

Mandamus Case: Two-thirds of the States v. Congress

Failure to Call the Article V Convention for Proposing Amendments in 1979

Proposed Action:

That several states, including your state, would file a Mandamus case in federal court designed to compel the U.S. Congress to call a Convention for Proposing Amendments to consider an Inflation-fighting Fiscal Responsibility Amendment. Based on recent research, Congress has failed to perform this mandatory and ministerial constitutional duty as provided under Article V of the U.S. Constitution as far back as 1979. Any such case will be unprecedented, highly visible, and will likely be ultimately decided by the Supreme Court.

Article V Language:

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 or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendments 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.

Need:

The Congress has lost control of the nation's finances. The federal government has grown from 2% of the economy in 1912 to about 25% in 2022 and it continues to grow. In addition, the amount of annual spending controlled by the Congress has declined from 97% in 1912 to 29% in 2021 and it continues to decline. Shockingly, the fastest growing expense in the federal budget is interest, for which we get nothing! Public debt/GDP is expected to exceed the all-time World War II record soon and the Congressional Budget Office projects that public debt/GDP will reach at least 185% and rising by 2052. In addition, the Medicare Part A (Hospital Insurance) Trust Fund and combined Social Security Trust Funds are projected to become insolvent no later than 2028 and 2035, respectively.

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Congress has become addicted to spending, deficits, and debt. Congress has historically avoided making tough fiscal choices until they are forced to do so. Both political parties have been fiscally irresponsible for the past twenty years. In addition, past statutory approaches to help ensure fiscal sanity and sustainability have all failed. Finally, it is clear the current Congress will not have the required two thirds support in both Houses to propose a Fiscal Responsibility Amendment on its own nor is it inclined to do so.

Given the above, the states need to assert their rights under Article V to achieve a Convention for proposing Amendments that will propose an Inflation-fighting Fiscal Responsibility Amendment. Such an amendment is likely to focus on limiting federal public debt/GDP and on achieving a more reasonable and sustainable level of federal public debt/GDP by a future year certain with limited and temporary exceptions.

Failure to put our federal finances in order will have serious adverse economic, national security, and domestic tranquility consequences over time. The longer Congress waits to act, the greater the risk of a major financial crisis of confidence, and the greater the changes and less transition time we will have to achieve the desired objective.

Basis:

Recent independent research of the Congressional Record has discovered that the requisite number of states needed for Congress to call a Convention of States for proposing Amendments was met as far back as 1979 and yet the Congress failed to act. Specifically, in 1979 there were a total of 39 active state Applications (9 Plenary and 30 Fiscal Responsibility only) and that number reached 40 active state Applications in 1983 (8 Plenary and 32 Fiscal Responsibility only).