



## Why conservatives must engage in the Article V Convention of States debate

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For the past few years, a growing number of conservatives have been calling for an Article V Convention of the States be convened as a way to check the incredible power of the federal government. Many conservatives may be unaware, however, that a number of liberals have also jumped on the Article V Convention of the States bandwagon, albeit for very different reasons. Thankfully, a recent debate between two proponents and two opponents of a convention provides some clarity on what each side is fighting for, and why conservatives must be fully involved in the convention process. Failing to do so all but guarantees liberals hostile to the Constitution will hijack the process.

The debate in question was held by Intelligence Squared Debates (IQ2) and was broadcasted live on [IQ2's YouTube channel](#). If you watched the debate, you'd have a pretty good idea about the arguments for and against such a proposal. But since few probably watched the actual two-hour debate, here is my rundown and analysis.

The National Constitution Center partnered with Intelligence Squared (IQ2) to host a debate featuring

- Larry Lessig, a Harvard Law professor;
- Mark Meckler, the president of Citizens for Self Governance;
- Walter Olson from the CATO Institute; and
- David Super, a Georgetown Law professor

The debate took place in New York City with about 450 people in attendance, each tasked with deciding which side was more persuasive.

The debate began with both sides making opening statements. Lessig, in favor of a Convention of States, stated that Congress has failed the American people and we don't have representative government anymore. He said an Article V Convention of States (which he demands it be properly referred to instead of "a constitutional convention," as the other side prefers to do) is George Mason's gift to America whereby the Left and the Right can work together for changes

that speak for all. But Lessig then bemoaned gerrymandering, voter suppression, the influence of money in politics, and that, in his mind, Congress hasn't properly addressed climate change or equality for all. He also gave a shout out to faithless electors, clearly demonstrating that he is a leftist fighting for a COS in order to destroy the Constitution, not strengthen it.

Meckler is a founder of the Article V Convention of States project, and is fighting to propose amendments that take power back from the government and give return it to the people.

His opening statement focused on how the American people have a chance to go around Congress in strengthening the Constitution and placing limits on the federal government. Meckler noted that with an Article V Convention of States, the power is vested in the people to fix government overreach, and that 72% of Americans believe government is too big.

The CATO Institute's Walter Olson is a law pundit — even though he holds no law degree, — an expert on tort reform, and a senior fellow at CATO Institute. He argued against the motion, wasted no time in declaring a Convention of the States “dangerous and uncharted territory.” He argued that he is actually in favor of a lot of the fiscally conservative amendment ideas that have been offered, but claimed there is not enough information about how it would actually work. In the end, Olson claimed, the Supreme Court could strike down the entire process if things aren't done exactly right. In fact, Olson claimed that ultimately, the final say doesn't rest in the states. As a result, he believes a convention would ultimately be a waste of time and would turn into certain defeat.

Finally, Georgetown Law's David Super — an expert in “poverty law” — was a super-wet blanket. Speaking against the motion, the Georgetown professor claimed that now is the worst time to amend Constitution. His reasoning? The nation is filled with angry people, and that the success of any attempt to amend the Constitution will make people believe the document is itself illegitimate. Consequently, Super continually called the Convention of States a “con-con,” and claimed the entire exercise throws away checks and balances. He repeated the oft-heard mantra that nobody knows who picks the delegates and we don't know what the process will look like. In his mind, that is a recipe for special interests hijacking the process. And while Super conceded that perhaps those in favor of a COS were right about one state getting one vote, he believes that it would not be fair if small states had as much say as large states, seemingly rejecting the electoral college and equal suffrage in the Senate that is within the Constitution right now. Perhaps Super believes the Constitution is illegitimate. In fact, he stated that the high number needed for ratification (38 states) isn't sufficient, because he believes the Constitutional Convention of 1787 illegally threw out unanimity and settled for  $\frac{2}{3}$  and  $\frac{3}{4}$  to make it easier to destroy the Articles of Confederation.

Following opening statements, the four had direct debate, and the side arguing against the Convention of the States was asked whether the framers blew it when they crafted this part of the Constitution. A good question, since opponents of a COS seem to have forgotten that the motion to put it in the Constitution was unanimously affirmed.

But while Olson claimed the framers were running out of time and just pushed it through, Super stood by his argument that the Constitutional Convention of 1787 illegally scrapped the Articles of Confederation and that this proposed convention will do the same.

Lessig stuck to clarifying Super's consistent improper language of calling it a "constitutional convention," but Meckler brought up some key points. First, the nation has had 38 conventions, 32 prior to the 1787 formation of the Constitution and six since. He pointed out that the rules governing each convention were remarkably the same, and that the Supreme Court has decided 50 times that referring to history is the way to guide us through an Article V Convention of States.

But Super never let up, continuing to suggest that outlandish fear of possible amendments may arise. He went as far as to say an amendment could be proposed to strike the entire Constitution, and to prevent that from happening, the high bar of 38 states needed to ratify must be at a unanimous 50. He went on to say that there should be someone in authority to preside over a convention because the people are not principled, they're just really angry. Super's argument had so many holes in it, but the pro-convention side didn't effectively address his constant fear mongering. For instance, he could have been asked why he was positioning himself as a defender of the Constitution if he believes it was proposed illegally in the first place?

In the end, the fact that the pro-convention side was insufficient in countering the fear mongering of the anti-convention side is probably why the audience finally voted that the opponents of a convention won this debate.

It also didn't help that of the two arguing in favor of the motion, one was deceitful — that would be Lessig — about his reasons for supporting the convention. Lessig ultimately wants to strip the Electoral College out of the Constitution, destroy the First Amendment while fighting to overturn the Citizens United decision, make the popular vote the barometer by which presidential elections are decided, and make all campaigns publicly funded, in effect nationalizing elections and erasing state lines.

As a proponent of an Article V Convention of States myself, nothing said during this debate is new coming those who oppose the idea of a convention. There are real answers to the constant fear mongering, and the fact that Lessig is there playing his own game made it difficult to make the answers known. One of the biggest complaints from those who waver on whether there should be an Article V convention is that leftists may hijack the process. But that argument is absurd when you see what is at stake, and how the power of people getting involved with the project is what will overcome the Left.

Lessig represents the extreme Left seeking an Article V Convention. That is what makes concerned citizens reinforce their initial concerns of having a convention in the first place. I often hear people claim that they won't bother fighting for a convention if conservatives can't control the process.

But that argument is a self-fulfilling prophecy. If conservatives don't get involved, the Left will for sure control the outcome.