Scholarly Answers to Common Questions Regarding an Article V Convention for Proposing Amendments

"In modern conditions, it is literally impossible for an amendments convention to exceed its authority; the 'run away' scenario derives from ignorance of basic facts." -Professor Natelson

1. Are the Protocols for an Article V Convention Unknown or Mysterious?

According to constitutional scholar Robert Natelson, this question has its origins in a 1963 polemic by Yale law professor Charles Black. However, Natelson effectively argues that there is no mystery. "An amendments convention is a 'convention of the states,' he says, "the same kind of gathering occurring 40 times in U.S. history. Its make-up and basic procedures [including one-state, one-vote majority rule] were well-established even before the Constitution was written. They were used in the 2017 Phoenix Balanced Budget Planning Convention."

2. Is a Convention for Proposing Amendments a "Constitutional Convention"?

Referring to an amendments convention as a "constitutional convention" is a 20th century misnomer," says Professor Natelson, "because it implies that the convention may re-write the entire Constitution. But Article V explicitly limits the convention to proposing 'Amendments to THIS Constitution.' Of course, someone might respond by saying, 'Any gathering to addresses changes in constitutional rules is a 'constitutional convention.' The answer is, 'Then why did you say we've had only one constitutional convention? By your definition, we had 'constitutional conventions' in 1754, 1774, 1780, 1786, 1814, and 1861. And none of them ran away.'"

3. Did the 1787 Constitutional Convention Run Away?

Professor Natelson asserts that the 1787 convention *did not* run away and explains that claims to the contrary "originated as a smear against the Framers by the Constitution's opponents [and rely] on the assumption that the Constitutional Convention was called by the Confederation Congress and received its powers from the congressional call. But this is wrong. The Constitutional Convention was called by Virginia in December 1786 and empowered by the states themselves (under their reserved powers) to re-write the entire political system. The February 21, 1787 congressional resolution the alarmists cite as the 'call' was, by its very wording, a mere expression of 'opinion.'"

4. Can a Convention for Proposing Amendments be Limited in Scope?

The *"convention can do anything" view*, says Natelson, "directly contradicts established constitutional law" which establishes "that when assemblies act under Article V, they derive their authority exclusively from the Constitution, and their power is limited accordingly. To take one example: A state convention commissioned to consider only a particular amendment can be limited to that purpose. In Re Opinions of the Justices, 204 N.C. 306, 172 S.E. 474 (1933). The courts can stop any proposed amendment outside the convention's authority."

5. **What Protections Exist, Should an Unauthorized Amendment be Introduced?**
   First, Natelson argues, the amendments convention would be live streamed, allowing State Legislatures to communicate with their commissioners in real time. And, according to Natelson, "The minute a commissioner stepped out of line, he'd get a call from home telling him, 'Straighten up or get recalled.'" On this same point, fourteen state legislatures have passed laws which require Article V convention commissioners to take an oath not to consider or approve unauthorized amendments. The laws then establish penalties for offenders, including vote nullification, commissioner replacement, and in some cases, criminal penalties.

   Ultimately, said Natelson, "Even if the convention exceeded its call and somehow got to the states for ratification—so what? No amendment is effective unless three fourths of the states ratify it, *including the same states the convention disobeyed!"*

6. **Could a Convention for Proposing Amendments Change the Ratification Process During the Convention?**
   Theories which suggest this, says Natelson, "misinterpret the power of the 1787 convention," contradict the text of Article V "which lays out how amendments to 'this Constitution' must be ratified," contradicts court rulings on Article V over the last 200+ years, and lacks any enforcement mechanism for a purportedly self-ratified amendment.

7. **Will Congress Control the Convention for Proposing Amendments?**
   This challenge to the independence of the Article V convention again originated with Professor Black in the 1960s. He claimed that Congress had power to control the convention pursuant to the Necessary and Proper Clause, (U.S. Constitution, Article I, Section 8, Clause 18). However, Natelson notes that the Necessary and Proper Clause authorizes the making of "laws," and points out that "the Article V amendment procedure is not constrained by ordinary laws but is instead subject to the rules of the Constitution as interpreted by historical practice."

   "The objection is also wrong as a matter of *agency* law," continues Natelson. "As the California Supreme Court recently pointed out in an Article V case, one cannot have incidental power to invade the prerogatives of another. The Constitution granted state legislatures authority to force a convention to *bypass* Congress. Congress does not have incidental power to disable the mechanism designed to check it."

Professor Robert G. Natelson is widely acknowledged to be the country's leading scholar on the Constitution's Article V amendment process. He is the principal author of several important Supreme Court briefs, and his research has been relied on by federal appeals courts and by the Supreme Courts of sixteen states. Read his Response to the Runaway Scenario in its entirety.