

LWVUS Constitutional Amendment Study

(Consensus SUMMARY)

During 2015 the LWVUS is conducting a study and member agreement process on amending our nation's Constitution and what constitutes an appropriate and well-crafted amendment.

This study of amending the U.S. Constitution is in three parts:

- I. Guidelines for evaluating constitutional amendment proposals.
- II. Aspects of an Article V Constitutional Convention
- III. How the League might put these guidelines into practice, and how we balance our competing values for policies and processes.

An in-depth Study Guide has been provided at: <http://forum.lwv.org/member-resources/article/constitutional-amendment-study-guide>.

The Study Guide provides in depth questions, background, arguments for and against and a complete reading list for each question. This is the material to be discussed at Unit meetings. **We recommend reading the entire study guide from the online source. Members without internet access can call the League office to have a copy mailed to them.**

In the Cincinnati area, units will meet to provide consensus feedback to LWVUS by December 1. In order to introduce LWVCA members to the subject, the Study Guide is briefly summarized here.

Constitutional Background

Article V of the US Constitution provides two ways of proposing amendments to the nation's fundamental charter.

- Congress, by a two-thirds vote of both chambers, may propose constitutional amendments to the states for ratification; OR
- The legislatures of two-thirds of the states (34 at present) may ask Congress to call a convention to propose amendments to the Constitution; this is commonly called an Article V Convention.

Amendments proposed by either method must be ratified by three-fourths of the states, either by state legislatures or through conventions in the states.

The first method has been used by Congress to submit 33 amendments to the states, beginning with the Bill of Rights. The second method, an Article V Convention, has never been successfully invoked.

US CONSTITUTION ARTICLE V:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof . . .

US Constitution 1787

League Background

The League of Women Voters believes it is right and permissible to amend the Constitution when circumstances demand. The question is: what circumstances might allow or compel the League to endorse a constitutional amendment or an Article V Convention?

The League has strong protocols for determining its advocacy agenda, as laid out in [Impact on Issues](#). So for any proposed amendment, the first question to ask is whether League positions support the proposed amendment, but even if the answer is an unqualified “yes,” we need to examine other factors.

We might support an amendment that is in concert with League positions, but we might not support every amendment that is in concert with League positions. ***Having a position on the issue is necessary but might not be sufficient for the League to endorse a constitutional amendment.***

What factors would lead the League to endorse a constitutional amendment?

Part I: Evaluating Constitutional Amendment Proposals

Many believe the Constitution to be a near-sacred document, only to be amended in the most serious circumstances. Do we agree? **Under what circumstances is it appropriate to amend the Constitution? What makes a sound and well-crafted amendment proposal?**

- 1a) Is it important to exercise restraint, amending the Constitution only in the most serious circumstances?
- 1b) Is it important to consider whether an amendment will achieve its intended policy outcome? Or is it valid to just set out principles for later interpretations by the Courts?
- 1c) Should constitutional amendment be limited to the fundamental goals 1) making our political system more democratic or 2) protecting individual rights, or can other purposes drive amendments?
- 1d) Should the amendment process be limited to circumstances where there is no other course of action, or can it be considered one of multiple strategies to achieve policy goals?
- 1e) Are constitutional amendments only suited to overall value statements that are subject to court interpretations, or can they have specific statutory detail for implementation?

Part I Foundation Readings

- [Synopsis of “Constitutional Amendments and the Constitutional Common Law” by Adrian Vermeule.](#)
- [Synopsis of “Constitutional Amendmentitis” by Kathleen Sullivan.](#)

Part II: Aspects of a Constitutional Convention

In an Article V Constitutional Convention, legislatures of two-thirds of the states ask Congress to call a convention to propose amendments to the Constitution.

An Article V Convention has never been successfully invoked. There is a debate among scholars as to whether a Constitutional Convention can – or should-- be controlled in any way. Congress has not passed any legislation to clarify, and the U.S. Supreme Court has refused to hear cases related to amendment procedures, calling such questions political.

Would the League support an Article V Convention? If so, under what circumstances?

- 2a) Would we require that “open meetings” and “freedom of information” rules should be in place for a Constitutional Convention, or would we allow for executive session private negotiations?
- 2b) Should representation at the Convention be based on state population or a set number per state?
- 2c) Should state delegations be elected or appointed?
- 2d) Should voting at the Convention be individual or by state?
- 2e) Should the Convention be limited to a specific topic, or open to any topic the delegates choose?
- 2f) In determining whether two thirds of states have called for a Convention, would Congress count every state resolution regardless of topic, or only the states that ask for a Convention on the same topic?
- 2g) Can state legislatures rescind their call for a Convention?
- 3) Should the League oppose an Article V Constitutional Convention regardless of topic because of unresolved questions about the powers and processes of such a convention?

Foundation Readings

- “The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress,” Thomas H. Neale, Congressional Research Service Report R42589, <http://fas.org/sgp/crs/misc/R42589.pdf>
- “The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives,” Thomas H. Neale, Congressional Research Service Report R42592, <http://fas.org/sgp/crs/misc/R42592.pdf>

Part III: Balancing Questions

How can the League put the guidelines from Part I and Part II into practice? How do we balance our values for process and positions? Are there circumstances where our commitment to a policy outcome could overcome our evaluation guidelines?

Should the evaluation guidelines and process criteria always be applied or may they be set aside in the overall context of any particular amendment proposal? Would we relax our standards to stand with allies to support a policy goal? Can the end justify the means?

Should the League consider supporting a constitutional amendment that will advance a League position if we are committed to the policy goal BUT:

- 4a) There are significant problems with the amendment as written? (Not an appropriate or well-crafted amendment; does not meet Part I guidelines)
- 4b) The amendment is being put forward through a process the League opposes. (Does not meet our criteria for whether and how an Article V Convention should be called; does not meet Part II guidelines)

Bibliography for Part III

- “Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change,” The Constitution Project at the Century Foundation, <http://www.constitutionproject.org/wp-content/uploads/2012/09/32.pdf>, pp. 1-11
- Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution, Mary Frances Berry, Indiana University Press, 1988

Once again, a reminder – for a more thorough discussion of the issues under consideration, please read the entire study guide at <http://forum.lwv.org/member-resources/article/constitutional-amendment-study-guide>; or call the League office to have a copy mailed to your home.