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Conservative lawmakers weigh bid to call for constitutional convention

Reid Wilson

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Conservative state legislators frustrated with the gridlock in Washington are increasingly turning to a plan to call a convention to consider a new amendment to the U.S. Constitution — an event that would be unprecedented in American history and one that could, some opponents predict, lead to complete political chaos.

Legislators in 27 states have passed applications for a convention to pass a balanced budget amendment. Proponents of a balanced budget requirement are planning to push for new applications in nine other states where Republicans control both chambers of the legislature.

If those applications pass in seven of the nine targeted states, it would bring the number of applications up to 34, meeting the two-thirds requirement under Article V of the Constitution to force Congress to call a convention.

What happens next is anyone's guess.

“There really isn't much of a precedent. We'll be charting new waters,” said Utah Senate President Wayne Niederhauser (R), a supporter of a constitutional convention. Utah became the 26th state to issue an application last month. North and South Dakota have also approved applications this year.

The problem is that while the Constitution allows amendments to be adopted and sent to the states by a two-thirds vote of both the House and Senate, or by a national convention called by two-thirds of the states, the founding document is silent on how such a convention would operate. How many delegates each state would receive, the rules under which a convention would operate and who would set the agenda would be left up to Congress — all of those would be open questions.

Most worrying to some who oppose the convention: There's no indication that a convention could be limited to just one topic. Hypothetically, delegates could take up any issue they wanted, from reinstating Prohibition to eliminating the direct election of senators. More extreme

scenarios envision delegates revisiting the 13th Amendment, which banned slavery, or inserting corporate giveaways into the Constitution.

“There’s no authority establishing in the Constitution above that of a convention. If you call a convention, what you’re doing is opening up the Constitution to whatever the delegates want to propose,” said Michael Leachman, director of state fiscal research at the Center on Budget and Policy Priorities, the center-left think tank that has opposed calls for a convention since the 1980s.

Leachman said such a convention could lead to a frenzy of lobbying and influence-peddling never before seen in American history. “You’d have every interest group in the country recognizing that, if you’re opening up the Constitution, they want in on that,” he said.

Even supporters acknowledge that a convention would be difficult to control.

“Can [a convention’s agenda] be limited? That’s a good question. We don’t know,” Utah’s Niederhauser said. “I suspect there would be a lot of discussion of that as we get closer to the 34 states calling a convention.”

Legislation to call a convention to consider a balanced budget amendment is pending in four of the nine targeted states — Idaho, Arizona, South Carolina and Oklahoma. Bills to call a convention failed in four others: Virginia, Wyoming, West Virginia and Montana. No bill has yet been introduced in Wisconsin.

Applications for conventions under Article V are as old as the republic itself. Virginia’s legislature issued the first such application on Nov. 14, 1788, less than five months after the Constitution was officially established in June of that year. Over the centuries, every state but one — Hawaii — has issued an application for a convention, on topics as broad as eliminating the electoral college, outlawing polygamy, limiting income taxes and making abortion illegal. None have ever reached the two-thirds necessary to trigger a convention.

The most serious effort began in the 1970s and early 1980s, when 32 states passed calls for a convention to create a balanced budget amendment. But over the years, as it became clear that they couldn’t reach the 34 states necessary, half of those states reversed themselves and rescinded their applications. (A balanced budget amendment failed by just a single vote in the Senate in 1995; Oregon Sen. Mark Hatfield, the only Republican to vote against it, offered to resign before the vote, an offer Senate Majority Leader Bob Dole rejected).

A renewed push in recent years, led by Republican legislators concerned with the nation’s mounting debt and the federal government’s increasing reach into domains previously reserved for the states, persuaded another 11 states to join the remaining 16.

But even the number of states with live applications is up for debate. Michael Paulsen, a constitutional law expert at the University of St. Thomas School of Law, contends that applications that purport to limit subjects covered in a constitutional convention are invalid.

Other experts disagree. The Balanced Budget Amendment Task Force, a group with close ties to the conservative American Legislative Exchange Council, says the 16 applications from the 1970s and 1980s remain valid, putting the number of states with live applications at 27.

“This is something that our legislative members felt pretty strongly about for quite some time,” said Molly Fuhs, an ALEC spokeswoman.

Proponents of a convention say Congress has used applications by the states as an impetus for action in the past.

“Constitutional amendments have never been originated in the states because whenever there are calls in the states, Congress gets ahead of it,” said Ilya Shapiro, a senior fellow of constitutional studies at the Cato Institute and a supporter of the Compact for America, which has passed applications in Mississippi, Georgia and Alaska. “Congress will see the writing on the wall.”

But the fact that Republicans have swept to control in so many legislative chambers — enough to spur a convention — has opponents worried.

“This is by far the most dangerous thing in the country today,” said Fred Wertheimer, who heads the campaign finance advocacy group Democracy 21. “If we ever got [to a convention], this would create a constitutional crisis unlike anything we’ve seen in our lifetimes.”