



An *Insider* Interview
with Matthew Spalding

Should We Rein in Federal Power with a Constitutional Convention?

On a variety of fronts—Medicaid mandates, individual health insurance mandates, national education standards—state governments are vigorously pushing back against an overweening federal establishment. This resistance to federal power includes a number of folks who are promoting a remedy that has never yet been employed in our nation’s history—a convention for considering constitutional amendments. As provided for in Article V of the U.S. Constitution, states have the power to call on Congress for a constitutional convention when two-thirds of them agree to do so. We asked Matthew Spalding, Vice President of American Studies at The Heritage Foundation, for his thoughts on this idea.

The Insider: In spite of numerous political convulsions in our history, we’ve never had

an Article V convention. Why do you think that is so?

Matthew Spalding: An Article V amendments convention has been a debated proposition since the very beginning. Madison understood this when he argued at the Constitutional Convention that “difficulties might arise as to the form, the quorum etc. which in constitutional regulations ought to be as much as possible avoided.” He recorded some of these questions in his convention notes: “How was a Convention to be formed? By what rule decide? What the force of its acts?” Combine these with the fact that no such amending convention has ever occurred (that is, there is no precedent) and too many serious questions are left open and unanswered. This absence of guidelines or rules makes an Article V convention a risky venture, and one that legislators have historically avoided.



Legislators have threatened an Article V convention as a way of encouraging Congress to take action on a certain issue. In these instances, the threat of an Article V convention (with all of its unknowns) is considered dangerous enough that Congress proposes the desired amendment through the usual congressional method. Such an action is not an unreasonable aspect of a constitutional strategy, but very different from claiming that we should actually have such a convention as a matter of course.

TI: *Some scholars think an Article V convention could be limited to considering specific amendments. Do you think that is the case, or not?*

MS: The largest question is whether an amendments convention can be limited to specific amendments or even topics. The pro-convention argument assumes that the power to limit the convention is inherent in the power to call the convention in the first place. I'm not so sure that follows: The text says that upon application of the states Congress "shall call a Convention for proposing Amendments," not for confirming a particular amendment already written, approved, and proposed by state legislatures (which would effectively turn the convention for proposing amendments into a ratifying convention). Indeed, it is not at all clear as a matter of constitutional construction (and doubtful in principle) that the power of two-thirds of the states to issue applications for a convention restricts, supersedes, or overrides the power of all the states assembled in that convention to propose amendments to the Constitution. When Madison later pointed to an Article V convention as a way to solve the Nullification Crisis (as did Lincoln during the Civil War), an amendments convention was understood to be free to propose whatever amendments thought necessary to address the problems at issue.

TI: *Shouldn't we pursue an Article V convention as an option for constitutional reform? What gives you hope that we can reform the federal government without an Article V convention?*

MS: Serious scholars will undoubtedly continue to debate the historical record and speculate about the possibility of an amendments convention under Article V. But the argument that, as a matter of course, we should spend considerable time, money, and effort right now to design, plan, and implement a convention—despite the unknowns and risks involved—is both imprudent and potentially dangerous. It is a distraction that inevitably gets bogged down in a debate over technical details, taking valuable attention and focus away from the substance of the constitutional reforms themselves. Claims of the ease and efficacy of an Article V convention are also misleading to the many committed and well-meaning reformers and activists who are serious about constitutional change in the United States.

There are several very good constitutional amendment ideas circulating, and a strong consensus is beginning to coalesce around a few. We should be careful not to undermine those good efforts by tying them intrinsically to the dubious process of an Article V convention.

There may be a time *in extremis* when an Article V convention is our last option to try to preserve the Constitution. But just when there seems to be a national awakening to reestablish constitutional principles, American politics at the state and national level is moving in the right direction and a decisive election is on the horizon. That dark time is not now.

Dr. Spalding is Vice President of American Studies at The Heritage Foundation. A version of this article was originally published at InsiderOnline.org on March 8, 2011.

