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CALLS FOR A CONSTITUTIONAL CONVENTION

Thirty-two states have passed resolutions requesting Congress to call a constitutional convention for the purpose of submitting a constitutional amendment on a balanced budget. Article V of the U.S. Constitution makes it mandatory that, if 34 states pass such resolutions, Congress "shall call a Convention for proposing Amendments."

Advocates of Con Con (as a constitutional convention is colloquially called) have been predicting for the last three years that the decisive number would be reached in 1984. It won't. Con Con resolutions were defeated in Kentucky and Michigan and advisory referenda were thrown off the November ballots in California and Montana by the courts.

So, we are saved from a constitutional crisis this year, but it hangs over our head in January when many state legislatures go back into session. It is devoutly to be hoped that any states which put this item on their agenda will hold hearings and thoughtfully evaluate the risks before plunging into uncharted waters for which there is no map.

A call for a Federal constitutional convention means playing Russian Roulette with our U.S. Constitution. If we pull the trigger, we might luck out and have the trigger click only on an empty chamber. On the other hand, we might kill our precious Constitution with a self-inflicted mortal wound.

The 26 existing amendments to the U.S. Constitution were all adopted by the first amending procedure specified in Article V. The alternate method, a constitutional convention, has never been used. That doesn't make it illegitimate; but, since there are no guidelines, it does make it a risky route since so many questions and problems have been raised by legal scholars for which there are no certain answers.

Could a Con Con be limited to a Balanced Budget Amendment, or would it be wide open to consider many amendments or even to jettison our entire Constitution and propose a different one? The most eminent constitutional authorities in the country are split on this question. Former Senator Sam J. Ervin, Jr., says it could be limited; Gerald Gunther (author of the leading law school casebook on constitutional law) says it could not.

Article V of the U.S. Constitution uses the plural "Amendments" in referring to what a constitutional convention can do. In order to argue that a Con Con could be limited to a Balanced Budget Amendment, you have to argue that the Founding Fathers didn't mean what they said, which is a rather thin argument against those precise wordsmiths who crafted the greatest document ever produced by the hand of man.

The best way to predict the outcome of any American legal controversy is to ask, what is the precedent? We have only one precedent for a Federal Con Con, the Constitutional Convention of 1787, and it was, indeed, a runaway convention. It violated its orders to merely amend the old Articles of Confederation, and then wrote the U.S. Constitution.

In that era, we were fortunate to have a historically unique group of great men to write our Constitution, including George Washington, James Madison, and Benjamin Franklin. If such men are around today, they have escaped public attention.

Today, we have an endless variety of well-funded special-interest pressure groups that can be counted on to clamor to open up the convention agenda for their own goals. How, for example, could consideration of a Human Life Amendment be barred from Con Con when some 20 states have memorialized Congress on that issue alone? Or a School Prayer Amendment, which polls have consistently shown is supported by enormous majorities?

No constitutional authority believes that a Con Con could be limited to the text of the Balanced Budget Amendment as written and promoted by the groups pushing the Con Con. At the very least, the Con Con would have the authority to consider any amendment pertaining to fiscal matters.

It's easy to see how a Con Con could include most currently-controversial issues as germane to a fiscal amendment. Should Federal spending be prohibited for abortion funding; or to schools that deny the right to pray in class?

The liberals also have their plans for changing the Constitution, and have been waiting for the opportune moment. Ford Foundation money has financed the writing of an entirely new Constitution which would eliminate our Separation of Powers and convert us into a European-style parliamentary form of government.

Our United States Constitution is too precious to put it up for grabs where it can be wrestled out of shape by warring special-interest groups. The Balanced Budget Amendment should be dealt with on its own merits like the other 26 amendments to the Constitution.