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Issue Summary

# Article V Constitutional Convention

## What is an Article V Convention of States?

Article V of the U.S. Constitution allows states legislatures to apply to attend a convention to propose amendments to the Constitution. Once two thirds of the states have submitted an application, Congress is authorized to convene such a convention. This convention will have the authority to propose amendments to the constitution that then must be ratified by three fourths of states, either by their state legislatures or by an individual state convention.

In 2016, Convention of States Action (COS), the organization leading the support for calling a convention, held a simulated convention of states on Colonial Williamsburg, VA. Supporters hailed the proceeding as a realistic look at what changes an actual convention could propose. The simulation proposed the following amendments:<sup>1</sup>

1. Raising the debt ceiling will require a 2/3 vote of both houses of congress.
2. Limit Congress's power to regulate interstate commerce
3. Term limits on the U.S. House and the U.S. Senate
4. Give the states power to rescind federal laws and regulation with 3/5ths ratification
5. Eliminate all taxes on income, gifts, and estates
6. Allow Congress to repeal any federal regulation unless a majority of both houses vote to affirm or adopt the regulation.

While these regulations would certainly accomplish COS's goals of imposing fiscal restraint on the federal government and limiting the federal government's jurisdiction, the simulation also confirmed opponents' fears about a few key issues.

### **Allowing Congress or the states to so easily repeal federal law and regulation is bad policy.**

As an organization dedicated to protecting and advancing voting rights, we have serious concerns with both the policy and the procedure proposed by the simulated convention, especially proposals #4 and #6 listed above. As a policy, it is crucial to understand that the Department of Justice is voters' last line of defense against state infringement of rights, voting or otherwise. We are also deeply uncomfortable with giving 3/5ths of states the ability to rescind federal law, since the articulation of voting rights as we understand them today come primarily from 3 pieces of federal legislation: the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2003. To allow the repeal of these acts despite opposition from 20 states is unacceptable. Allowing congress to repeal any federal legislation unless a majority of both houses affirm it (proposal #6) makes our federal protections of voting rights especially vulnerable to the political whims of congress. A slight majority in one chamber by one party should not jeopardize federal protection of our civil rights.

Procedurally, allowing for the repeal of federal law by 3/5ths of states is undemocratic. If the 30 least populous states and the District of Columbia all ratified the repeal of the National Voter Registration Act, for example, those votes would represent a population of 79,538,3470, or just 24.2% of the U.S. population. Meanwhile, the votes representing the remaining 248,492,951, or 75.8% of the U.S. population, would be overruled.<sup>2</sup> We cannot allow federal policy to be dictated by 24.2% of the population.

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## Article V Constitutional Convention (continued)

### “Fiscal restraint” proposals by a Convention of States could devastate the Nebraska economy

In 2018, federal funding accounted for approximately 30.4% of Nebraska’s total budget.<sup>3</sup> A balanced budget amendment or any substantial cuts to federal spending would put this money at risk. COS supporters stake their entire argument on the assumption that the federal government is not going to reign in its own power, or regulate its own spending. This is a reasonable assumption. But if the federal government is, in fact, so fiscally irresponsible, and they are handed a directive by the states to trim its budget, why do we assume those cuts will come from large federal programs? The impact of these fiscal restraints will be passed directly on to the states when the federal government reduces or eliminates federal aid to Nebraska and our neighbors.

Income tax accounts for approximately 47% of the federal budget.<sup>4</sup> Such a massive loss of income would almost certainly eliminate federal aid to the states. This would result in an insurmountable 30.4% blow to Nebraska’s budget. Here are some of the specific areas we would lose out on federal funds:

#### 1) Education - \$372, 654, 925

Nearly 13% of Nebraska’s education budget is federally funded.<sup>5</sup> Cutting funding for K-12 education in Nebraska limits our ability to provide our youth with the best education possible. Cutting education funding leads to losses in human capital, a risk no Nebraskan should be willing to take.

#### 2) Infrastructure - \$1,500,000,000

A 2015 congressional vote appropriated \$1.5 billion for highway and infrastructure spending to Nebraska. A convention aimed at restricting federal spending would put future infrastructure funding in jeopardy - a chance we cannot take with aging roads and crumbling bridges.<sup>6</sup>

#### 3) DHHS - \$1,808,744,427

Loss of federal funding for DHHS services would cost Nebraskans \$1,265 each to make up the cost.<sup>7</sup>

### Policy Recommendation

The 2016 Convention of States simulation proved that even the most limited convention of states that stays neatly within its proposed boundaries could not only devastate the Nebraska state budget, but also weaken crucial federal protections of our voting rights by subjecting federal law to the will of 24% of the population, or to a slight majority in one chamber of Congress. It is for these reasons we cannot support Nebraska’s petition to join an Article V Convention of States.

1. Official Proposals of the Simulated Convention of States. Adopted September 23, 2016. Published online by Convention of States Action. <https://conventionofstates.com/cos-simulation>

2. Population counts from [worldpopulationreview.com/states](http://worldpopulationreview.com/states).

3. Values are for FY2018 and exclude “Revolving/Other” funds from the total to avoid double-counting. State of Nebraska FY2017-2018/FY 2018-2019 Biennial Budget, August 2017, page 83.

4. Policy Basics: Where do Federal Tax Revenues Come From? Published by the Center on Budget and Policy Priorities. [cbpp.org/research](http://cbpp.org/research)

5. State of Nebraska FY2017-2018/FY 2018-2019 Biennial Budget, Page 88.

6. Morton, J. “Federal highway bill will bring \$1.5 billion to Nebraska,” Omaha World Herald. Published December 3, 2015.

7. Values are an average of FY18 & FY19 federal dollars per capita. Biennial budget page 88. U.S. Census Bureau, “State population by characteristics: 2010-2017”