Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment*

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Article V of the Constitution provides that Congress, on the application of the legislatures of two-thirds of the states, shall call a convention for the purpose of proposing amendments. As of Monday of this week, twenty-four states had asked Congress to call an Article V Convention

* With Professor Tribe's permission, we are reprinting verbatim the text of his prepared Statement before the Committee on Ways and Means of the California State Assembly on February 1, 1979. Professor Tribe testified at the invitation of the Committee. His prepared Statement was a revised version of a memorandum on the same subject, dated January 17, 1979, and prepared in response to an inquiry by the White House. In his extemporaneous remarks before the Committee on February 1, Professor Tribe added to the Statement reproduced here the proposition that, unlike a process unfettered by predisposition, the exercise of rubber-stamping a specific amendment hardly befits a body called for the task of reforming the Constitution—especially since the 38 least populous states (enough to ratify an amendment) contain just 40 percent of the nation's population.

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to propose a balanced budget amendment.[1] I welcome this opportunity to explore with the Committee the dangers that a convention called for that purpose could pose.

I. SUMMARY

Holding an Article V Convention to write a balanced budget amendment into the Constitution would be unwise for at least two sets of reasons.

First, the Constitution embodies fundamental law and should not be made the instrument of specific social or economic policies—particularly when those policies could be effected more sensitively and realistically through congressional or executive action, within the existing constitutional framework.

Second, it would be a mistake to take the uncharted course of an Article V Convention while the well travelled route of amendment by congressional initiative remains open—particularly when the nation badly needs to recover from an era of division, uncertainty, and unrest.

Undeniably, the calls for a balanced federal budget and a limited rate of growth in federal spending reflect at least some sound aspirations and are widely supported. Many Americans desire from government at all levels a reaffirmation of commitment to fiscal austerity as a policy objective. And, at least in theory, the convention device is itself preeminently democratic.

But I strongly believe that, as a practical matter, holding an Article V Convention to propose an amendment prescribing a fiscal policy would be a needless and perilous undertaking—one likely to generate uncertainties where confidence is indispensable, one likely to invite division and confrontation where unity and cooperation are critical, one likely to thwart rather than vindicate the will of the American people and damage rather than mend the Constitution.

II. THE IMPROPRIETY OF WRITING A BALANCED BUDGET POLICY INTO THE CONSTITUTION

A. The Constitution Embodies Fundamental Law and Should Not Be Trivialized as the Instrument of Specific Social or Economic Policies

To endure as a source of unity rather than division, the Constitution must embody only our most fundamental and lasting values—those that define the structures by which we govern ourselves, those proclaiming the human rights government must respect. As Justice Holmes wrote at the turn of the century, "a Constitution is not intended

1. As of April 18, 1978, the date this article was sent to print, twenty-nine states had asked Congress to call a convention to balance the federal budget.

to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*."[2]

But unlike the ideals embodied in our Constitution, fiscal austerity—however sound as a current goal—speaks neither to the structure of government nor to the rights of the people. The language of the Constitution expressing the values that infuse the structures of our fundamental rights is majestic in its force and simplicity. By contrast, the goal of a balanced budget would have to be couched either in such flexible and general terms as to be meaninglessly lax, or in such rigid terms as to be unthinkably harsh.

Consider, for example, what it would mean if the Constitution currently required a balanced federal budget. The implications of such a mandate for national security, for vital domestic programs, for economic growth, and for the burdens of federal taxation are staggering to contemplate. To avoid truly disastrous consequences, surely the mandate would have to incorporate loopholes large enough to drive the federal budget through—which would defeat the very purpose of an amendment. This very fact underscores the folly of engraving fiscal austerity in the Constitution, of freezing a balanced budget into our fundamental law.[3]

Experience, no less than intuition, counsels against the incorporation of particular social or economic programs into the Constitution—even assuming that a balanced budget policy could be expressed in terms that would make sense in that document. Slavery is the only economic arrangement our Constitution has ever specifically endorsed, and prohibition the only social policy it has ever expressly sought to implement. It demeaned our Constitution to embrace slavery and prohibition not only because one was evil and the other intolerant, but also because neither arrangement expressed the sorts of broad and enduring ideals to which the Constitution and the country can be committed—not just over a decade or two, but for centuries. The goal of fiscal austerity expresses no such ideals—notwithstanding its immediate popular appeal or the long-term soundness of at least some of its premises.

Because the Constitution is meant to express fundamental law rather than particular policies, it should be amended only to modify fundamental law—not to accomplish policy goals. Thus Madison described the amendment process not as a mere alternative to the legislative

2. Lochner v. New York, 198 U.S. 45, 75 (1904) (Holmes, J., dissenting).

3. For contrary views see, e.g., *Brown Stresses Conservatism in Inaugural*, N.Y. Times, Jan. 10, 1979, §A, at 10, col. 3 (calling for California to become next state to apply for balanced budget convention); *Friedman Urges Amendment to Set a Limit on Government Spending*, N.Y. Times, Oct. 25, 1976, at 44, col. 6.

mode, but as a means of correcting the "discovered faults" and "errors" in the Constitution.[4] That was plainly true of the first fifteen amendments. And, of the eleven amendments ratified since Reconstruction, all but two have served the purpose envisioned by Madison. Five have extended the franchise, three have involved presidential eligibility and succession, and one—permitting a federal income tax—gave to the federal government a power previously held unconstitutional by the Supreme Court. Of the two exceptional amendments, one attempted to enact a social policy—prohibition. The other amendment repealed the first. Thus a balanced budget amendment would be an anomaly not only in view of the Constitution's mission, but also in light of its history.

B. The Amendment Process Should Not Be Used to Achieve Aims That May Be Better Realized Through Congressional or Executive Action

Even prohibition was a more appropriate subject for the amendment process than a balanced budget would be. For unlike fiscal policy, which lies at the heart of the congressional mandate, temperance could not be legislated for the nation by Congress without express constitutional authorization. A balanced budget amendment would therefore be objectionable not only because it would transform a specific economic policy into fundamental law, but also because there is *no need* to amend the Constitution to make the pursuit of that policy the law of the land.

Legislation has in fact been introduced in the last three Congresses promoting the objectives of the balanced budget amendment, and a tide of similar proposals is already surging into the session that has just opened. President Carter has worked to serve the objectives of fiscal restraint as well—and he has stressed to the public his continuing commitment to them. The people of California have already sent a message to Washington that has not been ignored and will not go unheeded. But the proper response to that message is not a constitutional amendment—fiscal policy is simply too complex to execute through the sorts of generalities that belong in a constitution. Fiscal policy involves the sorts of nuances and distinctions that can best be expressed in statutes, regulations, and executive programs.

Needlessly amending the Constitution injures our political system at its core. If the amendment device is transformed into a fuzzy substitute for the more focused legislative process, not only will the lawmaking

4. THE FEDERALIST No. 43, at 296 (Madison) (J. Cooke ed. 1961).

function of Congress be eroded, but the Constitution itself will lose its unique significance as the ultimate expression of fundamental and enduring national values. By demanding, instead, that their representatives in Congress press for responsible fiscal policy while resisting the abuse of the amendment device threatened by the current convention campaign, the people of California will visibly serve the national interest in a sound economy, and help prevent the Constitution's devaluation.

To be sure, the devaluation of the Constitution would not occur overnight. In fact, until the Constitution had been effectively reduced to a shifting package of legislative commitments, each policy enshrined as an amendment would bind the government far more tightly than ordinary law. Obviously the proponents of the balanced budget amendment desire this very result, but responsible opinion must resist any such constitutional straitjacket for the nation. In few areas are flexibility and rapid responsiveness to changing circumstances more vital than in the realms of fiscal and monetary policy. For just this reason, even those sympathetic to the goals of a balanced budget amendment have warned that such an amendment would be a "blunt weapon" that "would be flawed with a certain troubling rigidity" if ratified.[5] Thus, so long as the Constitution is not made easier to alter than it ever has been or should ever become, it will remain the least appropriate instrument for American economic policy.

Perhaps infused with a deeper understanding of the purpose of the amendment process than today's proponents of the balanced budget amendment have displayed, advocates of most earlier Article V Conventions have not sought to achieve through amendment what congressional and executive action by themselves could accomplish at least as well. Earlier convention drives pursued goals that simply could not have been achieved without revising the Constitution—for example, the direct election of senators; the prohibition of polygamy; the repeal of the eighteenth amendment; the limitation of presidential tenure; the modification of presidential treaty-making power; the reversal of Supreme Court holdings involving reapportionment, school prayer, abortion, and busing; and the general revision of the Constitution. Whatever one may think of these proposals, one cannot fault their advocates for aiming needlessly to circumvent the ordinary channels of change offered by Congress and the Executive Branch, or for tampering with the Constitution when less drastic remedies not only would have sufficed but would have been more focused and effective.

5. Editorial, *The New, New Federalism*, Wall Street J., Jan. 10, 1979, at 22, col. 1.

III. THE ARTICLE V CONVENTION: A RELUCTANT COMPROMISE OF DUBIOUS PRESENT VALUE

Even if it were wise to amend the Constitution in order to mandate a balanced federal budget, calling an Article V Convention would be an exceedingly unsound means of achieving the desired end. Understanding why this is so requires a brief excursion into the history of the convention mechanism.

The Article V Convention device was a compromise between those at the 1787 Constitutional Convention who believed that the states should have unchecked power to amend the Constitution, and those who considered congressional involvement an essential safeguard for groups and interests that might otherwise be sacrificed to the majority's will. The plan of union originally submitted to the Federal Convention by Edmund Randolph of the Virginia delegation stated that "provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and . . . *the assent of the National Legislature ought not to be required thereto*."[6] The underscored clause was rejected by the Committee on the Whole; as Hamilton explained, if the convention process were entirely free of control by Congress, "the State legislatures will not apply for alterations but with a view to increase their own powers."[7] The Article V Convention provision as it was finally accepted marks the compromise, offered by Madison, between those Framers who supported Randolph's view and those who shared Hamilton's.[8]

Like many compromises among conflicting interests, the Article V Convention provision is strikingly vague. It provides only that "[t]he Congress . . . on the Application of the Legislatures of two-thirds of the several states, shall call a Convention for proposing amendments . . . ." One of the few points on which authorities generally agree is that the Article V Convention device is appropriately utilized only in extraordinary circumstances—when a determined Congress rides roughshod over the interests of the states, or stubbornly refuses to submit for possible ratification an amendment widely desired by the states. Neither is the case today.

As for the hundreds of state applications that have been made to Congress since 1789,[9] "[t]here can be no doubt that many [of those] petitions . . . were initiated not in the belief that Congress would con-

6. I J. ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 120 (2d ed. 1836) (emphasis added).

7. II M. FARRAND, THE RECORDS OF THE FEDERAL CONSTITUTIONAL CONVENTION OF 1787, at 558 (rev. ed. 1937).

8. *Id.* at 559-60.

9. A list of such applications made through 1974 is set out in ABA SPECIAL CONSTITU-

vene a Constitutional Convention, but in the hope that the petitions would spur Congress to adopt a suggested proposal as its own and submit it to the States for ratification under the [congressional initiative] method of amending the Constitution."[10] If the current convention drive were meant simply to spur Congress to draft and submit to the states a balanced budget amendment of its own, the nation might not have to face the risks and resolve the riddles of the Article V Convention device. But twenty-four states have already applied to Congress for a convention,[11] and if ten more apply we indeed may face the prospect of an Article V Convention,[12] for it cannot be said with any assurance that Congress could then avoid its duty to call a convention simply by proposing the desired amendment itself.

It is hard to imagine a less opportune moment for the potentially tumultuous step of a constitutional convention—no matter how limited its official purpose. The past decade has been among the most turbulent in the nation's history. The Vietnam War, the near-impeachment of a President, political assassinations, economic upheavals—it is hardly necessary to enumerate the many storms we have weathered. If, as a result of those bitter experiences, it is now time for self-healing and consolidation, for a return to basic concerns and a turning away from confrontation and division, little could be worse for the country than to risk the possible trauma of our first Constitutional Convention since 1787.

Indeed Jefferson, who considered the lack of a Bill of Rights in the Constitution a major defect in the draft originally submitted to the states, told Madison that he would not oppose the Constitution's adoption—in order to avoid a *second* Convention. In calmer times, when national wounds have not been so recently inflicted, and when single-issue disagreements did not run so deep, the risk of another Convention might be worth running—if the need were sufficiently great, and if other avenues of constitutional change had been exhausted. That is a time in which we do not yet live.

Particularly in a period of recovery from an era of unrest, it is vital that the means we choose for amending the Constitution be generally understood and, above all, widely accepted as legitimate. An Article V Convention, however, would today provoke controversy and debate unparalleled in recent constitutional history. For the device is

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TIONAL CONVENTION STUDY COMMITTEE, AMENDMENT OF THE CONSTITUTION BY THE CONVENTION METHOD UNDER ARTICLE V 59-69 (1974).

10. Brickfield, *Problems Relating to a Federal Constitutional Convention* 8 (Staff Report for the House Comm. on the Judiciary, 85th Cong., 1st Sess.) (Comm. Print 1957).

11. See note 1 *supra.*

12. See note 1 *supra.*

shrouded in legal mystery of the most fundamental sort, as the following section will explain.

IV. Answerable and Unanswerable Questions About Article V Conventions

In fairness, one must concede that a few of the questions periodically raised about Article V Conventions *do* in fact have clear answers. Thus, although questions have from time to time been raised about Congress' duty to call an Article V Convention after two-thirds of the state legislatures have duly petitioned Congress to do so, neither the text nor the history of Article V leaves any reasonable doubt as to the answer: "The Congress, . . . on the Application of the Legislatures of two-thirds of the several States, *shall* call a Convention for proposing amendments . . . ." In this context, "shall" clearly means "must."[13] It is equally clear that amendments proposed by any such convention are to become part of the Constitution "when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as one or the other Mode of Ratification may be proposed by the Congress . . . ." Unless three-fourths of the states ratify in accord with the method Congress specifies, no amendment proposed by an Article V Convention can become the law of the land. Finally, although the text of Article V is silent on the point, it is settled that the President has no role to play in the amendment process.

As to amendments initiated in the familiar way—by a two-thirds vote of both Houses—a good deal more could be said. But as to the untried convention route, the preceding paragraph says all that is known or knowable. Nor should one suppose that the interstitial matters involve minor technical questions that could easily be settled by Congress or the courts. On the contrary, the process of amending the Constitution by convention is characterized by fundamental uncertainties that yield to no ready mechanism of resolution. In an era of demanding confidence and certainty, those difficulties stand as overwhelming obstacles to both.

The objection to calling an Article V Convention is based not on misgivings at the prospect of unchecked democracy, nor on any vague apprehension about unsealing a Pandora's box, nor on a reflexive preference for the familiar over the unknown. Inherent in the Article V Convention device is the focused danger of three distinct confrontations of nightmarish dimension—confrontations between Congress and the Convention, between Congress and the Supreme Court, and be-

13. *See* The Federalist No. 85, at 593 (Hamilton) (J. Cooke ed. 1961).

tween the Supreme Court and the states. However democratic an Article V Convention might be in theory, such a convention would inevitably pose enormous risks of constitutional dislocation—risks that are unacceptable while recourse may be had to an alternative amendment process (the congressional initiative) that can accomplish the same goals without running such serious risks.

A. Holding a Convention Would Risk a Confrontation Between Congress and the Convention.

The primary threat posed by an Article V Convention is that of a confrontation between Congress and the Convention. Upon Congress devolves the duty of calling a convention on application of the legislatures of two-thirds of the states, and approving and transmitting to the states for ratification the text of any amendment or amendments agreed upon by the convention. The discretion with which Congress may discharge this duty is pregnant with danger even under the most salutary conditions.

Specifically, consider the incidental yet critical disagreements that could arise as Congress endeavored in good faith to discharge its duties under the convention clause. With no purpose whatsoever of avoiding its duties, Congress might nevertheless decide procedural questions arguably within its discretion in a manner that frustrated the desire of the states to call and conduct a convention—by treating some applications as invalid, or by withholding appropriations until the Convention adopted certain internal reforms, or by refusing to treat certain amendments as within the Convention's scope.

As a result of any of these decisions, the nation might well be subjected to the spectacle of a struggle between Congress and a Convention it refused to recognize—a struggle that would extend from the Convention's own claim of legitimacy to disputes over the legitimacy of proposed amendments. Such a struggle would undoubtedly be judicial as well as political, and thus draw the Supreme Court into the fray.[14] Considering the seriousness with which Congress and the Convention would take each other's challenge in light of the monumental stakes—constitutional power—it is unlikely that either side would surrender before the contest had deeply bruised the nation. Such a contest between Congress and the Convention, which could flare from a single procedural dispute in the balance of which hung the Convention's fate, the nation could ill afford.

14. See Sections *B* and *C infra*.

B. Holding a Convention Would Risk a Confrontation Between Congress and the Supreme Court

In the event of a dispute between Congress and the Convention over the congressional role in permitting the convention to proceed, the Supreme Court would almost certainly be asked to serve as referee. Because the Court would be obliged to protect the interests of the states in the amendment process, it cannot be assumed that the Court would automatically decline to become involved on the ground that the dispute raised a non-justiciable political question. In any event, depending upon the political strength of the parties to the dispute, a decision to abstain would amount to a judgment for one side or the other. Like an official judgment on the merits, such a practical resolution of the controversy would leave the Court an enemy either of Congress or of the Convention and the states that brought it into being.

Even in the absence of such a dispute over the Convention's initiation and completion, the Court could become embroiled in a confrontation with Congress over the limits of congressional power under Article V. For example, a bill introduced in the last Congress by Senators Helms, Goldwater, and Schweiker, entitled the "Federal Constitutional Convention Procedures Act,"[15] provided in part:

> A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by law.

One may readily guess that, were Congress to apply such a provision in the exercise of its Article V powers, the Supreme Court would be asked to decide whether the one-person, one-vote rule applies to the election of delegates to a national constitutional convention.[16] Similarly, a rule prescribed by Congress providing that "a convention called under this Act may propose amendments to the Constitution by a vote of the majority of the total number of delegates to the Convention,"[17] might well be challenged as an unconstitutional attempt by Congress to regulate the internal procedures of an Article V Convention.[18]

Whether the Court, once called upon to vindicate the one-person, one-vote principle or the autonomy of a convention, would invalidate

15. S. 1880, 95th Cong., 1st Sess. §7(a) (1977).

16. *See* ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, AMENDMENT OF THE CONSTITUTION BY THE CONVENTION METHOD UNDER ARTICLE V 34 (1974) (concluding that the rule is applicable).

17. S. 1880, 95th Cong., 1st Sess. §10(a) (1977).

18. *See* ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, AMENDMENT OF THE CONSTITUTION BY THE CONVENTION METHOD UNDER ARTICLE V 19-20 (1974) (characterizing such an attempt as unwise and of questionable validity).

an act of Congress passed pursuant to its Article V powers is no doubt an open question. But the stress that a decision either way would place upon our system is another unwelcome possibility inherent in the Article V Convention device. Like the risk of confrontation between Congress and the states that have called a Convention, the possibility of conflict between Congress and the Supreme Court is, of course, not peculiar to the Article V Convention device. But this device, which carries the potential for such grave clashes of power, should be utilized only if no alternative process is at hand.

C. *Holding a Convention Would Risk a Confrontation Between the Supreme Court and the States*

A decision upholding against challenge by one or more states an action taken by Congress pursuant to Article V would, needless to say, be poorly received by the states involved. Truly disastrous, however, would be any result of a confrontation between the Supreme Court and the states over the validity of an amendment proposed by their Convention. Yet the convention process could, quite imaginably, give rise to judicial challenges that would cast the states into just such a conflict with the Supreme Court.

It is true that such conflicts are theoretically possible even when the more familiar amendment route—the congressional initiative—is followed. But in that context it has been settled for over half a century that Congress exercises exclusive control over the mode of an amendment's proposal and ratification, and thus has the last word on such matters as attempted rescission and the timeliness of ratification.[19] When the familiar route is taken, therefore, the established preeminence of Congress militates against divisiveness arising from a conflict involving the states—although even along this familiar route passions may sometimes run high, as the recent debates over extension and rescission in the case of the Equal Rights Amendment demonstrated. But when the alternative course of an Article V Convention is chosen, soothing assertions of congressional supremacy are bound to be undercut by reminders that the convention device was, after all, meant to *evade* control by Congress. And, once such battle lines are drawn where the authority of Congress is not widely recognized, the ensuing debate is sure to be vehement.

19. *See* Coleman v. Miller, 307 U.S. 433 (1939); Dillon v. Gloss, 256 U.S. 368 (1921).

D. Many Critical Questions Threatening the Confrontations Described Above Lack Authoritative Answers

Having already indicated that a few questions about the Article V Convention device do indeed have clear answers,[20] I must reiterate here that many critical questions are completely open. These are questions that could well trigger one or more of the confrontations sketched above. As to each of these questions, one can find a smattering of expert opinion and some occasional speculation. But for none of them may any authoritative answer be offered. To make the point forcefully, one need only present a catalogue of basic matters on which genuine answers simply do not exist—matters as to many of which protracted dispute can surely be expected:

1. The Application Phase

a. Must both houses of each state legislature take part in making application for a convention to Congress?
b. By what vote in each house of a state legislature must application to Congress be made? Simple majority? Two-thirds?
c. May a state governor veto an application to Congress?
d. When, if ever, does a state's application lapse?
e. May a state insist in its application that Congress limit the Convention's mandate to a specific amendment?
f. Must a state's application propose a specific amendment, or may a state apply to revise the Constitution generally?
g. By what criteria are applications proposing related but slightly different subjects or amendments to be aggregated or set apart?
h. May a state rescind its application? If so, within what period and by what vote?
i. What role, if any, could a statewide referendum have in mandating or forbidding an application or a rescission?

MAY CONGRESS AUTHORITATIVELY ANSWER ANY OR ALL OF THESE QUESTIONS? MAY THE STATES? COULD SUCH ANSWERS APPLY TO APPLICATIONS ALREADY MADE? WHAT ROLE, IF ANY, WOULD THE COURTS PLAY IN ANSWERING SUCH QUESTIONS? EVEN THESE QUESTIONS—ABOUT WHO HAS THE POWER TO DECIDE—MUST BE DESCRIBED AS UNANSWERABLE.

2. The Selection and Function of Delegates

a. Who would be eligible to serve as a delegate?
b. Must delegates be specially elected? Could Congress simply appoint its own members?

20. See pages 634-35 *supra*.

c. Are the states to be equally represented, as they were in the 1787 Convention, or must the one-person, one-vote rule apply, as it does in elections for all legislative bodies except the United States Senate?
d. Would delegates be committed to cast a vote one way or the other on a proposed amendment? Could they be forbidden to propose certain amendments?
e. Would delegates at a Convention enjoy immunity parallel to that of members of Congress?
f. Are delegates to be paid? If so, by whom?
g. Could delegates be recalled? Could the Convention expel delegates? On what grounds?

WHICH OF THESE QUESTIONS, IF ANY, MAY CONGRESS AUTHORITATIVELY ANSWER? HOW MUCH SUPERVISION MAY CONGRESS EXERCISE OVER THE SELECTION AND FUNCTION OF DELEGATES? WHAT SUPERVISORY ROLE WOULD THE COURTS PLAY?

3. The Convention Process

a. May Congress prescribe any rules for the Convention or limit its amending powers in any way?[21]
b. How is the Convention to be funded? Could the power to withhold appropriations be used by Congress to control the Convention?
c. May the Convention remain in session indefinitely? May it agree to reconvene as the need arises? May it choose not to propose the amendment for the purpose of which it was convened?

AGAIN UNKNOWABLE ARE THE RESPECTIVE ROLES OF CONGRESS, THE STATES, AND THE COURTS IN RESOLVING THESE MATTERS.

4. Ratification of Proposed Amendments

a. To what degree may Congress—under its Article V power to propose a "Mode of Ratification," or ancillary to its Article V power to "call a Convention," or pursuant to its Article I power under the Necessary and Proper Clause—either refuse to submit to the states a proposed amendment for ratification or decide to submit such an amendment under a severe time limit? What if Congress and the Convention disagree on these matters?

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21. In 1911, Senator Heyburn opined that,

> [w]hen the people of the United States meet in a constitutional convention there is no power to limit their action. They are greater than the Constitution, and they can repeal the provision that limits the right of amendment. They can repeal every section of it, because they are the peers of the people who made it.

46 CONG. REC. 2769 (Feb. 17, 1911). Was Senator Heyburn right or wrong? If right, then a constitutional convention could propose any imaginable amendment, no matter how limited the official scope of the Convention. Although *opinions* contrary to those of the Senator may be found, the undeniable fact is that *no definitive answer exists.*

b. May Congress permit or prohibit rescission of a state's ratification vote? May the Convention? What if Congress and the Convention disagree?

UNKNOWABLE ONCE AGAIN ARE THE RESPECTIVE ROLES OF CONGRESS, THE STATES, AND THE COURTS IN PROVIDING A DEFINITIVE RESOLUTION IN THE EVENT OF DISAGREEMENT.

V. CONCLUSION

The call for an Article V Convention to write a balanced budget policy into the Constitution reflects profoundly misguided views of how national fiscal goals should be pursued and how the nation's fundamental law should be amended. Of doubtful wisdom at any time, such a call especially misreads the needs of the country today. I would hope it also misreads the country's mood—a mood that California, by rejecting the call for an Article V Convention, can help to shape.[22]

22. Four joint resolutions were introduced in the California Legislature urging the Congress of the United States, either acting by consent of two-thirds of both houses or upon application of the legislatures of two-thirds of the several states, to call a constitutional convention to propose an amendment to the United States Constitution requiring a balanced federal budget. Assembly Joint Resolutions 1 and 2 and Senate Joint Resolution 2 failed passage on February 22, 1979 in the Ways and Means Committee of the Assembly. Assembly Joint Resolution 1 was defeated by a vote of 9 Ayes, 11 Nays. Assembly Joint Resolution 2 was defeated by a vote of 8 Ayes, 12 Nays. Senate Joint Resolution 2 was defeated by a vote of 7 Ayes, 11 Nays. The hearing on Senate Joint Resolution 3 was canceled at the request of the author.