Is Article V in Our Future?

by Phyllis Schlafly *August 27, 2013*

Attacks on the U.S. Constitution are coming from all sides. The New York Times opened its op-ed page to several liberal professors of government: one calls our Constitution "imbecilic," another claims it contains "archaic" and "evil provisions," and a third urges us to "rewrite the Second Amendment."

Out of exasperation with the flouting of the Constitution by Barack Obama and his acolytes, and the way Congress is letting them get by with these violations, several conservative authors and pundits are promoting the calling of a national convention to propose amendments to the Constitution. They believe a series of amendments can put our country on a wiser path.

The authority for such a procedure is Article V of our Constitution, so they are calling their plan of action an Article V convention. However, they are fooling themselves when they suggest that Article V creates a path to bypass Congress with a "convention of states."

The only power the states have under Article V is the opportunity to submit an "application" (petition) humbly beseeching Congress to call a convention. Hundreds of such applications have been submitted over the years, with widely different purposes and wording, many applications were later rescinded, and some purport to make the application valid for only a particular amendment such as a federal balanced budget or congressional term limits.

Article V states that Congress "shall" call a convention on the application of two-thirds of state legislatures (34), but how will Congress count valid applications? We don't know, and so far Congress has ignored them anyway.

If Congress ever decides to act, Article V gives Congress exclusive power to issue the "Call" for a convention to propose "amendments" (note the plural). The Call is the governing document which determines all the basic rules such as where and when a convention will be held, who is eligible to be a delegate (will current office-holders be eligible?), how delegates will be apportioned, how expenses will be paid, and who will be the chairman.

Article V also gives Congress the power to determine whether the three-fourths of the states required for ratification of amendments can ratify by the state legislature's action or by state conventions.

The most important question to which there is no answer is how will convention delegates be apportioned? Will each state have one vote (no matter how many delegates it sends), which was the rule in the 1787 Philadelphia convention, or will the convention be apportioned according to population (like Congress or the Electoral College)?

Nothing in Article V gives the states any power to make this fundamental decision. If apportionment is by population, the big states will control the outcome.

Article V doesn't give any power to the states to propose constitutional amendments, or to decide which amendments will be considered by the convention. Article V doesn't give any power to the courts to correct what does or does not happen.

Now imagine Democratic and Republican conventions meeting in the same hall and trying to agree on constitutional changes. Imagine the gridlock in drafting a constitutional plank by caucuses led by Sarah Palin and Al Sharpton.

Everything else about how an Article V Convention would function, including its agenda, is anybody's guess. Advocates of an Article V convention can hope and predict, but they cannot assure us that any of their plans will come true.

If we follow the model of the 1787 Convention, will the deliberations be secret? Are you kidding? Nothing is secret any more. What are the plans to deal with protesters: the gun-control lobby, the gay lobby, the abortion lobby, the green lobby, plus experienced protestors trained by Obama's Organizing for Action, at what would surely be the biggest media event of the year, if not of the century.

There is no proof that the VIPs promoting an Article V convention have any first-hand knowledge of the politics or procedures of a contested national convention. Don't they realize that the convention will set its own agenda and that states will have no sayso over which amendments are considered?

A recent example of how a convention chairman wielding the gavel can manipulate what happens is the way the 2012 Democratic National Convention chairman ruthlessly called the vote wrong when a delegate tried to add a reference to God in the party platform. The chairman got by with declaring the amendment passed even though we all saw on television that the "Noes" won the vote.

The whole process is a prescription for political chaos, controversy and confrontation. Alas, I don't see any George Washingtons, James Madisons, Ben Franklins or Alexander Hamiltons around today who could do as good a job as the Founding Fathers, and I'm worried about the men who think they can.