Amending The U.S. Constitution By State-Led Convention

Indiana's Model Legislation

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AMENDING THE CONSTITUTION BY STATE-LED CONVENTION:

BACKGROUND INFORMATION

U.S. CONSTITUTION, ARTICLE V:

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.

AMENDING THE U.S. CONSTITUTION:

Article V of the U.S. Constitution provides two paths for amending the Constitution:

- Path 1:
  - *Step 1*: Two-thirds of both houses of Congress pass a proposed constitutional amendment. This sends the proposed amendment to the states for ratification.
  - *Step 2*: Three-fourths of the states (38 states) ratify the proposed amendment, either by their legislatures or special ratifying conventions.
- Path 2:
  - *Step 1*: Two-thirds of state legislatures (34 states) ask for Congress to call "a convention for proposing amendments."
  - *Step 2*: States send delegates to this convention, where they can propose amendments to the Constitution.
  - *Step 3*: Three-fourths of the states (38 states) ratify an amendment approved by the "convention for proposing amendments," either by their legislatures or special ratifying conventions.

WHY PURSUE THE STATE-LED OPTION FOR AMENDING THE CONSTITUTION?

The authors of the Constitution included the state-led amendment option for a reason. It is on equal footing with the Congress-led amendment option and was meant to serve as a check on a runaway federal government.

To this point in our nation's history, all Constitutional amendments have been proposed by Congress. However, there is a widespread sense by millions of Americans that we are at a moment in the life of our nation unlike any we've experienced before. Many believe Washington is broken, with Congress either unable or unwilling to control and reform itself, regardless of which party is in power. States' rights have been trampled almost to the point of extinction. This is exactly the environment that calls for the states to exercise their right under Article V to call an amendments convention.

FOUNDERS' INTENT FOR THE STATE-LED AMENDMENT OPTION:

The founding era record shows that the framers intended the two paths for proposing constitutional amendments to be equally usable, valid and effective.

- **Path 1** – amendments proposed by Congress – was seen as an obvious option because Congress' position would allow it to readily see defects in the system.
- **Path 2** – amendments proposed by states via a "convention for proposing amendments" – was seen as equally valid and necessary, especially in the event Congress refused to take action on a needed amendment to curb its own power.

James Madison: Known as the "Father of the Constitution," Madison was instrumental in devising its brilliant system of checks and balances. In Federalist No. 43, Madison made clear that the state-led amendment option was intended to be just as valid as the Congress-led option, saying:

- *"[The Constitution] equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."*

Alexander Hamilton: Writing extensively about the amendment process in Federalist No. 85, Hamilton makes clear that Article V allows the States to hold the federal government accountable by allowing them to call an amending convention and propose specific amendments. Key excerpts from Hamilton's Federalist No. 85 follow:

- *"But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly…There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."*
- *"We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."*

PRECEDENT FOR LIMITED CONVENTIONS:

Source: ***Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers*****, by Robert G. Natelson**

- Today, one of the most common arguments against a state-led Article V amendments convention is that it could not be controlled and would become a "runaway" convention.
- Because there hasn't been an Article V amendments convention since the adoption of the Constitution, it's necessary to look at the founding era for precedent about whether conventions can be limited in scope.
- The founding era record shows that there were many such limited conventions during that time. Some examples:

Convention	Limited Topic Area
Annapolis Convention of 1786	Trade and commerce issues
First Assembly at Providence (1776-1777)	Currency and defense issues
Second Assembly at Providence (1781)	Supplying the Army
New Haven and Philadelphia gatherings (1780)	Price regulation
In 1777, Congress recommended to the states that they sponsor conventions in York Town, Pennsylvania and Charlestown, South Carolina to consider price-stabilization measures.	Price stabilization

- The journals of these conventions show that they all remained essentially within the scope of their calls.
- Contrary to common belief, the 1787 Philadelphia Constitutional Convention had very broad power to suggest a new form of government. It was not a runaway convention.

CONCLUSION:

Concern is growing about the size and scope of the federal government. Consider just a few of the most conspicuous causes for alarm:

- More than $17 trillion in federal debt and counting
- Trillions more in unfunded entitlement programs
- Trillion-dollar annual budget deficits
- About 30 cents of every federal dollar spent is borrowed
- Unprecedented federal regulation and meddling in entire sectors of the economy (health care, auto industry, banking, energy, education, etc.)

Both major political parties in Washington have failed to stem this tide. States' rights have been trampled – rendering the 10th amendment almost meaningless. The Founders understood the threat of a runaway federal government and specifically provided states a tool to address it: a state-led amendment convention.

The legislation outlined in the pages to follow takes advantage of this tool the Founders gave to the states by establishing safeguards to prevent a so-called runaway convention. If other legislatures enact similar legislation in their own states, Congress will be on notice that states are serious about restoring a proper balance between state and federal power and have the foundation in place to call a limited Article V amendment convention.

The bigger modern-day threat to America is not a runaway convention, but a runaway federal government. This package of legislation is a state-led, constitutional approach to doing something about it.

INDIANA'S LEGISLATIVE ACTION

Summary of Article V state delegate selection and limitation provisions added to Indiana law

(NOTE: The Full Text of Indiana's Legislation Follows This Summary)

- *Delegate Selection:*
  - Establishes that the power for appointing and recalling Indiana's delegates to an Article V convention is vested with the General Assembly and requires delegates to take an oath to uphold the state and U.S. Constitutions and abide by any instructions given to delegates by the General Assembly.
  - Establishes Indiana's intention to send two delegates and two alternate delegates to an Article V convention.
- *Delegate Limitation:* Strictly limits the authority of Indiana's delegates to an Article V amendments convention. Provisions guarding against a so-called "runaway convention" include:
  - Requires the Indiana General Assembly to adopt a binding resolution governing the rules of procedure for Indiana's delegates.
  - Provides that a vote cast by a delegate or alternate that is outside the instructions established by the General Assembly or exceeds the subject matter limits established by the General Assembly's resolution calling for the Article V convention is void.
  - Provides that a delegate or alternate who votes or attempts to vote outside the instructions established by the General Assembly or the subject matter limits established by the General Assembly's resolution calling for the Article V convention forfeits his/her appointment and is guilty of a Class D felony.
  - Makes clear that the General Assembly's application calling for the Article V convention ceases to be active and is rendered ineffective if all of the delegates and alternates vote or attempt to vote outside of the instructions established by the General Assembly or the subject matter limits established by the General Assembly's resolution calling for the Article V convention.
  - Establishes an advisory committee that a delegate can consult if he/she has a question about whether a vote or other action would violate the instructions established by the General Assembly or exceed the subject matter limits established by the General Assembly's resolution calling for the Article V convention.

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 224

AN ACT to amend the Indiana Code concerning the general assembly.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

ARTICLE 8. DELEGATES TO A CONVENTION CALLED UNDER ARTICLE V OF THE CONSTITUTION OF THE UNITED STATES

Chapter 1. General Provisions

Sec. 1. This article applies whenever an Article V convention is called.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Alternate delegate" refers to an individual appointed as an alternate delegate as provided by law.

Sec. 3. "Article V convention" refers to a convention for proposing amendments to the Constitution of the United States called for by the states under Article V of the Constitution of the United States.

Sec. 4. "Delegate" refers to an individual appointed as provided by law to represent Indiana at an Article V convention.

Sec. 5. "House of representatives" refers to the house of representatives of the general assembly.

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Sec. 6. "Paired delegate" refers to the delegate with whom an alternate delegate is paired as provided by law.

Sec. 7. "Senate" refers to the senate of the general assembly.

Chapter 3. Duties of Delegates and Alternate Delegates

Sec. 1. (a) At the time delegates and alternate delegates are appointed, the general assembly shall adopt a joint resolution to provide instructions to the delegates and alternate delegates regarding the following:

(1) The rules of procedure.

(2) Any other matter relating to the Article V convention that the general assembly considers necessary.

(b) The general assembly may amend the instructions at any time by joint resolution.

Sec. 2. An alternate delegate:

(1) shall act in the place of the alternate delegate's paired delegate when the alternate delegate's paired delegate is absent from the Article V convention; and

(2) replaces the alternate delegate's paired delegate if the alternate delegate's paired delegate vacates the office.

Sec. 3. A vote cast by a delegate or an alternate delegate at an Article V convention that is outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or

(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

is void.

Sec. 4. (a) A delegate or alternate delegate who votes or attempts to vote outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or

(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

forfeits the delegate's appointment by virtue of that vote or attempt to vote.

(b) The paired alternate delegate of a delegate who forfeits appointment under subsection (a) becomes the delegate at the time

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the forfeiture of the appointment occurs.

Sec. 5. The application of the general assembly to call an Article V convention for proposing amendments to the Constitution of the United States ceases to be a continuing application and shall be treated as having no effect if all of the delegates and alternate delegates vote or attempt to vote outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or

(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

Sec. 6. A delegate or alternate delegate who knowingly or intentionally votes or attempts to vote outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or

(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

commits a Class D felony.

Chapter 4. Article V Convention Delegate Advisory Group

Sec. 1. As used in this chapter, "advisory group" refers to the Article V convention delegate advisory group established by section 2 of this chapter.

Sec. 2. The Article V convention delegate advisory group is established.

Sec. 3. The advisory group consists of the following members:

(1) The chief justice of the supreme court.

(2) The chief judge of the court of appeals.

(3) The judge of the tax court.

Sec. 4. The chief justice of the supreme court is the chair of the advisory group.

Sec. 5. The advisory group shall meet at the call of the chair.

Sec. 6. The advisory group shall establish the policies and procedures that the advisory group determines necessary to carry out this chapter.

Sec. 7. (a) Upon request of a delegate or alternate delegate, the advisory group shall advise the delegate or alternate delegate whether there is reason to believe that an action or an attempt to

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take an action by a delegate or alternate delegate would:

(1) violate the instructions established by a joint resolution adopted under IC 2-8-3-1; or

(2) exceed the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

(b) The advisory group may render an advisory determination under this section in any summary manner considered appropriate by the advisory group.

(c) The advisory group shall render an advisory determination under this section within twenty-four (24) hours after receiving a request for a determination.

(d) The advisory group shall transmit a copy of an advisory determination under this section in the most expeditious manner possible to the delegate or alternative delegate who requested the advisory determination.

(e) If the advisory group renders an advisory determination under this section, the advisory group may also take an action permitted under section 8 of this chapter.

Sec. 8. (a) On its own motion or upon request of the speaker of the house of representatives, the president pro tempore of the senate, or the attorney general, the advisory group shall advise the attorney general whether there is reason to believe that a vote or an attempt to vote by a delegate or alternate delegate has:

(1) violated the instructions established by a joint resolution adopted under IC 2-8-3-1; or

(2) exceeded the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

(b) The advisory group shall issue the advisory determination under this section by one (1) of the following summary procedures:

(1) Without notice or an evidentiary proceeding.

(2) After a hearing conducted by the advisory group.

(c) The advisory group shall render an advisory determination under this section within twenty-four (24) hours after receiving a request for an advisory determination.

(d) The advisory group shall transmit a copy of an advisory determination under this section in the most expeditious manner

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possible to the attorney general.

Sec. 9. Immediately, upon receipt of an advisory determination under section 8 of this chapter that finds that a vote or attempt to vote by a delegate or alternate delegate is a violation described in section 8(a)(1) of this chapter or in excess of the authority of the delegate or alternate delegate, as described in section 8(a)(2) of this chapter, the attorney general shall inform the delegates, alternate delegates, the speaker of the house of representatives, the president pro tempore of the senate, and the Article V convention that:

(1) the vote or attempt to vote did not comply with Indiana law, is void, and has no effect; and

(2) the credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

SECTION 2. IC 4-6-2-1.1, AS AMENDED BY P.L.126-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.1. The attorney general has concurrent jurisdiction with the prosecuting attorney in the prosecution of the following:

(1) Actions in which a person is accused of committing, while a member of an unlawful assembly as defined in IC 35-45-1-1, a homicide (IC 35-42-1).

(2) Actions in which a person is accused of assisting a criminal (IC 35-44.1-2-5), if the person alleged to have been assisted is a person described in subdivision (1).

(3) Actions in which a sheriff is accused of any offense that involves a failure to protect the life of a prisoner in the sheriff's custody.

(4) Actions in which a violation of IC 2-8-3-6 (concerning constitutional convention delegates) has occurred.

SECTION 3. IC 35-32-2-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 7. A person may be tried for a violation of IC 2-8-3-6 in:**

(1) Marion County; or

(2) the county where the person resides.

SECTION 4. IC 35-51-2-1, AS ADDED BY P.L.70-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. The following statutes define crimes in IC 2:

IC 2-4-1-4 (Concerning legislative investigations).

IC 2-7-6-2 (Concerning lobbying).

IC 2-7-6-3 (Concerning lobbying).

IC 2-7-6-4 (Concerning lobbying).

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IC 2-8-3-6 (Concerning constitutional convention delegates).

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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First Regular Session 118th General Assembly (2013)

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Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 225

AN ACT to amend the Indiana Code concerning the general assembly.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-8.2 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

ARTICLE 8.2. DELEGATES TO A CONVENTION CALLED UNDER ARTICLE V OF THE CONSTITUTION OF THE UNITED STATES

Chapter 1. General Provisions

Sec. 1. This article applies whenever an Article V convention is called.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Alternate delegate" refers to an individual appointed as an alternate delegate as provided by law.

Sec. 3. "Article V convention" refers to a convention for proposing amendments to the Constitution of the United States called for by the states under Article V of the Constitution of the United States.

Sec. 4. "Chamber" refers to either the house of representatives or the senate.

Sec. 5. "Delegate" refers to an individual appointed as provided by law to represent Indiana at an Article V convention.

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Sec. 6. "House of representatives" refers to the house of representatives of the general assembly.

Sec. 7. "Paired delegate" refers to the delegate with whom an alternate delegate is paired as provided by law.

Sec. 8. "Senate" refers to the senate of the general assembly.

Chapter 3. Qualifications and Appointment of Delegates and Alternate Delegates

Sec. 1. (a) An individual must satisfy the following to be appointed as a delegate to an Article V convention:

(1) The individual must reside in Indiana.

(2) The individual must be a registered voter in Indiana.

(3) The individual must be at least eighteen (18) years of age.

(4) The individual is not registered or required to be registered as a lobbyist under IC 2-2.1, IC 4-2-7, IC 4-2-8, 2 U.S.C. 1603, or rules or regulations adopted under any of these laws.

(b) An individual may not be appointed as a delegate if the individual holds a federal office.

Sec. 2. An individual appointed as an alternate delegate must have the same qualifications as an individual appointed as a delegate under section 1 of this chapter.

Sec. 3. (a) Whenever an Article V convention is called, the general assembly shall appoint:

(1) the number of delegates allocated to represent Indiana; and

(2) an equal number of alternate delegates;

under rules adopted jointly by the house of representatives and the senate. Unless established otherwise by the rules and procedures of an Article V convention, it shall be assumed that Indiana has two (2) delegates and two (2) alternate delegates designated to represent Indiana.

(b) If the general assembly is not in session during the time during which delegates to an Article V convention must be appointed, the governor shall call the general assembly into special session under Article 4, Section 9 of the Constitution of the State of Indiana for the purpose of appointing delegates and alternate delegates.

Sec. 4. (a) To be appointed a delegate or an alternate delegate, an individual must receive, in each chamber, the vote of a majority of all the members elected to that chamber.

(b) At the time of appointment, each alternate delegate must be paired with a delegate as provided in a joint resolution adopted by

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the general assembly.

Sec. 5. The general assembly may recall any delegate or alternate delegate and replace that delegate or alternate delegate with an individual appointed under this article at any time.

Sec. 6. The general assembly shall appoint or recall delegates or alternate delegates by joint resolution.

Sec. 7. (a) A delegate or an alternate delegate is:

(1) entitled to receive the same mileage and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council; and

(2) not entitled to receive a salary or a per diem instead of salary for serving as a delegate or alternate delegate.

(b) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, the position of delegate or alternate delegate is not a lucrative office.

(c) All funds necessary to pay expenses under subsection (a) shall be paid from appropriations to the legislative council and the legislative services agency.

Sec. 8. Each delegate and alternate delegate shall, after appointment and before the delegate or alternate delegate may exercise any function as delegate or alternate delegate, execute an oath in writing that the delegate or alternate delegate will:

(1) support the Constitution of the United States and the Constitution of the State of Indiana;

(2) faithfully abide by and execute any instructions to delegates and alternate delegates adopted by the general assembly and as may be amended by the general assembly at any time; and

(3) otherwise faithfully discharge the duties of delegate or alternate delegate.

Sec. 9. (a) A delegate's or alternate delegate's executed oath shall be filed with the secretary of state.

(b) After a delegate's or alternate delegate's oath is filed with the secretary of state, the governor shall issue a commission to the delegate or alternate delegate as provided in IC 4-3-1-5(2).

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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