A Convention to Save America

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ABSTRACT

Article V of the United States Constitution articulates the methods for amending the Constitution. Amendments are formally recommended by either a two-thirds vote of both Houses of Congress or by a vote of two-thirds of the state legislatures. This latter method is known as a Convention of States. Despite its inclusion in Article V, no amendment has yet been proposed for ratification by such a convention. This research aims to explain the history of Article V, the process for an Article V Convention, the current efforts to call such a convention, and amendments that should be considered at this convention. Also, this analysis seeks to disprove the notion that an Article V Convention could undermine the Constitution. The ultimate purpose of this analysis is to demonstrate that a Convention of States is necessary to protect economic stability and individual freedom throughout the United States.

Tables of Contents

List of Tables……..……iv

List of Abbreviations……...v

Introduction……vi

Literature Review……..vii

Convention of States……1

How a Convention Works……2

The "Runaway Convention" Myth……...…...5

A Single-Subject Convention……..5

Can We Trust the Constitution? Answering the "Runaway Convention" Myth……6

A Response to the "Runaway Scenario" ……....9

Proposed Constitutional Amendments…….……..14

An Amendment to Establish Term Limits for Members of Congress…….……..14

Two Amendments to Limit Federal Spending and Taxing……16

An Amendment to Limit the Federal Bureaucracy……25

An Amendment to Promote Free Enterprise……..32

An Amendment to Protect Private Property……..35

An Amendment to Grant the States Authority to Check Congress……...……38

Conclusion……42

Bibliography……44

List of Tables

Table 1: Annual Federal Spending and Deficits……20

Table 2: Income Tax Rates by Percentile……..24

Table 3: Percentage of National Income Taxes Paid by Percentile……...25

List of Abbreviations

Adjusted Gross Income (AGI)

Competitive Enterprise Institute (CEI)

Environmental Protection Agency (EPA)

Fiscal Year (FY)

Gross Domestic Product (GDP)

Violence Against Women Act (VAWA)

Introduction

The United States is in deep trouble. The national debt is over $30 trillion.[1] The United States Congress is more self-interested and corrupt than ever before. The federal bureaucracy grows ever more oppressive and unaccountable. Fundamental constitutional rights are under constant assault. Due to these problems, the American people feel pessimistic about the future of the country. According to a recent Reuters poll, only 25 percent of Americans believe the nation is on the right track, while 61 percent claim that the country is on the wrong track.[2] Some people claim that the best solution to these problems is to elect new people to Congress. However, this strategy has been employed for decades, and the problems the United States faces have only grown during this time. Even if enough reliable Congressmen and Senators could be elected, this solution would only be temporary at best, considering that they could lose their next election. Other people argue for Congress to propose amendments to the Constitution. However, this strategy relies on the very same politicians who have presided over America's decline. Instead, there is only one powerful and lasting solution to the numerous problems this country faces. This solution circumvents the United States Congress. This solution empowers the people. This solution is a Convention of States.

[1] "U.S. National Debt Clock: Real Time." U.S. Debt Clock, n.d. https://www.usdebtclock.org/.
[2] "Ipsos Poll: Core Political Data." *Reuters*. https://www.ipsos.com/sites/default/files/ct/news/documents/2022-03/2022%20Ipsos%20Tracking%20-%20Core%20Political%20Presidential%20Approval%20Tracker%2028%20Feb%20thru%201%20Mar%202022.pdf

Literature Review

The Convention of States movement has had much success in recent years. Arguably the most prominent organization in this movement is a group by the same name. Convention of States has encouraged state legislatures to pass resolutions to put fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and implement term limits on Congressmen and Senators. As of April 2022, 19 states have passed these Convention of States resolutions, with Wisconsin, Nebraska, West Virginia, and South Carolina adopting such resolutions in 2022.[3] With these recent additions, the Convention of States movement is only 15 states away from calling an Article V Convention.

There is a straightforward process for calling a Convention of States and subsequently implementing constitutional amendments that this convention proposes. This process was articulated by Tom Coburn, who was a three-term Oklahoma Congressman, serving from 1995 to 2001, and two-term Oklahoma Senator, serving from 2005 to 2015. He resigned before the end of his second term to become a Senior Fellow at the Manhattan Institute for Policy Research. He was also a senior advisor to the Citizens for Self-Governance, where he advocated for a Convention of States. Coburn's desire for a Convention of States was motivated by personally witnessing the widespread corruption and fiscal irresponsibility of the federal government while in Congress.[4]

He explains that a convention would assemble once 34 States, or two-thirds of the 50 states, pass a similar resolution calling for this convention. States then send delegates to this convention. While states can choose the number of delegates they send to the convention, each

[3] Convention of States Action, n.d. https://conventionofstates.com/.
[4] Coburn, Tom A. Smashing the DC Monopoly: Using Article V to Restore Freedom and Stop Runaway Government. Washington, D.C.: WND Books, 2017.

state's delegation will only have one collective vote at the convention. At the convention, delegates will vote on one or several amendments to send back to the states. For such amendments to be considered by the states, they must be approved by most of the convention. For these amendments to take effect, they must subsequently be ratified by 38 states, or three-fourths of the total. Congress can choose whether such amendments must be ratified by the state legislatures or by state ratification conventions. Once this three-fourths threshold is met, then the amendments are officially part of the United States Constitution.[5]

Coburn articulated five reasons for why he was cautiously optimistic about the chances of an Article V Convention succeeding. First, multiple grassroots organizations are coordinating on their efforts to call this convention. Second, the national debt has risen to dangerous levels, making the need for an amendment to place fiscal restraints on Congress greater than ever before. Third, the internet provides a platform for political organizations to easily communicate with each other and the public to build grassroots support for the Convention of States movement. Fourth, state legislatures have grown increasingly conservative in recent years. Fifth, and finally, concerns about a "runaway" convention, which have hindered previous efforts at an Article V Convention, have been addressed by scholars such as Robert Natelson.[6]

One of the most prominent arguments against an Article V Convention is that such a convention would exceed its mandate and rewrite the Constitution. In such a scenario, fundamental constitutional rights such as freedom of religion, freedom of speech, property rights, and the right to keep and bear arms would be at risk of being repealed. While this is a frightening prospect, several prominent scholars have articulated why such a scenario would not happen.

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[5] Coburn, "Constitutional Amendment by We the People."
[6] Ibid, "The Current Quest for an Article V Convention."

Robert Natelson is a Senior Fellow in Constitutional Jurisprudence at the Independence Institute. He has taught law courses at three different universities over the course of 25 years, and he is an expert on Constitutional scholarship pertaining to Article V of the Constitution. He has responded to an article written by amateur historian Chuck Michaelis. In this article, Michaelis made five major arguments to demonstrate that an Article V Convention would be a "runaway" convention: the 1787 Convention was America's first convention; the language of Article V is vague and would allow Congress to select delegates for an Article V Convention; an Article V Convention would be uncontrollable since it is an instrument of the people's sovereign will; such a convention would likely disregard limits set by the states in their respective convention applications; and the convention could alter the ratification process, as the 1787 Convention allegedly did.[7]

Natelson responds to each of these claims by utilizing the following criteria: the historical background of Article V, the post-Founding era usage of Article V, governing principles of constitutional, international, and agency law, many Article V court decisions ranging from the Founding era to the modern day, and various modern political realities.[8] These modern realities include popular opinion, state applications that limit the scope of the conventions, legal repercussions for commissioners that exceed the scope of their respective state's applications, potential judicial challenges brought during the convention process, and the need for any amendments the convention proposes to be ratified by 38 states before they are implemented.[9]

[7] Natelson, Robert G. "A Response to the Runaway Scenario." 2-3, Convention of States Action, n.d. https://apps.legislature.ky.gov/CommitteeDocuments/33/13552/A%20Response%20to%20the%20Runaway%20Scenario,%20Article%20V%20Information%20Center.pdf.
[8] Ibid, 3
[9] Ibid, 9.

Another scholar on Article V is Robert Kelly, who currently serves as the General Counsel for Citizens for Self-Governance. He is also a practicing attorney and a member of the California Bar. He claims that an Article V Convention could exceed its mandate by using several arguments. First, the text of the Constitution indicates that a convention can be limited in several ways. These limitations include restricting an Article V Convention to merely proposing amendments, as well as preventing any amendments from denying the States equal representation in the United States Senate. Also, there were dozens of multi-state conventions held before the ratification of the Constitution. These conventions dispel the notion that a convention would automatically "runaway." Furthermore, the purpose of Article V was to give Congress and the state legislatures equal standing to propose amendments to the Constitution. Finally, over 400 Article V applications have been made by the states throughout history. The overwhelming majority of these were limited to a particular subject.[10]

Yet another Article V scholar is Michael Farris, who is the founder of the Home School Legal Defense Association, as well as Patrick Henry College. Additionally, he is a Senior Fellow for Constitutional Studies at the Citizens for Self-Governance. Proponents of the "runaway" convention argument claim that the Constitution was illegally adopted as the result of such a convention. Farris has evaluated two claims that support this argument.[11]

The first is that the delegates at the 1787 Convention were instructed to only amend the Articles of Confederation, but that they went beyond their orders and created a completely new document. This claim is wrong because the Constitutional Convention was prompted by the

[10] Kelly, Robert. "A Single-Subject Convention." Convention of States Action, n.d. https://d3n8a8pro7vhmx.cloudfront.net/conventionofstates/pages/899/attachments/original/1423177477/Kelly__Single_Subject_Convention.pdf?1423177477.

[11] Farris, Michael. "Can We Trust the Constitution? Answering the 'Runaway Convention' Myth." Convention of States Action, n.d. https://conventionofstates.com/files/article-3-can-we-trust-the-constitution-answering-the-runaway-convention-myth.

Annapolis Convention, not by a call from the Articles of Confederation Congress. In fact, seven state legislatures agreed to send delegates to the Philadelphia Convention before the Articles of Confederation Congress endorsed this gathering.[12]

The second claim is that the ratification process for the Constitution was improperly changed by the 1787 Convention from a unanimous threshold of all 13 States, which existed under the Articles of Confederation, to only 9 state ratification conventions. However, since the delegates at the Philadelphia Convention voted to replace the Articles of Confederation with a new Constitution, they were not limited by the Articles' unanimous threshold for ratification. Before the change in the ratification threshold could take effect, all 13 states had to agree with this new method of ratification, which they did. While the Philadelphia Convention was able to change the ratification threshold, an Article V Convention would be unable to do so. This is because the Philadelphia Convention was not governed by the Articles of Confederation, while an Article V Convention would be governed by the Constitution.[13]

There are numerous amendments that could be considered at an Article V Convention. Many of these amendments were articulated by Mark Levin, who is a lawyer, prominent conservative author, and radio and TV show host. He was also chief of staff for President Reagan's Attorney General Edwin Meese. Levin has outlined 11 different amendments for a Convention of States to consider: term limits for members of Congress, repealing the direct election of Senators, term limits for Supreme Court Justices and the ability for Congress or the States to override Supreme Court decisions, two amendments to respectively limit federal spending and taxation, limits on the federal bureaucracy, protections for free enterprise, protections for private property, allowing States to directly amend the constitution, granting the

[12] Farris, "Can We Trust the Constitution? Answering the 'Runaway Convention' Myth."
[13] Ibid.

States the power to check Congress, and protecting the sanctity of the vote.[14] However, only seven of these proposed amendments will be evaluated in this analysis: term limits for members of Congress, two amendments to respectively limit federal spending and taxation, limits on the federal bureaucracy, protections for free enterprise, protections for private property, and granting the States the power to check Congress.

The term limits amendment would prevent any individual from serving more than twelve years in Congress. This requirement would apply to whether an individual's time of service would be spent exclusively in the House of Representatives, exclusively in the Senate, or split between the two Houses.[15]

Levin's spending amendment prevents total federal outlays from exceeding revenues in a given fiscal year. This amendment also prevents federal outlays in a year from exceeding 17.5 percent of the GDP for that year. The limit on the debt could only be suspended by a three-fifths vote of both Houses of Congress.[16] On the other hand, Levin's taxing amendment prevents Congress from extracting more than 15 percent of a person's annual income. This amendment also prohibits value-added taxes, national sales taxes, and taxes on a descendant's estate. Finally, the deadline for filing federal income tax returns will be moved from April 15 to the day before federal election day. This is done to remind voters immediately ahead of election day of the politicians who voted to raise their taxes.[17]

The amendment placing limits on the federal bureaucracy requires that every administrative department and agency that is not reauthorized in a stand-alone vote every three

[14] Levin, Mark R. The Liberty Amendments: Restoring the American Republic. New York: Threshold Editions, 2013.
[15] Ibid, "An Amendment to Establish Term Limits for Members of Congress."
[16] Ibid, "Two Amendments to Limit Federal Spending and Taxing."
[17] Ibid, 75.

years by a simple majority of both Houses of Congress automatically expires. Additionally, this amendment requires that every executive branch regulation that imposes an economic burden of at least $100 million be submitted for review to a Congressional Delegation Oversight Committee. This new committee will consist of seven members of the House of Representatives and seven Senators.[18]

Levin's amendment to promote free enterprise clarifies the jurisdiction of the Commerce Clause. More specifically, this amendment states that Congress's ability to regulate interstate commerce does not extend to intrastate commerce, nor does it give Congress the authority to compel an individual or organization to participate in commerce.[19]

The amendment to protect private property requires the federal government to fully compensate property owners for the taking of their property. This taking can either be in the form of direct seizure or burdensome regulation.[20]

Finally, Levin's amendment to allow the states to check Congress implements a thirty-day period between the engrossing of a bill or resolution and its final passage by both Houses of Congress. This requirement can be overridden by a two-thirds vote in both the House of Representatives and the Senate. This amendment also allows states to override both federal statutes and Executive Branch regulations with an economic burden exceeding $100 million with support from three-fifths of the state legislatures. However, the states must vote to override a statute or regulation within twenty-four months of them taking effect.[21]

[18] Levin, "An Amendment to Limit the Federal Bureaucracy."
[19] Ibid, "An Amendment to Promote Free Enterprise."
[20] Ibid, "An Amendment to Protect Private Property."
[21] Ibid, "An Amendment to Grant the States the Authority to Check Congress."

Convention of States

The current Convention of States movement is primarily championed by a group of the same name. Founded in 2013, the goal of the Convention of States is to 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. As of April 2022, 19 states have passed the Convention of States Resolution: Georgia, Alaska, Florida, Alabama, Tennessee, Indiana, Oklahoma, Louisiana, Arizona, North Dakota, Texas, Missouri, Arkansas, Utah, Mississippi, Wisconsin, Nebraska, West Virginia, and South Carolina. Wisconsin, Nebraska, West Virginia, and South Carolina were the four most recent states to adopt this resolution, with Wisconsin adopting it on January 25, Nebraska on January 28, West Virginia on March 4, and South Carolina on March 29 of this year. The Convention of States Resolution has also passed one chamber in 6 different states: New Hampshire, Virginia, North Carolina, Iowa, South Dakota, and New Mexico. Finally, the Convention of States Resolution is active in 16 additional states: Maine, Vermont, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Ohio, Kentucky, Michigan, Illinois, Minnesota, Kansas, Montana, Washington, and Hawaii.[22]

[22] Convention of States Action, n.d. https://conventionofstates.com/.

How A Convention Works

The process for a Convention of States is articulated in Article V of the United States Constitution. It reads:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one of the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.[23]

In his book on the Convention of States movement, former Oklahoma Senator Tom A. Coburn further describes the process for such a convention. He notes that 34 States, or two-thirds of the 50 states, would have to pass a similar resolution to initiate the amendments process. Once this threshold is met, Congress has a legal obligation to call an amendments convention to deliberate on topics relevant to the resolutions. States will then send delegates, or commissioners, to this convention. States can choose the number of delegates they send to the convention, but each state's delegation will only have one collective vote at the convention.

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[23] "Article V, U.S. Constitution." *Office of the Federal Register. https://www.archives.gov/federal-register/constitution/article-v.html#:~:text=The%20Congress%2C%20whenever%20two%20thirds,all%20intents%20and%20purposes%2C%20as*

Each state would be wise to send an odd number of delegates to the convention, so that there is no possibility of a tie in a specific delegation when the delegates vote among themselves. Accordingly, states have typically sent between three and seven delegates to various interstate conventions throughout history.[24]

At the convention, one of the delegates is selected as the presiding officer, and then the delegates vote on rules to govern the convention. Since an amendments convention would not be under the jurisdiction of Congress, Congress could not set the rules for the Convention. If all goes successfully, then the delegates will vote on an amendment or several amendments to refer to the states.[25]

At the conclusion of the convention, Congress will formally refer the proposed amendments to the various states, so long as they fit within the guidelines of the resolution which established the convention. Congress will then decide between two modes of ratification. Either the amendments will need to be ratified by the state legislatures, or by state conventions of engaged citizens in the respective states. Congress has required that the state legislatures ratify 26 out of the 27 amendments to the Constitution. However, for the 21st Amendment, which repealed prohibition, Congress resorted to the state ratifying convention method. Also, the Constitution, before the Bill of Rights was included, was ratified by state ratifying conventions. Beyond choosing between these two options, Congress would have no further involvement in the ratification process. Congress is forbidden from altering the wording of any amendments proposed by the convention. If 38 states, or three-fourths of the total, ratify any of the proposed amendments, then they are adopted. The President can then sign the certification of the newly

[24] Coburn, Tom A. "Constitutional Amendment by We the People." In Smashing the DC Monopoly: Using Article V to Restore Freedom and Stop Runaway Government, 60–68. Washington, D.C.: WND Books, 2017.
[25] Ibid.

ratified amendments, although this is not a requirement. For example, the archivist signed the certification for the 27th Amendment. After this process is completed, the amendments are officially part of the United States Constitution.[26]

In chapter 4 of his book, Coburn offers five reasons for why he is cautiously optimistic about an Article V amendments convention occurring. First, a previous Article V Convention attempt for a Balanced Budget Amendment that occurred in the 1970s and 1980s only had one primary advocacy group – The National Taxpayers Union. On the other hand, multiple advocacy groups are currently coordinating with the Convention of States organization to call an amendments convention. Second, the debt and deficit are exponentially higher today than they were several decades ago. Therefore, the need for a convention is greater than ever before. Third, the internet allows for better coordination between individuals and organizations working at the grassroots level to build support for an amendments convention. The previous attempt at a Balanced Budget Amendment convention, which occurred before the internet age, only fell two states short of calling a convention. Fourth, state legislatures have grown more conservative and more Republican in recent decades. Since the Convention of States movement is primarily, but not exclusively, supported by political conservatives, the Convention of States resolution has a more receptive audience among the state legislatures. Coburn noted that after the November 2016 elections, Republicans held both houses of the legislature, as well as the governorship, in 25 states, as opposed to only 6 Democratic trifectas. Furthermore, Republicans held 68 out of 99 state legislative chambers nationwide in comparison to Democrats' 31. Today, Republicans still hold 62 of the 99 state legislative chambers across the nation, having recently regained control of the Virginia House of Delegates in the November 2021 elections. Finally, intellectually honest

[26] Coburn, 60-68.

discussions surrounding an amendments convention are easier to obtain due to scholarship from figures such as Robert Natelson. These scholars have debunked criticism that such a convention could far exceed its purpose and harm the core structure of the Constitution. This criticism has often been referred to as the "runaway convention" argument.[27]

The "Runaway Convention" Myth

A Single-Subject Convention

Opponents of a constitutional convention often argue that once a convention convenes, it cannot be restricted in any meaningful way, and that it could result in the destruction of the Constitution as we know it.[28] This argument is flawed for several reasons.

First, the text of Article V of the Constitution indicates that a convention can be limited in some ways. For example, a convention is limited to merely "proposing amendments," and thus cannot ratify its own proposals. The text also prevents two topics from being amended in any context: provisions relating to the import of slaves being invalid until after 1808 (no longer applicable), and no amendment can be made to deny states equal representation in the Senate.[29]

Second, there is a long history of conventions in colonial America prior to Article V of the Constitution. In the century leading up to the ratification of the Constitution, there were at least 32 multi-state conventions that occurred. Most of these conventions were limited to specific subject matters, and the delegates to these conventions strictly adhered to these subjects.[30]

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[27] Coburn, Tom A. "The Current Quest for an Article V Convention." In Smashing the DC Monopoly: Using Article V to Restore Freedom and Stop Runaway Government, 103-105. Washington, D.C.: WND Books, 2017.
[28] Kelly, Robert. "A Single-Subject Convention." Convention of States Action, n.d. https://d3n8a8pro7vhmx.cloudfront.net/conventionofstates/pages/899/attachments/original/1423177477/Kelly__Single_Subject_Convention.pdf?1423177477.
[29] Ibid.
[30] Ibid.

Third, the purpose of Article V was to give Congress and the state legislatures equal standing to propose amendments to the Constitution. Since Congress has direct control over the amendments it proposes, the state legislatures would as well. Even if certain delegates attempted to go rogue in proposing amendments outside the limits of the Convention of States Resolution, which would likely result in legal repercussions from their respective states' legislatures, such a move would have to be approved by most of the convention and then 38 of the states, a substantial obstacle.[31]

Finally, states have implicitly understood that they can limit the scope of their Article V applications. The majority of the over 400 Article V applications made throughout U.S. history have been limited to a particular subject.[32] If states could not limit the scope of their Article V applications, then Congress should have been required to call an amendments convention in the early 20th century, when the threshold of two-thirds of states submitting applications was met. Since these states submitted differing resolutions, Congress was under no such obligation. Therefore, Congress only aggregating uniform applications into cohesive groups is an admission that states can limit the subjects discussed at a convention.[33]

Can We Trust the Constitution? Answering the "Runaway Convention" Myth

Proponents of this myth contend that the Constitution was illegally adopted because of a runaway Convention. They make two claims to support this assertion. The first is that the convention delegates were instructed to merely amend the Articles of Confederation, but instead

[31] Kelly, "A Single-Subject Convention."
[32] Ibid.
[33] Ibid.

decided to write a completely new document. The second is that the ratification threshold was illegitimately changed from a unanimous 13 states to 9 state ratification conventions.[34]

The first claim is wrong because the Constitutional Convention was prompted by the Annapolis Convention, not by a call from the Articles of Confederation Congress. The delegates from the 5 states participating at the Annapolis Convention concluded that a broader convention was needed to address the problems facing the young nation. They called for this Convention to start in Philadelphia in May 1787. The goal of the Philadelphia Convention was "to render the constitution of the Federal Government adequate for the exigencies of the Union."[35] The Articles of Confederation Congress did not play any role in this process. The states possessed the residual sovereignty to call this convention outside the jurisdiction of the Articles of Confederation, and they sent copies of their resolution to Congress solely out of respect. Seven state legislatures agreed to send delegates to the Philadelphia Convention prior to the Articles Congress endorsing it. The States told the delegates that the purpose of this Convention was the one previously outlined by the Annapolis Convention.[36]

On February 21, 1787, Congress voted to endorse the Convention, but it recommended that the delegates only amend the Articles and take steps to render the Federal Constitution adequate. However, such a recommendation was merely advisory. Accordingly, of the 12 states that sent delegates to the Constitutional Convention, ten of them adopted the broader framework of the Annapolis Convention, which allowed them to replace the Articles of Confederation if necessary. On the other hand, only New York and Massachusetts adopted the strict

[34] Farris, Michael. "Can We Trust the Constitution? Answering the 'Runaway Convention' Myth." Convention of States Action, n.d. https://conventionofstates.com/files/article-3-can-we-trust-the-constitution-answering-the-runaway-convention-myth.
[35] Ibid.
[36] Ibid.

recommendations of the Articles of Confederation Congress. In short, while the states called for the 1787 Constitutional Convention outside the jurisdiction of Congress and the Articles of Confederation, the process for a future convention would be governed by Article V of the Constitution, thus preventing the states from discarding the Constitution.[37]

The second claim is also wrong. The Articles of Confederation required unanimous approval of all 13 states to amend its Constitution. Additionally, the Annapolis Convention and most states agreed that any amendments to the Articles of Confederation would have to be unanimously approved. Since the States were sovereigns under the terms of the Articles of Confederation, and the Articles essentially functioned as a treaty between the various states, all parties would have to approve for changes to be made to the agreement. However, since the delegates at the Philadelphia Convention decided to replace the Articles of Confederation with a new Constitution, they were not strictly bound by the unanimous threshold for ratification. Therefore, the Convention lowered the threshold for ratification of the Constitution from 13 states to 9. Additionally, the Philadelphia Convention selected state ratifying conventions as the method for the Constitution to be ratified, so that the ratification process could be as close as possible to the people the Constitution would govern.[38]

Before this change in the ratification threshold could take effect, all 13 states would have to agree to this method of ratification. Since all 13 state legislatures established such conventions, this threshold was legally changed. Although the delegates at the 1787 Constitutional Convention found a way to change the ratification threshold, such a change could not be made at a modern-day amendments convention. This is because such a convention would

[37] Faris, "Can We Trust the Constitution?"
[38] Ibid.

be governed by Article V of the Constitution, which unlike the Articles of Confederation that preceded it, governs the convention and ratification process.[39]

A Response to the "Runaway Scenario"

Professor Robert G. Natelson, a noteworthy scholar on the Convention of States movement, responded to an article written by Chuck Michaelis, a businessman and amateur historian. In this article, Michaelis warns about the dangers of a constitutional convention. He claims that there are numerous uncertainties to the Article V convention process that could lead to a "runaway convention." He makes several arguments to justify his concerns. First, he claims that the 1787 Philadelphia Convention was America's "first constitutional convention." Second, he asserts that the language of Article V allows Congress to select and allocate delegates to a constitutional convention. Simply put, the convention process would be placed in the hands of the same institution that has routinely abused its authority. Third, Michaelis states that a convention is an uncontrollable body that would have the unbridled ability to propose amendments. Fourth, he predicts that delegates to a convention would disregard limits placed on them by state delegations. He argues that the Philadelphia Convention proved to be a runaway convention, despite "strongly worded" congressional language directed towards the delegates. Fifth, and finally, Michaelis states that the constitutional convention could alter the ratification process, just as the Philadelphia Convention did.[40]

To refute these claims, professor Natelson claims that five concepts must first be understood: the historical, legal, and linguistic background to Article V; two centuries of post-Founding era usage of Article V; governing principles of constitutional, international, and

[39] Faris, "Can We Trust the Constitution?"
[40] Natelson, Robert G. "A Response to the Runaway Scenario." 2-3, Convention of States Action, n.d. https://apps.legislature.ky.gov/CommitteeDocuments/33/13552/A%20Response%20to%20the%20Runaway%20Scenario,%20Article%20V%20Information%20Center.pdf.

agency law; many Article V court decisions ranging from 1798 to the 21st century; and various modern political realities.[41]

Michaelis states that an Article V Amendments Convention would be akin to the 1787 Convention. However, there is a great difference between a "convention for proposing amendments" and a "constitutional convention." A constitutional convention is tasked with drafting, proposing, and adopting a new charter, while a convention for proposing amendments is charged with drafting and proposing one or more amendments to this charter. James Madison once argued that a constitutional convention is plenipotentiary in our system, while an amendments convention is subject to the forms of the constitution.[42] Michaelis asserts that any gathering that seeks to change constitutional rules amounts to a constitutional convention. Using this definition, the Philadelphia Convention was not the first constitutional convention in American history: The 1754 Albany Congress proposed a plan of colonial union; the First Continental Congress institutionalized interstate cooperation; the 1780 Hartford Convention recommended amending the Articles of Confederation; the 1786 Annapolis Convention recommended amendments; and the Second Continental Congress drafted and proposed the Articles of Confederation. Also, one of the most prominent conventions to meet since the 1787 Convention was the 1861 Washington Conference Convention. This was an assembly of 21 states that proposed a slavery-related amendment in an ultimately unsuccessful attempt to prevent the Civil War.[43]

Michaelis is wrong to suggest that gaps exist in the language of Article V. When writing this article, the Founders used words that had a universally accepted meaning. Accordingly, a

[41] Natelson, 3.
[42] Ibid, 4.
[43] Ibid.

general convention would be a meeting of the States. Also, a "call" did not include authority for Congress to dictate the apportionment or selection of delegates to a convention. Additionally, the ratification record confirms that in an Article V Convention, the applying states would control the subject matter and the state legislatures would control their delegates. Subsequent constitutional jurisprudence supports the notion that the Founders established safeguards on the Article V Convention process. Natelson discusses that "the Supreme Court has held repeatedly that Article V consists of grants of enumerated powers to named assemblies (legislatures and convention). As some very modern Supreme Court opinions make clear, Founding Era customs and understandings largely define the scope of the Constitution's words and its grants."[44]

Michaelis's claim that a convention cannot be limited stems from the idea that such a gathering is sovereign, and thus is a direct and exclusive representation of the people's will. This view is supported by the fact that a few state conventions acted this way during the Revolutionary era. However, such a view contradicts most historical experiences and established law. At the time of the ratification of the Constitution, nearly all interstate conventions had been limited by topic. Since then, the same has held true for almost all such conventions. Also, established constitutional law holds that legislatures and conventions derive all their authority from the Constitution. Therefore, a state convention commissioned to consider only a single proposed amendment or set of amendments will be limited to that purpose.[45]

There are several historical facts that disprove Michaelis's assertion that the 1787 Convention was called by Congress for the limited purpose of amending the Articles of Confederation. The most obvious is that the Constitutional Convention was not called by Congress, but by Virginia and New Jersey in response to the recommendations of the Annapolis

[44] Natelson, 5.
[45] Ibid, 6.

Convention. This process was in line with that of most multi-state conventions during the Founding era, which were also called by the states.[46]

There are several other relevant historical truths worth considering. First, the Articles of Confederation operated as a treaty among sovereign states, unlike the Constitution. The States under the jurisdiction of the Articles of Confederation operated like Member States participating in the United Nations. With UN Member States and the pre-Constitution States alike, all signatories can reconsider the terms of their connections, even if the central governing body objects. Additionally, ten of the twelve states participating in the 1787 Convention authorized their delegates to consider changes to the American constitutional order that were not limited to merely amending the Articles. The two states that opposed the expanded power of delegates were New York and Massachusetts, where anti-federalist sentiment was strong. After seven states had signed up to join the 1787 Convention, these two states requested that Congress limit the Convention to amending the Articles. In response, Congress merely claimed that it was in their opinion for the Constitutional Convention to be limited to amending the Articles of Confederation. Finally, only seven delegates from these two states lacked the power to propose a new form of government, due to the terms adopted by their home states. Of these seven, only three delegates signed the Constitution: Alexander Hamilton, Nathaniel Gorham, and Rufus King. Hamilton signed the Constitution in an individual capacity. Therefore, the only delegates who arguably went rogue were Gorham and King, while the dozens of others who signed it were within the jurisdiction of their commission.[47]

Finally, Michaelis' claim that the Philadelphia Convention changed the ratification process lacks historical context. Admittedly, the convention did adopt a process that differed

[46] Natelson, 6.
[47] Ibid, 7.

from the one established in the Articles of Confederation. However, as previously noted, the 1787 Convention was not called for under the jurisdiction of the Articles. On the other hand, a modern-day amendments convention would be called for under the jurisdiction of the United States Constitution. Therefore, it would be bound by the Constitution's strict ratification procedures.[48] Also, even if Michaelis' claim of a runaway convention was correct, there were nearly 20 other multi-state conventions in the 18th and 19th centuries that did not exceed their jurisdiction. Examples include the Providence Conventions of 1776-77 and 1781, the 1777 Springfield and York Town Conventions, the New Haven Price Convention of 1778, the Hartford Conventions of 1779 and 1780, the 1780 Philadelphia Price Convention and Boston Convention, and the 1861 Washington Conference Convention.[49]

Furthermore, there are numerous safeguards that would prevent a runaway amendments convention: the damage that the disregard of clear limits would inflict on a commissioner's reputation; popular opinion; state applications defining the scope of the convention; the limit on the scope of the call; potential lawsuits to enforce these limits; state instructions to commissioners and the ability to recall such commissioners if they attempt to ignore these instructions; the need to gather a majority of state delegations to propose amendments; Congress's ability and responsibility to refuse to choose a mode of ratification for extraneous amendments; 38 states would have to ratify any amendment proposed by the convention; and judicial challenges could be brought during the ratification phase of this process.[50]

[48] Natelson, 8.
[49] Ibid.
[50] Ibid, 9.

Proposed Constitutional Amendments

In his 2013 book on the Convention of States, Mark Levin proposes 11 different amendments to help restore the American Republic. However, the seven most prominent are Congressional term limits, two separate amendments to respectively limit federal spending and taxation, limits on the federal bureaucracy, promoting free enterprise, protecting private property rights, and allowing the States to override certain Congressional statutes. Each of these proposed constitutional amendments warrants further examination.

An Amendment to Establish Term Limits for Members of Congress

> No person may serve more than twelve years as a member of Congress, whether such service is exclusively in the House or the Senate or combined in both Houses. Upon ratification of this Article, any incumbent member of Congress whose term exceeds the twelve-year limit shall complete the current term, but thereafter shall be ineligible for further service as a member of Congress.[51]

In the Republican midterm wave of 2010, 85 percent of incumbents from both parties were reelected. More specifically, 397 members ran for re-election and 339 won, a reelection rate of 85 percent. In the Senate, 25 incumbents ran for reelection, and 21 won, a Senate incumbent reelection rate of 84 percent. In 2008, the reelection rate for Representatives was 94 percent, while it was 83 percent for Senators.[52] The incumbent reelection rate has remained high in recent years. In the House of Representatives, the reelection rate was nearly 90 percent in 2012, over 95 percent in 2014, almost 97 percent in 2016, 91 percent in 2018, and almost 95 percent in 2020. In the Senate, the incumbent reelection rate was over 91 percent in 2012, more

[51] Levin, Mark R. "An Amendment to Establish Term Limits for Members of Congress." In The Liberty Amendments: Restoring the American Republic, 19. New York: Threshold Editions, 2013.
[52] Ibid, 19-20.

than 82 percent in 2014, over 93 percent in 2016, more than 84 percent in 2018, and nearly 84 percent in 2020.[53]

The consistently high incumbent reelection rate in recent years stands in stark contrast with the historical standard. University of California Irvine professor Mark P. Petracca noted that "throughout most of the nineteenth century, not very members of Congress sought reelection. Not until 1901…did the average number of terms served by House members prior to the present session rise above two terms."[54] He continued, "There were few occasions in which the average length of service approached two terms, but no more than a handful of some 56 sessions…during the 25 elections between 1850 and 1898…turnout averaged 50.2 percent. On average, more than half the House during any given session in the second half of the nineteenth century was made up of first term members."[55]

Term limits currently apply to the Presidency by means of the 22nd Amendment. At the state level, 36 out of 50 states have some form of term limits on their Governors, while 15 states have term limits for their state legislators. There are also term limits in some jurisdictions on municipal, county, and town governing bodies.[56] This proposed amendment would extend term limits to members of the U.S. House of Representatives and the U.S. Senate. The purpose of term limits is to prevent the emergence of a self-perpetuating class of career politicians who become entrenched in the corrupt ways of the federal government and less responsive to the needs of their constituents.

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[53] "Reelection Rates Over the Years." OpenSecrets, n.d. https://www.opensecrets.org/elections-overview/reelection-rates.
[54] Levin, Mark R. "An Amendment to Establish Term Limits for Members of Congress." In The Liberty Amendments: Restoring the American Republic, 27. New York: Threshold Editions, 2013.
[55] Ibid, 27.
[56] Ibid, 31.

The merits of term limits were recognized by Benjamin Franklin and Thomas Jefferson. On July 26, 1787, during the Constitutional Convention, Franklin proclaimed, "It seems to have been imagined by some that the returning to the mass of the people was degrading the magistrate…In free Governments the rulers are the servants and the people their superiors & sovereigns. For the former therefore to return among the latter was not to degrade but to promote them."[57] He continued that "it would be imposing an unreasonable burden on them to keep them always in a State of servitude, and not allow them to become again one of the Masters."[58] Additionally, Jefferson wrote the following to James Madison in December 1787: "I dislike, and strongly dislike…the abandonment, in every instance, of the principle of rotation in office, and most particularly in the case of the President…."[59] In February 1800, Jefferson told Samuel Adams that a "government by representees, elected by the people at short periods, was our object, and our maxim at that day was, 'Where annual election ends, tyranny begins'; nor have our departures from it been sanctioned by the happiness of their effects…."[60]

An amendment to impose term limits on Congress will prevent the emergence of a distant political elite and require a predictable rotation in office of elected officials.

Two Amendments to Limit Federal Spending and Taxing

Spending:

> Congress shall adopt a preliminary fiscal year budget no later than the first Monday in May for the following fiscal year, and submit said budget to the President for consideration. Shall Congress fail to adopt a final fiscal year budget prior to the start of each fiscal year, which shall commence on October 1 of each year, and shall the

[57] Levin, 31-32.
[58] Ibid, 32.
[59] Ibid, 26.
[60] Ibid.

President fail to sign said budget into law, an automatic, across-the-board, 5 percent reduction in expenditures from the prior year's fiscal budget shall be imposed for the fiscal year in which a budget has not been adopted. Total outlays of the United States Government for any fiscal year shall not exceed its receipts for that fiscal year. Total outlays of the United States Government for each fiscal year shall not exceed 17.5 percent of the Nation's gross domestic product for the previous calendar year. Total receipts shall include all receipts of the United States Government but shall not include those derived from borrowing. Total outlays shall include all outlays of the United States Government except those for the repayment of debt principal. Congress may provide for a one-year suspension of one or more of the preceding sections in this Article by a three-fifths vote of both Houses of Congress, provided the vote is conducted by roll call and sets forth the specific excess of outlays over receipts or outlays over 17.5 percent of the Nation's gross domestic product. The limit on the debt of the United States held by the public shall not be increased unless three-fifths of both Houses of Congress provide for such an increase by roll call vote. This Amendment shall take effect in the fourth fiscal year after its ratification.[61]

Taxing:

Congress shall not collect more than 15 percent of a person's annual income, from whatever source derived. "Person" shall include natural and legal persons. The deadline for filing federal income tax returns shall be the day before the date set for elections to federal office. Congress shall not collect tax on a descendant's estate. Congress shall not

[61] Levin, Mark R. "Two Amendments to Limit Federal Spending and Taxing." In The Liberty Amendments: Restoring the American Republic, 73-74. New York: Threshold Editions, 2013.

institute a value-added tax or national sales tax or any other tax in kind or form. This Amendment shall take effect in the fourth fiscal year after its ratification.[62]

The need for Constitutional limits on federal spending and taxation is apparent. In *The Liberty Amendments*, Mark Levin articulates the fiscal problems confronting the nation.

In 2002, the federal government spent a little more than $2 trillion. By 2008, it spent $2.98 trillion. Federal spending increased to $3.5 trillion in 2009, $3.45 trillion in 2010, $3.6 trillion in 2011, and $3.79 trillion in 2012. As a percentage of GDP, federal spending for fiscal operations was 19.1 percent in 2002, 20.8 percent in 2008, 25.2 percent in 2009, 24.1 percent in 2010 and 2011, and 24.3 percent in 2012.[63] Federal deficits have also increased dramatically. In 2002, the annual federal deficit was $157 billion. This figure increased to $458 billion in 2008, $1.4 trillion in 2009, $1.29 trillion in 2010 and 2011, and $1.32 trillion in 2012.[64]

As for the total federal debt, the figure stood at $10.69 trillion in 2008, $12.14 trillion in 2009, $13.8 trillion in 2010, $15.22 trillion in 2011, and more than $16.3 trillion in 2012.[65] This equates to $111,000 per taxpayer, even though the average annual income was only about $51,000 in 2012.[66] As a percentage of GDP, federal debt stood at 58.8 percent in 2002. This rose to 69.7 percent in 2008, 85.2 percent in 2009, 94.2 percent in 2010, 98.7 percent in 2011, and an astonishing 104.8 percent of GDP in 2012.[67] Accordingly, the CBO estimated in 2011 that "the government's yearly net interest spending will more than triple between 2011 and 2021 (from $225 billion to $792 billion) and double as a share of GDP (from 1.5 percent to 3.3

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[62] Levin, 75.
[63] "Fiscal Year 2013 Historical Tables." White House, February 13, 2012. https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2013/assets/hist.pdf.
[64] Ibid.
[65] Ibid.
[66] Boccia, Romina. "Obama: Don't Worry about $16 Trillion Debt." The Daily Signal, March 20, 2013. https://www.dailysignal.com/2012/09/19/obama-dont-worry-about-16-trillion-debt/.
[67] "Fiscal Year 2013 Historical Tables." White House, February 13, 2012. https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2013/assets/hist.pdf.

percent)."[68] The CBO continued, "Large budget deficits and growing debt would reduce national savings, leading to higher interest rates, more borrowing from abroad, and less domestic investment – which in turn would lower the growth of incomes in the United States."[69]

The federal government's fiscal problems have grown exponentially in recent years. This fiscal irresponsibility is largely a result of federal politicians across the political aisle lacking any concern for the nation's fiscal sustainability. The nation's fiscal health was further harmed by profligate spending over the past two years that was initially prompted by the coronavirus pandemic. Accordingly, federal spending totaled $4.109 trillion in FY 2018 and $4.447 trillion in FY 2019. The federal deficit during these two years was $779.1 billion and $983.6 billion, respectively. However, federal spending skyrocketed to $6.550 trillion in FY 2020, while the deficit climbed to $3.129 trillion. In FY 2021, federal spending was projected to rise even further to approximately $7.250 trillion, while the deficit totaled $3.669 trillion. Over the next several years, federal spending and the deficit are projected to remain at alarming levels: FY 2022 – $6.011 trillion in federal spending, $1.837 trillion deficit; FY 2023 – $6.013 trillion in federal spending, $1.372 trillion deficit; FY 2024 – $6.187 trillion in federal spending, $1.359 trillion deficit; FY 2025 - $6.508 trillion in federal spending, $1.470 trillion deficit; and FY 2026 – $6.746 trillion in federal spending, $1.414 trillion deficit.[70]

[68] "The 2012 Long-Term Budget Outlook." Congressional Budget Office, June 5, 2012. https://www.cbo.gov/sites/default/files/cbofiles/attachments/06-05-Long-Term_Budget_Outlook.pdf.
[69] Ibid.
[70] "Federal Budget Receipts and Outlays." The American Presidency Project. University of California Santa Barbara, May 28, 2021. https://www.presidency.ucsb.edu/statistics/data/federal-budget-receipts-and-outlays.

Fiscal Year	Federal Spending	Federal Deficit
2018	$4.109 Trillion	$779.1 Billion
2019	$4.447 Trillion	$983.6 Billion
2020	$6.550 Trillion	$3.129 Trillion
2021	$7.250 Trillion	$3.669 Trillion
2022	$6.011 Trillion	$1.837 Trillion
2023	$6.013 Trillion	$1.372 Trillion
2024	$6.187 Trillion	$1.359 Trillion
2025	$6.508 Trillion	$1.470 Trillion
2026	$6.746 Trillion	$1.414 Trillion

In addition to reckless spending levels and an enormous federal debt, the United States is burdened by tens of trillions of dollars in unfunded liabilities. As of 2012, the total unfunded liability of Medicare was $42.8 trillion, and the program's trustees estimated that Medicare spending could account for 10.4 percent of GDP by 2086. Additionally, the total unfunded liability of Social Security in 2012 was $20.5 trillion. As Mark Levin noted, the total obligations by the federal government, or "the accumulated debt from yearly fiscal operations plus the net present value of all unfunded liabilities – amounted to over $90 trillion in 2012. Moreover, the real yearly deficits, adding together all debt and liabilities, in 2011 and 2012 were about $4.6 trillion and $6.9 trillion, respectively."[71] As a result of this widespread fiscal irresponsibility, the nation's credit score was downgraded for the first time in its history. On August 5, 2011,

[71] Levin, Mark R. "Two Amendments to Limit Federal Spending and Taxing." In The Liberty Amendments: Restoring the American Republic, 80. New York: Threshold Editions, 2013.

Standard & Poor's, citing "negative long-term outlook," downgraded the United States' credit rating from the highest rating of AAA to AA+.[72] Since this report, unfunded liabilities for Medicare and Social Security have increased dramatically. As of December 2021, the unfunded liability for Medicare was $103.4 trillion, while the unfunded liability for Social Security was $59.8 trillion. Taken together, unfunded liabilities total $163.2 trillion, or nearly $490,000 per citizen.[73]

Taxation is also excessive, and increased tax rates help fuel irresponsible federal spending. Federal income tax rates have increased far beyond their initial levels. Following the ratification of the 16th Amendment in 1913, 7 income tax brackets were established. Incomes were taxed at 1 percent up to $20,000, 2 percent between $20,000 and $50,000, 3 percent between $50,000 and $75,000, 4 percent between $75,000 and $100,000, 5 percent between $100,000 and $250,000, 6 percent between $250,000 and $500,000, and 7 percent for annual incomes exceeding $500,000.[74] Adjusted for inflation, as of 2022, the rates were 1 percent for incomes up to $573,164, 2 percent for incomes between $573,164 and $1,432,909, 3 percent for incomes between $1,432,909 and $2,149,364, 4 percent for incomes between $2,149,364 and $2,865,818, 5 percent for incomes between $2,865,818 and $7,164,545, 6 percent for incomes between $7,164,545 and $14,329,091, and 7 percent for incomes over $14,329,091.[75]

The top tax rate of 7 percent in 1913 applied to very few individuals. On the other hand, current tax rates are both higher and more progressive than in 1913. Just as was the case in

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[72] Levin, 80.
[73] Matthews, Merrill. "You Owe More than $500,000 - and Counting." The Hill, December 14, 2021. https://thehill.com/opinion/finance/585679-you-owe-more-than-500000-and-counting#:~:text=The%20trustees%20estimate%20Social%20Security's,horizon%20to%20be%20%24103.4%20trillion.
[74] "Historical Federal Individual Income Tax Rates & Brackets, 1862-2021." Tax Foundation, August 24, 2021. https://taxfoundation.org/historical-income-tax-rates-brackets/.
[75] "Inflation Calculator: Find U.S. Dollar's Value from 1913-2022." US Inflation Calculator, n.d. https://www.usinflationcalculator.com/.

1913, there were seven income tax brackets in income year 2021. For married taxpayers filing jointly, the tax rates and corresponding income thresholds are as follows: 10 percent up to $19,900, 12 percent between $19,900 and $81,050, 22 percent between $81,050 and $172,750, 24 percent between $172,750 and $329,850, 32 percent between $329,850 and $418,850, 35 percent between $418,850 and $628,301, and 37 percent for incomes above $628,301.[76] For heads of household, the tax rates and corresponding income thresholds are as follows: 10 percent up to $14,200, 12 percent between $14,200 and $54,200, 22 percent between $54,200 and $86,350, 24 percent between $86,350 and $164,900, 32 percent between $164,900 and $209,400, 35 percent between $209,400 and $523,600, and 37 percent for incomes above $523,600.[77] Finally, for both married people filing individually and single filers, the tax rates and corresponding income thresholds are as follows: 10 percent up to $9,950, 12 percent between $9,950 and $40,525, 22 percent between $40,525 and $86,375, 24 percent between $86,375 and $164,925, 32 percent between $164,925 and $209,425, 35 percent between $209,425 and $523,600, and 37 percent for incomes above $523,600.[78]

While other nations have higher income tax rates than the United States, the U.S. has among the most progressive income tax systems in the world. More specifically, an OECD report found varying discrepancies in five countries between the share of national income earned by the top 10 percent of earners and the share of the national tax burden for this group. In France, the top 10 percent earned 25.5 percent of national income and paid 28 percent of national income taxes. In Germany, the top 10 percent earned 29.2 percent of national income and paid 31.2 percent of national income taxes. In Sweden, the top 10 percent earned 26.6 percent of

[76] "Historical Federal Individual Income Tax Rates & Brackets, 1862-2021." Tax Foundation, August 24, 2021. https://taxfoundation.org/historical-income-tax-rates-brackets/.
[77] Ibid.
[78] "Historical Federal Individual Income Tax Rates & Brackets, 1862-2021."

national income and paid 26.7 percent of national income taxes. In the United Kingdom, the top 10 percent earned 32.3 percent of national income and paid 38.6 percent of national income taxes. Finally, in the United States, the top 10 percent earned 33.5 percent of national income and paid 45.1 percent of national income taxes.[79]

As opposed to high tax rates that are uniformly imposed across all income brackets, a progressive tax system disproportionately burdens high income earners. The federal income tax system in the United States remains disproportionately burdensome to high income earners, as illustrated by a recent report from the Tax Foundation. This report analyzed Internal Revenue Service data on individual income taxes for tax year 2019. This report found that the top 1 percent of income earners paid an average rate of 25.6 percent, which is more than seven times the 3.5 percent rate paid by the bottom 50 percent of income earners. The average tax rates for the other income groups were 6.9 percent for the top 50 to 25 percent, 9.8 percent for the top 25 to 10 percent, 13.3 percent for the top 10 to 5 percent, and 17.4 percent for the top 5 to 1 percent of income earners. The income thresholds for that year were as follows: bottom 50 percent – AGI below $44,269; top 25 percent – AGI above $87,917; top 10 percent – AGI above $154,589; top 5 percent – AGI above $221,572; and top 1 percent – AGI above $546,434.[80]

[79] Matthews, Dylan. "America's Taxes Are the Most Progressive in the World. Its Government Is Among the Least." The Washington Post, April 5, 2013. https://www.washingtonpost.com/news/wonk/wp/2013/04/05/americas-taxes-are-the-most-progressive-in-the-world-its-government-is-among-the-least/.
[80] York, Erica. "Summary of the Latest Federal Income Tax Data, 2022 Update." Tax Foundation, January 20, 2022. https://taxfoundation.org/publications/latest-federal-income-tax-data/.

Income Percentiles	Income Thresholds	Average Income Tax Rate
Bottom 50 Percent	AGI below $44,269	3.5 Percent
Top 50 to 25 Percent	AGI above $44,269	6.9 Percent
Top 25 to 10 Percent	AGI above $87,917	9.8 Percent
Top 10 to 5 Percent	AGI above $154,589	13.3 Percent
Top 5 to 1 Percent	AGI above $221,572	17.4 Percent
Top 1 Percent	AGI above $546,434	25.6 Percent

The top 50 percent of taxpayers paid 97 percent of all income taxes, while the bottom 50 percent paid only 3 percent. Also, the top 1 percent paid a greater share of the total individual income taxes (38.8 percent) than the entire bottom 90 percent of taxpayers combined (29.2 percent). The share of national income compared to federal income tax rates for each major income group is as follows: bottom 50 percent – 11.5 percent of national income, 3.1 percent of total income taxes paid; top 50 to 25 percent – 19.7 percent of national income, 10.3 percent of total income taxes paid; top 25 to 10 percent – 21.5 percent of national income, 15.8 percent of total income taxes paid; top 10 to 5 percent – 11.4 percent of national income, 11.4 percent of total income taxes paid; top 5 to 1 percent – 15.8 percent of national income, 20.7 percent of total income taxes paid; top 1 percent – 20.1 percent of national income, 38.8 percent of total income taxes paid.[81]

[81] York, "Summary of the Latest Federal Income Tax Data, 2022 Update."

Income Percentiles	Percent of National Income	Percent of Income Taxes Paid
Bottom 50 Percent	11.5 Percent	3.1 Percent
Top 50 to 25 Percent	19.7 Percent	10.3 Percent
Top 25 to 10 Percent	21.5 Percent	15.8 Percent
Top 10 to 5 Percent	11.4 Percent	11.4 Percent
Top 5 to 1 Percent	15.8 Percent	20.7 Percent
Top 1 Percent	20.1 Percent	38.8 Percent

While the tax code imposes burdensome tax rates, it is also unnecessarily complex. In 2012, the National Taxpayer Advocate reported the following: "U.S. taxpayers (both individuals and businesses) [spend] more than 6.1 billion hours to complete filings required by a tax code that contains almost four million words and that, on average, has more than one new provision added to it daily. Indeed, few taxpayers complete their returns without assistance. Nearly 60 percent of taxpayers hire paid preparers, and another 30 percent rely on commercial software to prepare their returns."[82]

Given the widespread complexity of the tax code, as well as burdensome tax rates and the excessive national debt, the aforementioned Constitutional Amendments to limit spending and taxation are necessary.

An Amendment to Limit the Federal Bureaucracy

All federal departments and agencies shall expire if said departments and agencies are not individually reauthorized in stand-alone reauthorization bills every three years by a

[82] "2012 Annual Report to Congress." Taxpayer Advocate Service, December 31, 2012. https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2012-Annual-Report-to-Congress-Executive-Summary.pdf.

> majority vote of the House of Representatives and the Senate. All Executive Branch regulations exceeding an economic burden of $100 million, as determined jointly by the Government Accountability Office and the Congressional Budget Office, shall be submitted to a permanent Joint Committee of Congress, hereafter the Congressional Delegation Oversight Committee, for review and approval prior to their implementation. The Committee shall consist of seven members of the House of Representatives, four chosen by the Speaker and three chosen by the Minority Leader; and seven members of the Senate, four chosen by the Majority Leader and three chosen by the Minority Leader. No member shall serve on the Committee beyond a single three-year term. The Committee shall vote no later than six months from the date of the submission of the regulation to the Committee. The Committee shall make no change to the regulation, either approving or disapproving the regulation by majority vote as submitted. If the Committee does not act within six months from the date of the submission of the regulation to the Committee, the regulation shall be considered disapproved and must not be implemented by the Executive Branch.[83]

Over time, the federal bureaucracy has expanded to be an unaccountable, all-encompassing leviathan that exceeds Constitutional dictates and restricts individual liberty. While these various bureaucratic agencies technically fall within the jurisdiction of the executive branch, their scope has expanded to the point where they are often referred to as the Fourth Branch of the federal government. The case for restraints on these administrative agencies' power has a long history.

[83] Levin, Mark R. "An Amendment to Limit the Federal Bureaucracy." In The Liberty Amendments: Restoring the American Republic, 99-100. New York: Threshold Editions, 2013.

In Federalist 48, James Madison described how Congress should be the most powerful of the three branches. He wrote, "The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measure, the encroachments which it makes on the co-ordinate departments."[84] However, he noted that this power was not unlimited: "It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments."[85]

In Federalist 51, Madison wrote that government reflected human nature: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."[86] Madison continued: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."[87]

The recognition of restrictions on government's power was not limited to Madison. John Locke, who was the most widely read philosopher during the American Revolutionary era, wrote the following in his *Second Treatise of Government*: "The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others."[88] He continued, "the power of the legislative, being derived from the people by a positive voluntary grant and institutions, can be no other than what

[84] Levin, 101.
[85] Ibid.
[86] Ibid, 103.
[87] Ibid.
[88] Ibid, 101-102.

that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws and place it in other hands."[89] Even the Supreme Court has recognized this restriction on governmental power. In the 1892 case *Field v. Clark*, the Court ruled, "That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."[90]

However, regulatory authority dramatically expanded following two major Supreme Court rulings. In the 1937 case *Jones v. Laughlin Steel Corp*, the Court held that "intrastate activities that 'have a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions' are within Congress' power to regulate."[91] Also, in the 1942 decision *Wickard v. Filburn*, the Court held that withholding goods from interstate commerce affects interstate commerce since such goods have the mere potential to cross state lines. Therefore, Congress was emboldened to regulate intrastate, as well as interstate commerce.[92]

Since these rulings were issued, the power and influence of the administrative state has expanded beyond all reasonable limits. In 2008, the Small Business Administration estimated that annual regulatory compliance costs totaled $1.752 trillion. In 2012, the Obama Administration issued new regulations costing $236 billion. EPA regulations alone cost $172 billion.[93] The 2012 *Federal Register*, the official publication documenting administrative and proposed rules, exceeded 77,000 pages in length. The 2011 and 2010 *Federal Registers* had

[89] Levin, 102.
[90] Ibid, 103.
[91] Ibid, 105.
[92] Ibid.
[93] Ibid, 106-107.

been 81,247 and 81,405 pages long, respectively. In 2011, regulatory agencies issued 3,807 final rules, while only 81 new bills were signed into law by President Obama that same year. Bureaucracies issued 212 "economically significant" federal rules in 2012, each of which was projected to impose more than $100 million in economic costs. In the ten years preceding 2013, economically significant rules increased by 108 percent.[94]

Obamacare also imposes a substantial regulatory burden. This law is approximately 2,700 pages long. An analysis by Peter Ferrara of the Heartland Institute found that this law established over "150 new bureaucracies, agencies, boards, commissions and programs" that "are empowered to tell doctors and hospitals what is quality health care and what is not, what are best practices in medicine, how their medical practices should be structured, and what they will be paid and when."[95] During the law's initial implementation, the executive branch issued twenty thousand pages of regulations, with initial Internal Revenue Service regulations alone accounting for 159 pages.[96]

In recent years, discussions about regulatory policy have been centered on the Trump Administration's deregulatory efforts. In the early days of his administration, President Trump announced Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." The goal of this executive order was to eliminate two federal regulations for every new one implemented. This directive was widely successful, with the Trump Administration claiming that the FY 2020 ratio was 3.2 to 1, and 1.3 to 1 if only significant deregulatory actions were counted.[97]

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[94] Levin, 107.
[95] Ibid, 112.
[96] Ibid, 113.
[97] Crews, Clyde Wayne. "Ten Thousand Commandments 2021." Competitive Enterprise Institute, July 2, 2021. https://cei.org/studies/ten-thousand-commandments-2021/.

Additionally, calendar year 2020 ended with 3,353 final rules in the *Federal Register*, up from 2019's 2,964 final rules. The latter figure was the lowest count since records were first kept in the 1970s and is the only total that is less than 3,000. However, the Trump Administration added 202 additional rules between New Year's Day and Inauguration Day 2021. Of the 3,353 final rules, 2,149 had been published in the *Federal Register* by the end of calendar year 2020. While this figure was President Trump's highest yearly total, it was below every other figure prior to his presidency except for President Obama's level of 2,044 in 2009. President Trump's lowest figure was 2017's 1,834, which was also the lowest figure on record. Furthermore, in 2017, the *Federal Register* finished at 61,308 pages, the lowest count since 1993 and a 36 percent decline from President Obama's record number of 95,894 pages the previous year. The 2020 *Federal Register* rose to 86,356 pages, the second highest figure on record. However, this number included President Trump's rollbacks of rules. Thus, there were historically fewer rules in total during this time.[98]

Despite noticeable success, President Trump's regulatory policies were not without problems. According to the CEI, the regulatory compliance costs and economic effects of federal regulations totaled $1.9 trillion in 2020. This amounted to 9 percent of U.S. gross domestic product that year, which the Commerce Department's Bureau of Economic Analysis estimated at $21.17 trillion. CEI notes that if it were a country, U.S. regulatory costs would be the eighth largest economy in the world (excluding the U.S.), ranking ahead of Brazil. Such costs rival the combined federal individual and corporate tax receipts in 2020, which totaled $2.076 trillion, as well as corporate pretax profits, which equaled $2.237 trillion.[99]

[98] Crews, "Ten Thousand Commandments 2021."
[99] Ibid.

Additionally, the Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, D.C., jointly estimated that federal agencies spent $88 billion in FY 2020 to administer and implement the policies of the regulatory state. Furthermore, if the entire costs of federal regulations were paid directly by U.S. households, then each household would pay an extra $14,368 on average each year. This figure amounts to 17 percent of the average pretax household income of $82,852 and 23 percent of the average household expenditure budget of $63,036. This figure exceeds the average cost of every item in the household budget except housing. Thus, this regulatory cost is greater than the average household's annual expenditures on apparel, entertainment, transportation, food, health care, services, or savings.[100]

The Trump Administration had limited success in its deregulatory ambitions due to the goals of an entrenched federal bureaucracy. As Clyde Wayne Crews observes, "Agencies' stated priorities and "inventories" of rules were warning signs for Trump's deregulatory agenda all along…the longer horizon signaled agencies poised to reverse course and to issue substantially more regulatory actions than deregulatory ones. That impulse to regulation is unencumbered under Biden's new executive directives to agencies."[101]

While a politician such as President Trump can make progress in reducing the federal regulatory burden, they will inevitably be stymied by the entrenched federal bureaucracy, as well as the fact that their ideological opponents will rescind such polices as soon as they regain power. When implemented, these regulations impose a massive economic burden. Given these facts, the only way to implement lasting structural change to the federal bureaucracy is to adopt

[100] Crews, "Ten Thousand Commandments 2021."
[101] Ibid.

an amendment to rein in the power of the regulatory state. The proposed amendment outlined above is the proper means for accomplishing this task.

An Amendment to Promote Free Enterprise

> Congress's power to regulate Commerce is not a plenary grant of power to the federal government to regulate and control economic activity but a specific grant of power limited to preventing states from impeding commerce and trade between and among the several States. Congress's power to regulate Commerce does not extend to activity within a state, whether or not it affects interstate commerce; nor does it extend to compelling an individual or entity to participate in commerce or trade.[102]

During their time, the Founders clearly articulated the proper role of the Commerce Clause, which is to give Congress the power to regulate interstate trade. In *Federalist* 42, James Madison wrote that "a very material object of this power was the relief of the States which import and export through other States from the improper contributions levied on them by the latter."[103] He continued, "Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former."[104] In *Federalist* 45, Madison proclaimed that "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."[105]

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[102] Levin, Mark R. "An Amendment to Promote Free Enterprise." In The Liberty Amendments: Restoring the American Republic, 117. New York: Threshold Editions, 2013.
[103] Ibid, 122.
[104] Ibid.
[105] Ibid.

In *Federalist* 17, Alexander Hamilton wrote that "the supervision of agriculture and of other concerns of a similar nature…which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction."[106] In *Federalist* 36, Hamilton referred to "agriculture, commerce, [and] manufacturers" as "different…kinds" of wealth, property, and industry," not as fused in commerce.[107] Finally, at the Constitutional Convention, George Mason stated that the "general government could not know how to make laws for every part [state] – such as respects agriculture."[108]

In 2001, Randy E. Barnett, an expert on the Commerce Clause and a law professor at Georgetown University, found that after reviewing the *Federalist Papers* and the Constitutional Convention, the Founder's initial intent on commerce was as follows:

> In Madison's notes for the Constitutional Convention, the term 'commerce' appears thirty-four times in the speeches of the delegates. Eight of these are unambiguous references to commerce with foreign nations which can only consist of trade. In every other instance, the terms 'trade' or 'exchange' could be substituted for the term 'commerce' with the apparent meaning of the statement preserved. In no instance is the term 'commerce' clearly used to refer to 'any gainful activity' or anything broader than trade."[109]

Barnett noted that "in none of the sixty-three appearances of the term 'commerce' in the *Federalist Papers* is it ever used to unambiguously refer to any activity beyond trade or exchange."[110] He also wrote that after "having examined every use of the term 'commerce' that

[106] Levin, 118.
[107] Ibid.
[108] Ibid.
[109] Ibid, 120.
[110] Ibid.

appears in the reports of the state ratification conventions, I found that the term was uniformly used to refer to trade or exchange, rather than all gainful activity."[111] Finally, Barnett stated that "if anyone in the Constitutional Convention or the state ratification conventions used the term 'commerce' to refer to something more comprehensive than 'trade' or 'exchange,' they either failed to make explicit that meaning or their comments were not recorded for posterity."[112]

While the Founders intended for the Commerce Clause to grant the federal government the power to regulate interstate trade, two major Supreme Court decisions have expanded this power to the regulation of intrastate economic activity. These are the aforementioned cases of *Jones v. Laughlin Steel Corp.* and *Wickard v. Filburn*. In the 1937 *Jones v. Laughlin Steel Corp.* case, the Supreme Court ruled that intrastate activities can be regulated by Congress because they "have a close and substantial relation to interstate commerce [such] that their control is essential or appropriate to protect that commerce from burdens and obstructions."[113]

In the 1942 case *Wickard v. Filburn*, the Supreme Court opened the door for the Commerce Clause to justify a limitless array of federal regulations on private activity. This Supreme Court case involved Roscoe Filburn, an Ohio dairy farm owner. He used part of this farm to grow wheat, which he used in four different ways: He either sold the wheat, fed it to his livestock, used it to make flour, or used it for seeding for the following year. While all this wheat was produced and used within Ohio, the Agricultural Adjustment Act of 1938 set quotas on the amount of wheat he was allowed to produce. Filburn was fined when he exceeded this quota.[114] Thus, the Supreme Court ruled that goods that had the mere potential to travel across state lines could be regulated by Congress under the jurisdiction of the Commerce Clause.

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[111] Levin, 120-121.
[112] Ibid, 121.
[113] Ibid, 129.
[114] Ibid.

Due to the usurpation of the Commerce Clause by the Supreme Court and the federal bureaucracy, a constitutional amendment is needed to reestablish the proper framework through which interstate commerce can occur. Such an amendment would help preserve civil society and promote individual liberty. As Dr. Milton Friedman once explained, "Freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself…[E]conomic freedom is also an indispensable means toward the achievement of political freedom."[115]

An Amendment to Protect Private Property

> When any governmental entity acts not to secure a private property right against actions that injure property owners, but to take property for a public use from a property owner by actual seizure or through regulation, which taking results in a market value reduction of the property, interference with the use of the property, or a financial loss to the property owner exceeding $10,000, the government shall compensate fully said property owner for such losses.[116]

Property rights are a fundamental pillar of a free society. In *The Second Treatise of Government*, John Locke claimed that the government cannot take a man's property without his consent. Locke stated that "for the preservation of property being the end of government, and that for which men enter into society it necessarily supposes and requires, that the people should have property, without which they must be suppose[ed] to lose that by entering into society, which was the end for which they entered into it, too gross an absurdity for any man to own."[117]

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[115] Levin, 136.
[116] Levin, Mark R. "An Amendment to Protect Private Property." In The Liberty Amendments: Restoring the American Republic, 137. New York: Threshold Editions, 2013.
[117] Ibid, 138.

In his *Commentaries on the Laws of England*, William Blackstone wrote that "so great…is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man…to do this without consent of the owner of the land."[118]

In the Virginia Declaration of Rights, George Mason proclaimed that "all men are by nature equally free and independent and have certain inherent rights…namely the enjoyment of life and liberty, with the means of acquiring and possessing property…."[119] Accordingly, the Fifth Amendment of the Constitution explicitly states: "…nor shall private property be taken for public use without just compensation."[120]

Property rights have been undermined by several Supreme Court decisions. In the 1922 case *Pennsylvania Coal v. Mahon*, Associate Justice Oliver Wendell Holmes wrote that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."[121] The vague standard of "too far" gave subsequent courts the broad ability to arbitrarily decide whether such a taking had occurred.

In the 1978 case *Penn Central Transp. Co. v. New York City*, the Court ruled that there is no set formula to determine whether a particular regulatory taking of property merits compensation, but that there are factors that have particular significance. Such factors include "the economic impact of the regulation, particularly the extent to which the regulation has interfered with distinct investment-backed expectations."[122]

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[118] Levin, 138.
[119] Ibid, 139.
[120] Ibid, 141.
[121] Ibid, 142.
[122] Ibid, 142-143.

In the 1992 case *Lucas v. South Carolina Coastal Council*, even the originalist Justice Antonin Scalia hinted that a regulation devaluing a property of 95 percent of its value may not constitute a taking, and that the property owner would not necessarily be entitled to compensation.[123]

In the 1993 case *Concrete Pipe and Prods. of Cal. v. Constr. Laborers Pension Trust for So. Cal.*, the Court ruled that the "mere diminution in the value of property, however serious, is insufficient to demonstrate a taking."[124]

Finally, in the 2005 case *Lingle v. Chevron U.S.A. Inc.*, the Court stated that it would consider the "character of the governmental action…whether [the regulatory taking] amounts to a physical invasion or instead merely affects property interests 'through some public program.'"[125]

Since the right to private property has been gradually eroded over time, an amendment is necessary to further protect this fundamental right. This proposed amendment "acknowledges the crucial distinction between the government exercising its legitimate police powers to protect private property rights and its obligation to compensate property owners when government action – whether a statute, administrative regulation, or executive order – interferes with the ownership and use of private property for an asserted public interest."[126] "Moreover, the proposed amendment creates an expanded legal basis for private property owners to assert a constitutionally acknowledged and protected right. The notion that a taking must be physical, total, or near total to trigger a "just compensation" defies the Framers' intent and the Fifth

[123] Levin, 143.
[124] Ibid.
[125] Ibid.
[126] Ibid, 145.

Amendment's purpose."[127] "Finally, the proposed amendment is not limited to takings by the federal government. It applies to all levels of government."[128]

An Amendment to Grant the States Authority to Check Congress

> There shall be a minimum of thirty days between the engrossing of a bill or resolution, including amendments, and its final passage by both Houses of Congress. During the engrossment period, the bill or resolution shall be placed on the public record, and there shall be no changes to the final bill or resolution. [This requirement] may be overridden by two-thirds vote of the members of each House of Congress. Upon three-fifths vote of the state legislatures, the States may override a federal statute. Upon three-fifths vote of the state legislatures, the States may override Executive Branch regulations exceeding an economic burden of $100 million after said regulations have been finally approved by the Congressional Delegation Oversight Committee. The States' override shall not be the subject of litigation or review in any Federal or State court, or oversight or interference by Congress or the President. The States' override authority must be exercised no later than twenty-four months from the date the President has signed the statute into law, or the Congressional Delegation Oversight Committee has approved a final regulation, after which the States are prohibited from exercising the override.[129]

In the *Commentaries on the Constitution of the United States*, Associate Justice Joseph Story observed that "[a] government, forever changing and changeable, is, indeed, in a state bordering upon anarchy and confusion. A government, which, in its own organization, provides no means of change, but assumes to be fixed and unalterable, must, after a while, become wholly

[127] Levin, 145.
[128] Ibid.
[129] Levin, Mark R. "An Amendment to Grant the States the Authority to Check Congress." In The Liberty Amendments: Restoring the American Republic, 169-170. New York: Threshold Editions, 2013.

unsuited to the circumstances of the nation; and it will either degenerate into a despotism, or by the pressure of its inequalities bring on a revolution."[130] He continued, "It is wise, therefore, in every government, and especially in a republic, to provide means for altering, and improving the fabric of government, as time and experience, or the new phases of human affairs, may render property, to promote the happiness and safety of the people."[131] Story concluded that "the great principle to be sought is to make the changes practicable, but not too easy; to secure due deliberation, and caution; and to follow experience, rather than to open a way for experiments, suggested by mere speculation or theory."[132]

On November 13, 1815, John Adams wrote Thomas Jefferson that "[t]he fundamental Article of my political Creed is, that Despotism, or unlimited Sovereignty, or absolute Power is the same in a Majority of a popular Assembly, an Aristocratical Counsel, an Oligarchical Junto, and a single Emperor. Equally arbitrary, cruel, bloody, and in every respect diabolical."[133] There are two major examples of expansive legislation passed in recent years that illustrate the need for the States to be able to override Congress.

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010. Dodd-Frank implements four hundred separate rulemakings by eleven different federal agencies. It also established the Consumer Financial Protection Bureau, which has the power to regulate credit and debit cards, mortgages, student loans, savings and checking accounts, and nearly every other consumer financial product and service. Two years after its passage, over 8,000 pages of regulations had been issued, and regulators were only about 30

[130] Levin, 171.
[131] Ibid.
[132] Ibid.
[133] Ibid, 173.

percent finished. Compliance with this law is estimated to total 24 million labor hours a year and require businesses to hire over 26,000 personnel just to comply with existing regulations.[134]

Nearly a decade ago, Congress passed the Violence Against Women Reauthorization Act of 2013. Despite its commendable name, this bill was passed with virtually no debate and without the ability of members to offer amendments.[135] Additionally, VAWA's constitutionality is questionable because of due process concerns. According to William Creeley and Wendy Kaminer, the VAWA reauthorization would result in a form of double jeopardy against college students accused of sexual assault, as well as "implicitly reinforce Education Department 'guidance' demanding colleges water down due process protections in campus disciplinary proceedings."[136]

This law has other major problems. Columnist Daniel Horowitz articulated several of the troubling provisions contained within this iteration of VAWA. First, "it expands the definition of domestic violence to include causing 'emotional distress' or using 'unpleasant speech.'"[137] Additionally, this law gives "tribal Indian authorities jurisdiction over non-Indians accused of domestic violence within the borders of an Indian reservation."[138] Furthermore, VAWA "grants more visas to illegal immigrants who claim to be victims of domestic abuse."[139] Finally, the subject of domestic abuse has traditionally been dealt with by state and local governments because these entities are vested with the police power to deal with crimes committed against their residents. However, VAWA implements a federal prosecutorial and investigative regime

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[134] Levin, 176.
[135] Ibid, 177.
[136] Bader, Hans. "Troubling Provisions Being Added to the Violence Against Women Act: Due Process Rights Threatened." Competitive Enterprise Institute, March 23, 2012. https://cei.org/blog/troubling-provisions-being-added-to-the-violence-against-women-act-due-process-rights-threatened/.
[137] Horowitz, Daniel. "Say No to Violence Against the Constitution Act." RedState, April 23, 2012. https://redstate.com/dhorowitz3/2012/04/23/say-no-to-violence-against-the-constitution-act-n42939.
[138] Ibid.
[139] Ibid.

that is located within the Department of Justice. Horowitz asserts that the billions of dollars spent on this federal regime "have shown no success in reducing incidents of domestic violence, while precluding state and local governments from dealing with the problem as reflected by the reality in their areas of jurisdiction."[140]

The purpose of this proposed amendment is to give states the ability to repeal, not amend or replace, certain dangerous laws and regulations within a specific timeframe. More specifically, such a federal statute or regulation would have to impose an economic burden meeting or exceeding $100 million, and three-fifths of the states would have to vote to repeal such laws or regulations within a two-year timeframe. The states would be prohibited from imposing new federal laws in a manner that would circumvent the legislative powers of Congress. Additionally, this amendment would require a minimum of thirty days to pass between the engrossing of a bill and its final passage by both houses of Congress. The purpose of this requirement is to ensure that citizens, state officials, and members of Congress are fully aware of the contents and implications of the bills pending before Congress, as well as to give Congress adequate time to deliberate on these bills. However, Congress can bypass this thirty-day waiting period by a two-thirds vote in both houses. Such a provision would allow measures such as military funding and a declaration of war to pass in a genuine national emergency.[141]

[140] Horowitz, "Say No to Violence Against the Constitution Act."
[141] Levin, Mark R. "An Amendment to Grant the States the Authority to Check Congress." In The Liberty Amendments: Restoring the American Republic, 180. New York: Threshold Editions, 2013.

Conclusion

There are significant obstacles that pose a fundamental threat to the American Republic. These include fiscal irresponsibility, corruption in Congress, an unaccountable federal bureaucracy, and hostility by the political elite toward economic freedom and property rights. On its current course, the nation is destined to be destroyed. A major course correction is necessary. One solution is to elect more responsible and accountable people to Congress. However, this strategy has consistently failed to achieve lasting positive change, as evidenced by record-high deficits and debt, an unaccountable federal bureaucracy, a widespread disrespect for property rights, and an entrenched political elite of career politicians. Another solution is for citizens to encourage Congress to propose constitutional amendments to address these problems. However, such an approach relies on the same politicians who have presided over, and in many cases have caused, this nation's decline.

The only true solution is for the people to pressure their legislatures to call a Convention of States under the jurisdiction of Article V of the Constitution. Opponents of an Article V Convention argue that such an approach would result in a "runaway convention" that would threaten the existing Constitution. Not only is this argument false for multiple reasons, but it ignores the fact that the United States currently has a "runaway" federal government that threatens the future and the fundamental rights of its citizens.

In recent years, the Convention of States movement has had great success in building momentum for an Article V Convention. As of April 2022, 19 states have adopted the Convention of States organization's resolution to 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. Accordingly, more than half of the 34 states necessary to call an Article V

Convention have passed the Convention of States resolution, with Wisconsin, Nebraska, West Virginia, and South Carolina all passing this resolution in the first several months of 2022. With the faithful grassroots support of millions of patriotic Americans, the Convention of States movement will be able to generate the momentum necessary not only to call a convention, but to subsequently ratify amendments that the convention proposes. If this strategy proves successful, then the federal bureaucracy will be limited, fundamental rights will be secured, and the United States will be freer and more prosperous than ever before.

Bibliography

"Article V, U.S. Constitution." *Office of the Federal Register.* *https://www.archives.gov/federal-register/constitution/article-v.html#:~:text=The%20Congress%2C%20whenever%20two%20thirds,all%20intents%20and%20purposes%2C%20as*

Crews, Clyde Wayne. "Ten Thousand Commandments 2021." Competitive Enterprise Institute, July 2, 2021. https://cei.org/studies/ten-thousand-commandments-2021/.

Convention of States Action, n.d. https://conventionofstates.com/.

Daniel Horowitz. "Say No to Violence Against the Constitution Act." RedState, April 23, 2012. https://redstate.com/dhorowitz3/2012/04/23/say-no-to-violence-against-the-constitution-act-n42939.

Dylan Matthews. "America's Taxes Are the Most Progressive in the World. Its Government Is Among the Least." The Washington Post, April 5, 2013. https://www.washingtonpost.com/news/wonk/wp/2013/04/05/americas-taxes-are-the-most-progressive-in-the-world-its-government-is-among-the-least/.

Erica York. "Summary of the Latest Federal Income Tax Data, 2022 Update." Tax Foundation, January 20, 2022. https://taxfoundation.org/publications/latest-federal-income-tax-data/.

"Federal Budget Receipts and Outlays." The American Presidency Project. University of California Santa Barbara, May 28, 2021. https://www.presidency.ucsb.edu/statistics/data/federal-budget-receipts-and-outlays.

"Fiscal Year 2013 Historical Tables." White House, February 13, 2012. https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2013/assets/hist.pdf.

Hans Bader. "Troubling Provisions Being Added to the Violence Against Women Act: Due Process Rights Threatened." Competitive Enterprise Institute, March 23, 2012. https://cei.org/blog/troubling-provisions-being-added-to-the-violence-against-women-act-due-process-rights-threatened/.

"Historical Federal Individual Income Tax Rates & Brackets, 1862-2021." Tax Foundation, August 24, 2021. https://taxfoundation.org/historical-income-tax-rates-brackets/.

"Inflation Calculator: Find U.S. Dollar's Value from 1913-2022." US Inflation Calculator, n.d. https://www.usinflationcalculator.com/.

"Ipsos Poll: Core Political Data." *Reuters*. https://www.ipsos.com/sites/default/files/ct/news/documents/2022-03/2022%20Ipsos%20Tracking%20-

%20Core%20Political%20Presidential%20Approval%20Tracker%2028%20Feb%20thru%201%20Mar%202022.pdf.

Mark R. Levin. The Liberty Amendments: Restoring the American Republic. New York: Threshold Editions, 2013.

Merrill Matthews. "You Owe More than $500,000 - and Counting." The Hill, December 14, 2021. https://thehill.com/opinion/finance/585679-you-owe-more-than-500000-and-counting#:~:text=The%20trustees%20estimate%20Social%20Security's,horizon%20to%20be%20%24103.4%20trillion.

Michael Farris. "Can We Trust the Constitution? Answering the 'Runaway Convention' Myth." Convention of States Action, n.d. https://conventionofstates.com/files/article-3-can-we-trust-the-constitution-answering-the-runaway-convention-myth.

"Reelection Rates Over the Years." OpenSecrets, n.d. https://www.opensecrets.org/elections-overview/reelection-rates.

Robert G. Natelson. "A Response to the Runaway Scenario." Convention of States Action, n.d. https://apps.legislature.ky.gov/CommitteeDocuments/33/13552/A%20Response%20to%20the%20Runaway%20Scenario,%20Article%20V%20Information%20Center.pdf.2-3

Robert Kelly. "A Single-Subject Convention." Convention of States Action, n.d. https://d3n8a8pro7vhmx.cloudfront.net/conventionofstates/pages/899/attachments/original/1423177477/Kelly__Single_Subject_Convention.pdf?1423177477.

Romina Boccia. "Obama: Don't Worry about $16 Trillion Debt." The Daily Signal, March 20, 2013. https://www.dailysignal.com/2012/09/19/obama-dont-worry-about-16-trillion-debt/.

"The 2012 Long-Term Budget Outlook." Congressional Budget Office, June 5, 2012. https://www.cbo.gov/sites/default/files/cbofiles/attachments/06-05-Long-Term_Budget_Outlook.pdf.

Tom A. Coburn. Smashing the DC Monopoly: Using Article V to Restore Freedom and Stop Runaway Government. Washington, D.C.: WND Books, 2017.

"U.S. National Debt Clock: Real Time." U.S. Debt Clock, n.d. https://www.usdebtclock.org/.

"2012 Annual Report to Congress." Taxpayer Advocate Service, December 31, 2012. https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2012-Annual-Report-to-Congress-Executive-Summary.pdf.