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Balanced budget push sparks debate

by [Gregory Korte](#) on Nov. 29, 2011

Some supporters of a balanced [budget](#) amendment to the Constitution are turning to a method last used by the founding fathers: A constitutional convention.

And they're already halfway to their goal. At least 17 of the 34 states necessary have petitioned Congress for a convention to propose a balanced budget amendment. States that have done it this year include Alabama, Louisiana, North Dakota, Texas and Utah.

One scholar, looking at resolutions dating back over two centuries, puts the number at 33 states — just one short.

All 27 amendments to the Constitution have gone the congressional route. But repeated attempts to add a balanced budget amendment have failed in Congress — most recently this month, when it fell 23 votes short in the House. The Senate is scheduled to vote before the end of the year.

“Congress has been looking at this thing for decades. It’s unlikely that any legislative body would impose limitations on its spending and borrowing and taxing powers,” said David Biddulph, an anti-tax activist from New Smyrna Beach, Fla., as he met with lawmakers on Capitol Hill this month. “We think it’s going to have to be done by the states.”

The Constitution provides two ways to propose amendments: By a two-thirds vote of each house of Congress, or by a convention that has been requested by two-thirds of the states. Either way, three-fourths of the states (now 38) must ratify the amendment.

Because there hasn't been a constitutional convention since 1787, efforts have been clouded by unresolved legal [questions](#): Do the calls for a convention have to happen at the same time? Can a convention be limited to just one topic? What if Congress simply refuses to call a convention? Scholars are split on all those issues.

Balanced-budget supporters want to limit a convention to just that issue, fearing a “runaway convention” would make [wholesale](#) changes. (After all, the convention in 1787 was authorized only to amend the Articles of Confederation, not draw up the Constitution we have today.) But it's unclear whether the Constitution allows a limited convention.

Michael Stokes Paulsen, a law professor at the [University](#) of St. Thomas in Minnesota, said he believes the convention would have the power to propose anything it sees fit —

and so calls for a convention limited to one issue may not be valid. Still, by his count, 33 states have called for a general convention — some pending since the 19th century.

The scope of the convention is an important issue, said Emily Ekins, who has studied Tea Party opinion for the libertarian Cato Institute.

“For the grassroots, regular everyday Tea Partiers, if you said you wanted to have a constitutional convention to rein in government spending, there would be a lot of enthusiasm for it,” she said. But they don’t want to change parts of the Constitution “responsible for the things they like best about America.”

Pete Sepp, of the National Taxpayers Union, said the effort has to be about more than triggering a legal requirement. The group has been pushing for a convention for decades.

“This goes to the question of whether putting up resolutions on the scoreboard is the only thing that needs to be done here, and of course not. There needs to be genuine grassroots support,” Sepp said.

There have been recent calls for a convention from the political left, too. Lawrence Lessig, a Harvard law professor, proposes a constitutional convention in his new book, *Republic, Lost*, about how Congress has been corrupted by special interests.

Congress isn’t going to reform itself, he argues, and so the debate over a convention is about outsiders vs. insiders, not conservatives vs. liberals.

“There’s got to be a recognition that the dysfunction in Congress comes from a common root, and that is the corrupting influence of money,” Lessig said.

Lessig hosted a conference on a constitutional convention in September. The Tea Party Patriots co-sponsored that event, but co-founder Mark Meckler says he’s ambivalent about a convention: It wouldn’t be as harmful as some conservatives fear, but their energies are better spent on the 2012 elections.

Lessig and Meckler agree that the fears about a runaway convention are misplaced. It still takes at least 38 states to ratify an amendment. “That’s a big number. There’s clearly 13 red states and 13 blue states that could block anything extreme,” Lessig said.