

Utah Eagle Forum Newsletter



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PRESIDENT'S MESSAGE

Here we go again. Been there done that. Many years ago various state legislators and congressmen from around the nation decided the states needed to issue a call to Congress for a Constitutional Convention (Con Con). They worked hard for several years trying to get enough states to issue a call from their state and they came very close to accomplishing this disastrous event. It didn't come to pass because informed people who understood the process did all they could to stop this from happening. Not only were they successful in stopping a Con Con, many states, including Utah, rescinded their previous call for a Con Con. Why then after all we went through to stop a second Constitutional Convention do we have Utah Legislators once again sponsoring a resolution to call a convention? Is it because they were not around when common sense prevailed 20 years ago? They are now using the same arguments that were used to convince state legislators to call for a convention in the past. They said then and are saying now that the states have to take charge, that congress is out of control and the only way to stop them is for the states to take control through a Con Con.

Article V of the Constitution states, "The Congress... on the application of the Legislatures of two-thirds of the several states, shall call a convention for the purpose of proposing amendments..." It is the out of control Congress that calls the Convention, after two-thirds of the states apply. Because Congress calls the Convention, Congress makes the rules. They decide how, where, when and who. Congress will make the decisions about ;

- Where the Convention will be held?
- How and who will select the delegates?
- What the proportion of delegates will be per population, per state?
- How the chairman will be chosen. (I don't see a George Washington waiting in the wings.)
- Who can attend the Convention as non-delegates?
- Who can present the arguments for pros and cons on the issues being discussed?
- If the call for the Convention can be held to just one issue (the Constitution does not specify).
- If delegates will be able to propose new issues to be discussed and voted on.

Do we really want Congress telling Utah how they can elect their delegates and how many they can send to the convention. Delegates will more than likely be selected based on

the population of the state they represent, the small states getting a few and the larger states having many. Right now Utah has 5 congressmen (3 representatives and 2 senators), California has over 50. Will we be out-numbered by the large liberal states 10 to 1? How will that bring good results for Utah or conservative principles? Will Barack Obama be elected/selected as Chairman of the Convention?

Many people say now is the time because Republicans have control of the house. The Republicans, not the conservatives, have control of the house. Utah Republicans are not the same as establishment Republicans from most other states. There will be a lot more of them than there will be of us.

Referring to a new Constitutional Convention, Phyllis Schlafly stated, "the whole process would be a prescription for political chaos, controversy, confrontation, litigation, and judicial activism. Just about the only thing we can predict with certainty is that it could not be kept secret from the media and the public, as was the original 1787 Constitutional Convention."

I have attended several National Republican Conventions, there is more media there than there is delegates. The convention is controlled by the establishment and unless you are a very strong person they control you. Even if you don't allow yourself to be controlled, they control everyone around you.

Do we really want to risk our divinely inspired Constitution to so many unknowns? What will be accomplished? If our elected officials ignore the Constitution now, what makes us think they will abide by an amended/changed Constitution? As long as we leave in place our original Constitution we have a chance for survival as a nation. If we should experience a runaway Constitutional Convention, then all is lost. Why would anyone risk such a possibility?

Many of our religious and political leaders have said that our Constitution is divinely inspired. One religious leader said that the Constitution was dictated to the minds of the founder by the Lord Jesus Christ and that it was as good as it could be. Why would anyone be so foolish as to risk our sacred Constitution? We don't need a new Constitution, we need new elect officials that will abide by and protect the sacred Constitution we already have, a constitution that facilitated the creation and perpetuation of the greatest nation in the history of the world.

Please call your legislators now and ask them to oppose any attempt to call a Second Constitutional Convention. We have the same responsibility to protect our Constitution as did the founders who gave it to us.

Gayle Ruzicka
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Repulse a Modern Constitution Convention

Scott N. Bradley

The Past is Prologue

At the beginning of the American Revolution, the great patriot Patrick Henry stated, "I have but one lamp by which my feet are guided; and that is the lamp of experience. I know of no way of judging the future but by the past."

In *The Tempest*, William Shakespeare observed, "What's past is prologue," meaning, the experience of the past is but an introduction to that which is to come. In many ways, history repeats itself. If we are willing to learn the lessons of history, perhaps the nation may avoid the mistakes of the past.

There is national discussion in public forums suggesting the need of a constitutional convention to correct current disasters facing the nation. That discussion is growing into a movement to call a constitution convention to revise the United States Constitution. I fear that this movement will precipitate crises in this nation that will pose a greater risk to the survival of the republic than anything we have experienced since the 1860's.

One of the things which most concerns me is that many of those fostering this discussion claim to love and appreciate our constitution, but that say it has been polluted so thoroughly now that we need to call a convention to correct what they term "obvious defects."

I fear that they are ignorantly or (in some cases) purposefully planting seeds in the hearts and minds of good and caring Americans, and that these good and caring Americans will ultimately become so frightened by the unfolding events that they will insist a convention be called.

Risks of a New Constitution Convention

After sitting through the arduous debates of the 1787 Convention, Benjamin Franklin stated: "I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution."

In 1788 James Madison expressed grave concerns about calling another constitution convention, saying: "Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the Second, meeting in the present temper of America, and under all the disadvantages I have mentioned." If Madison was concerned about the risks in his day, who would be so foolish to suggest that today we are in a political environment that is better suited to bring forth more sound doctrines of liberty and proper government?

There are enormous risks associated with a constitution convention.

Our nation's only experience with a constitution convention testifies that if a convention is called, there is no way to keep it from even creating an entirely new constitution. That is exactly what happened in the convention of 1787.

When Congress called the convention of 1787, the convention was "for the sole and express purpose of revising the Articles of Confederation," thereby rendering "the federal constitution adequate to the exigencies of government and the preservation of the Union."

However, when the delegates gathered in Philadelphia in May 1787, they recognized that they were legally authorized to set the existing constitution aside and create an entirely new constitution.

Modern Founding Fathers?

Fortunately, the delegates were honorable men who loved liberty and understood the great Americanist principles: that individuals have God-given rights, that the purpose of government is to preserve those rights, that powers must be limited and enumerated, and that government must be checked, balanced, divided and subdivided if tyranny is to be prevented.

These men were uniquely suited to bring forth the magnificent work they established. And in numerous ways they recognized that the inspiration of God had been upon them as they sat and deliberated the magnificent precepts they incorporated into the United States Constitution.

I submit that men of the caliber of the American Founders are exceptionally rare today, and that individuals of lesser character and understanding of the eternal principles of liberty will almost assuredly sit in any modern constitutional convention, with far less desirable outcomes! Where in the entire world today may we find even one or two statesmen of the character and understanding exhibited by George Washington, Benjamin Franklin, George Mason, James Wilson, James Madison, and the others who, under the inspiration of God, framed our marvelous charter of liberty? We would search the world in vain for such individuals.

The Article V Process

Article V of the United States Constitution allows two ways to change the Constitution. The first way is the only way it has been changed since it was ratified: two thirds of both Houses of Congress pass a proposed amendment and forward it to the states for ratification. When three fourths of the states ratify the amendment, it becomes part of the Constitution.

The other way (which has never been used except to scrap the Articles of Confederation) is a constitution convention, colloquially called Con Con. That process involves two thirds of the states requesting a convention. When that happens, the Constitution says that Congress "shall" call a convention. If that

happens we are in grave danger of losing our Constitution. Upon reaching that required threshold of two thirds of the states, the Congress will call the convention, and the convention will go forward.

Constraints on a Convention?

Our experience in 1787 demonstrates that it is inconceivable to call a convention and limit it to just one amendment because it is impossible to limit the scope of authority of a convention once it has been called. Remember, our experience in 1787 is the perfect example of how powerful a convention is. The convention of 1787 was called with specific instructions to meet and suggest improvements to the existing Articles of Confederation, and then return and report to Congress. The delegates of the 1787 convention immediately exercised authority to set aside the existing constitution and write an entirely new one.

Notwithstanding views and expressions to the contrary by those who foster a new constitution convention, many prominent modern legal experts have gone on record expressing their conviction that it is impossible to limit or constrain a convention once it is called: former U.S. Solicitor General and BYU President Rex Lee, former U.S. Supreme Court Associate Justice Arthur Goldberg, former Notre Dame Law Professor Charles E. Rice, Professor Christopher Brown of the University of Maryland School of Law, Professor Neil H. Cogan of the Southern Methodist University School of Law, Jefferson B. Fordham of the University of Utah College of Law, Professor Gerald Gunther of the Stanford School of Law, and Charles Alan Wright of the University of Texas at Austin School of Law, among others. Why risk our divinely inspired Constitution to radical legal arguments and dangerous political whims of our day?

Safety in the Ratification Process?

As they wrote the Constitution in 1787, the Founding Fathers also changed the rules of ratification to facilitate its acceptance, since the rules under the Articles of Confederation required all of the states to agree to changes—a very difficult method. Consequently, the founders determined that ratification of the new Constitution of 1787 would require agreement of only two thirds of the States. Most assuredly, any new constitution brought forth by a Con Con would include a new ratification process that would virtually guarantee its passage.

The Politics of the 21st Century

Fortunately the delegates who met in 1787 were honorable men who sought to preserve the blessings of liberty and proper government for themselves and their posterity. Under the inspiration of God, they brought forth the most marvelous charter of liberty the world has ever known. Again, where in the world today can we find such men as walked across the stage of the world during this nation's founding? I know of none I would trust with such power today. In the current political environment, with the lack of principled statesmen and widespread ignorance among the electorate, we must not be led into the trap of a Con Con.

State Control of a Constitution Convention?

Many suggest that the states will control the call to convention and naming of delegates. There is no justification for such a position. In Article V of the Constitution, Congress calls the convention when two thirds of the states apply for a convention. The states are then out of the picture.

Who would name the delegates to a modern convention? Will California have 55 delegates and Utah only five? Will special interest groups influence the decisions Congress makes in naming the delegates? Will a new constitution be written and submitted by some elite "progressive" group as a modern solution for our government's ills? Will a new constitution be brought forth with a new method of ratification (maybe a mere majority of states, or a democratic majority vote of the electorate)? We don't know the answers to these questions, but I certainly do not wish to submit to the risks.

Ploys to Agitate for a Convention

Today is not the first time those who wish to destroy our divinely inspired Constitution have attempted to "pull the wool over the eyes" of America by calling for a constitutional convention. The movement nearly succeeded in 1983, when 32 of the required 34 states called for a convention, ostensibly to pass a balanced budget amendment. Many government problems today have become rallying points for amendments through a Con Con. These include desires for creating term limits, prohibiting flag burning, granting states power to override federal laws and amend the Constitution independent of Congress, enhancing the tenth amendment, and repealing amendments 14, 16 and 17. The frustrations of good and caring citizens may create a groundswell of sentiment for a Con Con, which would lead to greater danger than this nation has ever faced.

Do not be deceived into supporting any proposal that will result in a Con Con. If people of the states desire change, they should take the proven path of the past: pass an amendment through Congress with a two-thirds majority and ratify that amendment with three-fourths of the states. Granted, the process doesn't succeed very often, and for good reason. But as difficult as it is, this has not prevented some very bad amendments from passing. Nonetheless, much of the Constitution with its original intent is still intact, and we may return to it if we have the political fortitude to do so.