

ARTICLE V CONVENTION OF STATES: OVERVIEW AND MODEL LEGISLATION

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KEY POINTS

- Just 16% of Americans say they trust the federal government to “do the right thing.”
- Federal interference has had life threatening results, especially at the border.
- Poor federal policy has increased the financial burden on American families through out-of-control debt and rapid inflation.
- The delegation of authority to make laws, interpret laws, and execute laws to unelected bureaucrats undermines the guarantee of a republican form of government.
- Under the Texas Plan, Governor Abbott laid out nine proposed constitutional amendments meant to return the balance of power between the state governments and the federal government.

“THE ULTIMATE ARBITER IS THE PEOPLE OF THE UNION, ASSEMBLED BY THEIR DEPUTIES IN CONVENTION, AT THE CALL OF CONGRESS, OR OF TWO THIRDS OF THE STATES.”

~ THOMAS JEFFERSON ([1823](#))

BACKGROUND

In 2016, Texas Governor Greg Abbott announced his “Texas Plan,” which called “for an Article V Convention of States to propose constitutional amendments to rein in the federal government” ([Lindsay, 2016, p. 4](#)). In 2017, the 85th Legislature passed Senate Joint Resolution (SJR) 2 which formally declared that Texas was “applying to the Congress of the United States to call a convention under Article V of the United States Constitution for the limited purpose of proposing one or more amendments to the constitution” ([SJR 2, 2017, p. 1](#)). In the same session, the Legislature passed SJR 38 which rescinded “all applications [for a Convention of States] from Texas legislators prior to the 85th Legislature” and established that any application would be “automatically rescinded” if no convention is called before the “eighth anniversary of the date the last legislative vote is taken on the application” ([SJR 38 Bill Analysis, 2017, p. 1](#)). In the 88th Legislative Session, SJR 52 was introduced to nullify the previously established eight-year sunset provision that would cause the application for an Article V convention to expire in 2025, and instead replace the expiration date with a provision that would extend the application to 2033 ([SJR 52 Bill Analysis, 2023, p. 1](#)). As of 2024, 19 states have passed resolutions calling for an Article V convention ([Convention of States, n.d.](#)). However, SJR 52 did not pass the Texas Legislature, so Texas’s application for an Article V will expire in 2025. Because federal power has

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grown outside the parameters set by the Founders, it is vital that the 89th Legislature renew the call for an Article V Convention of States to propose substantive amendments to the U.S. Constitution in order to restore the balance of power between the federal government and the states.

HOW AN ARTICLE V CONVENTION WORKS

For an Article V Convention of States to be initiated, two-thirds of all the states, or 34 of the 50 states, must call for a convention to amend the nation’s founding document ([U.S. Const. art. V](#)). A state, like Texas, does this by passing a Joint Resolution through the Legislature. Should the requisite number of states apply for an Article V Convention, then “Congress is directed to by the Constitution to convene one” ([Congressional Research Service, 2016, p. 1](#)). When a meeting of the states is convened, each state is provided with an opportunity to send a delegation to the convention to submit and vote on proposed amendments. Each state delegation confers among themselves to decide how their state will vote ([Lindsay, 2016, p. 6](#)). Ultimately, each state, regardless of the size of the delegation, receives one vote on each proposed amendment ([p. 6](#)). Any of the proposed amendments that receive a majority of votes from the states at the Article V Convention are then presented to the states for ratification ([p. 6](#)). At least three-fourths, or 38, of the 50 states need to ratify the proposed amendments for them to be added to the U.S. Constitution ([U.S. Const. art. V](#)). Typically, the state legislatures have been the ratifying body, but the Constitution does allow for Congress to mandate

that each state hold a popular election to select delegates for a ratifying convention ([U.S. Const. art. V](#)).

WHY CALL FOR AN ARTICLE V CONVENTION?

The federal government today hardly resembles the limited and defined political system envisioned by the Framers. Its present form is vastly more complex, costly, and controlling than ever imagined. In many ways, such a domineering government is antithetical to the American ethos of governing by consent of the governed and of limited government.

James Madison wrote in *The Federalist Papers* that the difficulty of framing a government is that “you must first enable the government to control the governed; and in the next place oblige it to control itself.” ([Madison, 1788](#)). The idea that the federal government was created to be subject to the limits placed on it by the people is the foundation of the American republic. Considering how the federal government has been going far beyond these limits, it is imperative that the states utilize constitutionally legitimate tools to firmly reestablish the sovereignty of the people.

The expansion—and mismanagement—of federal power likely explains its deeply unpopular nature. According to a poll conducted by Pew research, “Just 16% of Americans say they trust the government in Washington to do the right thing” ([Pew Research Center, 2023, para 14](#)). Such pronounced hostility speaks volumes about the people’s sentiments toward their government.

Washington, D.C., policymakers continue to fail in many key areas, such as finance, border defense, and the separation of powers amongst the three branches of government. For instance, the federal government’s inability to exercise fiscal discipline in any fashion has ballooned annual deficits and the national debt—the latter of which has grown to \$34.5 trillion at the time of this writing ([U.S. Treasury, 2024](#)). The rapid rate of inflation from January 2020

to 2022 is a result of poor monetary policy at the federal level. According to economist John Taylor in a Stanford news article, “The last time inflation in the United States moved by such a large amount was in the 1960s and 1970s. But the situation was much different then: it took over 12 years, not just a year, for inflation to rise by large amounts” ([De Witte, 2022, para. 4](#)). In the same article, Taylor says that “monetary policy is a major cause of the increase in inflation” ([para. 5](#)).

The federal government has been derelict in its duty to secure its border and protect the states from invasion, as laid out in Article IV of the U.S. Constitution ([U.S. Const art. IV](#)). One example of this is showcased in the federal government actively restricting border states (like Texas) from adopting measures to prosecute illegal border crossings at the state level ([U.S. Department of Justice, 2024](#)). The actions (and lack thereof) of the government have resulted in 961,537 encounters reported in 2024 alone as of February of FY 2024, and since 2021 7,550,836 encounters with illegal immigrants have been reported ([U.S. Customs and Border Protection, n.d.](#)). Worse yet, even though they were deemed inadmissible “millions of poorly vetted illegal aliens” have been released into the United States due to the federal government’s “catch and release” policy according to a press release covering a hearing by the subcommittee on National Security, the Border, and Foreign Affairs ([Committee on Oversight and Accountability, 2024](#)).

Dr. Thomas Lindsay points out that Congress has also abdicated its legislative function, choosing instead to delegate “lawmaking authority to unelected, unaccountable Washington bureaucrats” ([2016, p. 5](#)). The result of this has been what Governor Abbott has referred to as an “administrative state” made up of an “alphabet soup of agencies” ([Abbott, 2016, p. 23](#)). Governor Abbott quotes Montesquieu, the political thinker who arguably had the greatest influence on the development of our Constitution, to explain why this delegation of power is harmful. Montesquieu writes, “When the legislative

and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner” ([p. 24](#)). Governor Abbott points to the Environmental Protection Agency (EPA) as being the prime example of this sort of tyranny, as the EPA “writes its own rules (lawmaking), brings enforcement actions for violations of those rules (law-execution), and adjudicates defendants’ liabilities (law-interpretation and law-enforcement)” ([p. 26](#)). This is a serious problem because employees of these agencies are not held accountable to the people in the same way that elected representatives are. For an elected representative, it is the people who decide whether he retains his seat of power. A bureaucrat is entirely outside the electoral process, so to place as much power in the hands of these bureaucratic agencies and their unelected officials is to directly contradict the republican form of government guaranteed by Article IV of the Constitution ([U.S. Const art. IV](#)). An Article V Convention will remedy this overreach of authority by prohibiting administrative agencies from creating federal law and from preempting state law.

THE PROPOSED AMENDMENTS

To remedy the problems highlighted above and to restore balance to the relationship between Washington, D.C., and the governments of the individual states, Governor Greg Abbott proposed nine amendments that he referred to as “The Texas Plan.” The amendments provide an ideal roadmap to reform and are as follows:

- I. Prohibit Congress from regulating activity that occurs wholly within one State.
- II. Require Congress to balance its budget.
- III. Prohibit administrative agencies—and the unelected bureaucrats that staff them—from creating federal law.

IV. Prohibit administrative agencies—and the unelected bureaucrats that staff them—from preempting state law.

V. Allow a two-thirds majority of the States to override a U.S. Supreme Court decision.

VI. Require a seven-justice super-majority vote for U.S. Supreme Court decisions that invalidate a democratically enacted law.

VII. Restore the balance of power between the federal and state governments by limiting the former to the powers expressly delegated to it in the Constitution.

VIII. Give state officials the power to sue in federal court when federal officials overstep their bounds.

IX. Allow a two-thirds majority of the States to override a federal law or regulation.” ([Abbott, 2016, p. 4](#))

While these amendments to the Constitution were sorely needed in 2016 when first proposed, the demand is even greater today, given the present state of affairs and the trajectory of federal public policy. These amendments should be considered at an Article V Convention to protect natural rights, to properly constrain the federal government’s role and reach, and to preserve a republican form of government for the next generation.

RECOMMENDATION

The 89th Legislature should enact legislation to renew the application for an Article V Convention of States.

MODEL LEGISLATION

By: _____

H/S.B. No. _____

Repeal the deadline for the automatic rescission of certain applications made by the Texas Legislature to the United States Congress to call a national convention under Article V of the United States Constitution for proposing any amendment to that constitution.

WHEREAS, the 85th Legislature of the State of Texas, Regular Session, 2017, enacted S.J.R. No. 38 to officially rescind, repeal, revoke, cancel, void, and nullify certain applications from Texas legislatures prior to the 85th Legislature, Regular Session, 2017, that apply to the United States Congress for the calling of a convention under Article V of the United States Constitution; and

WHEREAS, S.J.R. No. 38 additionally provided that any application to the United States Congress for the calling of a convention under Article V of the United States Constitution that is submitted by the Texas Legislature during or after the Regular Session of the 85th Legislature will be automatically rescinded, repealed, revoked, canceled, voided, and nullified if the applicable convention is not called on or before the eighth anniversary of the date the last legislative vote is taken on the application; now, therefore, be it

RESOLVED, That the 89th Legislature of the State of Texas, Regular Session, 2025, hereby officially rescinds, repeals, revokes, cancels, voids, and nullifies the provision of S.J.R. No. 38 that provided for the automatic rescission, repeal, revocation, cancellation, voiding, and nullification of any application from the Texas Legislature after the eighth anniversary of the date the last legislative vote was taken on the application; and, be it further

RESOLVED, That the Texas secretary of state forward official copies of this resolution to the president of the United States, to the speaker of the House of Representatives of the United States, to the vice president of the United States in the vice president's capacity as the presiding officer of the Senate of the United States at the office located in the United States Capitol Building, and to all members of the Texas delegation to Congress with the request that this resolution be officially entered in the Congressional Record.

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