Article V's convention process is part of the beautiful constitutional machinery built to protect the states and the people from an overreaching federal government.

FIVE MYTHS ABOUT AN ARTICLE V CONVENTION

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THE CONSTITUTIONAL boundaries separating the three federal branches and setting outer limits on their power are barely visible anymore. Many Americans are turning toward Article V of the Constitution to restore those boundaries. Constitutional amendment is strong medicine, to be sure, but it is *the* medicine that our Founders prescribed for the disease of federal overreach that is otherwise terminal to our Republic.

Here are five myths about the Article V antidote and its side effects.

1. An Article V convention is a "Constitutional Convention" or "Con-Con."
This point can get confusing, because Article V is a provision of the Constitution, so a convention held pursuant to its terms could be described as "constitutional" in that sense. But what most people mean when they describe an Article V convention as a "Con-Con" is that it is the same type of gathering as the one in 1787 that produced our Constitution. And that implication is clearly wrong.

The distinction between the Philadelphia Convention of 1787 and a convention held pursuant to Article V lies in the source of authority for each. The states gathered in 1787 pursuant to their residual powers as individual sovereigns—*not* pursuant to any provision of the Articles of Confederation for proposing amendments.

An Article V convention, on the other hand, derives its authority from the terms of Article V itself and is therefore limited to proposing amendments to the Constitution we already have, pursuant to the prescribed procedures.

2. We have no idea how an Article V convention would operate.
Article V itself is silent as to the procedural details of a convention, leading some to speculate that we are left clueless as to how the meeting would function. But while it's true that there has never been an Article V convention, *per se*, the states have met in conventions an estimated 40 times. There is a clear precedent for how these meetings work.

In fact, many of the Framers had attended one or more conventions, and the basic procedures were *always* the same. For instance, voting at an interstate convention is always done as states, with each state getting one vote, regardless of population or the number of delegates in attendance (that's why it's a convention of states—not a convention of delegates).

The more detailed, parliamentary rules of the convention are decided by the delegates at the convention itself.

3. The topic of an Article V convention cannot be limited, so convention delegates could re-write the entire Constitution once they assemble.

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If states weren't free to define the scope of an Article V convention, then America would have already witnessed many of them. Over the course of our nation's history, states have filed over 400 applications for Article V conventions. The reason we haven't had one yet is because there have never been 34 applications requesting a convention on the same topic.

Moreover, this proposition makes no sense from a historical, practical or legal perspective. In every interstate convention ever held, there was *always* a specified topic or agenda for the meeting. Practically speaking, some limitation on the topic is necessary in order for the state legislatures to provide instructions to the delegates they send as their agents (states always instruct their delegates).

4. Congress would control an Article V convention.

Anyone who has read James Madison's record of the Philadelphia Convention proceedings knows that the very reason the drafters added the convention method of proposing amendments to Article V was to give the states a way to bypass Congress— which has its own, express power to unilaterally propose amendments. They would never have given Congress control over both methods.

Congress only has two powers related to the convention: to issue the formal call, setting the date and location of the convention once 34 similar applications are received, and to choose between two methods of state ratification for any proposals offered by the convention. That's it.

In fact, at least one federal court has definitively ruled that Congress cannot use any of its Article I powers—including its power under the Necessary and Proper Clause— to affect Article V procedures.

5. The Article V convention process has no safeguards to protect our Constitution from rogue delegates or big-money special interest groups.

To the contrary, the process is so well-safeguarded that it has proven incredibly difficult to invoke! There are numerous, redundant safeguards on the process.

First, the topic specified in the 34 applications that trigger the convention act as an initial limitation on it. These applications are the very source of authority for the convention, so any proposals beyond their scope would be out of order.

Second, state legislatures can recall any delegates who exceed their authority or instructions. Convention delegates are the agents of their state legislature and are subject to its instructions. As a matter of basic agency law, any actions taken outside the scope of a delegate's authority would be void.

But the final and most effective protection of the process is the simple fact that it takes 38 states to ratify any amendment proposed by the convention. This means that it would only take 13 states to block any ill-conceived or illegitimately advocated proposal.

Article V's convention process is part of the beautiful constitutional machinery built to protect the states and the people from an overreaching federal government. It is time for us to use it.

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Rita Dunaway is a constitutional attorney, the author of Restoring America's Soul: Advancing Timeless Conservative Principles in a Wayward Culture, and co-host of the weekly radio program, "Crossroads: Where Faith and Culture Meet." She serves as National Legislative Strategist for the Convention of States Project.

Prior to joining the Convention of States Project, Rita spent approximately 10 years as Staff Counsel for The Rutherford Institute, where she worked to protect the civil liberties of Americans across the nation. She has authored numerous briefs for the United States Supreme Court and the federal appellate courts.

As an allied attorney for Alliance Defending Freedom and a volunteer for two Virginia-based conservative policy organizations, Rita has enjoyed being involved in the public policy process for several years and regularly testifies before legislative committees at the Virginia General Assembly.

Rita's commentaries are published weekly in The Daily News Record in Harrisonburg, Virginia, and have also appeared online at WND.com and The Blaze.

As a Presidential Scholar at West Virginia University, Rita earned dual bachelor degrees in 1998, graduating summa cum laude from both the Journalism and Political Science departments. She then continued her education as a Benedum Scholar at Washington and Lee University School of Law, from which she graduated cum laude in 2001.

Rita is a member of the Virginia State Bar and lives in the Shenandoah Valley with her husband, Scott and their two children.

No, a Convention of States Could Not Change the "One State/One Vote" Rule

Professor Robert Natelson
January 22, 2023

Could a convention of states could change the "one state/one vote" rule to one based on population? The short answer is "No."

In at least 42 conventions of states[1] and colonies over 350+years, there is no precedent for such a change. The possibility exists only in the fantasies of convention opponents.

Defenders of the federal government and other opponents of an Article V convention raise the issue in two contradictory ways. In urban states, they attack the Constitution's convention process for using the one state/one vote rule. (The say it is "undemocratic.") But in rural states, they attack the Constitution's convention process because, they say, it might not use the one state/one vote rule!

(They used to claim Congress could write the rules before the evidence made that argument untenable[2].)

Why the Question is Based on Fantasy

The one state/one vote system is based on a core principle of interstate conventions: sovereign equality. Claims that a convention might discard that core principle disregard political, demographic, historical, and legal realties.

Let's examine the political and demographic facts first.

Political and Demographic Realities

When the convention meets, it operates on a one state/one vote basis. To change this to a population formula requires a vote of a majority of states present—most likely 26 of 50.

Would 26 states vote for such a change? Not in a million years. Here's why:

- A population formula would give states with more-than-average populations more power at the convention. States with less-than-average populations would lose power.

- As of 2023, the population of the fifty states (that is, excluding the District of Columbia and Puerto Rico) is 338 million. Divide that by 50 and you get the average state population: about 6.76 million.
- Thus, a change to a population formula, would cause every state with a population of less than 6.76 million to lose power.
- There are only 17 states with more than 6.75 million people. 33 states have less.
- Even if (which is unlikely) all 17 urban states voted for a population-based system, at least nine rural states would have to vote to reduce their own power.
- Some of the more conservative large states like Florida, Texas, Tennessee, and Indiana probably would not vote to change the rule—so even more rural states would have to vote to disenfranchise themselves.

The Realities of Experience

In 42 prior conventions of states and colonies held over 350 years, there were efforts to change the sovereign equality principle at only three. All lost.

- At the Albany convention of 1754, there was talk about given some colonies more weight. The idea was abandoned.
- In 1783, the Massachusetts legislature called for a convention where the decisions would be made by a majority of delegates rather than by a majority of states. The call fizzled when important states simply refused to participate.
- The 1850 Nashville Convention witnessed an effort to give larger states more representation. It failed on a series of one state/one vote roll calls.

These experiences show how well accepted the sovereign equality principle is. It also shows how efforts to change it cause states to rebel.

What Does the Constitution Say?

Some scholars argue that, in the Article V context, changing the one-state/one vote formula also would be illegal. They point out that key Founders—people like Alexander Hamilton, James Madison, and Tench Coxe—characterized an amendments convention in ways consistent only with the principle of sovereign equality. (See, for example, Federalist No. 85.)

Whether or not this argument is right is less important than the fact that it could tie up any convention in litigation for months, perhaps years. Would convention commissioners from a majority of states want to destroy their own effectiveness and

legitimacy in that way? If any tried, they likely would be recalled by the state legislatures that sent them.

A Reminder

Although a convention for proposing amendments will meet on terms of sovereign equality, any proposals will require ratification by three fourths of the states. Than means they will have to be mainstream proposals with wide public support.

[1]*List of Conventions of States and Colonies in American History—https://articlevinfocenter.com/list-conventions-states-colonies-american-history/*

[2]*No, the Necessary and Proper Clause Does NOT Empower Congress to Control an Amendments Convention—https://articlevinfocenter.com/no-the-necessary-and-proper-clause-does-not-empower-congress-to-control-an-amendments-convention/*

Rob Natelson

Professor Robert G. Natelson, who contracts with Independent Institute, heads the Institute's Constitutional Studies Center and its Article V Information Center[1]. His vast range of experience includes education, outdoorsmanship, grass-roots activism, commercial talk radio, small business, initiative and referendum, political campaign management, journalism, and the teaching and practice of several fields of law.

Most importantly, he is a nationally known constitutional scholar[2] and author[3] whose constitutional research has been cited repeatedly by justices and parties at the U.S. Supreme Court==as well as by federal appeals courts, and at least 16 state supreme courts.

Rob is widely acknowledged to be the country's leading active scholar on the Constitution's amendment procedure and among the leaders on several other topics. He created the first-ever online bibliography[4] for 18th century materials used in constitutional research.

Scholarly record

After eleven years of "Main Street"-style law practice, Rob served 25 years as a law professor at three different universities. He taught Constitutional Law, Constitutional History, Advanced Constitutional Law, and First Amendment. But at various times he also taught real property law, contracts, remedies, commercial law, real estate transactions, trusts, homeowner associations law, water law, oil & gas law, and legal history.

His research into the Constitution's original meaning has carried him to libraries throughout the United States and in Britain, including four months at Oxford University. His books and articles span many different parts of the Constitution, including groundbreaking studies of the Necessary and Proper Clause, the Indian Commerce Clause, federalism, Founding-Era interpretation, regulation of elections, and the amendment process of Article V.

Since 2013, Rob has become one of the most-cited constitutional scholars by U.S. Supreme Court justices. They have relied explicitly on his research in 39 citations in 11 separate cases. The cases are:

- Sackett v. Environmental Protection Agency, ___ U.S. ___ (2023) (Thomas & Gorsuch, JJ., concurring)
- United States v. Vaello Madero, 596 U.S. ___ (2022), 141 S.Ct. 1534, 1546 (Thomas, J., concurring)

- Espinoza v. Montana Dep't of Revenue, 591 U.S. ___ (2020), 140 S.Ct. 2246, 2270 (Alito, J., concurring)
- Haalan v. Brackeen, ___ U.S. ___ (2023) (Thomas, J., dissenting)
- Health and Hospital Corp. of Marion Co. v. Talevski, ___ U.S. ___ (2023) (Thomas, dissenting)
- Arizona State Legislature v. Arizona Independent Redistricting Comm'n, 576 U.S. 787, 836 (2015) (Roberts, C.J., dissenting)
- National Labor Relations Board v. Noel Canning, 573 U.S. 513, 576 (2014) (Scalia, J., concurring)
- Town of Greece v. Galloway, 572 U.S. 565, 605-05 (2014) (Thomas, J., concurring)
- Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1, 30 (2013) (Thomas, J., dissenting)
- Adoptive Couple v. Baby Girl, 570 U.S. 637, 658-59 & passim (2013) (Thomas, J., concurring).
- Upstate Citizens for Equality v. United States, 583 U.S. ___ (2017), 140 S.Ct. 1287, 1288 (Thomas, J. dissenting from denial of certiorari).

He has been cited on constitutional and non-constitutional subjects in these federal appeals court cases:

- By Justice (then Judge) Gorsuch in Kerr v. Hickenlooper, 754 F.3d 1156,1195 (10th Cir. 2014) (dissenting)
- Koch v. Village of Heartland, 73 F.4th 747, 752 (2022 (op. for court, St. Eve, J.)
- United States Telecom Ass'n v. Federal Communications Comm'n, 855 F.3d 381, 414 (D.C. Cir. 2017) (Srinivasan J., concurring)
- Upstate Citizens for Equality v. United States, 841 F.3d 556, 568 (2d Cir. 2016) (op. for court, Carney, J.)
- Berlin v. Renaissance Rental Partners, 723 F.3d 119 (2d Cir. 2013) (Jacobs, C.J., dissenting)
- CREW v. Trump, 939 F.3d , 131, 162 (2d Cir. 2019) (Walker, J., dissenting)

Rob's work on constitutional and non-constitutional subjects also has been relied upon by:

- the highest state courts in Alaska, California, Indiana, Kansas, Maine, Maryland, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont, and Washington;

- the highest court of the Commonwealth of Puerto Rico;
- intermediate state appellate courts in Oregon and Washington; and
- U.S. District Courts in Colorado, Maine Nevada, and Wisconsin.

He is a principal author of several Supreme Court briefs submitted by the Independence Institute and other organizations to the U.S. Supreme Court, the U.S. Court of Appeals for the Tenth Circuit, and the Colorado and Montana Supreme Courts.

In addition to his work on U.S. constitutional issues:

- in conjunction with his eldest daughter Rebecca, he edited the first complete Internet versions[5] of the Emperor Justinian's great Roman law collection (in Latin);
- he has published widely on property law, legal history, legal remedies, and the initiative and referendum process; and
- he has published extensive historical and legal research on the Montana state constitution, and he created the database the Documentary History of the Ratification of the Montana Constitution[6].

He is a member of the Board of Scholars of the American Legislative Exchange Council. He formerly served as a senior advisor to the Convention of States Project and as Senior Fellow at the Initiative and Referendum Institute.

There are several keys to his success as a scholar. First, unlike most constitutional writers, he actually practiced law for over a decade—and his law practice bore some resemblance to that pursued by several of the American Founders (real estate, commercial, etc.). Second, his experience in the real world of business, communications, and politics provide valuable perspective most constitutional writers lack. Third, unlike most other constitutional writers, he has academic training in history and in the Greco-Roman classics that were the mainstay of Founding-Era education. Finally, he does not enter a research project to promote some pre-determined conclusion. His agenda is to find and publish the truth.

Popular Market

For the popular market, Rob authored the highly influential Article V Handbook for state lawmakers[7] and the popular book, The Original Constitution: What It Actually Said and Meant[8]. His contributions have appeared in the following national outlets: The Washington Post, the Washington Times, The Economist, the Epoch Times, the American Spectator, the Wall Street Journal, Barron's, the Daily Caller, Townhall.com, The Hill, and CNSNews.

Activities in Colorado and Montana

He grew up on the Revolutionary War town of Stony Point, New York—which helps explain his interest in the American Founding—but he has split most of his adult life between Colorado (1977-1987; 2011-present and Montana (1987-2011). His writings have appeared in most major news outlets in Colorado and in all major news outlets in Montana, and he regularly makes personal appearances in both states. His professional offices are in Colorado, as is his law license. When living in Montana, he created and hosted the state's first statewide commercial radio talk show; became Montana's best known political activist[9]; led victorious ballot-issue campaigns, including the most successful petition-referendum drive in the state's history; and helped push through several important pieces of legislation. In June 2000, he was the runner-up among five candidates in the party primaries for Governor of the State of Montana.

Recreation? He loves to spend time in the great outdoors, where he enjoys skiing and hiking, either alone or in the company of his wife, daughters, and sons-in-law. He also likes travel, science fiction, and opera, and is active in the Denver Lyric Opera Guild[10].

[1]*Aricle V Information Center http://articlevinfocenter.com/*

[2]*Lost Meanings http://archive.umt.edu/urelations/Vision/2009/lost%20meanings.html*

[3]*Robert Natelson: Books & Articles https://i2i.org/constitution/articles-books-by-rob-natelson/*

[4]*A Bibliography for Researching Original Understanding https://i2i.org/wp-content/uploads/Originalist-Bibliography-2016-0930.pdf*

[5]*Roman Law Sources http://constitution.i2i.org/classical-roman-law-sources/*

[6]*Documentary History of the Ratification of the Montana Constitution http://www.umt.edu/law/library/montanaconstitution/*

[7]***Proposing Constitutional Amendments by a Convention of the States: Article V—A Handbook for State Lawmakers https://alec.org/publication/article-v-a-handbook-for-state-lawmakers/***

[8]*The Original Constitution: What It Actually Said and Meant https://www.amazon.com/Original-Constitution-What-Actually-Meant/dp/1502933624/*

[9]*COLUMN: Natelson will leave legacy of strong conservative base in Montana https://i2i.org/wp-content/uploads/Missoulian-Johnson-conservative-base.pdf*

10Denver Lyric Opera Guild http://www.denverlyricoperaguild.org/