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A STATUS REPORT ON THE "BALANCED BUDGET" CONSTITUTIONAL CONVENTION

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For roughly a dozen years, various groups have engaged in a concerted effort to amend the United States Constitution to require a balanced federal budget and/or to directly restrain federal spending.[2] One method proponents of such an amendment have used in an attempt to achieve this goal is the passage of resolutions in State legislatures applying to Congress to convene a federal constitutional convention.[3] The Constitution provides that amendments may be proposed, either by Congress or by a convention,[4] but the convention method has never been employed and the manner in which that method should operate is far from clear.[5] Despite this lack of certainty, this article collects the materials necessary to determine the present status of the effort to call a convention and offers an assessment of that status.[6]

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I would like to acknowledge the tireless labors of Serpil Emre, one of my firm's librarians, who gathered most of the state legislative resolutions and scholarly materials discussed herein as a foundation for certain reports to the Chicago Bar Association Constitutional Law Committee which were the forerunners of this article.

2. For a discussion of some of the objections to the proposed substance of such an amendment, see *e.g.*, Note, *The Balanced Budget Amendment: An Inquiry Into Appropriateness*, 96 HARV. L. REV. 1600 (1983). This article will not address such issues, but will discuss only issues relating to the amending process itself.

3. *See* Note, *"The Monster Approaching the Capital": The Effort to Write Economic Policy Into the United States Constitution*, 15 AKRON L. REV. 773, 733-36, 744-45, 748-51 (1982).

4. U.S. CONST., art. V.

5. A substantial literature discusses a variety of questions arising in connection with the convention method of amendment. The principal questions which have been raised are listed in Appendix A to this article. Appendix B provides a selected bibliography of the more significant contributions to this literature, noting which of the questions listed in Appendix A is addressed in each work; works which have been superseded by or subsumed in later works are omitted. Only a few of the questions listed in Appendix A are discussed in this article.

6. Arguably, the state applications for a convention were intended only as pure symbolic gestures of support for a balanced budget or to exert pressure on Congress to act (either by balancing the budget or by proposing its own balanced budget amendment), rather than to actually obtain a convention. *See, e.g.*, Note, *supra*, note 3, at 733 & 733 n.7. If so, the very prospect of "success" may deter further applications which might actually trigger the calling of a convention. Additionally, the greatly intensified attention which budget balancing has recently received from Congress, *see, e.g.*, Blakely, *Revenue Sharing Ups and Downs*, 44 C.Q. WEEKLY REPORT,

The Constitution's provision for amendments is brief, specifying that:

> 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. . . .[7]

Thus, it is clear that a constitutional convention is neither authorized nor required unless Congress has received "Application[s] of the Legislatures of two thirds of the several states," which currently requires applications from 34 of the 50 states. A total of 32 state legislatures have adopted resolutions arguably constituting applications for some form of "balanced budget" constitutional convention.[8] A sense of the temporal ebb and flow of this effort may be gained from grouping these applications according to the most recent year in which they were adopted by each State's legislature:

1975	Delaware	Mississippi
	Maryland	North Dakota
1976	Alabama	New Mexico
	Florida	Oklahoma
	Georgia	Pennsylvania
	Nebraska	Virginia
1977	Oregon	Wyoming
	Tennessee	
1978	Colorado	South Carolina
	Kansas	Texas
1979	Arizona	Nevada
	Arkansas	New Hampshire
	Idaho	North Carolina

2264 (1986) (recounting the history of general revenue sharing program, including its progressive curtailment beginning in 1981 and its ultimate demise in 1986), may have cooled the ardor of state legislators to achieve that goal. For any or all of these reasons, there may never be another application for a "balanced budget" convention, in which case the questions discussed in this article will be of only academic interest. To date, this has been true of all questions pertaining to the convention process of amendment, but those questions remain significant even if they will only affect some convention effort yet to be started. Moreover, it is far from certain that there will not be additional applications for a "balanced budget" convention.

7. U.S. CONST. art. V. The remainder of the Article V places substantive limits on the amendments which may be adopted.

8. The texts of all 32 resolutions are set forth in Appendix C, with citations to pages of the Congressional Record where their respective texts may be found. (These resolutions will henceforth be cited simply by referring to Appendix C and naming the state whose legislature adopted the resolution). Resolutions requesting Congress to propose some form of "balance budget" amendment but not requesting the convening of a convention are omitted.

	Indiana	South Dakota
	Iowa	Utah
	Louisiana	
1980	Alaska	
1983	Missouri	

No question has been raised regarding the propriety of the procedures by which any of these resolutions was adopted. Moreover, I have been unable to find any indication that any of them has been rescinded or otherwise repudiated by the applying legislature. It is therefore unnecessary for purposes of this article to consider questions regarding adoption procedure or the validity of rescissions. Thus, the only questions which need be addressed are those presented on the face of the resolutions:

(1) How should the resolutions be construed? In particular:
   (a) Are they applications for an Article V convention?
   (b) What is the effect of the various conditions, express or implied, which they contain?
   (c) What types of convention do they request and to what extent are the requests compatible with one another?
(2) Does Article V authorize the type(s) of convention requested?
   (a) Is a convention limited to consideration of particular substantive issues authorized?
   (b) If so, may such a convention be limited in the particular ways demanded by these resolutions?
(3) Has the lapse of time since their original adoption by the various state legislatures rendered any or all of the resolutions ineffective?

CONSTRUCTION OF THE RESOLUTIONS

Are the Resolutions Article V Applications

Congress must act "on the Application" of the requisite number of state legislatures for the calling of a convention. While the resolutions at issue here were often delayed in their transmission to Congress, all have now been brought to its attention. Even if some are not yet properly authenticated by the appropriate officials of the states whose legislatures adopted those resolutions, it would seem that Congress must at least investigate their authenticity if joined by enough similar resolutions at a time when the existing resolutions are still effective. All request, subject to certain conditions, that a convention be called to consider proposing a constitutional amendment.[9] Thus, on their face, all would appear to constitute "applica-

9. *See* Appendix C.

tions" *if* the sort of convention requested is one authorized by Article V.[10]

It has been suggested, however, that the North Dakota resolution may not be relied upon to trigger the Congressional duty to call a convention because it does not explicitly call upon Congress to do so.[11] The North Dakota resolution states that the two houses of that state's legislature "respectfully propose an amendment to the Constitution of the United States and call upon the people of the several states for a convention for such purpose as provided by Article V of the Constitution, the proposed amendment providing as follows," with the text of the proposed amendment then set forth.[12]

While this resolution is directed to "the people of the several states," the action requested, the calling of a convention, is one which can be taken only by Congress. This suggests that the resolution should be read as being addressed, albeit indirectly, to Congress.[13] Moreover, Congress can do so only "on the Application" of the legislatures of the requisite number of states. It would be self-defeating for a legislature to promote the effort to call a convention but to refrain from making the necessary application. The resolution directs that copies be disseminated to the legislatures of all other states, presumably to encourage them to apply for calling of the sort of convention requested,[14] again supporting the reading that the North Dakota legislature was actually attempting to initiate the process necessary to convene a convention. Finally, the resolution's express invocation of Article V suggests that it was intended to have legal effect as an Article V "application," rather than as a mere statement that a convention would be desirable. Thus, despite the poorly worded text, it seems reasonably clear that the resolution should be read as an "application" if otherwise valid.

Thus, all 32 of the pertinent resolutions appear to be "applications," so far as that question is dependent on the intent of the leg-

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10. This article restricts use of the term "application" to those resolutions which call upon Congress to call a convention authorized by Article V. Until the question of what type(s) of the convention can be demanded under Article V has been resolved, the more general term "resolution" will be used.

11. Committee on Federal Legislation, *An Analysis of State Resolutions Calling for a Constitutional Convention To Propose a Balanced Budget Amendment*, 40 REC. A.B. CITY N.Y. 710, 718-19 (1985) [hereinafter cited as Committee on Federal Legislation].

12. Appendix C, North Dakota. For a discussion of what type of convention this resolution should be read to seek, see *infra* text accompanying notes 41-44.

13. The resolution does not appear to have been transmitted to Congress until 1979, but Congress has no need to be aware of an Article V convention application until there are a sufficient number of similar applications. Earlier transmission to Congress is necessary only if the resolution is intended as a device to pressure Congress itself to propose the desired amendment.

14. N.D.S. Con. Res. 4018 (1975), *reprinted*, at 125 CONG. REC. 2113 (1979).

islatures passing them.[15]

The Effect of Conditions in the Resolution

Of the 32 applications made for a "balanced budget" convention, 16 are expressly conditioned in one way or another. The most common condition is a provision that the application shall have no further effect if Congress proposes an a amendment of the sort desired.[16] A number of applications state expressly that they are to have no effect if the convention called on the basis of that application is not limited in the manner specified;[17] this type of condition is probably implicit in almost all of the applications.[18] Finally, three applications provide that they shall have no effect unless and until certain events occur or fail to occur.[19]

Clearly, Congress has yet to propose a constitutional amendment even arguably fulfilling the terms of any of the conditional resolutions. Thus none of the resolutions have thereby been rendered ineffective. Moreover, the "grace periods" allowed by two of the resolutions,[20] enabling Congress to prevent their becoming effective by itself proposing a suitable amendment, have expired, so both of those resolutions have become operative by their own terms. Thus, unless the very presence of the conditions impairs the validity of such resolutions, none of those conditions affect the current effectiveness of these resolutions. There are, however, two arguments

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15. Whether the type(s) of conventions requested are ones for which Article V authorizes the legislatures to apply is discussed at *infra* notes 68-171 and accompanying text.

16. *See* Appendix C: Alaska, Arizona, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Hampshire, North Carolina, Oregon, South Dakota, Tennessee. Two states limited the time within which Congressional proposal of the requested amendment would render the resolution ineffective: Georgia (only until January 1, 1977) and Mississippi (only until January 1, 1976). Since the time allotted has, in both cases, expired, this condition in the Georgia and Mississippi resolutions has ceased to have any operative effect.

17. *See* Appendix C: Alaska, Colorado, Idaho, Iowa, Louisiana, Missouri, Nevada (*see* note 11), New Hampshire, North Carolina.

18. Virtually all of the resolutions which lack any express condition requiring that the convention be limited are emphatic in requesting only a limited convention. *See* Appendix C: *e.g.*, Alabama ("for the specific and exclusive purpose of proposing an amendment" of a specified content), Florida ("for the sole purpose of proposing" a specified type of amendment), North Carolina ("for the exclusive purpose" of proposing an amendment of specified content). However, one of these (Delaware) may not be even implicitly conditioned on the convention being effectively limited in the manner requested. *See* note 38 *infra*. Moreover, the North Dakota resolution may even call for convention, with no pre-established subject-matter limits. *See infra* text accompanying notes 41-44, *infra*.

19. *See* Appendix C: Iowa (ineffective unless Congress fails to propose amendment by July 1, 1980), Missouri (ineffective unless Congress fails to propose an amendment by January 1, 1984), Nevada (ineffective unless Congress establishes restrictions in the scope of the convention).

20. *See supra* note 19.

which might suggest that the presence of the conditions *does* impair the validity of the resolutions.

A bar association committee has suggested that a condition allowing Congress to render a convention application ineffective by itself proposing an amendment brings the validity of the entire resolution into question.[21] It argues that the duty of Congress to call a convention when properly petitioned is clearly mandatory, and the conditional requests give Congress an option to instead propose an amendment. Thus, it suggests

> Conditional requests, by their very terms, create no obligation under Article V and do not trigger an Article V convention. Indeed, they suggest that states issuing these resolutions favor the congressional method of proposing amendments and are invoking the convention as a threat, or "burr under the saddle" of Congress. Nineteen of the most recent state petitions suffer from this defect and, for this reason, are of questionable validity.[22]

However, only two of the resolutions require Congressional failure to propose an amendment *before* they could take effect, and they both became unconditional when it failed to do so by a particular time.[23] The analysis discussed above concedes the validity of resolutions which became unconditional by a determinable date.[24] It questions the validity only of those which seem to leave Congress an indefinite period in which to decide whether to propose an amendment or to call a convention.

But the 14 resolutions which allow Congress to avoid calling a convention do not allow such an indefinite period for deciding whether to call a convention. All are presently operative (unless rendered ineffective by passage of time or substantive constitutional defects).[25] If otherwise valid and combined with a sufficient number of similar resolutions, they would immediately activate the Congressional duty to call a convention. However, calling such a convention is not the work of a moment. Congress first would be obliged to determine the validity and sufficiency of the purported applications and determine the content of the convention call (composition of the convention; manner and time of delegate selection; time and place of convening; provisions for delegate compensation, office

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21. Committee on Federal Legislation, *supra* note 11, at 723-24.

22. *Id.* at 724 (footnotes omitted). In addition to the 14 resolutions cited in *supra* note 16, the quoted passage refers to one earlier resolution each from Alabama, Arizona, Texas and Virginia. *Id.* at 732 n. 76, Appendix a. It also classifies the most recent Alabama resolution as conditional, *id.*, but the language of that resolution fails to support the classification.

23. *See supra* note 19.

24. Committee on Federal Legislation, *supra* note 11, at 724.

25. *See infra* text accompanying notes 68-188 for a discussion of substantive defects and the effect of the passage of time.

space, and staff support; regulations of scope and procedure, to the extent those are proper subjects for Congressional action; etc.). Clearly, Congress is allowed a reasonable time in which to perform these functions. While this activity is progressing, the conditional resolutions give Congress the option to avoid the obligation to call a convention by itself proposing the desired type of amendment. However, they do not relieve Congress of the obligation to proceed diligently toward calling the convention during the time it is also considering the proposal of the amendment. Thus, as a matter of the resolutions' construction, the alleged defect is not present.

Moreover, even if that supposed defect were present (e.g. in the form of a resolution conditioning its initial effectiveness on Congressional failure to propose an amendment without limiting the time in which Congress might decide whether to do so), there is no apparent reason why that should render the resolution invalid. As we will see,[26] the reason for creating a mandatory duty to call a convention was to provide a way around a recalcitrant Congress whose institutional self-interests rendered it unresponsive to popular demands for amendments limiting its own authority and power or that of the federal government generally. If the bodies entrusted with determining when Congress has failed to respond to popular demand for an amendment chose to leave it greater freedom than they are required to do, that hardly offends the constitutional scheme.

Presumably, a resolution of the type described would oblige Congress to decide within a reasonable time after that resolution was joined by a sufficient number of compatible resolutions whether it would propose the requested amendment. If Congress decided not to do so, it would then consider whether there were sufficient valid applications (which had not been validly rescinded or rendered ineffective by passage of time) to oblige it to begin the process of calling a convention. Such a procedure would be cumbersome, extremely time-consuming, and open to substantial Congressional manipulation. Yet, if one or more of the state legislatures necessary to oblige Congress to call a convention were to chose that mechanism, that decision should be respected.

The argument just rejected attacked conditional resolutions on the ground that they left Congress undue discretion in deciding whether to call a convention. They might also be attacked from the opposite direction, as an improper effort to coerce Congress in the exercise of its discretion whether or not to propose an amendment on a given subject or of a particular content. On analysis, this argument fares no better than the argument previously discussed.

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26. *See infra* text accompanying notes 115-29.

The United States Constitution was ordained and established by "the People of the United States."[27] Initially, "the People of the United States" acted through special ratifying conventions, a device selected to provide maximum legitimacy and authority to the government so established.[28] The Article V amending process enables the People of the United States to alter the Constitution by the combined action of various of their representatives: Congress, a federal convention, state legislatures, and/or state ratifying conventions. All participants in this process act purely as representatives of the People of the United States (or some segment thereof), and not as officials of a particular state.[29]

Thus, Congress, in its representative capacity, is free to decide what amendments, if any, it will propose to the Constitution. But forcing it to choose between calling a convention and proposing a particular type of amendment does not improperly constrain the Congressional freedom. Since Congress is empowered to prescribe the composition of the convention and the manner of selecting delegates, it may and should assure that the convention will be no less representative of the People of the United States than is Congress itself. Thus, the only "sanction" imposed for Congressional refusal to propose an amendment is the convening of an equally representative convention through which the People of the United States might propose amendments if they wish to do so. Since the very purpose of the convention method of amendment is to allow the People of the United States to bypass an unresponsive Congress which refuses to propose amendments they desire,[30] this degree of constraint on Congressional freedom in the amending process is entirely proper.[31]

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27. U.S. CONST. Preamble.

28. Thus, James Madison urged the 1787 Convention to provide for ratification of its product by state conventions because "he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves." I THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 123 (Farrend ed. 1937) [hereinafter cited as 1 Farrand].

29. *See* Hawke v. Smith, No. 1, 253 U.S. 221, 227 (1920) (ratification of amendment by state legislation is a federal function deriving its authority solely from Article V and not from a state constitution); Leser v. Garnett, 258 U.S. 130, 137 (1922) (same; power to ratify may not be limited by state constitution); Dyer v. Blair, 390 F. Supp. 1219 (N.D. Ill. 1975) (per Stevens, J.).

30. *See infra* text accompanying notes 115-29.

31. This analysis assumes, of course, that the convention itself will be free to fulfill its constitutional function. If the convention's freedom of action were to be curtailed in ways inconsistent with Article V, then forcing Congress to call such a convention unless it proposed a particular amendment would tend to improperly coerce Congressional action. However, the invalidity of an application for such a convention would be established by the very fact that the type of convention demanded was not one authorized by Article V, and it would not matter whether the application was conditional or not. Thus, this point adds nothing to the analysis of conditionality, as such.

The Nevada resolution is, for example, conditioned on Congressional action. Its effectiveness is dependent upon "the Congress of the United States establishing appropriate restrictions limiting the subject matter of a convention called pursuant to this resolution to the subject matter of this resolution." Unless and until Congress does so, the resolution "has no effect and must be considered a nullity." Without reaching the question of whether Congress has the power to enforce such limitations on a convention,[32] it is clear that Congress has not yet enacted legislation purporting to do so. Thus, the Nevada resolution is currently inoperative by its own terms.

Moreover, unlike the hypothetical resolution discussed above, which would be triggered by Congressional inaction (refusal to propose a constitutional amendment of a given type),[33] the Nevada resolution requires affirmative Congressional action before it takes effect. Because Congress cannot be obliged to take such action, the result is to grant Congress itself the power to decide whether a convention call shall be triggered, provided, of course, that the resolution is otherwise valid as an application[34] and that it has not been rendered ineffective by passage of time[35] before (a) it is joined by the requisite number of other applications and (b) Congress passes the necessary legislation. While entrusting such discretion to Congress is somewhat anomalous, the same analysis applied to the hypothetical resolution conditioned on Congressional *failure* to act suggests that it is permissible under Article V to condition an application upon affirmative Congressional action.

Rather than seeking Congressional action to limit a convention which is based upon them, eight of the resolutions condition their effectiveness on the fact that the convention will, as a matter of constitutional law, be limited in scope to the purposes specified by those resolutions.[36] At a minimum, these resolutions require Congress to decide whether it believes that the convention will be so limited and to disregard them if it concludes that the convention definitely *will not* be so limited or, in the alternative, to give them effect if it definitely *will* be so limited. It is less clear how these resolutions should be treated if Congress concludes that it is uncertain whether the convention will be so limited. Yet, the very inclusion of these conditions suggests a considerable aversion to the *risk* that the convention will not be limited in the manner described.

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32. *See infra* text accompanying notes 83-86; *see also* Gunther, *The Convention Method of Amending the United States Constitution*, 14 GA. L. REV. 1, 21-24 (1979).

33. *See supra* text accompanying notes 26.

34. *See infra* text accompanying notes 67-71.

35. *See infra* text accompanying notes 172-88.

36. *See* Appendix C: Alaska, Colorado, Idaho, Iowa, Louisiana, Missouri, New Hampshire, North Carolina.

Therefore, it would seem that the resolutions should be read to require at least a high degree of confidence (and perhaps even virtual certainty) by Congress that the convention will be so limited.

A similar problem arises with most of the resolutions not expressly conditioned on the limited scope of the convention. With the possible exception of the North Dakota resolution,[37] all demand a limited convention, suggesting an aversion to any convention not so limited. With one exception, these limited convention requests show no awareness of the uncertainty regarding the validity of any effort to limit the scope of the convention.[38]

Accordingly, they appear to simply assume that such a limitation is clearly valid. This construction of the resolutions is reinforced by the fact that none of the 14 pre-1978 resolutions, except that from Delaware, note the uncertainty of this point; while subsequent years have shown a rising awareness of the problem, coupled with a distinct aversion to the risk of an "unlimited" convention: One of four resolutions in 1978 is conditioned on favorable resolution of this issue, as are six of 11 resolutions in 1979 and both resolutions since 1979. Absent evidence that a given legislature (like that of Delaware)[39] recognized this uncertainty and elected to proceed nevertheless, Congress probably should treat these resolutions as impliedly conditioned and decline to call a convention unless Congress possesses a high degree of confidence that the convention will be limited in the manner requested.[40]

Because these conditions (express and implied) depend upon Congressional assessment of certain issues of constitutional law, fi-

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37. *See infra* note 44. *See also infra* text accompanying notes 41-44.

38. The Delaware resolution recognizes that the convention "method of proposing amendments to the Constitution has never been completed to the point of calling a convention and no interpretation of the power of the states in the exercise of this right has ever been made in any court or any qualified tribunal, if there be such." It then goes on to announce its own views on the subject (limitations specified in applications are effective even if the role of the convention is confined to proposing or rejecting a specific amendment set forth in the applications). While this analysis is premised on the erroneous view that convention applications are a "power of the states" exercised by their "sovereign government[s]," rather than an exercise of federal power by one of many representatives of the People of the United States (*see supra* note 29, and accompanying text), this appears to indicate a decision by the Delaware legislature to rely *solely* on its own constitutional judgments. Of course, for reasons discussed *infra* in notes 76-77, and accompanying text, the application is not binding on Congress if it concludes that the type of convention demanded is *not* within the contemplation of Article V.

39. *See supra* note 38.

40. Perhaps out of ignorance of the issue, these resolutions do not express the more extreme degree of aversion to an "unlimited" convention shown in the resolution expressly conditioned on the limited scope of the convention. Without that extra expression of risk aversion, the argument that Congress might be required to be virtually certain of the limitation (rather than only highly confident) does not seem to be applicable to these implied conditions.

nal assessment of the effect of the conditions must be deferred pending discussion of those issues. If Congress possesses the requisite degree of confidence that the convention would be limited in the manner(s) requested, then all of the resolutions except that of Nevada are effective, so far as their own terms control their effectiveness. The Nevada resolution is currently ineffective but might become effective, so far as its terms control its effectiveness, should Congress establish the requested restraints on the scope of the convention.

The Scope of the Requested Conventions

The resolutions vary considerably in the substantive scope of the issues they propose to place before the convention. These variations may be significant for two different reasons. First, a particular limitation on the scope of the requested convention may render the resolution invalid as an application because Article V does not permit that sort of limitation. Second, if conventions of limited scope are proper, then it is necessary to determine whether the various applications are in sufficient agreement to permit them all to be counted as requesting the same sort of convention. The various applications will be considered roughly in accordance with the apparent scope of the convention requested, with those of broadest scope considered first.

The North Dakota resolution states that the two houses of the adopting legislature "respectfully propose an amendment to the Constitution of the United States and call upon the people of the several states for a convention for such purpose as provided by Article V of the Constitution, the proposed amendment providing as follows," and then sets forth the text of the proposed amendment.[41] One could read this as requesting a convention to consider only the amendatory language specified, and some have done so.[42] However, the convention is described only as "a convention for such purpose as provided by Article V," that is "a convention for proposing amendments." Apart from the surrounding language, this would certainly seem to call for a convention free to propose whatever amendments it chose.[43] The particular amendment specified is described merely as a proposal of the North Dakota legislature, which could be read as merely a suggestion for the convention's consideration.

The latter construction is supported by failure to link the pro-

41. Appendix C: North Dakota.

42. Committee on Federal Legislation, *supra* note 11, at 720-21.

43. *See* Black, *Amendment by National Constitutional Conventions: A Letter to a Senator*, 32 OKLA L. REV. 626, 628-29 (1979) (discussing proper construction of an application which tracks the language of Article V).

posed amendment and the convention grammatically, although their treatment in a single sentence and the way the convention request is embedded in the proposal of the amendment suggests some sort of link. The lack of any reference to possible Congressional proposal of such an amendment suggests that the North Dakota legislature believed that a self-interested Congress would never propose such a restraint on its own actions. The resolutions is thus an attempt to place the proposal before the only other body which could act on it, a convention. The language used suggests that the North Dakota legislature either did not fear an "unlimited" convention or was willing to accept the risks of such a convention in order to obtain consideration of its proposal.[44] On the other hand, since the convention was apparently sought solely as a means of obtaining consideration of the substance of the proposed amendment, the resolution seems best construed as a request for *any* Article V convention whose scope would include authority to propose such an amendment.

Even if the North Dakota legislature was prepared to accept a convention of unlimited scope, no other legislature has gone so far in its efforts to obtain consideration of a balanced budget amendment. The next broadest formulation is a request for the calling of a convention for the purpose of "proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."[45]

Such a convention would have a broad mandate. It could provide either substantive or procedural exceptions or both. For example, it might create a capital budget for permanent improvements (road, harbors, parks, buildings) which could be financed over their useful lifetimes, with only the current expenditures' budget (including debt service) required to be balanced. Special majorities in Congress might be authorized to waive the requirements[46] or, conversely, the President might be given authority to impound appropriations to whatever extent necessary to assure compliance. Such a convention would thus be both authorized and required to deliberate on the broad problem created by federal deficits and, if it deemed them to require a constitutional remedy, to devise such a

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44. Certainly, if, as some contend see *infra* text accompanying notes 81-95, 123-28, 141-43, 169, Article V *only* permits conventions with unrestricted authority to propose whatever amendments they deem appropriate, then the North Dakota resolution would call for such a convention, as that would be the only "purpose provided by Article V."

45. *See* Appendix C: Florida, Georgia, Iowa, Louisiana, Missouri, New Hampshire, Oregon. *See also* Appendix C: Colorado ("for the . . . purpose of proposing an amendment. . . prohibiting deficit spending except under conditions specified in such an amendment").

46. Indeed, even ordinary majorities might be authorized to do so by special procedures designed to enhance political accountability for the decision to engage in deficit spending.

remedy with due regard to accommodation of any other needs and concerns which might weigh against the objective of deficit reduction.

North Carolina's application demands a convention "for the exclusive purpose of proposing an amendment. . . to require a balanced federal budget in the absence of a national emergency."[47] This narrows the discretion of the requested convention significantly. While it might have authority to specify what must be included in the "budget" (and so to provide for such things as a separate capital budget), it would not longer be able to consider solutions which would attack the problem through enhanced political accountability because they would not ordinarily require existence of a "national emergency" in any meaningful sense. More generally, the "national emergency" requirement for any exception to the balanced budget would significantly limit (and appears intended to limit) the authority of either the convention or Congress to accommodate competing demands which might weigh against a rigid requirement of a balanced budget.

The most popular single formulation of the desired scope of the convention's purpose defines that purpose as "proposing an amendment. . . requiring in the absence of a national emergency that the total of all federal appropriations made by Congress for any fiscal year not exceed the total of all estimated federal revenues for that fiscal year."[48] This again narrows the scope of the convention's authority. The period over which the budget must be balanced is now narrowed to a single fiscal year, whereas the requests previously discussed left that issue open.[49] Since the restraint would affect "all federal appropriations" nothing could be excluded from the budget, as all federal expenditures must be made pursuant to appropriations.[50] The "national emergency" requirement would be retained.

Three resolutions use a formulation similar to that just discussed but then direct that the proposed amendment "read substantially as follows," specifying essentially the same proposed text.[51]

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47. Appendix C: North Carolina.

48. *See* Appendix C: Alabama, Alaska, Arizona, Arkansas, Idaho, Indiana, Kansas, Nebraska, Nevada, New Mexico, Oklahoma, Pennsylvania, South Dakota (also specifying that "national emergency" be "as defined by law"), Texas (also calling for establishment of procedure for amortizing the national debt), Utah, Virginia.

49. The amendment proposed by the North Dakota legislature would require balance over a two-year period. Appendix C: North Dakota. However, under the construction adopted here, that is merely a suggestion to the convention. *See supra* text accompany notes 41-44.

50. U.S. CONST., Art. I, § 9, cl. 7. The proposed amendment also might have the effect of precluding appropriations of whatever amounts are required to comply with legislation (*e.g.*, payment of Social Security benefits) because the amount appropriated is indefinite.

51. *See* Appendix C: Maryland, Tennessee, Wyoming.

These resolutions seem best read as requesting a convention limited to proposing an amendment of the specified substantive content, subject only to stylistic and editorial changes. They can thus be grouped with three other resolutions which clearly demand conventions limited to proposing specific amendments.[52]

All of the amendments called for by these resolutions include some form of "balanced budget" rule to be applied in normal circumstances and make some exception for extraordinary circumstances. One also calls for repayment of the national debt over a 100-year period.[53] It is unclear whether the basic rules proposed differ in substance, but is is very clear that the exceptions permitted are much different. The two aspects will be considered separately.

Few of the resolutions formulate the basic rule in the same way: total appropriations for any fiscal year may not exceed estimated federal revenues for that year, exclusive of revenues from borrowing.[54] Another uses a similar formulation but omits the word "estimated" in describing the revenues;[55] since revenues for a future year can never be known with certainty in advance when making the appropriations for that year, it would appear that the word "revenues" is intended to mean "estimated revenues." Finally, one of the resolutions specifies an amendment providing that, normally "[t]he costs of operating the Federal Government shall not exceed its income."[56] Arguably, this might permit certain expenditures in excess of income if they were not deemed "operating costs" (e.g. capital expenditures). Since this last proposal might be interpreted as differing in substance from the others requesting specific amendments, it is at least unclear whether the basic rules suggested are the same.

Five of these resolutions provide some procedural mechanism for suspending the balanced budget requirement. The sixth provides that it is suspended only in time of declared war.[57] The procedural mechanisms vary among themselves. Three resolutions would permit suspension by joint action of the President and two-thirds of the members of each house.[58] One permits a one-year suspension by the President alone, subject to extension by Joint Resolution approved by two-thirds of the membership of both houses of Congress.[59] One

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52. *See* Appendix C: Delaware, Mississippi, South Carolina.
53. *See* Appendix C: Mississippi.
54. *See* Appendix C: Maryland, South Carolina, Tennessee, Wyoming. As a matter of interpretation, references in the resolutions to "revenues," "income," or similar terms would appear to exclude borrowing even if that exclusion is not express.
55. *See* Appendix C: Mississippi.
56. *See* Appendix C: Delaware.
57. *See* Appendix C: Delaware.
58. *See* Appendix C: Maryland, Tennessee, Wyoming.
59. *See* Appendix C: South Carolina. While the President need not request the extension, the Joint Resolution is presumably subject to the veto, although the vote

permits suspension by a concurrent resolution approved by three-fourths of all members of each house of Congress, without participation by the President.[60]

These proposed amendments differ from one another very substantially in the extent to which they allow the political branches of the government to override the balanced budget imperative to serve other governmental ends, in the distribution of powers among the political branches of the government, and in the degree of difficulty created for any attempt to suspend the balanced budget requirement. These differences are of sufficient significance to preclude any inference that a legislature which desired any one of them would also desire any of the others. Thus, even if state legislatures are empowered to demand a convention limited to considering a particular amendment, these resolutions cannot be counted together for that purpose because they demand substantially *different* amendments.[61] A request so limited clearly excludes any authorization for the convention to vary the substance of the amendment specified by the requesting legislature.

While each of the amendments specified by these six resolutions would be within the limits specified in the more general resolutions, there is no reason to believe that any of the legislatures requesting such a convention were willing to accept a convention limited in advance to consideration of a particular amendment specified (or to be specified) by some other legislature. Indeed, the North Dakota resolution, which sanctions a convention of almost any scope, nonetheless, insists that it be able to consider the particular amendment suggested by that resolution;[62] as that suggestion differs materially from the other specific amendments here at issue,[63] that requirement excludes any of the amendment-specific conventions requested by other legislatures. Thus, none of the more general resolutions can be counted in support of any of the amendment-specific requests. Conversely, since an amendment-specific request excludes authority to consider other proposals, none of the amendment-specific requests can be counted in support of the broader resolutions.

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required for initial passage would suffice to override any veto unless some members of Congress change their positions following the veto. *See* U.S. CONST., art. I, § 7, cl. 2 & 3.

60. *See* Appendix C: Mississippi.

61. Of course, if Article V does not permit such requests, then they may not be counted at all, let alone counted together. *See infra* text accompanying notes 76-77.

62. *See supra* text accompanying notes 41-44.

63. *See* Appendix C: North Dakota. It requires that expenditures over any two-year period (rather than the one-year period specified in the other specific amendments under discussion) not exceed estimated revenues, but allows the requirement to be suspended by any Congressional declaration of emergency, with no requirement for extraordinary majorities.

Similar considerations suggest that resolutions proposing significantly differing limits on the scope of the issues before the convention cannot be counted in support of one another. The more restrictive requests exclude broader issues by their very terms, while the broader requests do not necessarily indicate willingness to accept a convention which may be unable to consider problem areas and/or proposed remedies which are within the scope of the broader request. However, as a matter of construction, it is arguable that the somewhat different formulations of the proposal for a convention to propose some form of requirement for a budget balanced except in national emergencies (without limiting the convention to a proposed amendment)[64] are not significantly different from one another and may be counted together.[65]

On this basis the resolutions may be classified as follows:

6 requests for differing amendment-specific conventions;

17 requests for a convention to propose some form of amendment requiring a balanced budget amendment absent a national emergency;[66]

8 requests for a convention to propose an amendment requiring a balanced budget subject to whatever exceptions the convention deems appropriate;

1 request for virtually any non-amendment specific convention with authority to consider balanced budget proposals.

Given the differences in the scope of the requested conventions, the largest number of resolutions that can be counted in support of any particular type of convention request is 18,[67] for the balanced-budget-absent-national emergency formulation. Any attempt to further aggregate these resolutions would subordinate respect for their terms to a vague sense that, politically, the various legislatures were in harmony with one another. Since the very premise of the analysis is that these resolutions must be regarded as serious efforts to exercise Article V powers, the limits and conditions in the resolutions must be respected as fully as the other terms.

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64. *See* Black, *The Proposed Amendment of Article V: A Threatened Disaster*, 72 YALE L.J. 957, 963-64 (1963) ("It is. . . illegitimate to infer from a state's having asked for a 'convention' to vote a textually-given amendment up or down, that it desires some other sort of convention. It is not for Congress to guess whether a state which asks for our kind of 'convention' wants the other as a second choice. Altogether different political considerations might govern.")

65. *See supra* text accompanying notes 45-49.

66. This would clearly be true if North Carolina intended that "all federal appropriations" be included in the "budget." Compare *supra* text accompanying note 47, with *supra* text accompanying notes 48-49.

67. This number includes the Nevada resolution, which is currently inoperative by its own terms. *See supra* text accompanying note 32.

ARTICLE V AND LIMITS ON CONVENTIONS

There can be little doubt that if the state legislatures wish to do so, they *can* demand a convention authorized to consider whatever constitutional defects commend themselves to it and to propose amendments with respect to any or all of them. As Professor Black has pointed out, that would be the obvious meaning of an application which tracked the constitutional language by seeking simply "a convention for proposing amendments."[68]

Only one commentator has even suggested that Article V might not authorize such an unlimited convention.[69] Professor Van Alstyne has sketched such an argument, based on the premise that the reason for including the convention method of proposing amendments in Article V was to permit a remedy for Congressional unwillingness to respond to particular grievances which might be created by an abusive central government; the ability to convene a convention to propose amendments allowed a self-interested Congress to be bypassed.[70] From this premise, he offers the following argument:

> If the purpose of Article V is by one mode to permit Congress to propose whatever amendments it deems appropriate from time to time (whether one or several, whether narrow or very broad), and by a different mode to enable the states to gain specific recourse against *particular* usurpations that Congress may have no interest whatever in correcting, then it might not be unreasonable for Congress to reject state legislature applications that seek a convention of unlimited revisory power over the entire Constitution. *That* kind of "second Philadelphia" (or new Armageddon), one might argue, so far outstrips the rationale for an independent state mode of securing particular kinds of amendments that Congress would be warranted in turning back such applications.[71]

Even Professor Van Alstyne, after developing this argument, pronounces it "unsound" because, ordinarily, "the particular reasons for including a particular power in the Constitution were not enacted as a limitation on the uses of that power."[72] Even more fundamentally, the premise that the framers expected the convention method of proposing amendments to be used only for correction of

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68. Black, *supra* note 43, at 628-29. *See also* Brennan, *Return to Philadelphia*, 1 COOLEY L. REV. 1, 8 (1982) ("[T]he notion that there must be a national consensus upon the need for a specific amendment. . . as a precondition justifying the calling of a convention is utterly without foundation in logic or history.").

69. Van Alstyne, *The Limited Constitutional Convention—The Recurring Answer*, 1979 DUKE L.J. 985, 986-90.

70. *Id.* The history supporting the conclusion that the convention method of proposing amendments was designed as a way to circumvent an unresponsive Congress is reviewed at *infra* notes 115-29.

71. Van Alstyne, *supra* note 69, at 990.

72. *Id.* at 991.

specific abuses and usurpations is not well supported. The framers had just experienced a crisis in which the fundamental defects of the existing constitutional structure had made it necessary to lay the foundations of an entirely new structure. No evidence is offered that they were so confident of the enduring adequacy of their product that they dismissed any possibility that similar fundamental revision might again become necessary. Just as particular Congressional abuses and usurpation might require discrete remedies, so unanticipated systemic tendencies toward Congressional oppressiveness might require total restructuring of the governmental framework. The sole basis for Van Alstyne's assertion that *only* response to particular abuses was contemplated is a vague "sense of things" based on his reading of the history of the period.[73] The weight necessary for an argument which would limit the plain import of the constitutional language cannot be supported by such a gossamer thread.

While all agree that "[i]f thirty-four state applications call for an unlimited constitutional convention, that is what Congress should provide,"[74] there is no similar agreement on the proper response to thirty-four resolutions calling for a limited convention. A number of scholars contend that Article V does not authorize the legislators to demand a convention of the latter type.[75] If this premise is accepted, then none of the resolutions seeking a limited convention "would have called for the thing the Constitution names, properly construed. None, therefore, would be effective; none would create any congressional obligation. Thirty-four times zero is zero."[76] By the same token, if Article V authorizes limited conventions but not conventions limited to consideration of a specific amendment,[77] then a request for an amendment-specific convention is invalid and of no effect. Finally, there is ordinarily no reason to believe that a legislator requesting a convention limited in a particular way would want an unlimited convention or one with different limits.[78]

However, even if one concludes that a limited convention is not authorized, that is not to say that resolutions specifying a particular subject are necessarily invalid. There appears to be "no reason why states cannot voice the grievance that prompts their application," however limited that grievance may be, and a convention clearly may give weight to such statements in setting its own agenda, even

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73. Van Alstyne, *Does Article V Restrict the States to Calling Unlimited Conventions Only?—A Letter to a Colleague*, 1978 DUKE L.J. 1295, 1302.

74. Van Alstyne, *supra* note 68, at 991.

75. See *infra* notes 81-95, 123-28, 141-43, 169, and accompanying text.

76. Black, *Amending the Constitution: A Letter to a Congressman*, 82 YALE L.J. 189, 198-99 (1972).

77. *See infra* text accompanying notes 96-103, 123-36.

78. *See supra* text accompanying notes 61-67.

if the applying legislatures are powerless to limit that agenda.[79] If the statement of the grievance is not intended as a limit on the convention's authority to consider other subjects, then the resolution is properly treated as an application for an unlimited convention.[80]

We thus come to the question of what limits, if any, may be put upon the scope of an Article V convention. This question must be examined in light of (1) the text and structure of the constitution, (2) the intent of the framers, as revealed by the debates in the Constitutional Convention and the ratification process, (3) any relevant constitutional practice, and (4) considerations of practicality and constitutional theory.

Constitutional Text and Structure

Professor Black begins his analysis of the constitutional structure from the premise that Article V clearly authorizes the state legislatures to demand the convening of an unlimited constitutional convention.[81] He argues that

> [w]hen we inquire now whether a state application for a *limited* convention asks for what Article V means, we are inquiring whether, *in addition* to its incontestably plain conferral, on the legislatures, of a very significant power, the power to force the call of a general constitutional convention, Article V is to be taken to give them, as well, a *different* power, not at all obviously meant by Article V. In an inquiry concerning correct amendment procedure, where, more than anywhere else, very clear legitimacy is requisite, I should think that great clarity of justification should be looked for before one *adds*, to plain meaning, another meaning far from plain.[82]

Article V itself describes the convention as a "Convention for proposing Amendments" and its role as proposer of amendments appears from the text to be parallel to that of Congress. Since Congress may propose whatever amendments it deems necessary, the text and structure of Article V thus suggest that a convention may also propose whatever amendments commend themselves to it.[83]

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79. Gunther, *supra* note 32 at 17; Dellinger, *The Recurring Question of the "Limited" Constitutional Convention*, 88 YALE L.J. 1623, 1636 (1979) (application for an unlimited convention may be accompanied by recommendations or suggestions to the convention regarding the subjects it should address.)

80. *See supra* text accompanying notes 41-44, construing North Dakota resolution as an application for an unlimited convention with a request that the convention consider a particular proposed amendment.

81. Black, *supra* note 43, at 628-29.

82. *Id.* at 629.

83. *Id.* at 630; *see* Van Alstyne, *supra* note 72, at 1297 (reformulating the analysis and conceding its force). A bar association committee disputes the assertion that the role of the convention is parallel to that of Congress. It points out that the convention is part of a three-step process (application, call, proposal) and that the other actors in that process might legitimately play some of the agenda-getting functions

Despite Professor Van Alstyne's disagreement with this conclusion, he has pointed out another argument in its support.[84] He notes that if limited conventions are permitted, Congress will necessarily be called upon to decide whether various sets of resolutions evidence sufficient agreement with one another to require that a convention be called. Congress will also need to decide how it should describe the convention's agenda and the convention, once convened, will need to decide how to construe its mandate. If the convention arguably exceeds its mandate, may Congress then refuse to submit for ratification the amendment(s) it proposes? All of these issues raise "[e]ndless (and endlessly intractable) administrative and political questions."[85] None of these questions can arise if only unlimited conventions are permitted. This suggests that the "unlimited convention" construction is slightly preferable because, other things being equal, one should prefer the construction which does not "generate an entire series of *additional* questions. . . which there are no objective criteria to resolve."[86]

The proponents of an unlimited convention respond to the foregoing arguments primarily by relying on the history of Article V to show an intent to confer on the state legislatures a means of initiating constitutional change parallel to that conferred on Congress.[87] Requiring them to resort to an unlimited convention for this purpose is said to unduly obstruct their opportunity to initiate constitutional changes[88] because they fear the consequences of calling a con-

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which are inherent in the one-step process of Congressional proposal. New York State Bar Association, Committee on the Federal Constitution, *Article V and the Proposal Federal Constitutional Procedures Bill*, 3 CARDOZO L. REV. 529, 540 (1982) ("N.Y. State Bar Study"). If states are allowed to specify limits but Congress judges the extent of those limits in formulating the convention call, it is suggested that there may be an acceptable creative tension without granting excessive power to either side. *Id.* But this presupposes that the state legislatures, by submitting nonidentical applications, leave room for a Congressional role, and they need not do so. Accordingly, if the state legislatures are not themselves empowered to dictate the scope of the convention, this "compromise" rule can hardly be a viable alternative.

84. Van Alstyne, *supra* note 73 at 1299-1300.

85. *Id.* at 1299.

86. *Id.* at 1299-1300.

87. *See infra* notes 115-29 and accompanying text.

88. The mere fact that this requirement obstructs constitutional change is not itself an argument against a construction imposing that requirement. As Professor Van Alstyne concedes:

> [A]mending the Constitution is a *serious* business. Alterations in the fundamental law should be possible, but *not easy*. . .Supermajorities are required; a special mix of different constituencies is demanded. Short of virtual impossibility of change, which was regarded to be the problem under the Articles of Confederation where *unanimous* approval by all the states was required, the dominant function of article V (as Brandeis opined to be true with respect to the dominant function of separate powers) is not to facilitate, but to clog; not to make haste in the furor of *ad hoc* dissatisfactions, but to require a more profound dissatisfaction. . .

Van Alstyne, *supra* note 73, at 1298-99 (footnote omitted). Thus, it is necessary to

vention free to propose amendments to any part of the constitution.[89] Under that analysis, denying state legislatures the ability to limit the scope of the convention they request puts an unacceptable "price-tag" on the initiation of constitutional amendments by state legislatures:[90] they are unable to seek the amendments they desire without "creating an organism that is empowered to propose amendments [they] oppose."[91]

It is unclear why the legislatures ought to fear the convening of an unlimited convention. Its power to propose constitutional amendments would be no broader than that of Congress and one may presume that Congress will cause the convention to be constituted in a manner no less representative of the People of the United States. Except for elimination of the institutional self-interest of Congress in preserving its own powers (and those of the federal government generally), there does not appear to be any reason to expect an unlimited convention to be systematically more willing than Congress to propose noxious constitutional amendments.[92] Finally, the product of the unlimited convention will have no effect unless ratified, presumably by the very legislatures which are said to fear the convention.[93]

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show that requiring unlimited conventions obstructs constitutional change in a manner which is inconsistent with the constitutional plan.

89. American Bar Association Special Constitutional Convention Study Committee, *Amendment of the Constitution by the Convention Method Under Article V*, 16-17 (1974) ("ABA Study"); Ervin, *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 MICH. L. REV. 875, 883 (1968); Rees, *Constitutional Conventions and Constitutional Arguments: Some Thoughts About Limits*, 6 HARV. J.L. & PUB. POL. 79, 90 (1982); Van Alstyne, *supra* note 73, at 1299.

90. Van Alstyne, *supra* note 69, at 1299.

91. Rees, *supra* note 89, at 90.

92. One could fear (or desire) a convention without believing that it is systematically more likely to propose particular amendments than Congress. If one fears (or desires) particular amendments which Congress is currently unwilling to propose but which enjoy broad popular support, the convention could serve simply as a "second bite at the apple" for the proponents of those amendments if the convention is more receptive. This would make a difference only for amendments which were very close to having the support necessary to be proposed by Congress, which might be blocked by particular alignments of personalities in Congress. Only rarely would such a situation be likely to occur, and the convention method is unlikely to be of much significance in such cases. Only when reliance on Congress was seen to be futile would an effort to call a convention be initiated, and such an effort would likely require a number of years to produce the necessary applications and probably another two or more years for the convention to be called, elected, and convened. Over such a period, passage of time would be likely either to erode the popular support (making the amendment non-viable regardless of the convening of a convention) or alter the membership of Congress in a way which would dissolve the fortuitous blockage resulting from particular personalities. Of course, a convention called to circumvent Congressional self-interest might be caught up in other types of issues.

93. Congress could, of course, bypass the state legislatures by specifying ratification by state conventions. But the convention is significant only if Congress itself would not propose the amendment, so Congress is not likely to take unusual steps to facilitate ratification. Moreover, there is no apparent reason to distrust ratification

It is also unclear that the framers, who had not yet acquired two centuries of vested interests in existing institutional arrangements, would have expected state legislatures to fear unlimited conventions and designed the amendment process to accommodate those fears. The convention, after all, would speak directly for the People of the United States, just as the ratification conventions provided for in Article VII were to do.[94] In calling for a convention, the state legislatures would also represent the people, who should have nothing to fear from themselves.

But even assuming that the framers would have expected the state legislatures to form a convention, it is still necessary to decide the nature of the role which state legislatures play in the convention process. Are the legislatures entitled to *themselves* use the convention as a mechanism for initiating particular amendments or types of amendments, or do they merely serve as a mechanism whereby the People of the United States may obtain the calling of a convention at which the *People* can initiate desired constitutional changes which a recalcitrant Congress refuses to propose. That question is the fundamental issue in this debate and cannot be finally answered without examining the history of Article V.[95]

A subsidiary issue is presented by the Article V division of the amending process into two stages, proposal and ratification. As applied to Congress, the process of proposal includes "plenary deliberation upon the whole problem to which the amendment is to address itself" including a full range of choice as to substance and wording.[96] This suggests that a convention should have an equally deliberative role, so that undue limitation of its scope would improperly make the convention part of the process of ratifying an amendment proposed (literally or in substance) by the applying state legislatures.[97] This argument is independent of the claim that the convention's agenda cannot be limited at all and implies that, at a minimum, a convention must be accorded enough scope for substantial deliberation upon some problem or set of problems and formulation of an appropriate response to these problems.[98]

The latter point is reinforced by historical considerations. The very fact that the Constitution itself was the product of a fully deliberative convention supports the notion that Article V contem-

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conventions.

94. *See supra* note 28.

95. That examination is undertaken in the text, *infra*, accompanying notes 104-36.

96. Black, *The Proposed Amendment of Article V: A Threatened Disaster*, 72 YALE L.J. 957, 962 (1963).

97. *Id.* at 963.

98. *Id.*

plated that type of convention. In addition, as Professor Dellinger points out:

> Assembling a tightly controlled convention [to consider a particular amendment formulated by the applying state legislators]. . . would have made little sense to the drafters in 1787. The difficulty of choosing and assembling delegates from all the states was extraordinary; commencement of national meetings was sometimes delayed for weeks by the late arrival of many of the delegates. Delegates to such a convention would likely be frustrated by the delay and anxious to get on with the sole official act permitted them: voting on an amendment whose wording had been determined beforehand. The framers understood that "[c]onventions are serious things," and it is doubtful that they meant to suggest such a meeting by the phrase "a Convention for proposing Amendments."[99]

While such practical considerations may bear on the likely sense in which the language in Article V was intended, the ultimate issue is still one of the substance and nature of the power conferred by Article V on state legislations. With respect to this aspect of the problem, "[t]he issue is whether it is contemplated that measures of dominantly national concern should be malleable under debate and deliberation at a national level, before going out to the several states."[100]

While most commentators agree at least that Article V requires substantial deliberative scope for a convention,[101] Professors Van Alstyne and Rees do not.[102] They argue that the debates of the Constitutional Convention show that "Article V is essentially a grant of power *to the states* to initiate the amending process" so that "the phrase 'a convention for proposing Amendments' admits easily of the construction 'such amendments as the states wish the convention to consider.' "[103] The resolution of this dispute therefore de-

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99. Dellinger, *supra* note 79, at 1633 (footnotes omitted).

100. Black, *supra* note 64, at 963.

101. Association of the Bar of the City of New York, Committee on Federal Legislation, *Legislation to Establish Procedures for a "Limited Issues" Constitutional Convention*, 39 Rec. A.B. City of N.Y. 593, 597 (1984); Association of the Bar of the City of New York, Committee on Federal Legislation, *Proposed Procedures for Federal Constitutional Conventions* (S. 215), 27 Rec. A.B. City N.Y. 327, 328-29 (1972) [hereinafter cited as N.Y.C. Bar Study]; Black, *supra* note 96, at 962-63; Black, *supra* note 43, at 628; Bonfield, *The Dirksen Amendment and the Article V Convention Process*, 66 MICH. L. REV. 949, 953-54 (1968); Dellinger, *supra* note 79, at 1630-36; Ervin, *supra* note 89, at 884; Gunther, *supra* note 32 at 18; Voegler, *Amending the Constitution Method of Amending the United States Constitution*, 85 HARV. L. REV. 1612, 1629-30 (1972); *Federal Constitutional Convention: Hearings on S.2306 Before Subcomm. on Separation of Powers Comm. on the Judiciary*, 90th Cong. 1st Sess. 60 (testimony of Professor Alexander Bickel) ("1967 Hearings"); *id.* at 233 (statement of Professor Philip Kurland, whose analysis provides the primary basis for Senator Ervin's position).

102. Van Alstyne, *supra* note 73, at 1302-06; Van Alstyne, *supra* note 69, at 991-98; Reese, *supra* note 89, at 84-91.

103. Reese, *supra* note 89, at 85-86 (emphasis original).

pends upon analysis of the history of Article V before the convention.

The History of Article V

The Constitutional Convention did not reach any conclusions about the amending process until after the Constitution had taken substantial shape. Among the resolution which constituted the "Virginia Plan" was one stating "that provision ought to be made for Amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto."[104] On the latter point, it was argued that "[i]t would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse consent on that very account. The opportunity for such an abuse may be the fault of the constitution calling for amendment."[105] However, the question of excluding the national legislature was repeatedly postponed, so that only a directive to provide some method of amendment was before the Committee of Detail.[106]

The Committee of Detail proposed that "[o]n the application of the Legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose."[107] The Convention initially approved this draft,[108] but on September 10, Elbridge Gerry moved to reconsider the amendment provision, stating that he feared the innovations which a majority in such a convention might impose on all of the states.[109] Alexander Hamilton seconded the motion, but for a different reason: he believed it essential to provide an "easy mode. . . for supplying defects which will probably appear in the new system" and feared that "[t]he State Legislatures will not apply for alterations but with a view to increase their own pow-

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104. 1 Farrand, *supra* note 28, at 203.

105. *Id.* (statement of Mason).

106. 2 *The Records of the Federal Convention of 1897*, at 133 (Farrand, ed. 1939) [hereinafter cited as 2 Farrand].

107. 1 Documentary History of the Ratification of the Constitution 269 (M. Jensen ed. 1976). While the phrase "for an amendment of this Constitution" is not clear on whether the state legislatures could apply for conventions solely to propose specific amendments desired by them, I agree with Professor Dellinger that the more natural reading "is that this phrase is used in the sense of '[for] a revision of' the Constitution." Dellinger, *supra* note 79, at 1627 n.20. *Accord* Black, *supra* note 43, at 637 (construing this phrase to mean "for the process of amendment of").

108. 2 Farrand *supra* note 106, at 467-68.

109. *Id.* at 557-58. As the Committee of Detail proposal did not provide for any ratification process, the convention itself would seemingly have had "*final power to amend*, without 'ratification by anybody.'" Black, *supra* note 43, at 636, quoting ABA Study, *supra* note 89, at 12.

ers."[110] After some further discussion,[111] the motion to reconsider was carried.[112]

The Committee of Detail proposal was then altered to provide for ratification by three-fourths of the states and the following substitute proposal by James Madison was then adopted:

> The Legislature of the United States whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures of the several States, or by Convention in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the United States.[113]

The substance of this proposal was incorporated in a draft by the Committee of Style.[114] After Roger Sherman expressed concern at the extent to which amendments might impair the interests of particular states, George Mason objected that the amendment process was inadequate to safeguard the interest of the people. "As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately on Congress, no amendments of the properly kind would be obtained by the people, if the Government should become oppressive. . . ."[115]

Gouverneur Morris and Elbridge Gerry then proposed what became the language of Article V, providing for a convention on application of the legislatures of two-thirds of the states.[116] Madison saw

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110. Black, *supra* note 96, at 558.

111. Anticipating some of the problems presented by the convention mechanism ultimately included in Article V, James Madison "remarked on the vagueness of the terms 'call a convention for the purpose'. . . How was a convention to be formed? by what rule decide? what the force of its acts?" *Id.*

112. *Id.*

113. *Id.* at 559. So far as the state legislatures were concerned, this proposal appeared to contemplate that they would formulate specific amendements, which congress would then be under a ministerial duty to submit for ratification. *See* Dellinger, *supra* note 79 at 1628; Van Alstyne, *supra* note 69 at 988; Rees, *supra* note 89 at 87.

114. 2 FARRAND *supra* note 106, at 629-30. That draft provided, in pertinent part:

> The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the Legislatures 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. . . .

Id.

115. *Id.*

116. *Id.* Professor Black notes that "Gerry (who co-proposed the present language) and Mason (whom it was supposed to mollify) were both, *some minutes later on the same day*, going to refuse to sign the new Constitution [because] a new 'gen-

no reason "why Congress would not be as much bound to propose amendments applied for by two-thirds of the States as to call Convention on like application."[117] However, the Convention unanimously adopted this proposal.[118]

The last contemporaneous materials bearing on the construction of Article V are two excerpts from the Federalist Papers. In one, Madison described the amending process as follows:

> That useful alterations will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the state governments to originate the amendments of errors as they may be pointed out by the experience on one side or on the other.[119]

Later, Hamilton defended the proposed Constitution against those who urged that it be rejected. Among other points, he argued that it would be easier to amend the Constitution after ratification then to rewrite it and seek new ratifications. To show this he began by contrasting the difficulty of agreeing on a new plan, which would require acceptance by all thirteen states, with the comparative ease of amending the Constitution, once ratified.[120] If the new Constitution must be rewritten before again being submitted for ratification, then all of the compromises struck among the interests of the various states must be reopened and new accommodations reached acceptable to all; the difficulty of doing so was magnified by the number of issues and parties which be dealt with. In contrast, if the Constitution were ratified:

> Every amendment to the constitution would be a single proposition,

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eral Convention' was not to be mandatory." Black, *supra* note 43, at 636 (emphasis original). This, he suggests, indicates that the convention mechanism was inserted as another way in which they might obtain an unlimited convention, rather than as a means of obtaining limited conventions. *Id.* Certainly this fact does not suggest any fear of general conventions by the proponents of the Convention mechanism.

117. 2 FARRAND *supra* note 106, at 630. Madison did note again the procedural uncertainties created by the convention mechanism.

118. *Id.*

119. THE FEDERALIST No. 43, at 301-02 (E. Bourne ed. 1901). This passage does lend some support to the view that the state legislatures were to occupy a position parallel to that of Congress on "originate[ing] the amendment of errors." However, by forcing the call of convention, the state legislatures could "originate the amendment of errors" by pointing those errors out to the Convention, which could consider them free of the institutional biases which might make Congress unwilling to correct those "errors". Thus, parallelism between Congress and the state legislatures is not required for this passage to be correct.

120. THE FEDERALIST No. 85, at 168-69 (E. Bourne ed. 1901). Hamilton relied on the fact that, under Article V, nine states (out of 13) "may set on Foot the measure" to amend the Constitution and ten states might ratify.

> and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point, no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently whenever nine or rather ten states, were united in the desire of a particular amendment, that amendment must infallibly take place. There can therefore be no comparison between the facility of effecting an amendment, and that of establishing in the first instance a complete constitution.[121]

Hamilton also discussed the efficacy of the convention process for proposing amendments as a means of circumventing a Congress reluctant to yield any of its own authority:

> The national rulers, whenever nine states concur, will have no option upon the subject. . . 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. . . Nor however difficult it may be supposed to unite two-thirds or three-fourths of the state legislatures, in amendments which may effect local interests, can there by 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.[122]

From these fragmentary materials, the commentators have drawn strikingly different conclusions. Professor Black attaches primary significance to the fact that the mechanism adopted by the Convention put "another, nationally oriented body," "the convention, between the state legislatures and the passage of an amendment to the Constitution."[123] He also notes that the convention mechanism was a response to Mason's fears that Congressional control meant that "no amendments of the proper sort would ever be obtained by the people." As conventions were considered more fully and authentically representative of the people than legislatures, Professor Black finds it unlikely that the Constitutional Convention expected that "such a body, the visible organ of 'the people,' was to be led in with blinders put on by legislatures. . . . [Rather,] Mason's fears. . . would be best answered by a provision for a *general convention,* wherein 'the people' had the most ample scope of authority."[124] Such a convention would, of course, allow amendments to be initiated independently of Congress, even if state legislatures were not permitted to control the agenda of the convention.[125]

Professor Dellinger comes to a similar conclusion. He extracts two themes from the Convention debates:

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121. *Id.* at 169.
122. *Id.* at 170.
123. Black, *supra* note 43, at 635.
124. *Id.* at 636.
125. *Id.* at 634.

> Congress should not have exclusive power to propose amendments; and state legislatures should not be able to propose and ratify amendments that enhance their power at the expense of the national government. States were empowered under Article V to *ratify* amendments; the power to *propose* amendments was lodged in two national bodies, Congress and a convention. The proceedings suggest that the framers did not want to permit enactment of amendments by a process of state proposal followed by state ratification without the substantive involvement of a national forum. Permitting the states to limit the subject matter of a constitutional convention would be inconsistent with this aim.[126]

In particular, he relies on the fact that an intent to allow states to propose amendments would have made the convention unnecessary, for the prior proposal to require Congress to submit state-proposal amendments would have served the purpose equally well.[127] Unlike Professor Black, however, Professor Dellinger believes that there may be a theoretical possibility, unlikely of practical realization, that "a set of state applications could establish subject matter limitations sufficiently broad to provide latitude for compromise and consensus-building at the convention and sufficiently uniform to enable Congress to define and enforce their limits without unduly intruding into the convention's work."[128]

Professor Van Alstyne, on the other hand emphasizes the parallelism of the convention procedure to the prior provision for state-proposed amendments as a means for obtaining state-initiated constitutional change.[129] He agrees that the convention provided an additional "check against unduly precipitate state-proposed/state ratified amendments" but sees the question as one of how much of a check.[130] Certainly the mechanism allows Congress to specify the composition of the convention, assuring that it represents interests broader than those dominating the state legislatures. Moreover, the convention will include representatives of states not joining in the application for its call. Both the time necessary to call the convention and the process of deliberation (even limited to the wisdom of a specified amendment) would serve as a buffer against hasty or ill-considered action. Finally, any amendments proposed would still require ratification and Congress would be empowered to decide

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126. Dellinger, *supra* note 79, at 1630.

127. *Id.* at 1632.

128. *Id.* at 1635-36.

129. Van Alstyne, *supra* note 69, at 993-94. As Professor Rees, who concurs on this point puts the matter: "there is absolutely no evidence that *anybody* intended by the change to deprive the state legislatures of the power that they were clearly to have under the penultimate draft: the power to initiate the proposal of particular amendments. The syntactical ambiquity in the final draft of Article V. . . seems to have been an accident." Rees, *supra* note 89, at 89 (emphasis added, original footnote omitted).

130. Van Alstyne, *supra* note 129.

whether that should be done by state legislatures or state conventions. In his view, all of these factors already make state-initiated amendments far more difficult to achieve than those initiated by Congress, so that addition of the further obstacle of requiring unlimited conventions virtually nullifies the power intended to be conferred on state legislatures.[131]

Professor Van Alstyne relies on Hamilton's statements in the Federalist Papers to make an apparently powerful argument for the proposition that state legislatures were intended to have the power to use the convention to initiate specific constitutional changes, rather than merely the power to trigger the calling of a convention at which the People of the United States might initiate constitutional changes.[132] Professor Rees gives this point even more emphasis.[133] It will be recalled that Hamilton stated that whenever ten states were united in their desire for a particular amendment, "that amendment must infallibly take place" without any "necessity for management or compromise on any other point—no giving or taking."[134] Professors Rees and Van Alstyne read this passage as an assurance that state legislatures could initiate particular amendments, force the calling of conventions to consider them, and thereby "infallibly" obtain them.

However, the paragraph in question was discussing the amendment process generally, not the convention aspect specifically. It was not contrasting a limited convention to consider state-initiated amendments with the sort of bargaining which might occur in an unlimited convention under a ratified constitution. Rather, it was contrasting the process of amending the constitution with the total free-for-all involved in rewriting it before ratification.

The concern was not for the sort of log-rolling which might enable the three dissenting states to dissuade one or more of the states

131. *Id.* Professor Van Alstyne also makes the argument that a convention called "to undertake. . . 'an unconditional reappraisal of constitutional foundations' " was the least likely forseeable use of the power to call a convention and a convention to deal with a particular grievance the most likely. Van Alstyne, *supra*, note 73, at 1305. Thus, he argues, the least likely possible use can hardly be the only one permissible. *Id.* Professor Dellinger responds that even a convention entitled to set its own agenda would be likely to focus primarily on the grievance which caused it to be called and not to reexamine other constitutional issues unless there were a substantial popular demand for it to do so. If the public at large feared a broad reexamination, it would elect delegates pledged not to cooperate in such a venture. Thus, a convention with an unlimited agenda could respond only to a specific grievance *if* that was the popular will. Thus, this argument seems to rely on the need to protect the ability of state legislatures to collaborate with Congress to frustrate a popular desire for constitutional changes feared by *both* institutions. It hardly seems sound to interpret Article V to facilitate the one type of amendment at the expense of the other.

132. Van Alstyne, *supra* note 69, at 989 n.17.

133. Rees, *supra* note 89, at 90-91.

134. THE FEDERALIST No. 85, at 168-79, quoted *supra* at notes 119-20.

favoring the amendment to desist but rather, for the need to also obtain the consent of the dissenting states themselves. Thus, this passage does not support either view on the limited/unlimited convention issue.

Professor Gunther, who considers applications for limited conventions valid but the limitations imposed by them not binding on the convention, concludes that insertion of the convention into the mechanism for state-initiated constitutional change necessarily destroyed any close parallel between the role of Congress and that of the states.[135] As he reads the significance of that decision,

> in view of the evolution of the Article V compromise, the introduction of the convention device into the Constitution made the convention a prominent body indeed. It was plainly a mechanism to still the fears of those who thought that state legislatures might have power to dictate the terms of proposed amendments on their own. At the same time, it was a method likely to calm the anxieties of those who feared that Congress would have undue control over proposed amendments emerging from the state-initiated route. In short, the convention—understood to be a powerful mechanism both from the kind of convention contemplated early in the Philadelphia Convention and from the experience of the delegates throughout that Convention—was apparently conceived of as the central institution in the state-initiated amendment process, a body with a very considerable autonomy.[136]

I am persuaded by the textual and historic arguments that a convention cannot be validly restricted to passing upon a particular amendment. On the other hand, the textual and historic arguments regarding the role of the state legislatures in the convention process (are they to be the initiators of change or only a mechanism to enable the People of the United States to initiate change) yield no relatively clear answer. In such circumstances, an appeal is sometimes made to historical practice as an aid in construing unclear language. Just such an appeal has been made on this issue, and it is to that which I now turn.

Constitutional Practice

Seemingly the most directly relevant area of practice is the actual history of efforts to invoke the convention method of proposing

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135. Gunther, *supra* note 32, at 16-17.

136. *Id.* at 17. Professor Rees disputes this reading on the ground that there is no evidence that any of the delegates feared allowing states to propose amendments, so long as Congress was also able to do so. Rees, *supra* note 89, at 89 n.20. This appears to be true, though the available evidence is sufficiently fragmentary that one cannot exclude the possibility that some delegates did have such fears. However, the claim that the convention was intended as a powerful and prominent body does not depend on the existence or non-existence of those fears.

amendments. Prior to 1893 there were only about a dozen state legislature resolutions requesting an Article V convention, and all requested conventions not limited to any particular subject matter.[137] In 1893, a resolution called for a convention to consider direct election of Senators, and this was joined by another in 1895 and enough others in this century to persuade Congress to propose the Seventeenth Amendment.[138] Since the turn of the century, there have been hundreds of resolutions requesting conventions, almost all of limited scope.[139]

Relying on the overwhelming numerical predominance of "limited convention" resolutions, a bar association committee urges that this establishes at least a presumption that they are authorized by Article V:

> We do not believe that the arguments about the original intent of the framers, the structure of the amending process, and the first century of apparent constitutional practices are sufficiently important or persuasive to overturn the second century of practice, in which limited agenda conventions have come to be the norm, or to disrupt the institutional consensus in favor of limited agenda conventions.[140]

Professor Black believes that the absence for over a century of applications for limited conventions "is overpowering evidence of an original and long-continued understanding" that only unlimited conventions were authorized by Article V.[141] But even if one does not accept this reading of the Nineteenth Century experience, the suggested presumption still fails because there is, at least as yet, no

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137. ABA Study, *supra* note 89, at 59-69; Black, *supra* note 43, at 642; N.Y. State Bar Study, *supra* note 83, at 543; Senate Comm. on the Judiciary, Constitutional Convention Implementation Act of 1984, S. Rep. 594, 98th Cong., 2nd Sess. 10-11 (1984) [hereinafter cited as "1984 Senate Report"].

138. ABA Study, *supra* note 89, at 63, 72; 1984 Senate Report *supra* note 137, at 12.

139. The ABA Study lists over 350 applications, only 18 of which are categorized as "general". ABA Study, *supra* note 89, at 59-69. *See also* N.Y. State Bar Study, *supra* note 83, at 542-44; 1984 Senate Report *supra* note 137, at 11-13.

140. N.Y. State Bar Study, *supra* note 83, at 545. Others have appeared to attribute significance to these applications, without explicitly predicating any arguments on them. *See* ABA Study, *supra* note 89, at 1-2, 59-69; 1984 Senate Report *supra* note 137, at 10-13.

141. Black, *supra* note 43, at 643. In support of this conclusion, he argues:

> Through the controversies over the Alien and Sedition Laws, over the Embargo, over the "internal improvements" bills, over the Bank of the United States, over the early fugitive-slave laws, *not one single state legislature* acted as though it thought it had the power to force Congress to call a convention limited to one of these topics. It did not even occur to Kentucky and Virginia, in the 1790's, when they were busy with "interposition" against what they felt to be unconstitutional actions of Congress, to go at the matter *via* a limited Article V convention. Even in the great nullification and slavery contests, of the 1830's and 1860's respectively, the states that submitted applications made them "general". . . .

Id. at 642-43.

"institutional consensus in favor of limited agenda conventions."

Viewed from the standpoint of "practice," the hundreds of requests for limited conventions are but self-serving assertions by state legislatures of their power to make such demands. They have never resulted in the actual calling of a convention and have never been accepted by Congress as valid.[142] It is clear that the state legislatures ardently desire this power, although it appears to interest them primarily as a means of pressuring Congress to approve desired amendments rather than as a means of actually obtaining a convention.[143] But their desire for this power can hardly suffice to create a presumption that it exists. Accordingly, the "practice" on this matter cannot offer any real support for the propriety of limited conventions and may even suggest the contrary.

An alternative argument based upon practice relies on the numerous instances in which states have held constitutional conventions to deal with limited subject matter despite the absence of any provision for such limitations in the constitutions under which those conventions have been held.[144] This practice is said to show the feasibility of limiting a convention under Article V.

The basis for the state practice, however, rests on the force of express approval of the limits by the sovereign people themselves, at an election held for that purpose. Under such circumstances,

> it seems settled that the electorate choose to delegate only a portion of its authority to a state constitutional conventions and so limit it substantively. The rationale is that state convention derives its authority from the people when they vote to hold a convention and that when they so vote they adopt the limitations on the convention contained in the enabling legislation drafted by the legislature and presented on a "take it or leave it" basis.[145]

The supposed analogy to state practice is of limited applicability in the federal context. As one scholar has pointed out:

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142. The Senate has twice passed bills premised on the existence of this power but neither received approval by the House. *See* 1984 Senate Report *supra* note 137, at 14-15, discussing S.215, 92nd Cong., 1st Sess. and S.1272, 93rd Cong., 1st Sess.

143. *See* 1984 Senate Report, *supra* note 137, at 11 (describing general practice); Gunther, *supra* note 79, at 3-4, 19 (commenting on history of balanced-budget convention resolutions).

144. *See* ABA Study, *supra* note 89, at 16-17; Balog, *Popular Sovereignty and the Question of the Limited Constitutional Convention*, 1 COOLEY L. REV. 108 (1982); Heller, *Limiting a Constitutional Convention: The State Precedents*, 3 CARDOZO L. REV. 563 (1982); Note, *Limited Federal Conventions: Implications of the State Experience*, 11 HARV. J. LEGIS. (1973). The ABA Study also offers an argument, ABA Study, *supra* note 89, at 15-16, that state practices contemporary with the Constitutional Convention suggest that the framers would have expected that a constitutional convention might be convened for a specific purpose. Professor Black has subjected this argument to devastating criticism. Black, *supra* note 43, at 638-42.

145. ABA Study, *supra* note 89, at 16; Balog, *supra* note 144, at 117-22; Heller, *supra* note 144, , at 569-76; Note, *State Experience*, *supra* note 144, at 136-42.

> In order to impose an effective limitation, the state rule requires, roughly, that the sovereign body make an effective delegation of part of its amending authority. But neither the "sovereign body" nor the "effective delegation" part of the formula finds a ready analogue at the federal level. At the state level, the people who comprise the states' populace are collectively the sovereign. The "delegation" is their vote approving the limited convention.[146]

Professor Balog has suggested that the state legislatures which apply for a limited convention may be regarded as the "sovereign body."[147] Thus, while the sovereign People of the United States have no mechanism for directly authorizing limits on the scope of a convention, he argues that the state legislatures may do so on their behalf.[148] For purposes of this argument, "the crucial constitutional question raised by Article V" is whether "the state legislatures, for purposes of amending the Constitution, constitute the sovereign people."[149]

The argument concedes that, ordinarily, legislatures lack the authority to bind the sovereign people to irrevocable decisions.[150] However, the very ratification of the Constitution by the people is said to be a delegation to their state legislatures of "the power to alter the Constitution and thus to validly limit the power of any convention they might apply for in the future."[151] In support of this conclusion, primary reliance is placed on the provisions of Article V relating to ratification of constitutional amendments:

> Two methods are provided by the article for ratifying any amendments proposed either by Congress or by a convention. State legislatures and state conventions are given an equal status in the ratification process. If, then, the state legislatures have the right to speak for the people at the last stage of the amending process, the stage which is ultimately the most important, it seems that they are equally competent at the first stage.[152]

Moreover, a state is powerless to submit questions of ratification to a binding referendum of its people.[153] Because states are forbidden "to make the ratification process more immediately reflect the general will," it is argued that, when Congress has selected ratification by state legislatures, "the state legislature acts as the people

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146. Heller, *supra* note 144, at 577.
147. Balog, *supra* note 144, at 122-29.
148. *Id.* at 122-23.
149. *Id.* at 123.
150. *Id.* at 122-24.
151. *Id.* at 125.
152. *Id.* The equal status of the two methods is confirmed by United States v. Sprague, 282 U.S. 716, 730 (1930) (Congress has unfettered discretion to select either mode of ratification).
153. Hawke v. Smith, 253 U.S. 221, 230 (1919).

of the state."[154] This principle is then extended to the convention process, so that

> [f]or the purposes of Article V, the state legislatures are, in effect, the "people" of their respective states. They may, therefore, ask the Congress to assemble conventions with the full scope of authority to propose amendments, or they may prefer to delegate authority to deliberate upon a limited number of questions.[155]

A somewhat similar argument is made by Chief Justice Thomas Brennan, although directed to a different proposition.[156] He argued that while sovereignty resides in the People of the United States, the fundamental unit of political organization is state government, which controls all lesser units of government.[157] Both the territorial integrity and equal stature of each state is protected by the Constitution, and the states both administer the democratic process, by conducting elections, and furnish the basis for representation in both houses of Congress and in the election of the President.[158] Finally, the states are a key unit for purposes of the amendment process.[159]

From this analysis, Chief Justice Brennan concludes that:

> the people of the United States are *organized by states* when they assert their political power.
>
> For the purpose of exercising ultimate sovereignty; that is, for the purpose of determining the *forms* of government, as opposed to carrying out the *powers* of government, the people of the United States have always been organized by states.
>
> Whether a constitutional amendment begins with a congressional proposal, or with a convention devised proposal, it must receive the approval of the people of three-fourths of the states, in order to become a part of the Constitution. The approval of the people is expressed either by the state legislatures or by conventions in each of the states as one or the other mode of ratification shall be proposed by Congress. It is therefore, a concurrence of the people *by states* that works a change of the Federal Constitution.
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> By the constitutional mandate, it is the people of three-fourths of the states who ratify amendments; nor merely three-fourths of all the people of the United States.[160]

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154. Balog, *supra* note 144, at 125.
155. *Id.* at 125-126.
156. Brennan, *supra* note 68, at 59-72. The author, a former Chief Justice of the Michigan Supreme Court and President of Thomas M. Cooley Law School, urges the calling of a "general" constitutional convention. The argument discussed here is offered in support of organizing the convention to vote by states, as did the original Constitutional Convention.
157. *Id.* at 61-62.
158. *Id.* at 62-63.
159. *Id.* at 63-64.
160. *Id.* at 63-64.

While the state legislatures, by virtue of the authority conferred by Article V, may fairly be described as "participants in sovereignty,"[161] both Professor Balog and Chief Justice Brennan go much too far in attributing to them something approaching full sovereignty. Both neglect the fact that the amendment process has two stages: proposal and ratification. The states cannot ratify an amendment unless it has already been approved by another set of representatives: either Congress or a convention. Only the concurrence of extraordinary majorities at both levels permits the ultimate exercise of sovereign power, amendment of the Constitution. Rather than exercising sovereign power directly, the People of the United States have divided it between two sets of representatives with incentives to check one another in its exercise on behalf of the People. Thus, the state legislatures alone can no more speak for the People to authorize an extra-constitutional limit on the power of a convention than a single corporate officer can validly issue a check on an account requiring two signatures.[162]

Accordingly, the state practice regarding limits on conventions offers little support for a similar technique at the federal level. Indeed, "a far better case can be made for distinguishing the state precedents than for following them."[163]

Desirability and Practicality

"Where literalism and history are not productive of a conclusive answer," "desirability and practicality" "are legitimate aids for construction, for the users of constitutional language ought to be presumed to have intended the desirable and practical."[164] While proponents of limited conventions sometimes rely on these factors,[165] most of their affirmative arguments rest on the premise that the state legislatures were to be empowered to initiate constitutional change, so that their ability to do so should not be unduly obstructed. As that premise is the very issue in dispute, such arguments cannot alter the conclusion. However, the opponents of limited conventions do have some desirability/practicality arguments independent of those already discussed.

One set of these relates to the political dynamics of the limited convention process. Thus, some scholars have expressed the concern

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161. Balog, *supra* note 144, at 127.

162. On this analysis, such limits could be imposed by joinder of the requisite extraordinary majorities at both stages of the process. However, since they would have the power to directly amend Article V, one need not engage in any lengthy analysis of sovereignty to reach that conclusion.

163. Heller, *supra* note 144, at 579.

164. Black, *supra* note 76, at 200.

165. *E.g.*, N.Y. State Bar Study, *supra* note 83, at 546-48.

that:

> confining a convention to single issues invites control by elements of our political life willing to sacrifice the general well-being and political cohesion of the nation to one or a series of private visions. In their judgment, the only way to ensure that a convention behaves in the manner of a politically responsible national organization is to require it to have a diverse representation of open ended interests, each competing in the convention just as they do in Congress. To be politically responsible to a national constituency, according to these scholars, delegates ought to be forced to take a position on a variety of issues, each of which could easily arise at a convention. They must be free to trade on the issues during sessions of the convention, which they could not do in a limited convention. Single-issue conventions, it is asserted, breed political irresponsibility at every level: in the state legislatures submitting applications, in the election of delegates, and on the floor of the convention.[166]

Even those who believe limited conventions proper sometimes find considerable force to these arguments.[167] However, like many of the arguments which portray the dangers of an unlimited convention, they rest on:

> a mistrust of the people of the country—those who would attend a convention, those in the legislatures to whom proposals would likely be submitted for ratification, and the electorate responsible for the selection of these representatives. But the experience of state constitutional conventions does not lend credence to this fear; delegates, once assembled, do not run wild. Voters, furthermore, have been relatively attentive to constitutional amendments presented to them. Most significantly, convention delegates traditionally represent the same moderate political forces that infuse the legislature. If anything, they seem to take their roles as convention delegates more, not less, seriously than their ordinary roles as legislators. Professor Black is correct that formal amendment is serious business; he fails to acknowledge, however, that convention delegates are aware of this and arise to the occasion with an appropriate regard for their duties. One can reasonably assume that a state's delegates to an article V convention, whether general or limited, would be drawn from the mainstream of the state's political activity. The convention, once assembled, would have the informal counsel of the leading scholars and political figures, Congress included. It would be subject to rigorous scrutiny by the various news media. Though a convention might act unwisely, that possibility does not distinguish it from Congress or the state legislatures, who propose and ratify, respectively, most formal constitutional change. No basis exists for assuming that a convention would act irrationally, or that its proposals would be ratified if it did.[168]

So long as Congress insures that the convention will be selected

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166. *Id.* at 546-47. The N.Y. State Bar Study rejects this argument, after synthesizing it well from other sources.

167. *Id.* at 547.

168. Note, *Good Intentions, New Inventions and Article V Constitutional Conventions*, 58 TEX. L. REV., 131, 168 (1979).

in a manner which will be fully representative of the nation, as I think it should and will, I find this point dispositive of all arguments based on fear of either type of convention. Any convention poses risks, but such risks are inherent in any system of democratic constitution making and amending. So long as we are committed to the principle that the People of the United States have the right to alter or amend the basic structure of government, we must accept such risks. Thus, this set of arguments also gives no assistance in resolving the issues under consideration.

A practical argument based on democratic principles is advanced by Professor Black against allowing state legislatures to dictate the agendas of constitutional conventions:

> The national House of Representatives is the only body, anywhere, wherein the whole American people are represented in proportions to their numbers. The waves of pseudopopulist bilge, that would somehow identify the state legislatures with "the people," break against this rock. . . . About half the American people live in nine states. Three-quarters of the states contain as few as forty percent of the people. Anything that builds up the power of the state legislatures, counted one by one, is not a facilitation of democracy but in derogation of the American national democracy.[169]

I find this last argument substantial. However, its force is reduced if the convention to be called is selected in a manner similar to the House of Representatives. Nonetheless, the power to dictate the agenda to such a body is sufficiently significant that even assurance of a fully representative convention would not rob this argument of all force. The remaining force would depend in part on how narrowly the agenda might be limited.

The "Balanced-Budget Convention" Resolutions

All but two of the "balanced-budget convention" resolutions are explicitly or implicitly conditioned on a high degree of confidence that the convention summoned would be unable to validly propose amendments on subjects not specified therein.[170] The above analysis clearly demonstrates that such confidence cannot be generated by the arguments in support of limited conventions.[171] Accordingly, the

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169. Black, *supra* note 43, at 643.

170. *See supra* text accompanying notes 36-40.

171. Indeed, I find the arguments against limited conventions somewhat more persuasive. However, were Congress faced with a sufficient number of state resolutions requesting a convention with a broad but limited mandate (e.g., the "require a balanced budget and make exceptions" formulation) and recognizing that such a convention might not be bound by those limits, then Congress would be justified (and I think wise) in calling such a convention even though it could legitimately conclude that a truly limited convention is not possible. Similar conclusions have been reached by Professors Dellinger and Gunther, among others. *See* Dellinger, *supra* note 7, at

conditions are not fulfilled and the resolutions should be regarded as ineffective. The six amendment-specific resolutions should be regarded as invalid. Even if a limited convention is proper, the 17 "balanced budget absent national emergency" resolutions probably do not allow the convention the necessary scope for deliberation and formulation of an amendment, so their validity is also highly questionable. Apart from passage of time, only the North Dakota resolution would appear to be both valid and effective.

HAVE THE RESOLUTIONS EXPIRED?

As to whichever resolutions might be deemed to constitute valid "applications," the question then arises whether the passage of time since their respective adoption has impaired their effectiveness. On their face, they impose no limit on the time for which they are to be given effect, and some specifically state that they are intended to remain in effect until joined by sufficient other resolutions to oblige Congress to call a convention.[172] Thus, any time limit on their effectiveness must be derived from Article V itself.

A somewhat analogous question regarding the permissible time for ratification of an amendment was presented in *Dillon v. Gloss*.[173] Plaintiff in that case was charged with violating the National Prohibition Act and was being held in custody pending trial. He sought a writ of habeas corpus on the ground that the Eighteenth Amendment was invalid because Congress had impaired the ability of state legislatures to deliberate on its ratification by setting a seven-year limit on the time for ratification. In the course of rejecting the claim, the Supreme Court discussed both the implications of Article V regarding the time for ratification and the power of Congress in this regard.

The Court noted that Article V did not make any explicit provision regarding the time allowed for ratification, but went on to discuss the implications of its other provisions regarding this issue:

> We do not find anything in the Article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which

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1635-37; Gunther, *supra* note 32, at 12-13, 15, n.38. This approach would allow the convention itself to determine the boundaries and effect of its ostensibly limited mandate, thus leaving the ultimate decision in the hands of those specially elected for the purpose of deliberating on the need for revision of the Constitution. But one need not decide that question to resolve the issues presented by the resolutions thus far submitted.

172. *See* Appendix C: Delaware, Idaho, Iowa, Louisiana, Mississippi, Missouri, New Hampshire, North Carolina, Oregon, South Dakota, Tennessee.

173. 256 U.S. 368 (1921).

strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, thee natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefore that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson "that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress." That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.[174]

The Court then turned to the propriety of the seven-year time limit fixed by Congress for ratification of the Eighteenth Amendment, reasoning as follows:

> Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified.[175]

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174. *Id.* at 374-75.

175. *Id.* at 375-76. The Court had previously noted that some amendments had been ratified in less than a year and no ratification had taken longer than four years. *Id.*

Almost all commentators agree that, like ratifications of an amendment proposed by Congress, applications for an Article V convention must be "sufficiently contemporaneous . . . to reflect the will of the people in all sections at relatively the same period."[176] There is even a remarkable degree of agreement on the period within which the application process must be completed, with a general consensus that some figure in the range of four to seven years is appropriate,[177] although some have suggested periods as short as two years[178] or as long as a "generation."[179]

Those suggesting a seven-year time limit generally rely on an analogy to the period allowed in the last half century for ratification of constitutional amendments.[180] This is not a good analogy, however. In deciding whether to ratify an amendment, a state legislature must consider not only the general desirability of a given type of amendment, but the particular specifics of the amendment proposed by Congress. To call for a convention, however, it need only determine that Congress is unresponsive to popular demands for constitutional reform (whether general or specific), a less detailed type of inquiry. Thus, a shorter period should suffice to make the latter decision.

Moreover, the consequences of expiration of the time period are much different. If the time for ratification of an amendment expires,

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176. *Id. See* ABA Study, *supra* note 89, at 31-32; Bonfield, *supra* note 101, at 958-59; Ervin, *supra* note 89, at 89-91; N.Y.C. Bar Study, *supra* note 83, at 332; Voegler, *supra* note 101, at 370-71; Note, *supra* note 2, at 1619-20; 1984 Senate Report, *supra* note 137, at 35; Senate Comm. on the Judiciary, Federal Constitutional Convention Procedures Act, S. Rep. 293, 93rd Cong., 1st Sess. 13 (1973) [hereinafter 1973 Senate Report]; 1967 Senate Hearings, *supra* note 101, at 64-65 (testimony of Prof. Alexander M. Bickel). However, the propriety of any addition of non-textual requirements, such as contemporaneity, for ratification of amendments has been challenged by one commentator, who presumably would take a similar position with respect to convention applications. Dellinger, *The Legitimacy of Constitutional Change: Rethinking the Amendment Process*, 97 HARV. L. REV. 386, 417-19, 424-30 (1983).

177. *See* ABA Study, *supra* note 89, at 32 (Congress should determine period; anything between four and seven years within Congressional power); Ervin, *supra* note 89, at 890-91 (four years); N.Y.C. Bar Study, *supra* note 83, 27 Rec. A.B. City N.Y. at 332 (four years); Voegler, *supra* note 101, at 370-71 (period to be determined by Congress in light of circumstances; range of four to seven years appropriate); Note, *supra* note 2, at 1619-20 (four years); 1984 Senate Report, *supra* note 137, at 35 (normally seven years, subject to transition rule); 1973 Senate Report, *supra* note 176, at 13 (seven years); 1967 Senate Hearings, *supra* note 101, at 64 (testimony of Prof. Alexander M. Bickel) (anything over four years too long).

178. Bonfield, *supra* note 101, at 963 (about 2 ½ years); 1967 Senate Hearings, *supra* note 101, at 37-39 (testimony of Theodore Sorenson) (2 years).

179. L. ORFIELD, THE AMENDING OF THE FEDERAL CONSTITUTION 42 (1942).

180. This period was first used with the Eighteenth Amendment and was upheld by the Supreme Court in Dillon v. Glass, 256 U.S. 368 (1921), discussed in, *supra*, text at notes 173-75. For reliance on this analogy, *see* ABA Study, *supra* note 89, at 32; Voegler, *supra* note 101, at 370-71; 1984 Senate Report, *supra* note 137, at 35; 1973 Senate Report, *supra* note 176 at 13.

any attempt to revive that amendment requires the whole process to start over, starting with the extraordinary efforts required to propose the amendment again (whether by Congress or convention) and followed by fresh ratifications to replace those previously adopted. On the other hand, if the time expires on a particular legislature's convention application, only that legislature need reaffirm that application, as all later applications would remain in effect. Moreover, a legislature can *prevent* lapse of its application by periodically reaffirming it, while there is no similar way to prevent lapse of an unratified amendment on the expiration of the ratification period.[181]

Finally, ratification of an amendment is the final step necessary to make a change in the Constitution, a decision of potentially awesome significance and not to be taken without the fullest deliberation. A convention application, on the other hand, is a very preliminary step, which cannot result in constitutional change unless (1) a convention is actually called, (2) the convention proposes an amendment, and (3) the amendment is then ratified. While still a serious decision, it is both less final and, in and of itself, less consequential.

All of the above factors (complexity of the decision, procedural dynamics, and finality/significance) suggest that the time allowed for convention applications should be shorter than that for ratification.[182]

At the other end of the range of permissible time periods is the suggestion of a two-year period, based on the effective limit on Congressional action to propose a given amendment.[183] Here, too, the analogy is not appropriate. Congress meets as a body at least annually (and, in recent times, is rarely out of session for more than a few months in any two-year period). State legislatures, on the other hand, meet in their respective state capitals, at different times, and in some cases for very brief periods. As a practical matter, obtaining the necessary applications in such a period seems a nearly impossi-

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181. It has been suggested that, because of the uncertainty regarding the length of time an application remains effective, older existing applications should have their effectiveness extended by "saving" provisions in legislation establishing a general rule on the subject. 1984 Senate Report, *supra* note 137, at 35 (seven-year effective period, but existing applications preserved for two years after enactment or until application ten years old, whichever is sooner). But the ability to renew or reaffirm an application provides complete protection to any legislature which mistakenly believed that its application would remain effective for a longer period. Accordingly, there is no need for any extension of whatever expiration time would otherwise be appropriate.

182. The suggestion of a time period as long as a "generation" (perhaps 20-30 years), *see* L. ORFIELD, *supra* note 179, at 42, seems clearly untenable. An application that old must have been made under social and political conditions so different that it can "have no realistic relation to the present wishes of the current body politic." Bonfield, *supra* note 101, at 960.

183. *See* 1967 Senate Hearings, *supra* note 101, at 37-39 (testimony of Theodore Sorenson).

ble undertaking.[184] Only slightly better in this regard is Professor Bonfield's suggestion that an application remain effective only until the legislature in every other state had completed one full regular session, a period not exceeding two and one-half years.[185]

While onerous, these suggestions might have some merit if applying for a convention were an act of a state, as such, for the Bonfield proposal would allow each state to express its views. However, the state legislatures do not act on this subject as agencies of state government but rather as representatives of the People of the United States.[186] While the legislatures have authority to act for the People, the People may need to resort to the electoral process to make their will felt on a given subject.[187] The application process must take account of the dynamics of this process, in order to allow the People to utilize it to procure amendments which they desire but which Congress is unwilling to propose.

For this purpose, every application should be viewed as part of a dialogue with other state legislatures and, indirectly, the respective segments of the People of the United States represented by them. The application should thus remain effective until the People have had a full chance to make known their response through one full session of each legislature *after* all of its members have once stood for election or reelection following the adoption of the initial application. This would allow applications to remain effective for between four and five years.[188]

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184. Indeed, this proposal is intended to make the initiation of a constitutional convention at least as difficult as obtaining Congressional approval of a proposed amendment. *Id.* However, *calling* a convention is not tantamount to proposing an amendment, for the convention itself must act on any such proposal. While I agree that action *by the convention* should involve a degree of consensus comparable to that required for Congressional action (two-thirds of both houses), there is no reason why the difficulty of calling the convention should be so great.

185. Bonfield, *supra* note 101, at 963-64. Professor Bonfield argues that the difficulty envisioned could be minimized by simply having each legislature renew its application every two years until sufficient applications were obtained. *Id.* at 964-65. While true to some extent, this suggestion effectively presumes that each legislature changes its views on the subject every two years. At least a limited presumption seems warranted that those views remain unchanged absent rescission for the period necessary to allow the people full opportunity to express their will with respect to the proposed convention.

186. *See supra* note 29, and accompanying text.

187. Resort to the electoral process may involve replacing some state legislators, but it may require only use of the pressures of campaigning to induce acceptance of the preferences of the electorate.

188. No state legislature has a term of more than four years. THE COUNCIL OF STATE GOVERNMENTS, STATE ELECTIVE OFFICIALS & THE LEGISLATURES 1985-86, at VII. Thus, if the application is made at the very outset of a legislative session, all legislators in the country will have been through one subsequent election within four years and one additional year will allow all of the newly elected or reelected legislators at least one session after their election or reelection. This establishes the five year maximum. Were the application passed immediately before an election in some state,

On this basis, only the Missouri resolution of 1983 could be still effective in 1986, if a convention of the type requested is permitted by Article V. However, even under the seven-year limit which the above analysis would indicate is too long, no more than 13 resolutions could still be effective in 1986, as the other 19 were adopted before 1979.

CONCLUSION

It would thus appear that, given the doubtful efficacy of limits on Article V conventions, only the North Dakota and Delaware resolutions ever became effective by their own terms. The Delaware application, like the other amendment-specific applications, would seem to be invalid on its face and, in any event, both resolutions have ceased to be effective because they are no longer sufficiently contemporaneous with resolutions which might now be adopted. Thus, the effort which produced these applications has run its course and any further effort to the same end must start anew.

However, the analysis set forth above can still serve as an example of the way in which the problems presented by requests for a constitutional convention should be addressed. Moreover, it can reinforce the "practice pointers" for limited convention proponents which could already be derived from the prior literature on the subject. A request for a convention with broadly-defined authority is not only more likely to be valid, but is also less likely to conflict with limitations in parallel requests from other states. In addition, the face of the resolution should reflect the enacting legislature's awareness of the uncertain effect of the limits in confining the scope of the convention, thus establishing that the enacting legislature is willing to rely on its own (and the convention's) judgment on that issue rather than conditioning its request on a finding by Congress that the limits will be effective. Both of these considerations may render convention applications less useful and usable as lobbying tools to pressure Congress to propose particular amendments, but they would substantially increase the justification for treating such resolutions as serious and binding demands for the actual calling of a convention.

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roughly a year less would be required. (Because some states elect legislators in even-numbered years and some in odd-numbered years, at least three years are necessary for all legislators in the country to have been through one election).

APPENDIX A

PRINCIPAL ISSUES RELATING TO FEDERAL CONSTITUTIONAL CONVENTION

1. Does Article V permit the calling of a "limited" convention to propose amendments only with regard to a particular subject or does it authorize only a "general" convention authorized to propose whatever amendments the convention may deem appropriate to remedy what it perceives to be defects in the existing provisions of the constitution?

2. If a "limited" convention is constitutionally authorized, must the limits on such a convention permit it to function as a fully deliberative body called to consider a broad problem and to propose corrective measures or may the terms of the call narrowly limit the function of the convention (e.g. to proposing or rejecting a specified amendment)?

3. If a "limited" convention is constitutionally authorized, how closely must the applications for such a convention agree with one another in specifying the scope of the convention's mandate?

4. For how long a period after passage of a state legislative resolution applying for a constitutional convention does that resolution remain effective as a basis for the calling of such a convention (if joined by a sufficient number of other applications for such a convention)?

5. What procedural requirement must be satisfied to produce a valid application (e.g. is such an application subject to gubernatorial veto; may the lieutenant governor vote to break a tie if authorized by state law to do so; what majority is required to act)?

6. Once a legislature has made application for a convention, may it rescind that application?

7. If a convention is to be called, how should its members be selected?

8. Ought the delegates to a convention vote individually or by states?

9. What vote of the convention should be necessary to propose an amendment?

10. Should Congress or the convention resolve the questions regarding the manner of voting and the vote necessary to propose an amendment?

11. When and in what manner should Congress specify the method of ratification (by legislatures or state conventions) for any amendments proposed by the convention?

12. Are the actions of Congress in calling the convention, defining its composition, etc. subject to presidential veto?

13. If the convention is "limited," who should determine whether the amendments proposed by the convention fall within its mandate and what effect would proposals have which fall outside that mandate?

APPENDIX B

SELECTED BIBLIOGRAPHY OF LEGAL LITERATURE ON FEDERAL CONSTITUTIONAL CONVENTION

Reference	*Issued Addressed*/*
American Bar Association Special Constitutional Convention Study Committee, *Amendment of the Convention Method Under Article V* (1974) ("ABA Study").	All
Association of the Bar of the City of New York, Committee on Federal Legislation, *Proposed Procedures for Federal Constitutional Conventions (S. 215)*, 27 Rec. A. B. City N.Y. 327 (1972) ("N.Y.C. Bar Study").	1-5, 7-13
Black, *The Proposed Amendment of Article V: A Threatened Disaster*, 72 YALE L.J. 957 (1963) ("*Threatened Disaster*").	1
Black, *Amending the Constitution: A Letter to A Congressman*, 82 YALE L.J. 189 (1972) ("*Letter to Congressman*").	1
Black, *Amendment by National Conventions: A Letter to a Senator*, 32 OKL. L. REV. 626 (1979) ("*Letter to a Senator*").	1
Bonfield, *The Dirksen Amendment and the Article V Convention Process*, 66 MICH. L. REV. 949 (1968)	1-13
Brennan, *Return to Philadelphia*, 1 COOLEY, L.R. 1 (1982).	1, 8, 10
Connely, *Amending the Constitution: Is This Any Way To Call a Convention*, 22 ARIZ. L. REV. 1011 (1980).	1, 5-6
Dellinger, *The Recurring Question of the "Limited" Constitutional Convention*, 88 YALE L.J. 1623 (1979).	1-2
Ervin, *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 MICH. L. REV. 875 (1968).	1-13

Gunther, *The Convention Method of Amending the United States Constitution*, 14 GA. L. REV. 1 (1979).	1-2
Heller, *Limiting a Constitutional Convention: The State Precedents*, 3 CARDOZO L. REV. 563 (1982).	1
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Van Alstyne, *Does Article V Restrict the States to Calling Unlimited Conventions Only?—A Letter to a Colleague*, 1978 DUKE L.J. 1295 ("*Letter*").	1-2
Van Alstyne, *The Limited Constitutional Convention—The Recurring Answer*, 1979 DUKE L.J. 985 ("*Recurring Answer*").	1-2
Voegler, *Amending the Constitution by Article V Convention Method*, 55 N.D. L. REV. 355 (1979).	1-8, 10, 12-13
Comment, *Amendment by Convention: Our Next Constitutional Crisis*, 53 N.C. L. REV. 491 (1975).	1
Note, *Article V: Political Questions and Sensible Answers*, 57 TEX. L. REV. 1259 (1979) ("*Sensible Answers*").	5-6
Note, *Good Intentions, New Inventions, and Article V Constitutional Conventions*, 58 TEX. L. REV. 131 (1979) ("*Good Intentions*").	1
Note, *Limited Federal Constitutional Conventions: Implications of the State Experience*, 11 HARV. J. LEGIS. 127 (1973) ("*Limited Conventions*").	1

Note, *Proposed Legislation on the Convention Method of Amending the United States Constitution*, 85 HARV. L. REV. 1612 (1972) ("*Convention Legislation*").	1-2, 4, 7-10, 12-13
Federal Constitutional Conventions: Hearings Before the Subcommittee on Separation of Powers of the Committee on the Judiciary, United States Senate, 90th Cong. 1st Sess., on S.2307 (1967) ("1967 Senate Hearings").	1-13
Federal Constitutional Convention Procedures Act: Report of the Committee on the Judiciary, United States Senate on S.1272, S. Rep. 93-293, 93rd Cong., 1st Sess. (1973) ("1973 Senate Report").	1-13

APPENDIX C

STATE LEGISLATIVE RESOLUTIONS PERTAINING TO A "BALANCED-BUDGET" CONSTITUTIONAL CONVENTION[1]

Alabama[2]

Be it resolved by the legislature of Alabama, both houses thereof concurring, That the Legislature of Alabama hereby petitions the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the Alabama Legislature requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Be it further resolved, That, alternatively the Alabama Legislature makes application and requests that the Congress of the United States call a constitutional convention, pursuant to Article V of the Constitution of the United States, for the specific and exclusive purpose for proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Alaska[3]

BE IT RESOLVED by the Alaska State Legislature that the Congress of the United States is requested to propose and submit to the states an amendment to the Constitution of the United States which would require that within four years after its ratification by the various states, in the absence of a national emergency, the total

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1. Only in the most recent resolution from any one state is included in this Appendix. Portions of the resolution stating the legislature's reasons for acting are omitted unless they pertain specifically to the proposed constitutional convention (as opposed to the desirability of the type of constitutional amendment sought). Also omitted are exhortations to other state legislatures and directions for transmittal to Congress. Many of these resolutions are reprinted at a number of different places in the Congressional Record, and the references here were selected for convenience rather than to show when the resolution was first received by Congress.

2. Ala. H.J. Res. 227 (1976), *reprinted at* 125 Cong. Rec. 2108-09 (1979). An earlier application is Ala. H.J. Res. 105 (1975), *reprinted at*, 121 Cong. Rec. 28,347 (1975).

3. Alaska H.J. Res. 17 (1982), *reprinted at*, 128 Cong. Rec. S1075 (daily ed. Fed. 24, 1982).

of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

FURTHER RESOLVED that, alternatively, this body makes application and requests that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

FURTHER RESOLVED that if Congress proposes such an amendment to the Constitution this application shall no longer be of any force or effect; and be it

FURTHER RESOLVED that this application and request shall no longer be of any force or effect if the convention is not limited to the exclusive purpose specified by this resolution.

Arizona[4]

Be it resolved by the Legislature of the State of Arizona:

1. That the Congress of the United States institute procedures to add a new article to the Constitution of the United States and that the Congress of the United States prepare and submit to the several states an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

2. That, alternatively, the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

3. That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this joint Resolution then this petition for a constitutional convention shall no longer be of any force or effect.

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4. Ariz. S.J. Res. 1002 (1979), *reprinted at*, 125 Cong. Rec. 7920-21 (1979). An earlier application is Ariz. H. Con. Me. 2003 (1977), *reprinted at*, 123 Cong. Rec. 18,873-74 (1977).

Arkansas[5]

Now, therefore, be it resolved by the seventy-second General Assembly of the State of Arkansas:

> That this Body proposed to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the General Assembly of the State of Arkansas requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and

Be it further resolved:

> That, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that Fiscal year.

Colorado[6]

Be it resolved by the Senate of the Fifty-first General Assembly of the State of Colorado, the House of Representatives concurring herein:

> That the Congress of the United States is hereby memoralized to call a constitutional convention pursuant to Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the federal constitution prohibiting deficit spending except under conditions specified in such amendment.

Be it Further Resolved, That this application and request be deemed nulled and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

Delaware[7]

Be it resolved by the House of Representatives of the 128th General Assembly, the Senate concurring therein, that the General Assembly of the State of Delaware hereby, and pursuant to Article

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5. Ark. H.J. Rex. 1 (1979), *reprinted at*, 125 Cong. Rec. 2109 (1979).
6. Colo. S.J. Mem. 1 (1978), *reprinted at*, 125 Cong. Rec. 2109 (1979).
7. Del. H.Con. Res. 36 (1975), *reprinted at*, at 125 Cong. Rec. 2109 (1979).

V of the Constitution of the United States, makes application to the Congress of the United States to call a convention for the proposing of the following amendment to the Constitution of the United States:

"ARTICLE —

The costs of operating the Federal Government shall not exceed its income during any fiscal year, except in the event of declared war."

Be it further resolved that this application by the General Assembly of the State of Delaware constitutes a continuing application in accordance with Article V of the Constitution of the United States until at method of proposing amendments to the several states have made similar applications pursuant to Article V.

Be it yet further resolved that since this method of proposing amendments to the Constitution has never been completed to the point of calling a convention and no interpretation of the power of the states in the exercise of this right has ever been made by any court or any qualified tribunal, if there be such, and since the exercise of the power is a matter of basic sovereign rights and the interpretation thereof is primarily in the sovereign government making such exercise and, since the power to use such a right in full also carries the power to use such right in part, the General Assembly of the State of Delaware interprets Article V to mean that if two-thirds of the states make application for a convention to propose an identical amendment to the Constitution for ratification with a limitation that such amendment be the only matter before it, that such convention would have power only to propose the specified amendment and would be limited to such proposal and would not have power to vary the text thereof nor would it have power to propose other amendments on the same or different proposition.

Florida[8]

Resolved by the Legislature of the State of Florida:

That the Legislature of the State of Florida does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the

8. Fla. S. Mem. 234 (1976), *reprinted at*, 125 Cong. Rec. 2109-10 (1979). Final approval of S. Mem. 234 by the Florida House of Representatives occurred on June 3, 1976. On May 6, 1976, the Florida Senate gave final approval to Fla. H.Mem. 2801 (1976), *reprinted at*, 125 Cong. Rec. 3655-56 (1974), which requested a convention limited to proposing a particular amendment. Because S. Mem. 234 is both the later resolution and calls for a convention of broader scope, but including the proposal amendment specified in H. Mem. 2801, S.234 appears to supercede H. Mem. 2801.

sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Georgia[9]

Be it resolved by the General Assembly of Georgia:

That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Be it further resolved that this application by the General Assembly of the State of Georgia constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Resolution before January 1, 1977, this petition for a Constitutional Convention shall no longer be of any force or effect.

Idaho[10]

Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the House of Representatives and the Senate concurring, that the Legislature proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the legislature requests the Congress to prepare and submit to the several states an amendment to the constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved, that, alternatively, the Legislature makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved, that this application by this Legislature

9. Ga. H. Res. 469-1267 (1976), *reprinted at*, 125 Cong. Rec. 2110 (1979).
10. Idaho H. Con. Res. 7 (1979), *reprinted at*, 125 Cong. Rec. 3657 (1979).

constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the Legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution then this petition for a Constitutional Convention shall no longer be of any force of effect; and

Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

Indiana[11]

Be it resolved by the General Assembly of the State of Indiana:

Section 1. The General Assembly of the State of Indiana makes application to the Congress of the United States for a convention to be called under ARticle V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution to the effect that, in the absence of a national emergency, the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

Iowa[12]

Be it resolved by the General Assembly of the State of Iowa:

Section 1. The Iowa general assembly proposes to the Congress of the United States that procedures be instituted in the congress to propose and submit to the several states before July 18, 1980, an amendment to the Constitution of the United States requiring that the federal budget be balanced in the absence of a national emergency.

Section 2. Alternatively, effective July 1, 1980, if the Congress of the United States has not proposed and submitted to the several states an amendment as provided in section one (1) of this resolution, the Iowa general assembly respectfully makes application to and petitions the congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Section 3. Effective July 1, 1980, this application by the Iowa general assembly constitutes a continuing application in accordance with Article five (V) of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made similar

11. Ind. S.J. Res. 8 (1979), *reprinted at*, 125 Cong. Rec. 9118 (1979). An earlier application is Ind. H. Con.Res. 9 (1957), *reprinted at*, 103 Cong. Rec. 6475 (1957).

12. Iowa S.J. Res. 1 (1979), *reprinted at*, 125 Cong. Rec. 15,227 (1979).

applications pursuant to Article five (V), but if the congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution, or if before July 1, 1980, the general assembly repeals this application to call a constitutional convention, then this application and petition for a constitutional convention shall no longer be of any force or effect.

Section 4. This application and petition shall be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

Kansas[13]

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein: That the Congress of the United States is hereby requested to propose and submit to the states an amendment to the Constitution of the United States which would require that within five years after its ratification by the various states, in the absence of a national emergency, the total of all appropriations made by the Congress for a fiscal year shall not exceed the total of all estimated federal revenues for such fiscal year; and

Be it further resolved: That, alternatively, the Legislature of the State of Kansas hereby makes application to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by the Congress for a fiscal year shall not exceed the total of all estimated federal revenues for such fiscal year. If the Congress shall propose such an amendment to the Constitution, this application shall no longer be of any force or effect.

Louisiana[14]

THEREFORE, BE IT RESOLVED by the Senate of the Legislature of the state of Louisiana, the House of Representatives thereof concurring, that the Congress of the United States institute procedures to propose and submit to the several states an amendment to the Constitution of the United States requiring that the federal budget be balanced in the absence of a national emergency.

BE IT FURTHER RESOLVED that, alternatively, this body

13. Kansas S. Con. Res. 1661 (1978), *reprinted at*, 125 Cong. Rec. 2110 (1979).

14. La. S. Con. Res. 4 (1979), *reprinted at*, 125 Cong. Rec. 19,470-71 (1979). Earlier applications are La. S.Con.Res. 73 (1978), *reprinted at*, 125 Cong. Rec. 2110-11 (1979), and La. S. Con. Res. 109 (1975), *reprinted at*, 121 Cong. Rec. 25,312 (1975).

respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

BE IT FURTHER RESOLVED, that this application by the Louisiana Legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Resolution, then this petition for a constitutional convention shall no longer be of any force or effect.

BE IT FURTHER RESOLVED, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

Maryland[15]

Resolved by the General Assembly of Maryland, That this Body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article XXVII to the Constitution of the United States, and that the General Assembly of Maryland requests the Congress to prepare and submit to the several states and amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of any estimated Federal revenues, excluding any fiscal year; and be it further

Resolved, That this Body further and alternatively requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII; and be it further

* * * *

Resolved, That the proposed new Article XXVII (or whatever numeral may then be appropriate) read substantially as follows:

"PROPOSED ARTICLE XXVII

"The total of all Federal appropriations made by the Con-

15. Md. J. Res. 77 (1975), *reprinted at*, 125 Cong. Rec. 2111 (1979).

gress for any fiscal year may not exceed the total of the estimated Federal revenues for that fiscal year, excluding any revenues derived from borrowing; and this prohibition extends to all federal appropriations and all estimated Federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this Article. If the President proclaims a national emergency, suspending the requirement that the total of all Federal appropriations not exceed the total estimated Federal revenues for a fiscal year, excluding any revenues derived from borrowing, and two-thirds of all Members elected to each House of the Congress so determine by Joint Resolution, the total of all Federal appropriations may exceed the total estimated Federal revenues for that fiscal year."

Mississippi[16]

Now therefore, Be it Resolved by the House of Representatives of the State of Mississippi, the Senate Concurring of the State of Mississippi, the Senate Concurring Therein, That we do hereby, pursuant to Article V of the Constitution of the United States, make application to the Congress of the United States to call a Convention of the several states for the proposing of the following amendment to the Constitution of the United States:

"ARTICLE —

Section 1. Except as provided in Section 3, the Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year.

Section 2. There shall be no increase in the national debt, as it exists on the date on which this article is ratified, shall be repaid during the one-hundred-year period beginning with the first fiscal year which begins after the date on which this article is ratified. The rate of repayment shall be such that one-tenth (1/10) of such debt shall be repaid during each ten-year interval of such one-hundred-year period.

Section 3. In time of war or national emergency, as declared by the Congress, the application of Section 1 or Section 2 of this article, or both such sections, may be suspended by a concurrent resolution which has passed the Senate and the

16. Miss. H. Con. Res. 51 (1975), *reprinted at*, 125 Cong. Rec. 2111 (1979).

House of Representatives by an affirmative vote of three-fourths (¾) of the authorized membership of each such house. Such suspension shall not be effective past the two-year term of the Congress which passes such resolution, and if war or an emergency continues to exist such suspension must be reenacted in the same manner as provided herein.

Section 4. This article shall apply only with respect to fiscal years which begin more than six (6) months after the date on which this article is ratified."

Be it Further Resolved, That this application by the Legislature of the State of Mississippi constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds (⅔) of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical with that contained in this resolution before January 1, 1976, this application for a convention of the several states shall no longer be of any force or effect.

Missouri[17]

NOW, THEREFORE, BE IT RESOLVED by the Senate of the Eighty-second General Assembly of the State of Missouri, the House of Representatives concurring therein, that the Missouri General Assembly proposes to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the Missouri General Assembly requests the Congress to prepare and submit to the several states before January 1, 1984, an amendment to the Constitution of the United States, requiring a balanced federal budget and to make certain exceptions with respect thereto; and

BE IT FURTHER RESOLVED that if, by January 1, 1984, the Congress has not proposed and submitted to the several states such an amendment, this body respectfully makes application to the Congress of the United States for a convention to be called under Article V of the Constitution of the United States for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto; and

BE IT FURTHER RESOLVED that effective January 1, 1984, this application constitutes a continuing application in accordance

17. Mo. S. Con. Res. 3 (1983), *reprinted at*, 129 Cong. Rec. S10,594 (daily ed. July 21, 1983).

with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made similar applications pursuant to Article V, but if the Congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution, then this application and petition for a constitutional convention shall no longer be of any force or effect; and

BE IT FURTHER RESOLVED that this application shall be deemed null and void, rescinded and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

Nebraska[18]

Now, Therefore, be it resolved by the members of the eighty-fourth legislatures of Nebraska, second session:

> 1. That this body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the State of Nebraska requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year.
>
> 2. That, alternatively, this Legislature makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenue for that fiscal year.

Nevada[19]

Resolved by the Senate and Assembly of the State of Nevada, jointly, That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must not exceed the total of the estimated federal revenue for that year; and be it further

Resolved, That this legislature conditions this request upon the Congress of the United States' establishing appropriate restrictions limiting the subject matter of a convention called pursuant to this

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18. Neb. Leg. Res. 106 (1976), *reprinted at*, 125 Cong. Rec. 2112 (1979).
19. Nev. S.J. Rec. 8 (1979), *reprinted at*, 126 Cong. Rec. 1104-05 (1980).

resolution to the subject matter of this resolution, and if the Congress fails to establish such restrictions, this resolution has no effect and must be considered a nullity.

New Hampshire[20]

Resolved by the legislature of the state of New Hampshire, that this body proposes to the Congress of the United States that procedures be instituted in the Congress to propose and submit to the several states an amendment to the Constitution of the United States requiring that the federal budget be balanced in the absence of a national emergency; and be it further

Resolved that, alternatively, this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto; and be it further

Resolved, that this application by this body constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar application pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this House Concurrent, then this petition for a Constitutional Convention shall no longer be of any force or effect; and be it further

Resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

New Mexico[21]

Now, therefore, be it resolved by the legislature, of the State of New Mexico that this body that procedures be instituted in the congress to add a new article to the constitution of the United States, and that the legislature of the state of New Mexico requests the congress to prepare and submit to the several states an amendment to the constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and

Be it further resolved that, alternatively, this body makes appli-

20. N.H.H. Cong. Rec. 8 (1979), *reprinted at*, 125 Cong. Rec. 11,584 (1979). An earlier application is N.H.H.J. Res. 4 (1977).

21. N.M.S.J. Res 1 (1976), *reprinted at*, 125 Cong. Rec. 2112-13 (1979).

cation and requests that the congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

North Carolina[22]

Section 1. That the Congress of the United States is requested to propose and submit to the states an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the federal budget be balanced each fiscal year within four years after the amendment is ratified by the various states.

Section 2. That, alternatively, this body respectfully petitions the Congress of the United States to call a convention for the exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget in the absence of a national emergency.

Section 3. That this application constitutes a continuing application in accordance with Article V, of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, or until this application is rescinded by the General Assembly of North Carolina; but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this joint resolution before January 1, 1980, this petition for a Constitutional Convention shall no longer be of any effect.

Section 4. That this application and request be deemed rescinded in the event that the convention is not limited to the subject matter of this application.

North Dakota[23]

Be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein;

That we respectfully propose an amendment to the Constitution of the United States and call upon the people of the several states for a convention for such purpose as provided by Article V of the Constitution, the proposed Article providing as follows:

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22. N.C.S.J. Res. 1, *reprinted at*, 125 Cong. Res. 1923 (1979). An earlier application is N.C. Res. 97 (1977), *reprinted at*, 123 Cong. Rec. 23,348 (1977).

23. N.D.S. Con. Res. 4018 (1975), *reprinted at*, 125 Cong. Rec. 2113 (1979).

Section 1. The president shall submit, at the beginning of each new Congress, an annual budget for the ensuing fiscal year setting forth in detail the total proposed expenditures and the total estimated revenue of the Federal Government from sources other than borrowing. The president may set new revenue estimates from time to time. Expenditure for each two-year period shall not exceed the estimated revenue except in time of war or a national emergency declared by the Congress. The provisions of this Article shall not apply to the refinancing of the national debt.

Oklahoma[24]

Now, therefore, be it resolved by the House of Representatives and the Senate of the 2nd session of the 35th Oklahoma legislature:

Section 1. That this body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the Legislature of the State of Oklahoma makes application and requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Section 2. That alternatively, this Body requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Oregon[25]

1. That this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

2. That this application by this body constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Memorial before Janu-

24. Okla. H.J. Res. 1049 (1976), *reprinted at*, 125 Cong. Rec. 2113 (1979). An earlier application is Okla. S.Con.Res. 130 (1974).

25. Ore. S.J. Mem. 2 (1977), *reprinted at*, 125 Cong. Rec. 2113 (1979).

ary 1, 1979, this petition for a constitutional convention shall no longer be of force or effect.

Pennsylvania[26]

Resolved (The Senate concurring), That the General Assembly of the Commonwealth of Pennsylvania proposes to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the General Assembly of the Commonwealth of Pennsylvania requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and be it further

Resolved That, alternatively, the General Assembly of the Commonwealth of Pennsylvania makes application and requests that the Congress of the United States call a Constitutional Convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

South Carolina[27]

Be it resolved by the Senate, the House of Representatives concurring:

> That Congress is requested, pursuant to Article V of the United States Constitution, to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution.

Be it further resolved that the proposed new amendment read substantially as follows:

"PROPOSED ARTICLE XXVII

The total of all federal appropriations made by the Congress for any fiscal year shall not exceed the total of the estimated federal revenues for that fiscal year, excluding any revenues derived from

26. Pa. H.J. Res. 236 (1976), *reprinted at*, 125 Cong. Rec. 2113-14 (1979).

27. S.C.S. 1024 (1978), *reprinted at*, 125 Cong. Rec. 2114 (1979). An earlier application is S.C.H.J. Res. 3296 (1976), *reprinted at*, 122 Cong. Rec. 4239 (1976).

borrowing, and this prohibition extends to all federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this article.

The provisions of this article shall be suspended for one year upon the proclamation by the President of an unlimited national emergency. The suspension may be extended, but not for more than one year at any one time, if two-thirds of the membership of both Houses of Congress so determine by Joint Resolution.

South Dakota[28]

Be it resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein:

> That the Legislature does hereby make application to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the Legislature of the state of South Dakota hereby requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and
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> Be it further resolved, that alternatively, this Legislature hereby makes application under said Article V of the Constitution of the United States and with the same force and effect as if this Resolution consisted of this portion alone and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States requiring in the absence of a national emergency, as defined by law, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and
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> Be it further resolved, that this application and request be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and
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> Be it further resolved, that this application by this legislature constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made applications for similar relief pursuant to Article V, but, if Congress proposes an amendment to the Constitution identical in subject matter to that contained in this Joint Resolution then this petition for a Constitutional Convention shall no longer be of any force or effect.

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28. S.D.S.J. Rec. 1 (1979), *reprinted at*, 125 Cong. Rec. 3656 (1979).

Tennessee[29]

Be it resolved by the House of Representatives of the Ninetieth General Assembly of the State of Tennessee, the Senate concurring, That pursuant to Article V of the Constitution of the United States, application is hereby made to the United States Congress to call a convention for the purpose of considering and proposing an amendment to the Constitution of the United States to require that, in the absence of a national emergency, the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues for that fiscal year, such amendment to read substantially as follows:

> The total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated federal revenues for that fiscal year; and this prohibition extends to all federal appropriations and all estimated federal revenues without exception. The President in submitting budgetary requests and the Congress in enacting appropriation bills shall comply with this article. If the President proclaims a national emergency, suspending the requirement that the total of all federal appropriations not exceed the total estimated federal revenues of a fiscal year, and two-thirds (⅔) of all members elected to each house of the Congress so determine by joint resolution, the total of all federal appropriations may exceed the total estimated federal revenues for that fiscal year.

Be it further resolved, That this application shall constitute a continuing application for such convention under Article V of the Constitution of the United States until the legislatures of two-thirds (⅔) of the several states shall have made like applications and such convention shall have been called and held in conformity therewith, unless the Congress itself proposes such amendment within the time and the manner herein provided.

Be it further resolved, that proposal of such amendment by the Congress and its submission for ratification to the legislatures of the several states substantially in the form of the article hereinabove specifically set forth, at any time prior to sixty (60) days after the legislatures of two-thirds (⅔) of the several states shall have made application for such convention, shall render such convention unnecessary and the same shall not be held. Otherwise, such convention shall be called and held in conformity with such applications.

Texas[30]

RESOLVED by the House of Representatives of the State of

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29. Tenn. H.J. Res. 22 (1977), *reprinted at*, 125 Cong. Rec. 2114-15 (1979).

30. Tex. H. Cong. Res. 31 (1977), *reprinted at*, 125 Cong. Rec. 5223-24 (1979). This application was reaffirmed by reference in Tex. H. Con. Res. 13 (1978), *re-*

Texas, the Senate concurring, That the 65th Legislature propose to the Congress of the United States that procedures be instituted in the Congress to add a new article to the Constitution of the United States, and that the State of Texas request the Congress to prepare and submit to the several states an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year; and, be it further

RESOLVED, That, alternatively, this body request that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Utah[31]

Now, therefore, be it resolved by the 43rd Legislature of the State of Utah, that the Congress of the United States is requested to institute procedures to add a new article to the Constitution of the United States and to prepare and submit to the several states an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

Be it further resolved that, alternatively, this Legislature applies to the Congress of the United States to call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the federal constitution which would require, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed that total of all estimated federal revenues for that fiscal year.

Virginia[32]

Resolved by the Senate of Virginia, the House of Delegates con-

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printed at, 125 Cong. Rec. 3654 (1979). The latter resolution adds a provision stating:

> RESOLVED, that this amendment require the achievement of a balanced budget within a reasonable period after adoption and establish a procedure for amortizing the national debt.

31. Utah H.J. Res. 12 (1979), *reprinted at*, 125 Cong. Rec. at 4372-73 (1979).

32. Va. S.J. Res. 36 (1976), *reprinted at*, 125 Cong. Rec. 2115-16 (1979). Earlier applications are Va. S.J. Res. 107 (1975), *reprinted at*, 121 Cong. Rec. 5793 (1975), and Va. H.J. Res. 75 (1972), *reprinted at*, 119 Cong. Rec. 8091 (1973).

curring, That the General Assembly of Virginia proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that this Body hereby requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year; and, be it

Resolved further, That, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year not exceed the total of all estimated Federal revenues for that fiscal year.

Wyoming[33]

Now, therefore be it resolved by the legislature of the State of Wyoming, a majority of all members of the two Houses, voting separately, concurring herein:

> Section 1. That procedures be instituted in the Congress to add a new Article XXVII to the Constitution of the United States, and that Congress prepare and submit to the several states an amendment to the Constitution of the United States, requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues, excluding any revenues derived from borrowing, for that fiscal year; or
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> Section 2. That the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing such an amendment to the Federal Constitution, to be a new Article XXVII.
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> * * * *

Section 4. That the proposed new Article XXVII (or whatever numeral may then be appropriate) read substantially as follows:

PROPOSED ARTICLE XXVII

"The total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of the estimated Federal revenues for that fiscal year, excluding any revenues derived from

33. Wyo. H.J. Res. 1 (1977), *reprinted at*, 125 Cong. Rec. 2116 (1979). An earlier application is Wyo. H.J. Res. 4 (1961), *reprinted at*, 107 Cong. Rec. 2759 (1961).

borrowing; and this prohibition extends to all Federal appropriations and all estimated Federal revenues, excluding any revenues derived from borrowing. The President in submitting budgetary requests and the Congress in enacting appropriations bill shall comply with this Article. If the President proclaims a national emergency, suspending the requirement that the total of all Federal appropriations not exceed the total estimated Federal revenues derived from borrowing, and two-thirds of all Members elected to each House of the Congress concur by Joint Resolutions, the total of all Federal appropriations may exceed the total estimated Federal revenues for that fiscal year."