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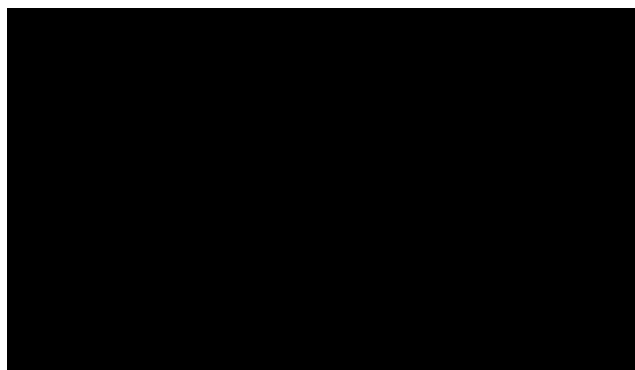


BOOKS



RESEARCH

Why We Must Act Now to Use the Constitution's Amendment Process



America is in trouble. Perhaps the biggest peacetime trouble she has been in since our country was founded. The fundamental concept behind America is that all people are endowed by nature and by nature's God with rights to life, liberty, and the pursuit of happiness, and that to secure those rights, governments are instituted among men, deriving their just powers from the consent of the governed. Adherence to that simple idea freed Americans to propel this country to a level never before seen.

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Who Called the Constitutional Convention? Answer: The Commonwealth of Virginia

Posted on October 7, 2016 by [articlev_admin2](#) in All Postings, [amendments convention](#), [Article 5](#), [Article V](#), [constitution](#), [constitutional amendment](#), [constitutional law](#), [convention for proposing amendments](#), [Natelson Rob](#), [Rob Natelson](#), [Uncategorized](#)

In interstate convention practice a “call” is an invitation for state representatives to meet at a particular time and place to discuss certain designated issues. During the Founding Era, [convention calls were issued](#) by the Continental and Confederation Congresses, by prior conventions and—most frequently—by individual states.

In rare instances the call might be the product of negotiation among two or more states, reflected in letters or resolutions issued by those states. This was how the Providence Convention of 1776-77 was summoned.

Who gets the credit for calling the most important convention of all—the gathering that drafted our U.S. Constitution? Writers most often [claim that the Confederation Congress did](#), citing [its resolution of February 21, 1787](#). However, the honor also has been claimed for New Jersey, Virginia, and the [1786 Annapolis Convention](#).

The documentary record shows that the caller certainly was not Congress. Beyond that, the issue becomes more difficult. (NB: Sources sometimes are confused as to the exact dates some measures were adopted. I checked and verified the dates used below.)

The first to act was the Annapolis Convention, which was convened to discuss issues of trade. Commissioners (delegates) from only five states showed up on time: New York, New Jersey, Pennsylvania, Delaware, and Virginia. Professing themselves unable to fulfill their mission, on September 14, 1786, the commissioners issued a [statement](#). The entire text is set forth at the end of this post.* Stripping out the unessential wording, it is as follows:

Your Commissioners. . . suggest . . . that . . . the States, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia . . . to take into consideration the situation of the United States, to devise such further provisions . . . to render the constitution of the Federal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to . . . Congress . . . as when agreed to, by them, and afterwards confirmed by the Legislatures of every State, will effectually provide for the same.

By Professor Rob Natelson



(Note that the word *constitution* in Founding Era political usage usually did not refer to a specific document but to the political system generally—much as we refer to the “British constitution.”)

Thus, the commissioners suggested to the five states that sent them that those states agree with and promote the idea of a gathering in Philadelphia that would

- * consider the situation of the U.S.,
- * “devise . . . provisions” to
- * change the political system so as to
- * render it adequate, and
- * obtain the agreement of Congress and of every state legislature.

The Annapolis resolution was only a suggestion because the commissioners did not have power to call a new convention.

New Jersey was the first state to respond. On November 24, 1786, her state legislature approved a resolution that four named commissioners were

appointed on the Part of this State. . . and they hereby are authorized and empowered to meet such Commissioners as have been or may be appointed by the other States in the Union at the City of Philadelphia, in the Commonwealth of Pennsylvania . . . for the Purpose of taking into Consideration the State of the Union as to Trade and other important Objects, and of devising such further Provisions as shall appear necessary to render the Constitution of the federal Government adequate to the Exigencies thereof.

Interestingly, the actual credentials delivered to the commissioners bore the date of November 23, the day before the legislative resolution passed.

On December 1, 1786 (not on October 16 as some sources indicate) Virginia’s general assembly passed a law entitled “AN ACT for appointing Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the federal Constitution.” The **entire act** is too long to extract here, but here are the highlights:

A preamble contained three “whereas clauses.” The first recited the suggestion of the Annapolis convention without mentioning the need for approval by Congress or by all states. The second recited that a political “Crisis” had arrived. The third urged all states to act, citing the need for citizens to unite in the same spirit in which they had joined together under the Articles of Confederation.

The operative part of the Virginia statute followed the preamble. It authorized appointment seven commissioners to join with those from other states:

in devising and discussing all such Alterations and farther Provisions as may be necessary to render the Foederal Constitution adequate to the Exigencies of the Union and in reporting such an Act for that purpose to the United States in Congress as when agreed to by them and duly confirmed by the several States will effectually provide for the same.

This language appeared at the end:

And the Governor is requested to transmit forthwith a Copy of this Act to the United States in Congress and to the Executives of each of the States in the Union.

Virginia appointed her commissioners by legislative resolution on Dec. 12.

Pennsylvania announced participation on December 30, North Carolina and New Hampshire in January, Delaware on February 3, Georgia on February 10. Thus, seven states already had agreed to participate under terms granting the convention wide powers when Congress passed the following resolution on Feb. 21, 1787:

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several States be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and the preservation of the Union.

This was a compromise resolution between a committee proposal that Congress “strongly recommend” a convention with broad powers and a New York proposal that Congress “recommend” a convention limited to proposing amendments to the Articles of Confederation.

Which of these constitutes the call? Obviously, not the congressional resolution: It was issued after seven states already had accepted a prior invitation in broader terms. Moreover, the congressional resolution was not a summons nor even a recommendation; it expressed only “the opinion of Congress”—language without any legal force.

One can argue that, as in the case of the 1776-77 Providence convention, this was a negotiated call: The Annapolis commissioners laid down certain basic terms, and New Jersey and Virginia responded based on those. However, the Annapolis convention had no authority to issue a call, its resolution was phrased as a mere “suggestion,” and no state adopted the terms of that suggestion in their entirety.

I used to think that New Jersey had a strong case to be considered “co-caller” with Virginia because she was the first entity to act with power to do so. But now I’m persuaded that Virginia has the better case. The Virginia resolution not only specified the time, place, subject matter, and limitations of the convention, but Virginia was the first state to explicitly urge other states to participate.

So the honor of calling the Constitutional Convention goes to Virginia.

U.S. Constitutional Convention