

The Conconcon; Wrong Name, Right Time

By Bill Walker

For the past few days the Internet has buzzed with discussion of an upcoming conference scheduled for next month at Harvard Law School entitled “The Conference on the Constitutional Convention ([Conconcon](#)).” The conference is sponsored by “[Fix Congress First](#)”, the [Tea Party Patriots](#), and [Harvard Law School](#). The co-sponsors of the Conference are Mark Meckler, Co-Founder and National Coordinator for the Tea Party Patriots and Professor Lawrence Lessig, Director of the Edmond J. Safra Center for Ethics at Harvard University and Roy L. Furman Professor of Law, Harvard Law School.

The conference’s purpose is articulated on its home page:

“From the Right and the Left, citizens are increasingly coming to recognize that our Republic does not work as our Framers intended. Reform of any kind is stalled by a status quo that profits from blocking change. No side in the political debate benefits from this inertia.

The Framers created a method for escaping from captured government—an Article V Constitutional Convention. If two-thirds of the states pass resolutions calling for a convention, then all sides will have the opportunity to argue for the changes they believe will restore our Republic. Any amendment proposed must then be ratified by three fourths of the states to become law.

On September 24th, people from across America and across the political spectrum will convene at Harvard University to discuss the advisability and feasibility of organizing towards a Constitutional Convention. The conference’s lead organizers are both proponents and opponents of an Article V convention and we actively encourage the participation of those who support a convention and those who oppose holding a convention at all.”

The two day conference will feature three main panels on Saturday September 24:

1. A legal/historical panel, during which legal and historical scholars will discuss their interpretations of Article V and their understanding of how the Founders viewed the provision and how a Convention would operate today: Who would be elected to it? Under what rules would it operate? Could a convention “run-away”? Can Congress limit the topics that a convention will consider?
2. A political panel, during which advocates for various structural reforms will discuss their successes and failures to date, and consider merits and drawbacks of trying to utilize a Constitutional Convention to propose, debate, and move their

- plans forward. There will also be discussion of alternative methods for achieving similar reforms.
3. A strategic panel, during which organizers will discuss the logistics of organizing a Constitutional Convention. Invited panelists include representatives of government reform groups, organized labor, the Tea Party Patriots, the, state legislators, and others.

Additionally, there will be two Saturday keynote addresses from Glenn Reynolds, Professor, University of Tennessee School of Law; founder of Instapundit blog (according to the website, representing the political “right”) and Professor Lessig, (according to the website, representing the political “left). On Sunday, break-out sessions “inspired by the previous day’s conversations” will be held. These sessions will include “a debate about the potential for a “runaway” convention, and workshops on cross-partisan organizing, online organizing, organizing state-level campaigns for passage of resolutions calling for a convention, and a conversation about popular support for various reform measures.” In short, a very busy two days with those concerned with a convention.

The [FAQ Section](#) of the site gives additional answers which serve to highlight the views and understandings of the event’s sponsors in regards to a convention. Despite their length, these answers are worth quoting in full here:

“What gives us the power to call a Constitutional convention?

Article Five of the United States Constitution asserts that Congress shall call a convention upon the application of the legislatures of two thirds of the states. Here's the full text:

"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 Amendment 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."

Has a Constitutional Convention ever been held?

Not since the Constitution was written in 1787. But they've almost happened since—for instance, by 1910 nearly two-thirds of states had called for a Constitutional convention to propose that United States Senators be directly elected. (They were previously appointed by state legislatures.) This compelled Congress to put forth the 17th amendment, which was ratified in 1913 and established the current mode of choosing U.S. Senators.

Are you worried about a runaway convention?

Some raise concerns about the possibility of a "runaway" convention, whereby large swaths of the Constitution would be overturned in a unthinking frenzy driven by overzealous conventioners. But the Constitution makes it clear that changes suggested by a Constitutional Convention would not take effect unless ratified by three-fourths of states, most likely via passage by those states' legislatures, so as few as 13 of America's 99 state legislative chambers could block an amendment that is too extreme. Only those amendments that represent the views of the overwhelming majority of Americans would stand a chance of ratification.

This is the same way in which amendments offered by Congress, through the more familiar process, would be ratified: In many respects Congress can be considered a standing Constitutional Convention. It's when Congress is intransigent because the interests of Congress members themselves are in question—when, say, we want to change the campaign finance laws by which Congress members get elected—that we must empower ordinary citizens to force the changes we need.

Amending the Constitution is a reckless move. Why are you rushing into an Article V convention?

The purpose of this conference is not to call a convention. The purpose is to have a conversation about how such a convention would work and whether it would be a wise decision. Many of the conference's participants—perhaps the majority—believe that an Article V convention should not be called.”

I should mention before continuing one of the panelists at the conference will be myself. As anyone who has read columns written by me knows, the term “constitutional convention” is a misnomer. Anyone professing to know anything about Article V knows the Constitution does not allow nor permit a “constitutional convention.” A constitutional convention is empowered to write a new Constitution, something our Constitution *expressly* forbids. A simple reading of Article V shows both Congress and a convention are expressly limited to proposing amendments “as Part of this Constitution.” Obviously you cannot have a *new* constitution if it is required to be part of the *old* constitution. Hence, the only valid terms for a convention are an amendments convention, a convention for proposing amendments or an Article V Convention. Not to use one of these terms demonstrates in my mind, a lack of fundamental understanding about Article V.

There are other statements in the website text concerns me. The first is, “If two-thirds of the states pass resolutions calling for a convention, then all sides will have the opportunity to argue for the changes they believe will restore our Republic.” While the understanding is there, as usual, it is clear those behind this conference either cannot or will not read Article V even when they post the text on their site. The sponsors clearly understand if two-thirds of the states “pass resolutions” (a more accurate description would be “submit applications then a convention must be called”). The point that is missed is the fact the states have already submitted the required applications and thus a

convention call is mandated on Congress. In short, the event is now, not sometime in the nebulous future. That this most important fundamental fact is missing from the website concerns me.

The second statement that concerns me is the fact the conference is even discussing working on new applications rather than concentrating on Congress' failure to call a convention. As shown on the FOAVC website [FOAVC website](#) 49 states have submitted over 700 applications for a convention call. The conference makes no mention of these applications except to erroneously state that "But they've almost happened since—for instance, by 1910 nearly two-thirds of states had called for a Constitutional convention to propose that United States Senators be directly elected." While it is a fact for that particular issue, less than two-thirds of the states had applied, public record clearly shows the total number of states that had applied for a convention call easily exceeded the two-thirds requirement of the Constitution. Thus, the statement is misleading and factually inaccurate.

Clearly, based on these statements this conference shows signs of reaching decisions based on false information and thus accomplishing nothing. The reason I decided to attend this conference was, to the best of my ability, provide the conference with factual information regarding an Article V Convention based on the public record. If those at the conference can overcome their prejudices they will come away with the tools necessary to cause a convention and do it in such a manner as to be a safe, constitutional, legal method of effecting the political changes they all say they desire. In short, the conference can accomplish a great deal.

The question is: will they listen? Only time will tell.