendments to reverse our decline. But, as we have seen, while a supermajority of Americans agree that the federal government has gone rogue, there is disagreement about the utility of calling a convention of states to rein it back in.

The "long-shot" critique of the convention of states movement argues that it will waste precious time and resources in pursuit of an unrealizable goal. As noted previously, there is an historical basis for the critics' skepticism. Despite being included as an element of the original Constitution, a convention of states has never occurred in American history. And for good reason: It is, as was intended, exceedingly difficult to garner two-thirds of the states (34) to call a convention and three-fourths of the states (38) to ratify any amendment. These are tall orders, and well they should be. After all, the Constitution was passed by supermajorities, and hence it is just that the Constitution requires supermajorities to ratify amendments.

The critics are correct, then, that a convention of states is a long shot. But it appears to this writer that the truth of this first critique undermines the second objection—that a convention of states would become a runaway convention, in which rogue delegates hijack the agenda, perhaps with the complicity of the U.S. Congress, which, under the Constitution, calls the convention after state applications hit the target of 34.

The second critique capitalizes on what Natelson labels "popular mythology"—that the Constitution, though enabling states to call a convention, provides little guidance about the process governing it. Hence, critics fear that the very Congress that is part of the problem will use its power over the convention process to prevent any problems from being solved, and perhaps even create new ones.

Natelson's critique notwithstanding, defenders of the viability of the Article V process must address this fear, for it threatens to doom their movement. As we have seen, the most powerful rejoinder to the runaway convention prediction is the fact that, under the Constitution, it takes 38 states to approve any amendment, "rogue" or otherwise, that might come out of a convention of states.

But there is an additional, deeper reason not to fear that a runaway convention will be the unintended consequence of an effort by the states to push back against federal overreach. To see this, consider where the logic leads from the admittedly correct "long-shot" description of the convention of states. If 34 state legislatures actually were to formally agree on a convention call, it would be the first time in history that this has occurred. Reflect for a moment on the magnitude of such an accomplishment: Consider all the coalitions that would need to be formed in each state, between and among states, and across the country. The historic character of the formation of such a massive nationwide coalition would both require and, in turn, enhance significantly a massive increase in public awareness of the nature and causes of the crisis and of the power of the states and their citizens to remedy it through Article V.

The effect that such a nationwide debate would have on the character of the American people could not help but to be so transformative that it should go no small distance toward assuaging the well-intentioned concerns of those fearing a runaway convention. Their fears underestimate the effect on the U.S. Congress, the executive branch, and

the U.S. Supreme Court of such an unprecedented popular movement. Faced with an historic uprising by We the People, unscrupulous delegates and/or Congress would be unable to pull strings from behind closed doors without exciting a national uproar.

Indeed, as we have seen, there is historical precedent for the expectation that, in the interest of forestalling such a national uproar, the U.S. Congress would move to preempt a burgeoning Article V movement through proposing its own likeminded amendment or amendments. Were this to happen again in the case of the present movement, it would have to be regarded as a victory for those alarmed over the federal government's growth.

Through underestimating the salutary political consequences that would supervene a successful effort by 34 states to apply for an Article V convention of states, those fearing its unintended consequences also miss something else: They miss the fact that, in proportion as the Article V movement grows, it will educate everyday Americans in the liberating power of our Constitution.

Today, through no fault of their own, Americans know less and less about the Constitution. This is because our schools, both at the K-12 and university levels, teach it less and less. According to the U.S. Department of Education, only one in three college students graduates having taken even one course in American government. The reason for this lapse is that, over the past half-century, the majority of American colleges and universities have come to no longer require study of the political, moral, and philosophic foundation of the American experiment in self-government. The nonpartisan higher education group, the American Council of Trustees and Alumni (ACTA) has tracked college civics requirements over the past 15 years. Its latest study concludes:

> There is a crisis in American civic education. Survey after survey shows that recent college graduates are alarmingly ignorant of America's history and heritage. They cannot identify the term lengths of members of Congress, the substance of the First Amendment, or the origin of the separation of powers. They do not know the Father of the Constitution, and nearly 10 percent say that Judith Sheindlin—"Judge Judy"—is on the Supreme Court.

In this light, an additional benefit of the Article V movement would be to provide Americans the knowledge they need to restore the Constitution, which embodies the sovereign will of "We the People."

Through this effort, Americans would learn again that the people already possess their natural rights, before government is ever instituted. That is what "natural rights" means. Through the compact that is our Constitution, the people agree to delegate *some* of their natural authority to government, but only so far and for so long as the government remains faithful to the liberty-promoting purposes for which it was established. Learning this lesson alone would be immensely helpful for the American people, because recourse to our Constitution gives the lie to the current notion, expressed by some defenders of big government—that our rights come from government. Our rights, the Declaration of Independence argues, come from "Nature and Nature's God," not from politicians in Washington.

This writer's observations about the effect on the American people of 34 states applying for a convention of states is not meant to deny or underestimate the power of the most direct rejoinder to the runaway convention concern. Because ratification of any feared rogue amendments would take 38 states, this means that merely 13 states could successfully veto any amendment. One is hard put to believe that there are not 13 states in the Union that would block any amendments but those called for by 34 states to rein in the federal government. To believe other-

wise would be tantamount to concluding that we can no longer count on there being constitutional fidelity in even this small number of states. Were this true, we might be forced to concede that America's experiment in self-government has already failed.

In an effort—perhaps a last-ditch effort—to ensure that America does not fail, the movement has arisen to call for a convention of states. In the final count, where one comes down on this issue is the product of one's estimation of the relation between the possible risks and rewards of such an effort. We have seen that we can expect there to be a good deal of political and rhetorical fireworks with which progress in this direction has been and will be met. Will the facts about the constitutional history and legal precedents guiding the Article V process be heard above the din of name-calling and general calumny? Will the process, if and when it ever moves to an actual convention, be stolen by lawyers, judges, and federal legislators? Will contesting lawsuits challenging the validity of various state resolutions so retard the process that it loses steam? We will not know the answers to these questions until and unless 34 states file applications.

Reviewing the arguments of both the defenders and the critics of the Article V movement, this writer concludes that the risks are worth it. The people, acting through their state representatives, are less to be feared today than is the federal government. The prospect of a runaway convention is therefore less to be feared than is the reality of our runaway federal government.

Thus, this writer is not prepared to assert that the Founders put an instrument into the original Constitution that, if used, would harm the Republic. The Founders were wiser than that. Proof of their wisdom is their anticipation of the day when the federal government goes rogue, for which they provided states a remedy in Article V.

Now, to argue that the rewards promised by an Article V convention of states are worth the risks is not to deny the risks. This study concludes with the assessment of then-law professor, and later, U.S. Supreme Court Justice Antonin Scalia, who participated in a panel discussion of Article V in May 1979 (see Appendix D). When asked to respond to Richard Rovere's claim that a convention of states would be "unlimited" and thus "might reinstate segregation and even slavery," Scalia rejoined, "All those things are possible, I suppose, just as it is possible that the Congress tomorrow might pass a law abolishing social security as of the next day, or eliminating Christmas. . . . I have no fear that such extreme proposals would come out of a constitutional convention."

Scalia next states the calculus with which all of us must wrestle in attempting to decide this issue: "Surely, whether that risk is sufficient to cause anyone to be opposed to a constitutional convention depends on how high we think the risk is and how necessary we think the convention is." The threshold question, then, is "whether we think a constitutional convention is necessary." Because Scalia deems a convention "necessary for some purposes," he indicates his willingness to accept what seems to him "a minimal risk of intemperate action." The Founders foresaw that Congress would resist giving due "attention to many issues the people are concerned with, particularly those involving restrictions on the federal government's own power." For this reason, they provided the remedy in Article V. "If the only way to get that convention is to take this minimal risk, then it is a reasonable one."

Without denying its possible perils, the promise of an Article V convention of states suggests to this writer that we "take this minimal risk," trusting that history will show it was a "reasonable one." It is high time that states once again recognize the liberty-promoting powers that are theirs under the Constitution, and then "act like it." ★

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APPENDIX A

Texas Governor Greg Abbott

"Restoring the Rule of Law, With States Leading the Way"

EXECUTIVE SUMMARY

The Constitution is increasingly eroded with each passing year. That is a tragedy given the volume of blood spilled by patriots to win our country's freedom and repeatedly defend it over the last 240 years. Moreover, the declining relevance of our Nation's governing legal document is dangerous. Thomas Hobbes's observation more than 350 years ago remains applicable today: the only thing that separates a nation from anarchy is its collective willingness to know and obey the law.

But today, most Americans have no idea what our Constitution says. According to a recent poll, one-third of Americans cannot name the three branches of government; one-third cannot name any branch; and one-third thinks that the President has the "final say" about the government's powers. Obviously, the American people cannot hold their government accountable if they do not know what the source of that accountability says.

The Constitution is not just abstract and immaterial to average Americans; it also is increasingly ignored by government officials. Members of Congress used to routinely quote the Constitution while debating whether a particular policy proposal could be squared with Congress's enumerated powers. Such debates rarely happen today. In fact, when asked to identify the source of constitutional authority for Obamacare's individual mandate, the Speaker of the House revealed all too much when she replied with anger and incredulity: "Are you serious?" And, while the Supreme Court continues to identify new rights protected by the Constitution's centuries-old text, it is telling that the justices frequently depart from what the document actually says and rely instead on words or concepts that are found nowhere in the document. That is why one scholar observed that "in this day and age, discussing the doctrine of enumerated powers is like discussing the redemption of Imperial Chinese bonds."

Abandoning, ignoring, and eroding the strictures of the Constitution cheapens the entire institution of law. One of the cornerstones of this country was that ours would be a Nation of laws and not of men. The Constitution is the highest such law and the font of all other laws. As long as all Americans uphold the Constitution's authority, the document will continue to provide the ultimate defense of our liberties. But once the Constitution loses its hold on American life, we also lose confidence in the ability of law to protect us. Without the rule of law, the things we treasure can be taken away by an election, by whims of individual leaders, by impulsive social-media campaigns, or by collective apathy.

The Constitution provides a better way—if only we were willing to follow it. The Constitution imposes real limits on Congress and forces its members to do their jobs rather than pass the buck. The Constitution forces the President to work with Congress to accomplish his priorities rather than usurping its powers by circumventing the legislative process with executive orders and administrative fiats. And the Constitution forces the Supreme Court to confront the limits on its powers to transform the country. Although the Constitution provides no assurance that any branch of government will make policy choices you like, the Constitution offers legitimacy to those choices and legitimate pathways to override those choices. The people who make those choices would have to stand for election, they would have to work with others who stand for election, and crucially, they would have to play by rules that we all agree to beforehand rather than making them up as they go along.

Of course, the Constitution already does all of this. And thus it bears emphasis at the outset that the Constitution itself is not broken. What is broken is our Nation's willingness to obey the Constitution and to hold our leaders accountable to it. As explained in the following pages, all three branches of the federal government have wandered far from the roles that the Constitution sets out for them. For various reasons, "We the People" have allowed all three branches of government to get away with it. And with each power grab the next somehow seems less objectionable. When measured by how far we

have strayed from the Constitution we originally agreed to, the government's flagrant and repeated violations of the rule of law amount to a wholesale abdication of the Constitution's design.

That constitutional problem calls for a constitutional solution, just as it did at our nation's founding. Indeed, a constitutional crisis gave birth to the Constitution we have today. The Articles of Confederation, which we adopted after the Revolutionary War, proved insufficient to protect and defend our fledgling country. So the States assembled to devise what we now know as our Constitution. At that assembly, various States stepped up to offer their leadership visions for what the new Constitution should say. Virginia's delegates offered the "Virginia Plan," New Jersey's delegates offered the "New Jersey Plan," and Connecticut's delegates brokered a compromise called "Connecticut Plan." Without those States' plans, there would be no Constitution and probably no United States of America at all.

Now it is Texas' turn. The Texas Plan is not so much a vision to alter the Constitution as it is a call to restore the rule of our current one. The problem is that we have forgotten what our Constitution means, and with that amnesia, we also have forgotten what it means to be governed by laws instead of men. The solution is to restore the rule of law by ensuring that our government abides by the Constitution's limits. Our courts are supposed to play that role, but today, we have judges who actively subvert the Constitution's original design rather than uphold it. Yet even though we can no longer rely on our Nation's leaders to enforce the Constitution that "We the People" agreed to, the Constitution provides another way forward. Acting through the States, the people can amend their Constitution to force their leaders in all three branches of government to recognize renewed limits on federal power. Without the consent of any politicians in Washington, D.C., "We the People" can rein in the federal government and restore the balance of power between the States and the United States. The Texas Plan accomplishes this by offering nine constitutional amendments:

I. Prohibit Congress from regulating activity that occurs wholly within one State.

II. Require Congress to balance its budget.

III. Prohibit administrative agencies—and the unelected bureaucrats that staff them—from creating federal law.

IV. Prohibit administrative agencies—and the unelected bureaucrats that staff them—from preempting state law.

V. Allow a two-thirds majority of the states to override a U.S. Supreme Court decision.

VI. Require a seven-justice super-majority vote for U.S. Supreme Court decisions that invalidate a democratically enacted law.

VII. Restore the balance of power between the federal and state governments by limiting the former to the powers expressly delegated to it in the Constitution.

VIII. Give state officials the power to sue in federal court when federal officials overstep their bounds.

IX. Allow a two-thirds majority of the States to override a federal law or regulation.

APPENDIX B

The Jefferson Statement

The Constitution's Framers foresaw a day when the federal government would exceed and abuse its enumerated powers, thus placing our liberty at risk. George Mason was instrumental in fashioning a mechanism by which "we the people" could defend our freedom—the ultimate check on federal power contained in Article V of the Constitution.

Article V provides the states with the opportunity to propose constitutional amendments through a process called a Convention of States. This process is controlled by the states from beginning to end on all substantive matters.

A Convention of States is convened when 34 state legislatures pass resolutions (applications) on an agreed topic or set of topics. The Convention is limited to considering amendments on these specified topics.

While some have expressed fears that a Convention of States might be misused or improperly controlled by Congress, it is our considered judgment that the checks and balances in the Constitution are more than sufficient to ensure the integrity of the process.

The Convention of States mechanism is safe, and it is the only constitutionally effective means available to do what is so essential for our nation—restoring robust federalism with genuine checks on the power of the federal government.

We share the Founders' conviction that proper decision-making structures are essential to preserve liberty. We believe that the problems facing our nation require several structural limitations on the exercise of federal power. While fiscal restraints are essential, we believe the most effective course is to pursue reasonable limitations, fully in line with the vision of our Founders, on the federal government.

Accordingly, I endorse the Convention of States Project, which calls for an Article V Convention for "the sole purpose of proposing 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."

Signatories:

Each of the following individuals has signed onto The Jefferson Statement, endorsing the Convention of States Project, and serves as a legal advisor to the Project:

Randy E. Barnett is the Carmack Waterhouse Professor of Legal Theory at the Georgetown University Law Center.

Charles J. Cooper is a founding member and chairman of Cooper & Kirk, PLLC.

Dr. John C. Eastman is the Henry Salvatori Professor of Law & Community Service at Chapman University Fowler School of Law, and also served as the School's dean from June 2007 to January 2010.

Michael Farris, head of the Convention of States Project, is the chancellor of Patrick Henry College and chairman of the Home School Legal Defense Association.

Robert P. George holds Princeton's celebrated McCormick Chair in Jurisprudence and is the founding director of the James Madison Program in American Ideals and Institutions.

C. Boyden Gray is the founding partner of Boyden Gray & Associates, in Washington, D.C. Prior to founding his law firm, Ambassador Gray served our nation in various capacities both domestic and abroad.

Mark Levin is one of America's preeminent conservative commentators and constitutional lawyers. Mark is the author of several New York Times bestselling books including *Men in Black* (2007), *Liberty and Tyranny* (2010), *Ameritopia* (2012) and *The Liberty Amendments* (2013).

Nelson Lund is University Professor at George Mason University School of Law. He holds a doctorate in political science from Harvard and a law degree from the University of Chicago. After clerking for Justice Sandra Day O'Connor, he served in the White House as associate counsel to President George H.W. Bush.

Mat Staver is the founder and chairman of Liberty Counsel and also serves as vice president of Liberty University, professor of law at Liberty University School of Law, and chairman of Liberty Counsel Action.

Andrew McCarthy is a bestselling author, a senior fellow at National Review Institute, and a contributing editor at National Review.

Mark Meckler is president of Citizens for Self-Governance, the parent organization of the Convention of States Project.

APPENDIX C

Facts about the U.S. National Debt

The US National Debt matters because higher debt results in: higher taxes, reduced 'benefits' and programs, higher interest rates, and a weak dollar. All of which will make the United States a much weaker and less free nation. It is stealing from the future by spending their money today and reducing growth now which hurts everyone in coming years.

1. On January 1, 1791, the US National Debt was $75 million. It increases by that amount every hour today (2010).

2. $1 trillion = $1,000 billion or $1,000,000,000,000 (that's 12 zeros).

3. In 2010 the United States issued nearly as much debt than the rest of the world governments combined.

4. The budget deficit for 2011 alone will end up being well over 10 percent of GDP. A very dangerous level.

5. For 2010, debt as a percentage of GDP was 94.3% in the United States. For Greece, who is having massive problems, the figure was 115.1% (see here). Increasing at 10% per year (see above) means we will hit the Greece level in 2012 or 2013. [2011:Some estimates put it at 150% of GDP now, which the US could reach at 10% growth per year just a few years from now.]

6. The World does not have enough money to lend the United States so for the nine months ending June 2011, the Federal Reserve purchased nearly all the debt issued by the United States Government. It did this by printing money out of thin air, "quantitative easing" in Washington double-speak.

7. The U.S. government currently has to borrow approximately 41 cents of every single dollar that it spends.

8. During President Obama's first two years in office, the U.S. government added more to the U.S. national debt than the first 100 U.S. Congresses combined.

9. Just before the start of President Bush's term, at end of calendar year 2000, the debt stood at $5.629 trillion. Eight years later, the federal debt stood at $9.986 trillion.

10. For President Obama, the debt started at $9.986 trillion in January 2009 and increased to $13.7 trillion, a 38 percent increase over two years, by January 2011. By May 2011 it stood at $14.3 Trillion—$600 Billion in 4 months.

11. Spending one dollar per second, it would take twelve days to spend $1 million. It would take more than 31000 years (31709.792 years) to spend one trillion. The deficit presently stands around $1.5 Trillion per year. If you were alive when Christ was born and you spent $1 million every single day since that point, you still would not have spent $1 trillion dollars by now - you would have spent about $734 Billion.

APPENDIX D

A Brief Reflection on Article V of the U.S. Constitution

E. Scott Pruitt, *Attorney General of Oklahoma*

Our legislature is considering differing versions of joint resolutions invoking the power conferred on the States through Article V of the U.S. Constitution. I write today not to opine on the merit of a particular version, but rather to reflect on the legitimacy of what those resolutions propose: a convention of the States.

Article V of the U.S. Constitution provides, in relevant part:

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.

U. S. CONST. art. V. By its plain terms, Article V empowers both Congress and the States to propose amendments to the U.S. Constitution. While Congress has done so many times in the past, the States have not, even though Article V gives the States the same power.

When two-thirds of the States call for a proposing convention on the same subject or subjects, Congress *must* set a time and place for the convention. Congress then determines whether ratification will be by state legislatures or state conventions. If, through a convention, an amendment is ultimately proposed and then ratified by three-fourths of the States through a subsequent process, then such amendment is as validly a part of the U.S. Constitution as anything proposed by Congress.

While States have not exercised their power to amend the Constitution through a convention, there is, in fact, a great deal of precedent for how such a convention would work. Before Independence, American colonies met in conventions twenty times, and from Independence through 1787, the States met in convention eleven times. These historical conventions employed the same fundamental structure, protocol, and practices. For example, States and colonies before them—commissioned representatives referred to as "delegates" or "commissioners" to act on the States' behalf through instructions specifying the extent of the representatives' authority. Employing historical structure, protocol, and practices would ensure that a convention does not operate against a blank slate, but is organizationally sound.

Nevertheless, it is my understanding that there is some fear of a "run-away" convention. Principally, convention critics fear that sweeping changes will be proposed, potentially destroying the nature of our Constitution. Indeed, while addressing what he dubbed the "minimal risks" associated with an Article V convention, Justice Antonin Scalia once stated that the founders foresaw the convention as a remedy against a recalcitrant Congress and that the only way to get that convention is to take this minimal risk, then it is a reasonable one. While concerns are thus understandable, safeguards exist to protect our Constitution against abuses.

First, Article V makes plain that conventions called under that provision may only propose amendments. A plenipotentiary convention—a constitutional convention called for a broad and unrestrained purpose—is not authorized under the U.S. Constitution. Second, because they act as agents, representatives must remain within the limits of the authority placed on them by their respective States, and if they do not, their ultra vires acts are not legally binding. Moreover, States can recall their representatives, with enforcement mechanisms for the respective States available via state court proceedings. Finally, and perhaps most importantly, ratification requires that thirty-eight States (three-fourths) approve the amendment. That any proposal coming from a convention of the States must meet that ratification requirement should allay any concerns that unruly and misguided acts of a run-away convention would find their way into and transform the U.S. Constitution.

In conclusion, I hope that as these resolutions are debated, we are sensitive to the opportunity a convention provides. As a run-away Washington D.C. has eroded constitutional limits, we have placed our hope in pushing back against this erosion through federal elections and Supreme Court nominations—all efforts premised on reining in Washington D.C. from the inside. Article V exists so that States may restore constitutional limits through their own independent efforts. And that the States explore this opportunity is consonant with the philosophy of the Founders. Tench Coxe, a prominent Federalist essayist, wrote: "Congress . . . cannot hold any power, which three fourths of the states shall not approve, on experience." The Article V convention power is a legitimate and integral constitutional power.

E. Scott Pruitt
Oklahoma Attorney General

APPENDIX E

Excerpts from the American Enterprise Institute's Panel Discussion on Article V with Panelist Antonin Scalia

May 23, 1979

p. 5

MR. DALY: All right. Professor Scalia, Richard Rovere in the New Yorker, suggested that the convention method of amendment might reinstate segregation and even slavery, throw out much or all of the Bill of Rights, eliminate the Fourteenth Amendment's due process clause, reverse any Supreme Court decision the members didn't like, and perhaps for good measure, eliminate the Supreme Court, itself. [Laughter.] Now, what would you anticipate from an unlimited convention?

ANTONIN SCALIA, professor of law, University of Chicago: I suppose it might even pass a bill of attainder to hang Richard Rovere. [Laughter.] All those things are possible, I suppose, just as it is possible that the Congress tomorrow might pass a law abolishing social security as of the next day, or eliminating Christmas. Such things are possible, remotely possible. I have no fear that such extreme proposals would come out of a constitutional convention. Surely, whether that risk is sufficient to cause anyone to be opposed to a constitutional convention depends on how high we think the risk is and how necessary we think the convention is. If we thought the Congress were not necessary for any other purpose, the risk that it might abolish social security would probably be enough to tell its members to go home. So, it really comes down to whether we think a constitutional convention is necessary. I think it is necessary for some purposes, and I am willing to accept what seems to me a minimal risk of intemperate action. The founders inserted this alternative method of obtaining constitutional amendments because they knew the Congress would be unwilling to give attention to many issues the people are concerned with, particularly those involving restrictions on the federal government's own power. The founders foresaw that and they provided the convention as a remedy. If the only way to get that convention is to take this minimal risk, then it is a reasonable one.

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pp. 21-22

PROFESSOR SCALIA: I have not proposed an open convention. Nobody in his right mind would propose it in preference to a convention limited to those provisions he wants changed. Regardless of the issue-say, a constitutional amendment on abortion-its supporters would want a convention that considers that issue and nothing else; or one that considers only the particular features of the Constitution that they do not like, but precludes consideration of those features they do like. I think there is nobody, except maybe one or two anarchists, who would sincerely want an open convention for its own sake, to expose the whole system to possible change. There comes a point, however, at which one has to be willing to run the risk of an open convention to get the changes that are wanted. Essentially what I have said is that there is some risk of an open convention, even with respect to the limited proposal of financial responsibility at the federal level. I think that risk is worth taking. It is not much of a risk. Three-quarters of the states would have to ratify whatever came out of the convention; therefore, I don't worry about it too much. I would also be willing to run that risk for issues primarily involving the structure of the federal government and a few other so-called single issues. I would favor a convention on abortion, which some consider a single issue. I suppose slavery could have been called a single issue, too. It all depends on how deeply one feels about the issue. In any case, I do not have any great fear of an open convention, since three-quarters of the states do have to ratify what comes out of it. The clucking that Richard Rovere and others do about it is simply an intentional attempt to create panic and to make the whole idea sound unthinkable. It is not unthinkable at all; it is entirely thinkable.

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p. 36

PROFESSOR SCALIA: I listed first among the things that I would like to have considered the structural issues at the federal level. I do not have a lack of trust in the American people. I am the one here who is least terrified of a convention. We have come a long way. We have gotten over many problems. But the fact remains that a widespread and deep feeling of powerlessness in the country is apparent with respect to many issues, not just the budget issue. The people do not feel that their wishes are observed. They are heard but they are not heeded, particularly at the federal level. The Congress has come up with a lot of palliatives—the legislative veto, for example-which do not solve the problem at all. Part of the problem as I have noted is simply that the Congress has become professionalized; its members have a greater interest than ever before in remaining in office; and it is served by a bureaucracy and is much more subject to the power of individualized pressure groups than to the unorganized feelings of the majority of the citizens. This and other factors have created a real feeling of disenfranchisement that I think has a proper basis. The one remedy specifically provided for in the Constitution is the amendment process that bypasses the Congress. I would like to see that amendment process used just once. I do not much care what it is used for the first time, but using it once will exert an enormous influence on both the Congress and the Supreme Court. It will establish the parameters of what can be done and how, and after that the Congress and the Court will behave much better…

PROFESSOR SCALIA: May I rehabilitate myself? Maybe reach down a hand to pull Paul back up on the bandwagon? When I say I do not much care what it is about, I mean that among various respectable issues for a constitutional convention, I am relatively neutral as to which goes first. The process should be used for some significant issue that concerns the American people, but which issue is chosen is relatively unimportant. I would not want a convention for some silly purpose, of course. But I think there are many serious purposes around, many matters that profoundly concern the American people and about which they do not now have a voice. I really want to see the process used responsibly on a serious issue so that the shibboleth—the Richard Rovere alarm about the end of the world—can be put to rest and we can learn how to use the process responsibly in the future.

About the Author

Thomas K. Lindsay, Ph.D., is director of the Foundation's Center for Higher Education. He has more than two decades' experience in education management and instruction, including service as a dean, provost, and college president.

In 2006, Lindsay joined the National Endowment for the Humanities (NEH) staff as director of the agency's signature initiative, We the People, which supports teaching and scholarship in American history and culture. He was named Deputy Chairman and Chief Operating Officer of the NEH in 2007.

Lindsay received his B.A., *summa cum laude*, in Political Science, and went on to earn his M.A. and Ph.D. in Political Science from the University of Chicago. Oxford University Press published Lindsay's American Government college textbook, *Investigating American Democracy* (with Gary Glenn). He has published numerous articles on the subject of democratic education, many of which have appeared in the world's most prestigious academic journals, including *American Political Science Review*, *Journal of Politics*, and *American Journal of Political Science*.

Lindsay has published articles on higher-education reform in *Real Clear Policy, Los Angeles Times, National Review, Inside Higher Ed, Washington Examiner, Knight-Ridder Syndicate, Dallas Morning News, Houston Chronicle, American Spectator*, and *Austin American-Statesman*, among others. He has just accepted an offer to become a contributor to *Forbes*.

In recognition of his scholarship on democratic education, Lindsay was made the 1992-93 Bradley Resident Scholar at the Heritage Foundation in Washington, D.C.

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