



December 10, 2020

## Constitutional Convention Resolutions: Why You Should Care

Resolutions to amend the U. S. Constitution through a “Balanced Budget Article V Convention” resolution or a “Convention of States” resolution made significant progress in the South Carolina General Assembly and have already been passed in legislatures in many states. These resolutions represent a substantial danger to our federal Constitution and to the Republic that it has sustained for more than two centuries. South Carolinians across the political spectrum have ample reason to reject these measures. Our Constitution has often sustained, sometimes frustrated, and frequently puzzled us, but it has held us together in a united nation. We cannot put this at risk.

The “balanced budget” version is only five states from the required 34 states needed to call a convention under Article V. The “Convention of States” model is further from approval. However, it really doesn’t matter what version is passed by the states. Most constitutional scholars agree that the Convention, once called, will determine its own processes and scope, without reference to state resolutions.<sup>1</sup> They would not do so in a vacuum. Once called, a convention would draw intense pressure from well-funded special interests. That is certainly the intention of those funding the national push for these initiatives, including the wealthy Koch and Mercer families who have backed the resolutions as proposed.<sup>2 3</sup> Others, perhaps equally well funded, could work to influence a Convention with different intentions. We don’t know who will win. Let’s consider the possibilities.

### Current SC General Assembly Bills: Pre-filed 9 December 2020

- [H. 3205](https://www.scstatehouse.gov/billsearch.php?billnumbers=3205&session=124&summary=B) (full restriction of federal government, same as S. 133) -- Reps. Taylor, others
- S. 133 (full restriction of federal government, same as H.3205) – Massey [https://www.scstatehouse.gov/sess124\\_2021-2022/bills/133.htm](https://www.scstatehouse.gov/sess124_2021-2022/bills/133.htm)
- S. 141 (balanced budget) – Massey [https://www.scstatehouse.gov/sess124\\_2021-2022/bills/141.htm](https://www.scstatehouse.gov/sess124_2021-2022/bills/141.htm)

### The Scope of a Convention

These resolutions are marketed to legislators and the public in highly deceptive ways.

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<sup>1</sup> Michael Leachman & David A. Super, “States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment and Other Issues,” Center for Budget and Policy Priorities, July 6, 2014, available at <http://www.cbpp.org/sites/default/files/atoms/files/7-16-14sfp.pdf>.

<sup>2</sup> <https://www.esquire.com/news-politics/politics/a14841457/convention-of-states-campaign-secession/>

<sup>3</sup> [https://www.sourcewatch.org/index.php?title=Convention\\_of\\_States\\_Action](https://www.sourcewatch.org/index.php?title=Convention_of_States_Action)

The stated objectives of the Convention of States measures are listed in H.3125, a bill that received a favorable report from the Judiciary Committee of the SC House in 2020:<sup>4</sup>

*“proposing amendments to the United States Constitution that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.”*

Whose interests do these really serve? Not surprisingly, if successful they would empower those who are funding the national efforts to pass these resolutions. Billionaires who oppose both federal regulation of their businesses and paying taxes proportionate to their incomes and wealth are funding much of this effort.<sup>5</sup> For a closer look at their intentions, an in-depth New Yorker profile of one individual, Robert Mercer, is very illuminating.<sup>6</sup> It portrays an individual who believes destruction of most of the federal government is needed to give those with great wealth the unfettered power to act in their own self-interest.

### Limiting Federal Power and Jurisdiction

A Convention of States is intended to limit the power and jurisdiction of the federal government. South Carolina legislators accurately observed during House Judiciary hearings on H.3125 in 2020 that the Commerce Clause of the Constitution is a major target of this provision.

Eliminating or greatly restricting the Commerce Clause would have major impacts in every area of our lives. Serious economic impacts have been summarized in an op-ed by League Co-President Holley Ulbrich in the Greenville News, including massive change in the federal role in regulation, stabilization, and trade policy.<sup>7</sup>

The intended goal is to end most federal regulation of private businesses, an area in which states are not prepared to step into the gap that would be created. Large corporations could pollute our air, water and land. We would all breathe more polluted air, experience accelerated climate change, drink less safe water, and more.

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<sup>4</sup> H.3125, §1(A). [https://www.scstatehouse.gov/sess123\\_2019-2020/bills/3125.htm](https://www.scstatehouse.gov/sess123_2019-2020/bills/3125.htm)

<sup>5</sup> Brendan O'Connor, [Koch Brothers' Former Right-Hand Man's New Gig: Helping Reactionaries Dismantle the Constitution](#), *Fusion*, June 12, 2017.

Arn Pearson, [Koch Convention to Rewrite Constitution Runs into Roadblocks](#), *Exposed by CMD*, June 12, 2017.

<sup>6</sup> [https://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency?utm\\_campaign=falcon&mbid=social\\_twitter&utm\\_social-type=owned&utm\\_medium=social&utm\\_brand=tny&utm\\_source=twitter](https://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency?utm_campaign=falcon&mbid=social_twitter&utm_social-type=owned&utm_medium=social&utm_brand=tny&utm_source=twitter)

<sup>7</sup> Holley Ulbrich. Opinion: Why proposed Convention of States is a bad idea. Greenville News. 13 Aug 2020. <https://www.greenvilleonline.com/story/opinion/2020/08/13/why-convention-states-bad-idea/3353570001/>

Consumer protections also would be crippled – the federal government would not work to ensure that banks and loan companies accurately represent the terms of their contracts, and federal regulation of the safety of everything from autos to baby carriages would end.

Federal protections for employees would be gutted, from OSHA regulations to protected rights of labor organizing. There could be no federal minimum wage.

However, it isn't all about money. There is yet another very distressing aspect of these charges of "federal overreach." This is an attempt to cripple the federal government's ability to protect the civil rights of all Americans. To some, "federal overreach" has long meant federal restraints on employment discrimination by private businesses on the basis of race, gender and sexual preference, disabilities, or age. This "federal overreach" also includes federal restraints on discrimination against customers of restaurants, bowling alleys, motels and hotels, real estate markets, and other businesses.

The Bill of Rights could be edited. Restraints on gun ownership could be explicitly acknowledged. States could become free to prohibit gun ownership of any kind or to impose limits far more stringent than currently available. Free speech could be curtailed. An approved religion could be established, to the disadvantage of all others. Everything could be open to change.

In a highly volatile political atmosphere, who would win the tug of war on issues like these? No one actually knows.

## Balancing the Budget

The balanced budget aspect of these resolutions is especially appealing to many and is the sole focus of some resolutions. The League of Women Voters supports prudent tax and budget reforms to bring revenue and expenditures into better balance. However, most supporters of federal balanced budget amendments wish to put many kinds of income, investment, and corporate tax increases off limits. This one-sided approach would lead inevitably to draconian budget cuts in many areas as well as substantial payroll tax increases for programs that the majority of Americans rely upon, like Social Security and Medicare.

Many balanced budget supporters like to imagine that the worst impact would be felt by others, people who are presumably less deserving than themselves. Not so.

The Congressional Budget Office (CBO) provides annual estimates of 10-year savings associated with various tax and spending measures.<sup>8</sup> Anyone who looks at the CBO list can see changes that they believe would be good policy decisions, but many more that would cut deeply into the security of working Americans. The CBO has shown that the greatest impact could be obtained by taxing employer contributions to employment-based health insurance, significantly increasing Social Security and Medicare payroll taxes on workers and imposing a 5% federal VAT tax on sales. There is so much more that would surely see significant cuts, from the Crop Insurance Program to the Department of Defense budget.

These changes would have a major impact not just on individuals but on communities and states, especially those that like South Carolina receive much more federal money than we send to

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<sup>8</sup> <https://www.cbo.gov/budget-options>

Washington. South Carolina's economy depends very heavily on the military, on retirees, on farm subsidies, and on much more that would surely be on the chopping block to achieve a balanced budget.

What about national emergencies? The uselessness of provisions that allow overriding the balanced budget requirement during national emergencies has been made clear during the COVID-19 pandemic. An effective response to emergencies, whether a pandemic or a hurricane, depends on having the plans, people, and resources in place before the emergency occurs, requiring on-going expenditures. As COVID-19 also shows, not being prepared is far more expensive in dollars, as well as lives, than permanent programs to ensure adequate emergency response.

In Summary, *What Would a Successful Convention of States Do in South Carolina?*  
If successful this effort will, among other things:

- **Badly Damage South Carolina's economy;**
  - In 2019 the Voice of America reported that SC receives \$11,890/person and sends \$6,882/person to the federal government.<sup>9</sup> Much of this federal spending would end and SC would suffer terribly through cuts in everything from income for our state's large retiree population to business assistance, from military installations to farm subsidies.
- **Damage the ability of the federal government to assist South Carolinians as draconian budget cuts become necessary and severely impact:**
  - Farm subsidies;
  - Small business assistance;
  - Medicare and retirement benefits;
  - Assistance to families in poverty (SNAP, Medicaid, etc);
  - Educational costs for at risk students;
  - Hurricane recovery;
  - Work of NIH, CDC, NEH and other public interest research agencies;
  - And much, much more.
- **Destroy the federal government's ability to regulate interstate commerce to:**
  - ensure needed consistencies in interstate commerce so that companies are not required to meet different standards in each state;
  - protect citizen employment rights when dealing with private businesses;
  - protect consumer rights when dealing with private businesses;
  - protect our environment from polluting businesses; and
  - protect consumers from faulty and dangerous products.
- **Require federal term limits, a move that will empower lobbyists, not citizens.**
- **Open the door to loss of civil liberties enshrined in the Bill of Rights.**
- **Radically reshape our nation by empowering the wealthy and corporations who would have far more latitude to act solely from self-interest.**

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<sup>9</sup> <https://www.voanews.com/usa/all-about-america/which-us-states-get-more-they-give#&gid=1&pid=3>

## Can this Succeed?

In short, yes this can succeed, either in full or in very damaging part.

### A Runaway Convention is a Real Possibility

Most scholars of constitutional law agree that a great danger of a constitutional convention is the inability of any state resolution or other measure to limit the scope of the convention once convened. Restrictions written into states resolutions are meaningless window dressing to make nervous legislators more comfortable voting for something that is, in fact, immensely dangerous. It is for this reason that there is no practical difference between Article V “balanced budget” convention resolutions and “Convention of States” resolutions.

Similarly, supposed restrictions on convention process are meaningless window dressing. Once convened, the convention is free to establish its own rules and procedures, unconstrained by verbiage in state resolutions.

### Would Amendments be Approved by the States?

Many supporters admit the legal danger of a runaway convention but argue that there is protection in the necessity of the convention submitting amendments for approval by three quarters of the states. What the supporters are counting on is obvious.

The same very deep pockets that are funding the resolution push would be back with a vengeance to pour money into pushing amendments generated by a Convention. If you tell the public that you are going to “balance the federal budget” and “rein in federal overreach” many citizens will happily lobby their legislators for approval, not understanding the potential harm to themselves and their state.

One supporter of these resolutions even testified to a SC Senate subcommittee in 2020 that no one should worry because the measures are only intended to frighten Congress into doing the right thing (or, as it happens in this case, the wrong thing).

**Legislators can’t be expected to draw the line at the next stage if they can be persuaded to vote for this terrible plan at this stage.**

**No one with any grasp of rational risk management would take this risk, with our entire system of government hanging in the balance.**

## In Conclusion

Assessing risk is always about considering both the probability that a worst-case scenario will actually occur and the magnitude of the harm if it does. In this case, the chances of realizing the worst intentions of convention supporters are higher than supporters would have us believe, and the magnitude of the potential harm that would be done if they succeed is immense.

However, we wouldn’t even need to get to that final point to tear the nation apart. Badly divided as we are today, just the process of establishing and conducting a convention would be the political equivalent of throwing a lit match into a pile of gas-soaked rags as our system of government and our constitutional rights are put up for grabs.

**Nothing before the South Carolina General Assembly equals these resolutions for the harm that they can do to our communities, our state, and our nation. They must be rejected this year and every year.**

## Resources:

League of Women Voters of the United States:

<https://www.lwv.org/fighting-voter-suppression/league-opposes-calls-article-v-constitutional-convention>

<https://www.lwv.org/fighting-voter-suppression/leagues-support-effort-rescind-call-article-v-convention-maryland>

<https://www.lwv.org/league-opposes-balanced-budget-amendment>

League of Women Voters of South Carolina

Holley Ulbrich. Opinion: Why proposed Convention of States is a bad idea. Greenville News. 13 Aug 2020. <https://www.greenvilleonline.com/story/opinion/2020/08/13/why-convention-states-bad-idea/3353570001/>

Common Cause:

<https://www.commoncause.org/resource/u-s-constitution-threat-to-fairness-ed-as-article-v-convention-movement-nears-success/>

SourceWatch

[https://www.sourcewatch.org/index.php?title=Convention\\_of\\_States\\_Action](https://www.sourcewatch.org/index.php?title=Convention_of_States_Action)

New Yorker Profile of Robert Mercer, Convention of States Funder

[https://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency?utm\\_campaign=falcon&mbid=social\\_twitter&utm\\_social-type=owned&utm\\_medium=social&utm\\_brand=tny&utm\\_source=twitter](https://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency?utm_campaign=falcon&mbid=social_twitter&utm_social-type=owned&utm_medium=social&utm_brand=tny&utm_source=twitter)

Esquire Magazine on Koch and Convention of States

<https://www.esquire.com/news-politics/politics/a14841457/convention-of-states-campaign-secession/>