



The New York Times | <http://nyti.ms/11Fyyfl>

POLITICS | LETTER FROM WASHINGTON

Clamor Rises to Rewrite the U.S. Constitution

By ALBERT R. HUNT | BLOOMBERG VIEW NOV. 30, 2014

WASHINGTON — Rising frustration with Washington and conservative electoral victories across much of the United States are feeding a movement in favor of something America hasn't done in 227 years: Hold a convention to rewrite the Constitution.

Although it's unlikely to be successful, the effort is more serious than ever before: Already more than two dozen states have called for a convention. There are two ways to change or amend the founding document. The usual method is for an adjustment to win approval from two-thirds of both houses of Congress and then be ratified by three-quarters of the 50 states. There have been 27 amendments adopted this way.

The second procedure is separate from Congress. It requires two-thirds of the states, or 34, to call for a convention. The framers thought this might be necessary because Congress wouldn't be likely to advance any amendments that curtailed its powers. But this recourse has never been used.

Two states, California and Vermont, have called for a convention to overturn the Supreme Court's Citizens United decision that permits huge amounts of unregulated money into federal campaigns. Larry Sabato, a

University of Virginia political scientist, wants a convention to adopt sweeping changes, including a single six-year presidential term, and concomitant House and Senate terms to create more of a parliamentary system. Petitions to adopt term limits for members of Congress have circulated for years.

But much of the current impetus comes from fervent fiscal conservatives. This includes calls for an amendment requiring a balanced budget and other restraints on the federal government's spending and taxation powers.

A constitutional convention is a rallying cry for right-wing talk-radio hosts such as Rush Limbaugh and Mark Levin; the idea has been endorsed by Senators Ron Johnson of Wisconsin and Tom Coburn of Oklahoma, both conservative Republicans. An influential backer is the American Legislative Exchange Council, known as ALEC, an organization of conservative state legislators and lobbyists that advocate for corporate interests.

But many constitutional scholars believe that limits cannot be placed on a convention; if one were convened, anything could be up for consideration. A convention "can propose what they think is appropriate," said Michael S. Paulsen, a professor at the University of St. Thomas School of Law in Minneapolis who is an expert on the issue. "There is no good theory under which the convention can be 'limited' to specific topics — far less to a specific proposed 'text.'"

Accordingly, say experts like Walter E. Dellinger III, a former solicitor general and a constitutional scholar, no limits can be imposed on calls for a convention. He believes the current petitions from states, even if they reach the two-thirds mark, are invalid.

If, however, the backlash against Washington intensifies, the Republican-led Congress stalls, these imperfections are corrected and a convention were held, Congress would play a relatively minor role. It might decide how the size of different delegations should be determined. After the federal lawmakers "specify the time and place for kicking it off," Professor Paulsen said, "they then have to get out of the way."

Although it's chiefly the political right driving this proposal, more than a few staunch conservatives say it's a bad idea. Foremost is Justice Antonin Scalia, the longtime leader of the Supreme Court's conservative bloc, who observed this summer: "Whoa! Who knows what would come out of it?"

Some proponents argue that a check on any convention deliberations would be that three-quarters of the states then have to ratify any decisions, so radical changes like alterations to the First Amendment most likely wouldn't fly. "That is a huge hurdle," Professor Paulsen said.

Yet other observers like Mr. Dellinger worry about the possibility of a runaway process that could rattle both the left and right. They doubt that modern-day James Madisons or Alexander Hamiltons would be in attendance to temper the proceedings.

A version of this article appears in print on December 1, 2014, in The International New York Times.

© 2014 The New York Times Company