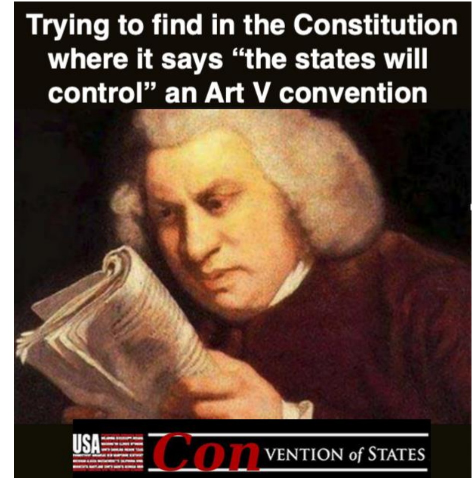
False claims in SR 234 & HR 206 application for an Article V Convention which contradict the US Constitution



The BLACK font in items 1-6 below is the wording in SR 234 (HR 206).
The RED font is what the U.S. Constitution says.
The GREEN font is the Report of the Congressional Research Service.
The BLUE font is my comments.

Constitutional Provisions Respecting an Article V convention

Article V, US Constit., says:

> "The Congress, whenever two thirds of both Houses shall deem 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…"

So *Congress* "calls" the convention. Art. I, §8, last clause, US Constit., says Congress shall have the Power:

> "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof."

So *Congress* makes *all laws* to organize the convention. That includes determining how Delegates will be selected.

Any Resolution made by the Pennsylvania General Assembly which contradicts these provisions of the US Constitution is **unconstitutional and of no effect**. Article VI, cl. 2, US Constit., says:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The April 11, 2014 Report of the Congressional Research Service shows that Congress understands that the Constitution delegates to Congress *exclusive authority* over setting up the convention. The CRS Report exposes as *false* COS's assurances that the States would organize the convention. The Report says:

> "**First, Article V delegates important and exclusive authority over the amendment process to Congress**…" (page 4)
>
> "Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including **(1) receiving, judging, and recording state applications;** (2) establishing procedures to summon a convention; … **(4) determining the number and selection process for its delegates;** (5) setting internal convention procedures**, including formulae for allocation of votes among the states**; …" (page 4).

1. The SR 234 (HR 206) application falsely claims [page 2, lines 22 -30 & line 1 on page 3]:

> "(1) An application to Congress for an Article V Convention confers no power on Congress other than to perform a ministerial function to call a Convention.
> (2) This ministerial duty shall be performed by Congress only when Article V applications for substantially the same purpose are received from two-thirds of the legislatures of the several states.
> (3) The power of Congress to call a Convention solely consists of the authority to name a reasonable time and place for the initial meeting of the Convention."

The Truth: The Constitution doesn't say that! Art. V authorizes the States to *apply* to Congress for *Congress* to call a convention. **That's all the Constitution authorizes the States to do.** The Constitution grants *to Congress* the power to make the laws "necessary and proper" to carry out its power to "call" the convention; & States cannot change this by wishful thinking and by claiming that Congress' powers are merely "ministerial".

Article V *doesn't confer any power on the States to dictate to Congress how Congress is to count the applications.* Congress has power to **judge the applications** as they deem best. [1] **The States cannot dictate to Congress how Congress is to exercise a power the Constitution grants to Congress!**

2. The SR 234 (HR 206) application falsely claims [page 3, lines 2-6]:

> "(4) Congress possesses no power to name delegates to the Convention, as this power remains exclusively within the authority of the legislatures of the several states.
> (5) Congress possesses no power to set the number of delegates to be sent by any state."

The Truth: Art. V doesn't say that! *Congress* has the power to make the laws "necessary and proper" to "call" the convention, and that includes determining how Delegates will be selected and how many there will be.

Nothing in Art. V (or elsewhere in the US Constit.) requires Congress to permit States to select Delegates. The CRS Report recognizes that ***Congress*** **"determ[ines] the number and selection process for its delegates" -** so *Congress* decides how Delegates will be selected. Congress may appoint *themselves* as Delegates.

Furthermore, *if* Congress permits the States to send Delegates**,** the CRS Report recognizes that **Congress may decide that each State will have that number of Delegates & votes which is equal to its electoral votes** (p. 37, 41). If so, Pennsylvania would get 20 **D**elegates & votes, and California **55**.

3. The SR 234 (HR 206) application falsely claims [page 3, lines 7-12]:

> "(6) Congress possesses no power to determine any rules for the Convention.
> (7) According to the universal historical precedent of interstate conventions in America, states meet under conditions of equal sovereignty, which means one state, one vote."

The Truth: The Constitution delegates *to Congress* the power to make the laws "necessary and proper" to "*call*" the convention – *to organize it*. But once the convention is convened and Delegates assemble, the Delegates alone have the power to make the Rules. On **May 29, 1787**, at the convention called to propose revisions to *our first Constitution* (the Articles of Confederation*), the Delegates made the Rules for their proceedings & voted to make their proceedings secret.*

The "interstate conventions" are irrelevant: They weren't **constitutional conventions** called to propose changes to our Constitution! The only relevant historical precedent for a convention called under Article V is the federal convention of 1787 **called by the Continental Congress "for the sole and express purpose of revising the Articles of Confederation"; but which resulted in the Delegates' ignoring their instructions and proposing a new Constitution which created a new Form of government.**

As to voting, and as noted just above, **the CRS Report recognizes that Congress may decide that each State will have that number of votes equal to its electoral votes**.

4. The SR 234 (HR 206) application falsely claims [page 3, lines 13-23]:

> "(8) A convention convened pursuant to this application is limited to consideration of topics solely specified in this resolution.
> (9) This application is made with the express understanding that no amendment which in any way seeks to amend, modify or repeal any provision of the Bill of Rights of the Constitution of the United States is authorized for consideration at any stage.
> (10) This application shall be void ab initio if ever used at any stage to consider any change to any amendment within the Bill of Rights."

The Truth: An Article V convention is a *federal* convention, called by the *federal* government, to perform the *federal* function of addressing our *federal* Constitution. State legislatures have nothing to do with it other than to "apply" **to** *Congress for Congress* to *call* the convention. See **this Chart**.

Furthermore, **Article V shows that *the convention itself* is the deliberative body. State Legislatures may not strip Delegates of their constitutional powers to "propose amendments".** Article V doesn't grant to the States any power to control Delegates.

State Legislatures and the Continental Congress couldn't control Delegates to the federal "amendments" convention of 1787 (where our present Constitution was drafted); and they cannot control Delegates to an Article V convention. That's because:

- The Delegates are the Sovereign Representatives of *The People;*
- The Declaration of Independence (DOI) recognizes the right of a People to form, modify, or abolish their gov't.; and
- An Article V convention is a sovereign assembly with gov't - making or gov't-changing authority.

So Delegates can, like James Madison in **Federalist No. 40** (15th para), invoke that "transcendent and precious right" recognized in our DOI, to throw off the governments we have and write a new constitution which creates a new Form of gov't. And since the new constitution will have its own mode of ratification, it's sure to be approved. **This State Flyer** shows how we got from our *first* Constitution to our *second* Constitution.

The assertion that a State may "void" its application after the convention has convened is absurd. *Once Congress "calls" the convention, the bell has rung, the States can't un-ring it.*

5. The SR 234 (HR 206) application falsely claims [page 3, lines 24-28]:

> "(11) The General Assembly of the Commonwealth may provide further instructions to its delegates.
> (12) The General Assembly of the Commonwealth may recall its delegates at any time for breach of their duties or violation of their instructions."

The Truth: See response just above. Furthermore, ***if*** Congress permits the States to select Delegates, the Pennsylvania General Assembly may issue all the instructions it wants to Delegates from Pennsylvania, **and the Delegates are free to ignore them, just as they ignored the instructions from their States for the federal "amendments" convention of 1787** (See Delegate flyer).

And if Delegates make the proceedings secret (as at our *first* "amendments" convention), the States won't know what's going on & can't stop it. If Delegates vote by secret ballot, the States would ***never*** know who did what.

6. The SR 234 (HR 206) application says [page 3, lines 29 - page 4, line 6]:

> "(13) Under Article V, Congress may determine whether proposed amendments shall be ratified by the legislatures of the several states or by special state ratification conventions;…
> …the General Assembly of the Commonwealth recommend that Congress choose ratification by state legislatures;…"

That statement is true. The States are free to make recommendations to Congress - but Congress is free to ignore the recommendations. And **SR 234 (HR 206) omits the rest of the story**: As recognized in our DOI, a People always have the "self-evident Right" to assemble in convention and overthrow one gov't and set up a new one. **The DOI is part of the "Organic Law" of our Land,** and the Pennsylvania General Assembly has no power to repeal it.

Ignorance and Moral Decline are the Cause of our Problems

All of the "horribles" of which SR 234 (HR 206) complains constitute *violations by the federal gov't of the existing constitutional limits on their powers.* The federal gov't has gotten away with this because Americans are generally ignorant of what our Constitution says.

FURTHERMORE: States & local gov'ts are not victims of fed tyranny. They enthusiastically participate in fed tyranny by taking fed funds to implement unconstitutional fed programs. For FY 2017, 35% of the revenue of the Pennsylvania State Gov't was from fed funds. And that's a pittance compared to the billions more paid to local gov'ts, NGO's, research grants, price supports, welfare subsidies, Medicare, social security, etc.. *And all that money, paid into all of the States, year in & year out, is added to the national debt*.

To claim we can fix our problems by amending our Constitution is absurd. Those funding the push for an Article V convention have a different agenda (see Rescission flyer).

Endnote:

[1] E.g., some applications filed with Congress are over 150 years old. Pennsylvania **has applications from the early 1900s!** Should old applications be counted? Can Congress aggregate the various different applications to get the 34 State total? **Congress has the power to judge the applications and make the laws deciding these issues.**

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