

## Constitutional Calvinball

Ilya Shapiro is one of those guys who wants the Supreme Court to establish libertarianism as the law of the land. And he thinks that holding a constitutional convention to propose new amendments might bring us closer to that goal. I'm skeptical of that whole agenda in dozens of different ways, but I think his [analysis is interesting](#):

1. An amendments convention is the ultimate guarantor of state sovereignty. History and law support states limiting the convention to specific topics. **Delegates to the convention are bound as agents of the states to stay within the scope of the applications that trigger it. And 38 states must ratify whatever the convention generates as a proposed amendment.** In short, the states initiate the process, the states control its subject matter, and the states ratify its product.

2. The amendments convention concept is not radical. Washington, Madison, Jefferson and Hamilton all agreed that states should use the Article V process to correct errors in the Constitution and rein in the federal government if it oversteps its bounds. Madison even intervened during the nullification debates of the 1830s to chide the states that they should be invoking the Article V process to regain control over the federal government.

3. **The convention will not run away. Any proposed constitutional amendment yielded by the convention requires ratification by 38 states. During the constitutional convention of 1787 the Founders rejected language that would have allowed Article V to establish a foundational convention,** substituting language that requires any convention to operate within existing constitutional limits.

4. There is nothing to lose from an amendments convention because no matter which party controls Congress, the status quo is a runaway federal government.

This seems to me to pretty fundamentally misunderstand what it is that a “runaway convention” would be. It's quite true that a convention *that adhered to the rules of the Constitution* wouldn't run away. But that's nearly a tautology. Ask yourself how we got the Constitution in the first place. Was it by amending the Articles of Confederation? Nope. The Articles were even harder to amend than the current Constitution. But enough people—and sufficiently important ones—wanted to change it, and so they did. That's what a runaway convention would look like. Now obviously that's not going to happen in the short run. But these things do happen, as witnessed by France's transition from 4th Republic to 5th Republic. And though I may be the only one who thinks this, I think it's pretty likely that we'll see a Constitutional Calvinball moment like this at some point during my lifetime. US-style constitutional setups are usually very unstable and the stability of our system was plausibly [related to the now-gone tradition of ideologically incoherent parties](#).

Ask yourself what's more likely: Partisan gridlock leads to major US sovereign default or threat of major US sovereign default leads to institutional changes to eliminate gridlock?

