



A Radical Right-Wing Dream To Rewrite The Constitution Is Close To Coming True

Travis Waldron

April 27, 2021

Six weeks before Donald Trump won the 2016 presidential election, more than 100 state lawmakers gathered in Williamsburg, Virginia, for a week of Founding Fathers cosplay. Their task, over three days in the town that bills itself as a living museum to America's colonial period, was to approve a dramatic overhaul of the United States' foundational text.

The lawmakers, nearly all Republicans, ratified six new Constitutional amendments: They imposed term limits on members of Congress, abolished the federal income tax and placed severe limits on the federal government's ability to levy taxes, implement new regulations or spend money. While the rest of the country focused on the presidential election, the Virginia gathering partied like it was 1787.

"The events at Williamsburg will be remembered as a turning point in history," Michael Farris, a co-founder of the Convention of States Project, the conservative group that organized the event, said as the mock convention closed.

That may have been a comically grandiose statement at the time. But nobody should be laughing today. The project to overhaul the Constitution is much closer to fruition than most people realize.

Since 2014, the Convention of States Project and other conservative groups, including the American Legislative Exchange Council (ALEC) have helped persuade lawmakers in 15 states to pass resolutions that call for a new constitutional convention.

Led by a prominent right-wing activist — former Tea Party Patriots founder Mark Meckler, who is also the current acting CEO of Parler, a social media platform popular on the right — the Convention of States Project has spread the gospel of a convention to an increasingly radical audience. This year, lawmakers proposed 42 Convention of States resolutions in at least 24 new states, according to the Center for Media and Democracy, which has long monitored the convention push.

The passage of those resolutions would trigger the provision in Article V of the Constitution that allows a convention to be called if 34 states demand it. Backers of another resolution — one that

calls for a Balanced Budget Amendment — have begun to argue that they have already reached that threshold. And last year, former Wisconsin Gov. Scott Walker (R) began pushing Republican officials to sue Congress in an effort to force a convention call.

“I think if [Republicans] win the midterm elections, if they take the House and Senate, they will try to call an Article V convention immediately,” said David Super, a Georgetown University law professor who has closely followed the movement for a new convention. “It’s not a foregone conclusion that the simple Republican majority would get there, but if they get big majorities, I think they’ll try.”

That has set off a furious tug-of-war between the groups and lawmakers that want a convention and those desperate to stop it. Almost as quickly as advocates have introduced new resolutions in key states that could tip the balance their way, opponents have mobilized to persuade other legislatures to repeal their existing calls, tipping it right back.

Primarily a conservative effort now, the prospect of a convention excites elements of both the right and left who see it as a useful way to improve a broken and dated founding document, check the powers of Congress, and work around the influence of special interest groups that have derailed popular policies, be they a limit on corporate campaign contributions or fiscal restraints on the feds.

Opponents, on the other hand, see a far more nefarious plot: a master class in astroturfing that could open the entire document up to a radical rewrite meant to serve the right-wing corporate interests that already dominate our politics, especially at the state level. The convention, they argue, could lead to the demolition of everything from the social safety net and environmental protections to civil rights laws. Or maybe even the Constitution itself.

“The First Amendment, the 14th Amendment, the 15th Amendment,” said Jay Riestenberg of Common Cause, a liberal group that campaigns against the calling of a convention. “Any civil rights, any constitutional protection in the Constitution could be up for grabs in this constitutional convention.”

For others, the fear is less about what the convention could accomplish than what might happen simply because it takes place. An untested process will likely face questions about its legitimacy from the start. And in a fractured nation where a substantial number of Republican voters falsely believe the last election was invalid, a messy or deadlocked convention could lead to an all-out constitutional crisis that would make the democratic catastrophe that occurred on Jan. 6 look tame in comparison.

“We shouldn’t want to go down that road, especially now that we’ve just had an experience of how dangerous and unpleasant it is to get close to a constitutional legitimacy crisis,” said Walter Olson, a senior fellow at the Cato Institute who has long warned against the convention effort.

Dangers Of A ‘Runaway Convention’

Article V lays out two methods to amend the Constitution. The first, and most common, is for Congress to approve an amendment and send it to the states for ratification. The second allows states to petition for a convention to consider amendments, stipulating that a convention will occur once two-thirds of the states have done so.

States have filed various petitions seeking to amend the Constitution almost since the day it was ratified. But the modern push to use the second method, which proponents refer to as an Article V convention, traces its roots to 1957 when Indiana passed a resolution seeking to convene the states to consider the passage of an amendment that would require the federal government to balance its budget each year.

Wyoming joined four years later, but no other state picked up the baton until the 1970s, when conservatives widely adopted the cause. Between 1973 and 1979, 29 states called for a convention to consider a Balanced Budget Amendment, a proposal that economists have repeatedly warned would hamstring the federal government's tax-and-spend authorities, leave it unable to respond to economic crises and force it to gut popular programs like Social Security, Medicare and Medicaid.

In theory, if 34 states approve resolutions solely related to a Balanced Budget Amendment, delegates wouldn't be allowed to propose or pass anything else for states to ratify. That's what proponents of a budget-related convention say, anyway.

But it's not clear they are right, nor that courts would agree. Since an Article V convention has never been called, the legal limits haven't yet been meaningfully tested. And critics have long argued that there is no language in Article V to ensure its limited scope, or that a convention would necessarily follow the contours advocates lay out in their supposedly limited convention calls.

A broad convention, Super has argued, could possibly write its own rules or even change the existing ratification process, and courts aren't likely to intervene. They may not even have the authority to do so. So there is an inherent risk of a "runaway convention" that goes beyond its purported aim and opens up the entire Constitution to an overhaul.

Those fears were especially strong early on among conservatives who worried that special interest groups had foul intentions and that a convention would go awry the minute it began.

"If I tell you I'm going home this afternoon to Illinois, but you look at my plane ticket and it reads to the Bahamas, I think you would deduce that I wasn't in any hurry to get home, and I was planning some fun and games along the way," conservative activist Phyllis Schlafly testified in the Oregon state Senate in 1989 in a successful attempt to persuade the legislature there to repeal its convention call.

"That is exactly what I think about the people who propose a 'ConCon' as a route to getting a Balanced Budget Amendment. There's no evidence that the one will lead to the other, and there is enormous evidence that it will lead to a lot of mischief," she said.

During that time, both liberals and hard-core conservatives like Schlafly teamed up to persuade more than a dozen states to rescind their calls for a convention and derailed the idea altogether — for a while.

In 2010, the idea experienced a resurgence among conservatives who weaponized racism and the national debt in an effort to thwart the biggest aims of Barack Obama's presidency, including the Affordable Care Act and efforts to kickstart the economy after the Great Recession.

Florida passed a resolution calling for a convention to consider a Balanced Budget Amendment in 2010; over the next decade, 21 other states joined (some of them already had existing

convention calls on the books). Most counts place the total number states with of active resolutions at 28, while Robert Natelson, a conservative constitutional scholar who supports the idea of calling a convention, considers 27 of the petitions valid.

The Balanced Budget Amendment resolutions are still the closest to making a convention a reality, but unable to clearly get over the hump, proponents of the Balanced Budget Amendment convention last year proposed a different strategy: to sue Congress, which has the discretion to determine when the Article V threshold has been met, and force its hand.

Walker, the former Wisconsin governor, laid out that plan during an ALEC annual meeting last July as conservatives once again railed against extra-constitutional abuses of power related to the COVID-19 pandemic. The theory rests on the fact that, in addition to the states that have active Balanced Budget Amendment resolutions on the books, six states have passed calls for a plenary convention to consider general changes to the document.

Combine them, and the necessary two-thirds of states have filed petitions, meaning Congress has an obligation to call a convention. If Congress does not comply, a friendly state attorney general will sue in court, The Associated Press reported last year.

The plenary convention calls are not new and are largely, if not entirely, unrelated to the Balanced Budget Amendment petitions. New York's, for instance, dates to 1789, before the ratification of the Bill of Rights. Nevertheless, conservative legal scholars like Natelson have argued that, by law, they are likely valid when combined with the Balanced Budget Amendment resolutions.

That doesn't mean that Natelson thinks Walker's plan will work. Asked if he thought a legal order against Congress would succeed, he answered with a flat "no." Hesitant to project when a convention call might actually reach the necessary threshold, Natelson guessed that any legitimate push is at least a few election cycles away.

Common Cause and other groups have, over the last few years, focused their efforts on persuading states with longstanding convention resolutions to rescind them, with some success. Colorado's state legislature in April voted to rescind all of the previous convention resolutions its general assembly had passed in an effort to ensure the state did not play an unwitting role in the calling of a new convention.

Colorado's move could be a striking blow to the movement to call a convening of the states: Now, combining the Balanced Budget Amendment and plenary resolutions doesn't add up to the necessary 34.

Still, that Walker and other conservatives may even be willing to try the legal route has aroused concern among convention opponents.

"They know their agenda is unpopular," Riestenberg said. "So they have to find a different way to push their agenda without getting legislators or voters to care about it."

A Sharp Right Turn

If the Balanced Budget Amendment convention is the closest one to fruition, it's Meckler's group that appears to have the most momentum and money behind it. Meckler launched the Convention of States Project in 2014 under the umbrella of another group he formed after

splitting with Tea Party Patriots, the organization he co-founded to help foment protests in the earliest days of that “movement.”

Meckler’s proposal does not limit the ideal convention to a single idea like term limits — another popular focal point for convention advocate — or a Balanced Budget Amendment; rather, it broadens the scope of the gathering to include any amendments that will “impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.”

The effort quickly gained steam. Georgia, Alaska and Florida passed Convention of States proposals in 2014, and five others — Alabama, Indiana, Louisiana, Oklahoma and Tennessee — followed over the next two years.

Meckler signed a litany of prominent conservatives onto the effort. Florida Sen. Marco Rubio (R) was an early endorser, according to the organization’s website. Members of the Republican establishment (like ex-Florida Gov. Jeb Bush), its right-wing conservative fringe (like former Florida Rep. Allen West), and its media echo chamber (Mark Levin and Ben Shapiro) have also given the idea their blessing.

Trump’s victory in 2016 did not stall the push. Seven states — Arizona, Arkansas, Missouri, North Dakota, Texas and Utah — joined the crusade between 2017 and 2019, bringing the total to 15. In at least a half-dozen other states, single legislative chambers passed resolutions that failed to fully advance.

The Convention of States Project goes to lengths to make itself look like a grassroots movement. It boasts that nearly 2 million people have signed its petition calling for an Article V convention, encourages visitors to send auto-generated letters to state lawmakers to urge them forward, and has insisted that the majority of its funding comes from small donors eager to support the cause.

Much of what it says it’s after, meanwhile, is broadly popular: The American public generally supports term limits, balanced budgets and vague ideas like “fiscal responsibility” and “reducing the power of the federal government.”

But everything else about it suggests rather clearly that, much like the tea party, the push for a convention is more of a priority for its wealthy, right-wing backers than it is for the conservative grassroots.

The Convention of States Project’s source of funding is opaque, but its parent organization received more than \$12 million from groups linked to brothers Charles and David Koch and other major conservative donors between 2010 and 2018, according to IRS filings reported by the Center for Media and Democracy and Splinter. The Mercer family, which through its foundation has showered tens of millions of dollars on right-wing causes over the last decade, has donated at least \$500,000 to the group, CMD has reported.

ALEC, the Koch-funded membership organization of business-friendly and government-skeptical conservative state lawmakers, is among the biggest proponents of a new convention. It has pushed model legislation calling for a Balanced Budget Amendment convention for more than a decade, and in 2015 produced a model bill along the lines of what Meckler’s group prefers. FreedomWorks, another corporate-backed right-wing group that helped foment the original tea party protests, also supports an Article V convention.

“I’m not convinced that the Convention of States Project really is a movement,” said Super, who has testified against the organization’s resolutions in multiple states. “It’s a well-funded organization that passes itself off as a movement.”

For its part, the Convention of States Project has never done much to combat the notion that it is a steroid-infused outgrowth of the tea party: In 2017, when he signed on as an adviser, former South Carolina Sen. Jim DeMint — a tea party darling who left the Senate to work for the Heritage Foundation — called an Article V convention the tea party’s “new mission.”

“They realize that all the work they did in 2010 has not resulted in all the things they hoped for,” DeMint told USA Today. “Many of them are turning to Article V.”

Them, however, does not refer to the more lightly-funded elements of the conservative movement, or rank-and-file Republican voters. Many local tea party groups oppose the plan. And although polling on the subject is limited, a majority of Americans and an even larger majority of Republicans oppose the idea of a new convention, according to a 2021 survey that Common Cause has touted.

The broad nature of Meckler’s proposed convention makes the idea even more toxic for conservatives who’ve long feared what a convention might bring. Second Amendment activists, for instance, have in the past worried that a “runaway convention” could lead to the demise of their most cherished element of the Constitution, given that it does not inspire the religious devotion among the general public that it does among gun enthusiasts and Republican lawmakers.

Grassroots conservative opponents of the convention, meanwhile, fear as Schlafly once did that the convention call is a backhanded way for special interests to advance their own plans. As one conservative activist who opposes the idea put it: Many movement conservatives want the government and federal courts to more aggressively adhere to an originalist interpretation of *this Constitution*, not throw it out altogether. Andy Biggs, the Arizona Republican congressman who has faced allegations that he helped organize the Capitol insurrection, strikes a similar note in a book he published in 2015 that described the convention plan as “a con.”

“Their approach is like overhauling an engine to fix a flat tire,” Biggs wrote.

Natelson, the conservative constitutional expert who has advised the Convention of States Project and is a member of ALEC’s board of scholars, dismissed concerns about a “runaway convention,” saying that his research into past conventions has convinced him that it is “literally impossible” for one to spiral out of control.

Although there has never been a convention called under Article V, states have convened for both general and regional conventions to discuss single topics, or a limited number of topics, without branching off to other subjects. Article V, he argued, does not lay out specific rules because the rules are well understood.

Neither the First Amendment nor Second Amendment are under threat at a convention like the one Meckler’s group favors, he insisted, because by definition, repealing or overhauling them would *expand* federal powers, rather than limit them. (That argument suffers from the fact that Republican state legislatures are currently pushing a rash of new bills that would curb First Amendment protest rights.)

“There never has been a convention that has run away,” Natelson said. “This argument is totally fabricated. It was fabricated in the 20th century by conservatives and more recently has been used by liberals. It has no historical merit whatsoever.”

“But,” he added, “it scares people.”

Meckler and the Convention of States Project did not respond to HuffPost’s interview requests or questions about their effort. But Meckler has similarly dismissed fears of a “runaway convention” in recent interviews with other outlets. (Term limits, abolition of the Department of Education and a requirement that two-thirds of states agree to any change in immigration law top Meckler’s priority list, he told Newsweek.) And over the last few years, his group has ramped up its efforts to alleviate those concerns and bolster support among newer constituencies, making its case to gun rights groups and individual gun owners during appearances at gun shows across the nation.

Last year, Meckler and the conservative groups pushing for a convention found another source of right-wing frustration to stoke: the COVID-19 pandemic. As governors used emergency executive powers to shut down businesses and impose mask requirements and other restrictions meant to slow the spread of the virus, a cadre of conservative groups — including ALEC and FreedomWorks — began to organize and foment protests outside state capitols. Meckler was one of the chief proponents of the so-called “reopen” movement, such that it was one.

Much as they had with the tea party movement, the groups wielded rhetoric about “liberty” and “freedom” to provoke small but angry gatherings, then translated that energy into a push for priorities they had always supported — in particular, restrictions on the executive powers of democratically elected governors, many of whom lost those powers as soon as conservative legislators wielding ALEC’s model bills returned to state capitols.

Yet if they hoped the energy fueling those protests would generate similar momentum behind calls for a new convention, it hasn’t yet materialized: Conservative state legislatures in Montana, New Hampshire and South Dakota have already killed such resolutions this year, and the proposal went nowhere in Kentucky, one of several states Meckler’s group has prioritized. Others face uncertain futures in legislative sessions crowded with other GOP priorities.

No such resolution has passed yet this year, but Wisconsin Republicans have advanced Convention of States Project resolutions out of committees in both chambers of the state legislature and could bring them up for floor votes soon. (Sixteen of the GOP lawmakers behind the resolutions have links to ALEC, the Center for Media and Democracy reported.) South Carolina’s version of the resolution advanced out of a state House committee for the second straight year, but it’s not clear whether it will receive a full vote. (The sponsor of that bill, state Rep. Bill Taylor, declined an interview request. Sponsors in four other states did not respond to HuffPost’s inquiries.)

The anti-lockdown protests became a haven for right-wing extremism that expressed itself in increasingly violent ways, under the guise of fighting “tyrants” who were abusing the Constitution. In Kentucky, a member of the Three Percenters, a white supremacist militia group, hanged the governor in effigy during one demonstration. In Michigan, men with ties to militias were arrested for plotting to kidnap Gov. Gretchen Whitmer; they had previously discussed “creating a society that followed the U.S. Bill of Rights and where they could be self-sufficient.”

Protests in Michigan and Oregon eventually led to armed demonstrators entering state capitols in an effort to intimidate lawmakers, episodes that became a trial run for the riot in Washington months later.

Longtime observers of the push for an Article V convention worry that it, too, is becoming a vehicle for extremists to express their disdain for the federal government, especially given the prevalence of conspiracy theories pushed by Trump and his supporters that the election was stolen and that the country itself is being purloined by liberals, “the Deep State” and other extra-constitutional actors.

Those fears deepened earlier this year when Meckler assumed the position as interim CEO of Parler, the right-wing social media platform that has served as an incubator for extremism and that along with other, similar services was used to plan the attack on the U.S. Capitol. Rebekah Mercer, the head of the Mercer Family Foundation, pushed Meckler — himself an extremist who has called Black Lives Matter an “evil” and “anti-American” movement — into the job, Bloomberg reported in March.

“Their strategy for years now has been to play hard to the right-wing,” said Arn Pearson, the executive director of the Center for Media and Democracy. Meckler’s job at Parler, he added, “is just their latest move to try to connect with right-wing extremists” and “energize that base around the Convention of States approach.”

What A Convention Might Do

Fantasies of an Article V convention that will fix the United States’ ills have also percolated on the left in the last decade, particularly among supporters of a constitutional amendment to overturn *Citizens United v. FEC* — the 2010 Supreme Court decision that tossed out most restrictions on corporate and special interest spending in federal elections.

In 2011, progressive television host Cenk Uygur launched WolfPAC, a group that supports such an amendment and cites an Article V convention as a potential path to get it. Other left-leaning groups that favor a similar amendment have also expressed some openness to a convention, even if it’s not their preferred route. And at times, the right and left have joined forces: As far back as 2011, Meckler and Lawrence Lessig — a Harvard professor who has advised WolfPAC and later waged a brief campaign for the 2016 Democratic presidential nomination on the sole issue of campaign finance reform — held a joint conference on the merits of an Article V convention.

“You can see how that appeals to people who have lost faith in conventional politics and see themselves as the new founding generation,” Olson, of the Cato Institute, said. “I think it’s a delusion, but I can see how a lot of people are attracted to it.”

The vast majority of liberal and leftist energy focused on the issue, however, remains steadfastly opposed to any convention call, both out of fear over how it would work and about what its better-funded and organized proponents on the right would like it to accomplish.

The impact of a Balanced Budget Amendment alone is potentially massive: Economists have warned that it could demolish any semblance of the country’s social welfare state while imposing restrictions on federal spending that make it almost impossible for the government to respond to massive crises like the next Great Recession or global pandemic. In addition to a Balanced Budget Amendment and a repeal of the federal income tax, the 2016 mock convention sought to

weaken the Commerce Clause — a major source of Congress' regulatory power on civil rights and other matters — and allowed states to nullify federal laws if three-fifths agreed to.

And it's not hard to guess what else the right would push hard to enshrine into the nation's new governing text, given the priorities of the groups that are out front about their support for the convention. Like, say, a total gutting of the federal government's ability to respond to crises like climate change or hold corporations accountable for environmental disasters. Super, the Georgetown professor, worries that it could even lead to the total opening of protected lands to mining, drilling or extraction contracts.

“My fears are basically that the oil and gas industry makes sure that we can ever have cap-and-trade or a carbon tax, and makes it very easy for a single friendly administration to give them irrevocable rights to public lands that the Takings Clause would prevent anyone from ever taking from them,” Super said. “So basically crippling environmental enforcement.”

Others see the convention as a way the right can enshrine its ability to govern without ever winning a majority of votes at the federal level, especially as states redraw their congressional and state legislative maps over the next year, a process that is likely to result in heavy rounds of partisan gerrymandering.

“If the GOP is able to control its grasp on the states following the next round of redistricting, then adopting amendments via [constitutional convention] would enable them to dominate law and policy in a majority of states, even if they lose power in Washington or at the gubernatorial level,” Pearson said.

The liberals who oppose the calling of a convention, in other words, largely believe that groups that support it on the left are blind to what would actually take place. Instead of improving the current Constitution, a convention would likely seek to overhaul it with a laundry list of priorities that the right-wing's corporate donor class has already sought through more typical legislative means, or alter the Constitution in a way that makes it easier to achieve those aims through more typical means down the road.

Natelson, the conservative scholar who supports the Article V convention, believes all of these arguments amount to hyperventilating nonsense. While no Article V convention has been held, there is sufficient precedent and constitutional understanding to determine how the founders intended such a convention to work, and to protect it from going off the rails, he argued.

The convention, he said, would almost certainly be closely monitored by the media and state lawmakers, keeping it from going beyond its scope. States, he said, could recall delegates who went rogue, if they chose to. And the high threshold required for ratification of any amendment — 38 state legislatures must eventually approve — means that only incredibly popular proposals would stand even the slightest chance of ratification.

“I would say term limits, if the amendment is drafted well, would have a high chance of being ratified,” Natelson said. “Some kind of simple fiscal restraint that is well-drafted and has exceptions for emergencies probably would be ratifiable. And my guess that some kind of campaign finance reform, if it got two-thirds of the states to propose it, would probably be ratifiable.”

And fears that the convention would quickly be co-opted by special interest groups, lobbyists, and those big donors?

“Like Congress?” he laughed.

Olson is similarly skeptical that a convention would produce radical change, not in a polarized country that hasn't been able to alter its founding documents through more tried and true means. No amendment has been added to the Constitution since 1991, and that only happened because enough states finally ratified a proposal put forth 202 years prior. It's been half a century since an amendment was proposed and ratified in a timeframe typical of the majority of the other alterations.

“If the national consensus is missing for the retail, one-at-a-time amendments, then the national consensus is also absent for a big, radical change-lots-of-things-at-once national convention,” Olson said of the Convention of States Project's plan. “People are deluding themselves if they think that kind of huge national consensus exists for either conservative or liberal views.”

But he worries a convention could lead to an even bigger splintering of the country and an even deeper legitimacy crisis for its democracy. Without a clear mandate or obvious rules it should follow, any convention, Olson argued, would inherently be seen as illegitimate by a huge swath of a country.

The left, for good reason, isn't going to trust a convention that results from a Hail Mary legal challenge or a Republican Congress' decision to call it, especially not when the majority of delegates would be appointed by GOP state legislatures that are steadily radicalizing against the basic tenets of democracy — and “just a few months ago tried to throw out the results of a free and fair election,” Riestenberg said. And especially not if a conservative-heavy Supreme Court eventually blesses the whole process.

The right, meanwhile, has spent the last decade wading deeper and deeper into the fever swamps, bathing itself in conspiracy theories and the increasingly extremist notion that the country has been stolen from them. An entire political party is now premised on and beholden to false beliefs so rampant that they generated an armed insurrection in the United States Capitol. What happens inside that movement — especially as Meckler and his allies continue to foment anger and court extremists — when a convention that has been sold as a cure-all fails to produce what they want?

Riestenberg fears another potential outcome of that scenario: a compromise amendment ostensibly meant to walk the country back from the sort of crisis the convention could potentially create. To stave off disaster, the convention delegates might agree to bar corporate election funding but also force the government to balance its budget each year. Comity, at the price of crippling the federal government's most basic functions.

Natelson isn't swayed by any of these concerns, or the idea that it's too dangerous a time to open the Constitution up to potentially massive changes. On the eve of the Civil War, he said, Virginia called for a convention of states in an attempt to lower the nation's temperature. In February 1861, delegates from the participating states met in Washington to discuss a compromise amendment to the Constitution that they hoped would stave off a war.

“The debates were bitter between South and North, beyond anything today,” Natelson said. “And yet, when the dust is cleared, they had successfully negotiated and drafted a constitutional amendment, which if adopted might very well have averted a civil war.”

The proposed amendment went nowhere. Had it been ratified, it might have helped avoid the war. But it also would’ve prohibited Congress from outlawing slavery in the Southern states.