

FREQUENTLY ASKED QUESTIONS

Answers provided, in part, by the Balanced Budget Amendment Task Force 2013-14
Additional questions were asked and answered in Tennessee Senate and House Committees (Feb. 26 and March 4, 2014) and by activists and BBA leaders at grassroots meetings in early February in Knoxville and Nashville.

Must all the states' applications be in identical language?

No. It is enough if they identify the same problem or subject.

Within what period must the required number of applications be received?

Adoption of the 27th Amendment (proposed over 200 years earlier) has convinced many observers that there is no time period. Because, however, some still claim that applications can go "stale," prudence suggests that a campaign be completed within a few years. The application campaign for direct election of senators took 14 years.

Can Congress refuse to call a convention on the demand of two-thirds of the states, and if it does, can it be compelled to act by the courts?

Nearly all scholars have concluded that Congress may not refuse. Supreme Court precedent strongly suggests that the courts can compel it to act.

Who are the delegates, and how are they chosen?

Delegates are representatives ("or direct agents") of their respective state legislatures and are chosen as the state legislature directs.

Would delegates be selected based on race, ethnicity, or gender?

The Equal Protection Clause of the Fourteenth Amendment and the Supreme Court cases interpreting it forbid election on these grounds.

Can the convention act by a simple majority vote, or would a two-thirds majority be required, as in Congress, for proposing an amendment?

The convention acts by a simple majority of the represented states. The convention may, by a simple majority of the represented states, alter that voting rule.

How is a convention to be financed, and where does it meet?

A convention for proposing an amendment is a conclave of state delegates. It therefore is financed by the states. Congress, in the convention call, specifies the time and initial meeting place, but the convention may alter that meeting place.

Is there a time limit on the proceedings, or can the convention act as a continuing body?

There is no fixed time limit - the convention can meet until it decides whether to propose an amendment. But a convention is, by definition, not a continuing body. It has no authority beyond deciding whether to propose a balanced budget amendment under a growing number of similar state resolutions. Once that is performed, the convention must adjourn. Additionally, states may recall and/or replace their delegates at any time.

What authority would be responsible for organizing the convention, such as committee selection, committee chairs, and members?

Organizational details, such as these, are fixed in rules adopted by the convention itself, in accordance with nearly universal American convention procedures. Conventions universally elect their own permanent officers. Of note, nearly 100 legislators from 32 states, including Senator Bell and Representative Butt, met on Dec. 7, 2013 to begin the process of writing the rules for a convention. Another meeting to discuss the rules is scheduled in June.

How would the number of delegates serving on any committee be selected and limited?

The convention rules determine committees and their makeup.

Can controversies between Congress and the convention over its powers be decided by the courts?

Controversies over the scope of the convention's powers may be decided by the courts. However, the states, not Congress, fix the scope of such powers.

Isn't a convention of the states a journey into the unknown?

To the contrary, there have been 20 conventions of the states in our nation's history. The Framers were aware of the authority they were granting the states under Article V and expected that states would exercise this authority, if/when federal authority needed to be checked.

"Congress isn't following the Constitution. What makes you think they will follow a balanced budget amendment?"

While Congress certainly has many challenges at the moment many observers like Constitutional scholar Jonathan Turley believe it is the Executive Branch that has had more challenges enforcing our laws, or is rewriting or straying from them, over the last decade or so. The Executive Branch will have no role in a convention of the states; Congress will have a ministerial role only, as noted above.

So what will be the role of Congress, given its limited ministerial role? Isn't this amendment just asking for a massive tax increase?

Congress' role in the process is simply to set the time and initial meeting place of the convention. If amendment language is adopted at the convention and then ratified by three-fourths of the states, both high hurdles, Congress would then have to balance the budget. Congress would be responsible for doing so, in the manner it sees fit, as always accountable to the electorate.

Didn't James Madison express uncertainty about the composition of an Article V convention, and wasn't he "horrified" at the prospect of one?

Quite the contrary. Madison drafted what became nearly the final wording for Article V and later promoted the convention idea as a reasonable way to resolve constitutional disputes. It is true that during the Constitutional Convention debate he initially expressed uncertainty as to how amendments conventions were to be constituted. Madison must have been satisfied with the answer he received, since he agreed to draft the language. It is also true that he was "horrified" by a 1789 New York proposal for an unlimited convention to rewrite the entire constitution with over 30 amendments. Who wouldn't be? However, Madison repeatedly asserted that his objection was directed only at that particular proposal at that particular time.

Isn't it true that the 1787 Constitutional Convention was a "runaway" - that Congress convened it under the Articles of Confederation only to propose amendments to the Articles, but it ended up drafting an entirely new Constitution?

The truth is quite to the contrary: Most delegates had full authority from their legislatures to recommend a new Constitution. Additionally, nothing legally changed after the convention adjourned. Not until the states ratified the new Constitution did the Articles of Confederation cease to be the law of the land.