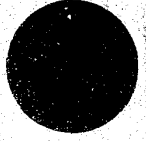


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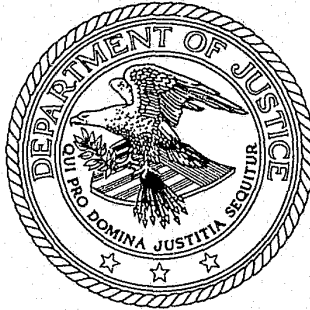


Report to the Attorney General

Limited Constitutional Conventions under Article V of the United States Constitution

September 10, 1987

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U.S. Department of Justice
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**LIMITED CONSTITUTIONAL
CONVENTIONS
UNDER ARTICLE V
OF THE UNITED STATES
CONSTITUTION**

(September 10, 1987)

NCJRS

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ACQUISITIONS



Office of the Attorney General
Washington, D. C. 20530

Although Article V of our Constitution establishes two means by which proposed amendments may be submitted to the States for their ratification, only one of those methods, submission by initiative of Congress, has ever been employed. The alternative process requires that the Congress call a convention for the purpose of proposing constitutional amendments whenever two-thirds of the States, acting through their legislatures, apply for such a convention.

Recently, there has been increased interest in this alternative means of amending the Constitution -- an interest reflected in the increasing number of state applications to hold a constitutional convention. With the states showing renewed interest in a constitutional convention, there has been significant and far-reaching legal scholarship regarding the nature, purposes, and potential effects of such a convention. Among the questions which have received substantial attention is whether a constitutional convention could be limited to the subjects on which it was called.

The present study, "Limited Constitutional Conventions Under Article V of the United States Constitution," is a contribution to the on-going inquiry into this issue. It was prepared by the Justice Department's Office of Legal Policy, which functions as a policy development staff for the Department and undertakes comprehensive analyses of contemporary legal issues.

This study will generate considerable thought on a topic of great national importance, a topic about which there are several reasonable points of view. It will be of interest to anyone concerned about a provocative and informative examination of the issues.

Edwin Meese III
EDWIN MEESE III
Attorney General

EXECUTIVE SUMMARY

The attached paper examines the process of amending the Constitution through a constitutional convention. Specifically, the paper explores the question of whether such a convention, authorized by Article V of the Constitution, can be limited to the consideration of particular subjects.

The paper concludes that Article V permits the states to apply for, and the Congress to call, a constitutional convention for limited purposes, and that a variety of practical means to enforce such limitations are available. The language and structure of Article V, as well as the history of its drafting, support this conclusion because the two methods of constitutional amendment, Congressional initiative and the state-called convention, are treated by Article V as equally available procedural alternatives. There is no suggestion that the alternative modes are substantively distinct, that one is subordinate to the other, or that use of one mode is restricted to particular topics or circumstances.

Since it is undisputed that Congress possesses the authority to propose amendments limited to a single topic or group of topics, it follows that the applications of the states for calling a constitutional convention also may be limited. This understanding is reinforced by the normal practice of the states in limiting by subject their applications to the Congress.

The paper also notes that the requirements of Article V are designed to ensure that a consensus exists as to the desirability of amendment, whichever method of amendment is employed. As the Supreme Court has held, an Article V consensus is a super-majority agreement on the same subject at the same time that has been made manifest and clear by following the procedures outlined in Article V. If the states choose to condition their application for a convention on discussion of a particular amendment or subject, then the Congress must call a convention of that kind if the principle of consensus is to be vindicated.

After establishing that Article V does permit limited constitutional conventions, the paper examines the procedural strictures available to ensure that such limitations are enforced. In particular, the paper concludes that Congress has the authority to adopt legislation providing for the enforcement of limitations. The report also suggests that judicial review to curb convention irregularities and the possibility of holding

convention delegates to their oaths of office are other potentially effective enforcement devices.

The paper concludes by recognizing that there are inevitable uncertainties associated with any as-yet-untried process. However, it is suggested that the adoption of convention-procedures legislation by the Congress would minimize greatly any remaining uncertainties associated with the convention method of amendment.