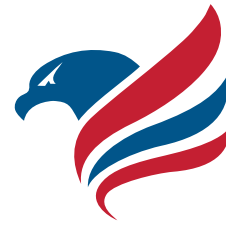


# Policy Brief

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COMPACT FOR AMERICA

## FAQ Series: Doesn't the Article V Convention Draft the Amendment?

By Nick Dranias

### Introduction

It is a common belief that the convention called by Congress in response to the application of two-thirds of the State legislatures under Article V of the U.S. Constitution has the job of drafting the amendment(s) to be proposed. This belief has its origins in the contention that conventions inherently have wide-ranging deliberative authority that cannot be constrained to a specific pre-drafted amendment. But the overwhelming weight of the evidence indicates that the Article V convention was ordinarily meant to propose the amendment or amendments specified by two-thirds of the State legislatures in their call-triggering *application*. This evidence consists of the drafting history of Article V, the meaning and usage of the word “application” and “convention,” and the contemporaneous statements of the Founders and Framers at the time the Constitution was ratified and soon thereafter.<sup>1</sup>

### The Textual Implications of Article V's Drafting History

The relevant portion of the final draft of Article V says: “The Congress . . . on the Application of the legislatures of two thirds of the several states, shall

call a convention for proposing amendments . . .” But the drafting history of Article V shows that the immediately preceding version said: “The Congress . . . on the Application of the legislatures of two thirds of the several states, shall propose amendments . . .”<sup>2</sup>

As shown above, in both instances the “Application” of state legislatures would prompt an amendment proposal by another body. In the next-to-last version of Article V, the “Application” would prompt *Congress* to propose amendments. In the final version of Article V, the “Application” would prompt Congress to call a convention for proposing amendments.

Some have contended that this shift in the proposing body from Congress to a “convention” indicated a desire to deprive state legislatures of the ability to formulate and seek the proposal of desired amendments. This contention is easily disproven by a closer look at the text and drafting history of Article V.

Notice that in the next-to-final version of Article V, the “Application” would have supplied any amendment for Congress to propose. Congress could not have been *both* a drafting *and* proposing body on “Application” of the state legislatures because this same version of Article V already gave Congress the power to draft and propose amendments on approval of two-thirds of each House. It would be redundant to give Congress yet another power to draft and propose amendments.

A redundant interpretation of Congress's Article V

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powers in this next-to-final version of Article V is only avoided if the state's "Application" were to supply the desired amendments for proposal. Congress was obviously meant to serve only as the coordinating instrumentality for the proposing of any amendment specified in the states' application in this next-to-final version of Article V.

Although a "convention" replaced Congress as the proposing body in the final version of Article V, nothing in the text indicates that the role of the "Application" would have changed. On its face, there is every reason to believe that the "Application" would continue to specify one or more desired amendments, with the sole substantive difference being that the proposing body would be a convention rather than Congress itself.

Likewise, there is no indication in the drafting history of Article V that the proposing convention would necessarily assume amendment drafting authority denied to Congress in the next-to-final version of Article V; much less that it would have the inherent power to disregard the wishes of state legislatures in seeking the proposal of specific amendments as specified in their Application. The sole rationale for switching the proposing body from Congress to a convention was George Mason's objection that Congress could not be counted on to propose the amendments desired by the people (which was a common way of referring to the representative role of the states in the founding era).

In other words, in replacing Congress with a proposing convention, a more reliable proposing body was being sought by Mason and others. Nothing indicates the proposing convention would do anything other than better guarantee the proposal of desired amendments than Congress would. The notion that a proposing convention would necessarily function as a drafting convention is thus unfounded in the drafting history of Article V.

## **The Meaning of "Application" Confirms the Article V Proposing Convention Can be Limited to Proposing a Specific Amendment or Amendments Sought by the States**

The role of the Article V application in specifying desired amendments for proposal by convention is also entirely consistent with the custom and practice associated with applications from the states during the founding era. Applications were commonly made by states at the time to the Continental Congress. To

prove this point, Appendix A to this policy brief includes a selection of records from the Journal of the Continental Congress from 1778 through 1788.<sup>3</sup>

## ***The notion that a proposing convention would necessarily function as a drafting convention is unfounded in the drafting history of Article V.***

As shown in Appendix A, it was typical of an application from the states or a state legislature to include very specific requests for action by Congress. In fact, Appendix A includes references to applications:

- by the states of New Jersey, Massachusetts-Bay and Connecticut for various amounts of money;
- for food and supplies by the state of Massachusetts-Bay;
- for various forms of military support by the states of Connecticut and New York;
- for congressional assistance with the settlement of local disputes by the states of New York and New Hampshire;
- for a legislative change by the state of Virginia; and
- for participation in an ongoing "convention" by the state of Pennsylvania.

Of these applications, the most notable is the application of the legislature of the state of Pennsylvania to participate in a "convention" concerning ongoing Indian treaty negotiations. As shown on pages 18 and 19 of Appendix A, this application specifically requested authorization for the state of Pennsylvania to participate in that "convention" through state-appointed commissioners authorized to purchase

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Indian lands on behalf of the state.

It would be incongruous with this customary usage to suggest that an Article V application would not similarly advance a specific request for a desired action, such as the organization of a convention for the proposal of a desired amendment through delegates with specified legal authority.

Indeed, the parallel usage of the term “Application” in section 4 of Article IV of the U.S. Constitution confirms that the Constitution did not deviate from this standard usage of “application.” There, state legislatures or executives have the power to make an “Application” to compel the federal government to assist in suppressing domestic violence. Such an application obviously would have to be very specific in its request in order for the federal government to know what to do (as were similar applications for military support evidenced in Appendix A). Likewise, it is far more reasonable to construe an Article V application as meant to include a specific direction for the proposal of a desired amendment at an Article V convention, rather than serving as an substantively empty procedural trigger to authorize the calling of a convention to do whatever it wants.

### **The Meaning of “Convention” Is Consistent with the Article V Proposing Convention Being Limited to the Application’s Request**

This naturally raises the question: Why have a convention do the proposing instead of just having two-thirds of the state legislatures directly propose amendments for ratification by three-fourths of the states? In response, first of all, it is important to emphasize that conventions did not have the significance we ascribe to them today. The word convention was simply a synonym for an assembly. It did not necessarily entail any special autonomous power by virtue of being a “convention.” You can see this by reviewing the term in 18th century dictionaries here.<sup>4</sup> Appendix A at pages 18 and 19 evidences this fact with a specific reference to a “convention” organized solely to negotiate an Indian treaty.

Further, the fact that conventions could be organized for the limited purpose of ratifying a specific amendment (as per the authority in Article V for ratification by “convention”) further demonstrates that no one at the founding era thought conventions inherently have autonomous drafting power or authority. There was no “convention fairy” sprinkling limitless deliberative authority or sovereign power on assemblies of state or federal representatives during the Founding Era.

Secondly, the need for a proposing convention is made obvious when one considers the limitations of 18th century technology. There was no modern instantaneous communication. Some means of ensuring that the amendment or amendments specified in the application of two-thirds of the state legislatures would actually be proposed had to exist. The convention was introduced into the language of Article V simply to ensure that what was proposed was actually what the states asked-for in their application. In other words, the “convention” was meant to be an assembly that would serve as a coordinating instrumentality for the states in proposing the amendments specified in the application. Why? Because, as per Mason’s commentaries at the Philadelphia Convention, Congress was not trusted as the proposing body; it was trusted only to serve as a handmaiden of the states in calling the proposing convention. Right or wrong, asking Congress to propose amendments that could threaten its own power on application of the states was thought to be more likely to result in noncompliance by Congress than asking Congress to undertake the discrete ministerial duty of calling a convention on a similar application of the states.

### **The “Six Founder Quotes” Confirm the Article V Application was Able to Specify Any Amendment to be Proposed**

The evidence that this interpretation of Article V conforms to original intent and public understanding is pretty overwhelming. All one needs to do is consider the six statements made by the Founders on the matter as evidence of the public understanding of the provision:

1. George Washington's representation in his April 25, 1788 letter to John Armstrong that "nine states" can get the amendments they desire, which is consistent with the interpretation that two-thirds of the states (then nine) would specify the desired amendments in their Article V application and target the convention agenda accordingly.<sup>5</sup>
2. Federalist George Nicholas' June 6, 1788 statement at the Virginia convention that state legislatures would apply for an Article V convention confined to a "few points;" and that "it is natural to conclude that those States who will apply for calling the Convention, will concur in the ratification of the proposed amendments." Notice how Nicholas' conclusion is only "natural" with the expectation that the states would typically organize a convention after first agreeing on one or more amendments specified in their Article V application.<sup>6</sup>
3. Tench Coxe's June 11, 1788 statement that: "If two thirds of those legislatures require it, Congress must call a general convention, even though they dislike the proposed amendments, and if three fourths of the state legislatures or conventions approve such proposed amendments, they become an actual and binding part of the constitution, without any possible interference of Congress." Coxe further explained: "Three fourths of the states concurring will ensure any amendments, after the adoption of nine or more." Notice that these statements indicate that two-thirds of the states would specify and agree on the desired amendments in their Article V application *before any convention was called*.<sup>7</sup>
4. James Madison's representation in Federalist No. 43 that the power of state governments to originate amendments is equal to that of Congress, which could only be true if the Article V application had the power to specify and target the convention to desired amendments.<sup>8</sup>
5. Alexander Hamilton's representations in Federalist No. 85 that all amendment proposals under Article V, logically including even those originated by the states, would be brought forth without "giving or taking" and "singly;" that "nine" states [then two-thirds] would effect "alterations," that "nine" states would effect "subsequent amendment" by setting "on foot the measure," and that we can rely on state "legislatures" to erect barriers. These statements all anticipate the amendment-specifying power of an Article V application, which alone is entirely controlled by two-thirds of the states through their legislatures; as well as a narrow and preset agenda for an Article V convention.<sup>9</sup>
6. James Madison's 1799 Report on the Virginia Resolutions, which observed that the states could organize an Article V convention for the "object" of declaring the Alien and Sedition Acts unconstitutional. Specifically, after highlighting that "Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose," Madison wrote both that the states could ask their senators to propose an "explanatory amendment" clarifying that the Alien and Sedition Acts were unconstitutional, and also that two-thirds of the Legislatures of the states "might, by an application to Congress, have obtained a Convention for the same object." Again, the Application is the stated source of the desired amendment, and the anticipation is that the proposing convention would be targeted to a specific amendment and its authority so narrowly tailored as to propose an amendment that would clarify that a specific law was unconstitutional.<sup>10</sup>

**The Application's Authority to Limit the Article V Proposing Convention to a Specific Amendment Best Explains Madison's Fearful "Letter to Turberville"**

One of the most vexing pieces of evidence for the Article V movement is Madison's famous letter to Turberville dated November 2, 1788. That letter

expressed great fear about the State of New York's proposal to convene a "second convention."<sup>11</sup> But Madison's expressed fear is easily reconciled with his support for states organizing an Article V convention to propose a clarifying amendment declaring the unconstitutionality of the Alien and Sedition Acts. Simply put, there is nothing inconsistent about Madison opposing New York's effort to organize a "second convention" to address roughly two dozen amendment topics when his view, as expressed in Federalism No.

43, was that state governments had the same authority to propose specific amendments as Congress. Madison obviously preferred states exercising their amendment power in a targeted fashion

similar to that of Congress. He supported organizing an Article V convention to propose one amendment specified in the states' application, and opposed the organization of a wide-ranging convention that could draft and propose dozens of amendments, potentially scuttling the Constitution.

Madison's preference for organizing an Article V convention focused on proposing a specific amendment was shared by Alexander Hamilton. Significantly, in Federalist No. 85, Hamilton clearly differentiated the Article V amendment process from convening a convention to establish a new constitution, stating: "There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."<sup>12</sup>

Hamilton also wrote: "every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And

consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place."

Notice that Hamilton wrote of "every amendment" — logically including even an amendment to be proposed by an Article V convention—as being "brought forth" as a "single proposition." This is fully consistent with Washington's understanding that nine states (then two-thirds) could specify desired amend-

ments in their Article V applications. Notice also that Hamilton discounted the "necessity" of "giving and taking" in the amendment process, without qualifying that statement in regard to an Article V convention; there-

by rejecting the notion that the convention process is necessarily one in which there is freewheeling deliberation. Indeed, Hamilton's reference to "nine, or rather ten states" was clearly meant to emphasize that the states would unite in the desire for a particular amendment either through the Application ("nine" states, then two thirds) or through the ratification process ("ten" states, then three fourths).

Hamilton further cemented his promise that the states could target the Article V convention process with this statement: "Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."

Again, notice that Hamilton referenced the convention application process ("two thirds") as being an instance in which the states would "unite . . . in amendments." Hamilton's statement about relying on

**Madison supported organizing an Article V convention to propose one or more amendments specified in the states' application, and opposed the organization of a wide-ranging convention that could draft and propose dozens of amendments.**



“state legislatures to erect barriers” is also undoubtedly a representation that the states would target the Article V convention mode of proposing amendments through their applications. Why? Because the only way Hamilton’s statement can be taken as true is if it were in reference to the power state legislatures have to apply for a convention for proposing amendments. This is because only the application portion of the Article V process is entirely controlled by state legislatures. In contrast, there is no guarantee whatsoever that state legislatures can “erect barriers” through the ratification process because Congress, not state legislatures, chooses between ratification by state legislature or by in-state convention. Thus, it would be a false statement to say that we can rely on “state legislatures to erect barriers” through the ratification process. Therefore, when Hamilton wrote we could rely on “state legislatures to erect barriers” he could have only been referring to the power of state legislatures to use the Article V convention application process to “erect barriers” against the national authority.

Yet more confirmation that the Founders understood that states held the power to target the Article V convention to one or more desired amendments in their application is found in Hamilton’s footnote to the phrase “thirteen to nine” in the following observation in Federalist No. 85: “If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine[fn] in favor of subsequent amendment, rather than of the original adoption of an entire system.”

Significantly, Hamilton’s footnote says: “It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify.” The colorful reference that “two thirds may set on foot the measure” confirms that the “Application” (which alone requires action by “nine,” then two-thirds, of the state legislatures) will set “on foot” the “alterations” to be “effected.” This representation is still more evidence of the view that the Article V convention would *and should* be targeted by the “Application”

to one or more specific amendments. In sum, both Madison and Hamilton expected and preferred the Article V convention to propose the amendment or amendments specified in the “Application” triggering the convention call, rather than to engage in a freewheeling “second convention” that would itself draft and propose dozens of amendments.

### **States Used to Understand the Power of their Application to Request the Proposal of Any Specified Amendment (and More).**

There was a time when the states fully understood the power of their Article V Application to request the organization of a convention for the proposal of a desired amendment. They even understood that they could specify desired convention rules in their application, which would necessarily be embraced by the Congressional call it triggered. Appendix B includes two examples of just such an application, passed by the States of Texas and Indiana, respectively, in the 1950s. As you can see, those applications both specified the amendment to be proposed at the convention and the voting rules for the convention, as well as other logistical matters. More than a half-century ago, Indiana and Texas understood and followed the Founders’ repeated injunctions about how to use Article V.

### **Conclusion**

The bottom line is that all of the foregoing evidence is unified by an interpretation of Article V in which the “Application” should specify the amendment to be proposed, and the convention serves as a coordinating instrumentality in proposing that amendment. The foregoing evidence is *not* consistent with the interpretation that the Application has no substantive content and the convention has authority to do whatever it wants (or otherwise has exclusive amendment drafting authority). There was a time when the states like Indiana and Texas recognized this fact. They were right. Moreover, the Compact for America approach of applying under Article V for a specific amendment (and using an interstate agreement to ensure that the resulting Article V convention

is strictly limited to proposing that amendment) is fully consistent with the original meaning of the Constitution.<sup>13</sup>

# # #

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## Endnotes

1. The Records of the Federal Convention of 1787, vol. 2, 629–634 (Max Farrand, ed. 1911), available at <http://oll.libertyfund.org/titles/farrand-the-records-of-the-federal-convention-of-1787-vol-2>.
2. See 2 Records of the Federal Convention of 1787 (Farrand edit., 1966 ed.) pp. 559, 629–630.
3. See e.g., A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 – 1875, Journals of the Continental Congress, Vol. 10, p. 161 (1778), Vol. 11, pp. 675–76 (1778), Vol. 13, p. 257 (1779); Vol. 14, pp. 630, 674, 801 (1779), Vol. 16, p. 341 (1780), Vol. 22, p. 115 (1782), Vol. 25, pp. 717–18 (1783), Vol. 27, p. 487 (1784), Vol. 34, p. 145 (1788), available at <https://memory.loc.gov/ammem/hlawquery.html>.
4. See e.g., Giles Jacob, The Law-Dictionary: Explaining the Rise, Progress, and Present State, of the English Law, in Theory and Practice; Defining and Interpreting the Terms or Words of Art; and Comprising Copious Information, Historical, Political, and Commercial, on the Subjects of Our Law, trade, and Government, vol. 1 at cxcvii (T.E. Tomlins, ed. 1797), available at <https://books.google.com/books?id=niZPAAAYAAJ&printsec=frontcover&dq=dictionary+law&hl=en&sa=X&ved=0ahUKEwj13dO66arKAhXFWCYKHUjYB7wQ6AEIVjAH#v=onepage&q&f=false> (defining a convention as “a parliament assembled, but in which no act is passed, or bill signed.”).
5. Letter from George Washington to John Armstrong, 25 April 1788 [http://media.wix.com/ugd/e48202\\_afa4f22939c94cb58a7bee a7ee966a49.pdf](http://media.wix.com/ugd/e48202_afa4f22939c94cb58a7bee a7ee966a49.pdf)
6. The Debates in the Several State Conventions of the Adoption of the Federal Constitution, vol. 3 at 101–02 (Virginia) (Johnathon Elliott Ed., 1827), available at [files.libertyfund.org/files/1907/1314.03\\_Bk.pdf](http://files.libertyfund.org/files/1907/1314.03_Bk.pdf).
7. The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009.

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8. The Federalist No. 43, (James Madison) (Gideon ed., 1818) available at [oll.libertyfund.org/?option=com\\_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27).

9. The Federalist No. 85, (Alexander Hamilton) (Gideon ed., 1818) available at [oll.libertyfund.org/?option=com\\_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27).

10. "From James Madison to Thomas Jefferson," 18 Jan. 1880, in *The Writings of James Madison*, vol. 6 1790–1802, 347, 403–04 (Gaillard Hunt, ed. 1906), available at [http://files.libertyfund.org/files/1941/1356.06\\_Bk.pdf](http://files.libertyfund.org/files/1941/1356.06_Bk.pdf).

11. "From James Madison to George Lee Turberville, Nov. 2, 1788, available at <http://founders.archives.gov/documents/Madison/01-11-02-0243>

12. The Federalist No. 85, (Alexander Hamilton) (Gideon ed., 1818) available at [oll.libertyfund.org/?option=com\\_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=788&chapter=108643&layout=html&Itemid=27).

13. Similar conclusions have been reached by other scholars. Michael B. Rappaport, "The Constitutionality of a Limited Convention: An Originalist Analysis," *Constitutional Commentary*, Vol. 81 (2012), p. 53; Mike Stern, "Reopening the Constitutional Road to Reform: Toward a Safeguarded Article V Convention," *Tennessee Law Review* 765 (Spring 2011), p. 78; Note, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, *Harvard Journal of Law and Public Policy* 30 (2007), pp. 1005, 1022.



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**Appendix A**  
**(Examples of the Custom and**  
**Usage of “Application” by States**  
**during the Founding Era as**  
**Evidenced by the Journals of**  
**the Continental Congress)**

of 3 [2] July, from Colonel Butler, of Westmoreland, which were read:<sup>1</sup>

Whereupon,

*Resolved*, That the Board of War be directed to send for and confer with the Seneca chiefs who have lately quitted the city of Philadelphia, to enquire in what character and with what views they have come among us, whether as representatives or ambassadors of the Seneca nation; and whether the Seneca nation, as such, have committed hostilities against us, and report specially and immediately to Congress.

A letter, of 30th June, from General Heath, was read, with copy of a letter of 18 May, from B. Franklin and J. Adams, Esqrs. commissioners of the United States at Paris:

*Ordered*, That the letter from B. Franklin and John Adams, Esqrs. be published.

*Ordered*, That the cloathier general, or in his absence, his deputy in Philadelphia, be directed immediately to make out and lay before Congress an exact and particular invoice of all and every kind of the goods, wares, and merchandises which have been purchased or taken up by the cloathier general or any of his deputies within this city, together with a list of the names of the persons of whom they have been purchased, or from whom taken, and the prices at which they were purchased.

*Resolved*, That the governors of Maryland and Virginia be severally requested to take proper measures for giving the earliest intelligence to any French fleet or ships of war that may appear off the Bay of Chesapeake, of a fleet of British ships of war being ready to sail for North America, as by the information transmitted from the American commissioners at Paris; and that they be

<sup>1</sup>The letter of Butler is in the *Papers of the Continental Congress*, No. 78, II, folio 501.

respectively desired to accommodate any such French fleet or ships of war with good pilots for bringing them safely into the Bay, should they incline to come there:

That a similar request and proper advice be transmitted to each of the governors of North and South Carolina, and Georgia.

An application being made for an advance of 200,000 dollars to the State of New Jersey,

*Ordered*, That it be referred to the Board of Treasury.  
Adjourned to 9 o'Clock to Morrow.<sup>1</sup>

THURSDAY, JULY 9, 1778

Mr. Andrew Adams, a delegate from Connecticut, attended, and took his seat in Congress.

A letter, of 7, from General Washington, at Brunswick, was read: Whereupon,

*Ordered*, That the committee appointed to arrange the army, repair, without delay, to General Washington's head quarters, and proceed on the business committed to them.

A letter from Major Romand de Lisle, [dated Savannah, April 4] was read:<sup>2</sup>

*Ordered*, That it be referred to the Board of War.

A memorial from officers belonging to different regiments of the State of Pennsylvania, was laid before Congress:

*Ordered*, That it be referred to the committee of arrangement.

A memorial from the lieutenants and masters in the navy and captains of marines, was read:

<sup>1</sup> A letter from Ethan Allen, dated June 17, was received on July 2, and ordered to lie on the table July 8. It is in the Library of Congress, *United States Revolution*, IV.

<sup>2</sup> The letter of Washington is in the *Papers of the Continental Congress*, No. 152, VI, folio 163; that of Romand de Lisle is in No. 78, XIX, folio 241.

some contingent expences, a ballance of two hundred and thirty four dollars and 50/90.

That there is due to William Hurrie, his account paid for sawing and piling 22 cords of wood for the use of Congress, eighty three dollars.<sup>1</sup>

*Ordered*, That the said accounts be paid.

The committee to whom was re-committed the report of the committee on an application from the State of Massachusetts bay, &c. respecting a supply of provisions, brought in a report; Whereupon, Congress came to the following resolutions:

Whereas it is represented to Congress, that the inhabitants of the states of Massachusetts bay, and Rhode Island and Providence Plantations, are distressed for want of bread, and cannot obtain supplies except from Maryland, Virginia, North Carolina and South Carolina: and, whereas, a private trade for grain and flour between the said states might be injurious and ineffectual:

*Resolved*, That it be recommended to the executive powers of Maryland, Virginia, North Carolina and South Carolina, at their discretion, to permit the executive powers of Massachusetts bay, and Rhode Island and Providence Plantations, to purchase and export, under proper regulations, such quantities of grain or flour as they may judge expedient, and may be able to spare respectively.

A motion having been made to strike out the word "North Carolina;" and on the question that it stand part of the report, the yeas and nays being required by Mr. [Thomas] Burke,

<sup>1</sup> This report, dated February 24 and signed by B. Smith and William Geddes, is in the *Papers of the Continental Congress*, No. 136, III, folio 117.

cent. per annum, transmitting duplicate receipts to the Board of Treasury:

That upon application from the State of Massachusetts bay, a warrant issue on the treasurer in favor of Mr. John Lowell, for 800,000 dollars, the said State to be accountable, and to repay 500,000 dollars thereof to the commissioner of the continental loan office of the said State in the month of August next, with interest at six per cent. per annum, transmitting duplicate receipts to the Board of Treasury:

That upon application from the State of Virginia, a warrant issue on the treasurer in favor of John Moss, Esq. for 300,000 dollars, the said State to be accountable, and to pay a like sum to the commissioner of the continental loan office thereof in the month of August next, with interest at six per cent. per annum, transmitting duplicate receipts to the Board of Treasury.

*Resolved*, That the auditors of the army be authorized to increase the pay of such of their clerks as may merit the same, to a sum not exceeding 120 dollars per month, according to their respective abilities.

*Resolved*, That all continental officers who are or may be exchanged, and not continued in the service, be, after such exchange, considered as supernumerary officers, and entitled to the pay provided by a resolution of Congress, of the 24 November last.

That John Holker, Esq<sup>r</sup> be authorized, agreeable to his proposition, to order a sum not exceeding five hundred thousand dollars to be paid in South Carolina to the order of the Executive Council of that State; that upon producing to the Board of Treasury a receipt for

the money so paid he be entitled to a warrant on the  
**Postponed.**

Continental Treasurer for a like sum, and that the said State repay the same to the Commissioner of the Continental Loan Office thereof in the Month of August next, with interest at 6 p<sup>r</sup> cent p<sup>r</sup> annum, transmitting duplicate receipts to the Board of Treasury.<sup>1</sup>

<sup>1</sup> This report, dated May 18, is in the *Papers of the Continental Congress*, No. 136, III, folio 319.

county, the letter of Colonel Patterson to Governor Clinton, Governor Clinton's answer, &c. and have come to sundry resolutions thereon, which he was ordered to report:

The report being read, Congress thereupon came to the following resolutions:

Whereas divers applications have been made to Congress on the part of the State of New York and of the State of New Hampshire, relative to disturbances and animosities among inhabitants of a certain district known by the name of "the New Hampshire Grants," praying their interference for the quieting thereof; Congress having taken the same into consideration,

*Resolved*, That a committee be appointed to repair to the inhabitants of a certain district known by the name of New Hampshire Grants, and enquire into the reasons why they refuse to continue citizens of the respective states which heretofore exercised jurisdiction over the said district; for that as Congress are in duty bound on the one hand to preserve inviolate the rights of the several states, so on the other they will always be careful to provide that the justice due to the states does not interfere with the justice which may be due to individuals:

That the said committee confer with the said inhabitants, and that they take every prudent measure to promote an amicable settlement of all differences, and prevent divisions and animosities so prejudicial to the United States.

*Resolved*, That the further consideration of this subject be postponed until the said committee shall have made report.

*Ordered*, That they report specially and with all convenient speed.

Previous to passing the first resolution,

A motion was made by Mr. [John] Henry, seconded by Mr. [William] Carmichael, to strike out the word "several," and in lieu thereof insert "United;" and, on the question, shall



Whereas by a resolution of Congress, passed the 22d day of May last, upon application of the State of Connecticut, a warrant issued on the treasury in favour of their delegates, for one hundred and fifty thousand dollars, the said State to be accountable, and to repay the same to the commissioner of the continental loan office, in the month of August next, with interest at six per cent. And whereas his excellency Jonathan Trumbull, Esq. governor of the said State, has represented to Congress, that before the arrival of the said money, other provision was made for the purpose of the said application, but as orders for recruiting their quota of the deficiency of the continental army are issued, and no money transmitted for that purpose, the general assembly of the said State request that Congress will charge the said State with the said loan, not as a loan according to the first intention, but on account of recruiting and cloathing their quota of the deficiency of the continental troops aforesaid, without any charge of interest:

*Resolved*, That the said request be complied with, and the money so received be charged to the said State as so much advanced for recruiting and cloathing their quota of the deficiency of continental troops, and for which the said State is to be accountable.

*Ordered*, That a warrant issue on the treasurer of the State of Connecticut, in favour of his excellency Jonathan Trumbull, Esq. governor of the said State, for two hundred thousand dollars, for the purpose of supplying cloathing for their quota of troops in the Continental line, to be paid out of moneys in the hands of the said treasurer, collected for the use of the United States; for which sum of 200,000 dollars the said State is to be accountable.

*Resolved*, That his excellency the governor and council of Connecticut be requested, if they shall judge it expedient,

<i>New Hampshire,</i>			<i>New Jersey,</i>		
Mr. Peabody,	no	} div.	Mr. Fell,	no	} no
Folsom,	ay		Houston,	no	
<i>Massachusetts Bay,</i>			Clark,	no	
Mr. Lovell,	ay	} ay	<i>Pennsylvania,</i>		
Holten,	ay		Mr. Muhlenberg,	no	} no
Partridge,	ay		<i>Virginia,</i>		
<i>Rhode Island,</i>			Mr. Griffin,	no	} no
Mr. Ellery,	no	} no	Madison,	no	
Collins,	no		<i>North Carolina,</i>		
<i>Connecticut,</i>			Mr. Burke,	no	} no
Mr. Huntington,	no	} no	Jones,	no	
Sherman,	no		<i>South Carolina,</i>		
Ellsworth,	no		Mr. Mathews,	no	} no
<i>New York,</i>			Kinloch,	no	
Mr. Scott,	no	} div.			
Schuyler,	ay				

So it passed in the negative.

On the question to agree to the main question, the states were equally divided and the question was lost.

The next paragraph of the report was read, viz.

That upon the application of the State of Massachusetts Bay by their delegates in Congress, representing that the said State had incurred a very heavy expence for repelling a late invasion of Penobscot in the said State by the common enemy, and requesting that part of the monies raised by the said State for the United States might be retained until the accounts of the expence aforesaid could be prepared and submitted to the consideration of Congress; it be resolved,

That a warrant issue on the treasurer of the State of Massachusetts Bay, in favour of the said State, for two millions of dollars, being part of the monies raised by the said State, for the use of the United States, for which sum the said State is to be accountable.

On the question to agree to the order for a warrant as reported,

Your Committee to whom was referred a letter from the Minister for Foreign affairs, to the President dated the 27<sup>th</sup> Ult<sup>o</sup>. and praying leave of absence for the Reasons therein contained, beg leave to Report that the last reason assigned by him is sufficient for indulging him in a leave of absence for a few weeks, if in the opinion of Congress the business of his Department will admit of it.

*Resolved*, That the Secretary for foreign affairs have permission to be absent from the public service, for the time requested in his letter of the 27 of February last.<sup>1</sup>

Upon the application of the State of Connecticut contain'd in Governor Trumbull's Letter of the 21<sup>st</sup> of Feby last,

*Resolved*, That the ten companies therein mentioned to be raised for the defence of said State, be supported and paid by the United States upon the same terms and under the like regulations with the troops stationed in Massachusetts or those raised and stationed in the State of New York the last campaign.<sup>2</sup>

<sup>1</sup> This report, in the writing of John Morin Scott, except the last paragraph which is in James Madison's writing, is in the *Papers of the Continental Congress*, No. 25, II, folio 79 and 81.

<sup>2</sup> This motion, in the writing of Richard Law, is in the *Papers of the Continental Congress*, No. 36, IV, folio 99. It is undated. Trumbull's letter is in No. 66, II, folio 208. It was referred on this day to Mr. [Daniel] Carroll, Mr. [Samuel John] Atlee, Mr. [Ezekiel] Cornell.

On this day, according to the indorsement, was presented the memorial of Major William Macpherson, dated Philadelphia, March 1, 1782. It was "referred to the Secretary at War to lie in his office until he shall return and report thereon." It is in No. 41, VI, folio 273.

Also, the petition, undated, of mechanics and others praying for pay and interest on certificates for supplies advanced to the Army by them. It was "ordered to lie," and is in No. 42, V, folio 275.

Also, another letter of February 21 from the Governor of Connecticut. It is in No. 66, II, folio 214.

Also, a representation from the inhabitants of the Western country on the Ohio, which was referred to Mr. [Daniel] Carroll, Mr. [Samuel John] Atlee, Mr. [Ezekiel] Cornell. It is in No. 69, II, folio 401-407.

Also, a letter of February 27 from the Superintendent of Finance, on new taxes to establish a fund for discharging the principal and interest of public debts. It was referred to Mr. [Samuel] Osgood, Mr. [Abraham] Clark, Mr. [Arthur] Lee. It is in No. 137, I, folio 347. According to Committee Books Nos. 186 and 191, the report was delivered March 25, and on August 5, 1782, was referred to the grand committee appointed on July 22.

Also, a letter of February 28, from the Superintendent of Finance, respecting the salary of the Deputy Secretary of Congress. It is in No. 137, I, folio 351.

A memorial, dated March 1, 1782, from Lieutenant Colonel Edward Carrington, was presented and referred, as the indorsement states, to the delegates of Pennsylvania, Maryland and Virginia who were "to confer with com<sup>rs</sup> in chief and Gen<sup>l</sup> Knox." It is in No. 41, II, folio 118.

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~~the war. The definitive treaty they conceive as only giving the dress of form to these contracts and not as constituting their obligation. Congress however conceive it would be premature to send forward the recommendation stipulated by the said articles until the exchange of the ratification thereof by the Court of Great Britain shall be formally announced or at least till the British forces shall be withdrawn from the United States.~~

~~I am with great respect~~

Your Excellency's most obedient humble servant.<sup>1</sup>

His Excellency.

The committee, consisting of Mr. [James] Duane, Mr. [Daniel] Carroll and Mr. [Richard] Peters, to whom was referred a motion of Mr. [Richard] Peters, together with an application of the legislature of Pennsylvania, relative to the purchase of the Indian claim of land within the jurisdiction of that State; report,

That it appears to them, that the application of the legislature of Pennsylvania, relative to a treaty for the purchase of the Indian claim to lands within the jurisdiction of that State, proceeded from a respectful attachment to the federal government, and a desire to guard against prejudices which might arise from the interference of their own particular views with the authority of the United States: That the public interest might have been deeply affected by a negotiation for such purchase independent of, and unconnected with the general treaty to be holden on behalf of the United States. For, in the opinion of the committee, the idea of a division of councils, of separate interests, and a competition in purchase which two distinct treaties must have impressed on the minds of the Indians, could not but

<sup>1</sup> This report, in the writing of James Duane, is in the *Papers of the Continental Congress*, No. 29, folios 331-333. The following, without date, in the writing of James Madison, is on folio 335:

"That as an exemplification of the articles, concluded on the — day of — between the Minister Plenipo. of the United States and the King of G. B. as ratified by Congress on the — day of — be transmitted to each of the states and that they be informed that Congress deem it indispensable to the honor of the Confederacy, and to the principles of good faith, that every act within the states respectively should be forborne which may tend to render any of the stipulations in the said articles hereafter impracticable on the part of the U. S."

have had a tendency to diminish the dignity and authority of our government in their estimation, and expose both the United States and the individual State to unreasonable and extravagant impositions, and our public councils to great embarrassments. The committee, therefore, think it proper that it should be

*Resolved*, That the commissioners for holding the convention with the Indians under the act of the 15 day of October instant, give notice to the supreme executive of the State of Pennsylvania, of the time and place of holding such treaty, to the end, that the persons to be appointed by that State, for purchasing lands within the limits thereof, at the expence of the said State, may attend at the time and place appointed for holding the said treaty: and the commissioners on the part of the United States, are instructed to give every aid in their power, to the commissioners on the part of Pennsylvania, in such manner as will best promote the object which the said State shall have in view, and not be incompatible with the national interests which the United States propose by the said treaty.<sup>1</sup>

A motion was made by Mr. [Elbridge] Gerry, seconded by Mr. [David] Howell, to strike out the words "and not be", before incompatible, and in lieu thereof to insert, "provided nothing shall be done by virtue of this resolve":

And on the question to agree to this amendment, the yeas and nays being required by Mr. [Elbridge] Gerry,

<i>New Hampshire,</i>		<i>Connecticut,</i>	
Mr. Foster,	ay } *	Mr. S. Huntington,	no } no
<i>Massachusetts,</i>		B. Huntington,	no } no
Mr. Gerry,	ay }	<i>New York,</i>	
Holten,	ay } ay	Mr. Duane,	no } no
Osgood,	ay }	L'Hommedieu,	no } no
<i>Rhode Island,</i>		<i>New Jersey,</i>	
Mr. Ellery,	ay }	Mr. Boudinot,	no } *
Howell,	ay }		

<sup>1</sup> This report, in the writing of James Duane, is in the *Papers of the Continental Congress*, No. 20, II, folio 165.



<i>New York,</i>			<i>Maryland,</i>		
Mr. De Witt,	no	} no	Mr. Chase,	no	} *
Paine,	no		<i>Virginia,</i>		
<i>New Jersey,</i>			Mr. Hardy,	ay	} ay
Mr. Stevens,	no	} no	Mercer,	ay	
Beatty,	no		Monroe,	no	
Dick,	no		<i>North Carolina,</i>		
<i>Pennsylvania,</i>			Mr. Williamson,	ay	} ay
Mr. Mifflin,	no	} no	Spaight,	ay	
Montgomery,	ay		<i>South Carolina,</i>		
Hand,	no		Mr. Read,	ay	} diy
			Beresford,	no	

So it passed in the negative.

The committee, consisting of Mr. [Thomas] Stone, Mr. [Edward] Hand, Mr. [Jacob] Read, Mr. [John Francis] Mercer and Mr. [John] Beatty, to whom was referred the application of the State of New York, for Congress to declare the number of troops which are necessary to be kept up by the said State, to garrison the forts necessary for the defence thereof, having reported "as their Opinion, that        men, including non-commissioned Officers, will be requisite to garrison the forts necessary for the defence of the said State;" and thereupon submitted the following resolution: "That the State of New York be permitted to raise        men, including non-commissioned Officers, for the purpose of garrisoning such posts within the said State not possessed by the forces of the United States, as the said State shall judge proper; which troops so to be raised by the State of New York, shall be discharged whenever the United States in Congress assembled, shall so direct." <sup>1</sup>

<sup>1</sup> This report, in the writing of Thomas Stone, is in the *Papers of the Continental Congress*, No. 20, I, folio 401.



[Report of Board of Treasury on letter of Governor of Virginia <sup>1</sup>]

The Board of Treasury to whom was referred a Letter from His Excellency the Governor of the State of Virginia of the 13<sup>th</sup> March 1788,

Beg leave to Report

That the application of the State of Virginia for an extension of the Period assigned by the Ordinance <sup>2</sup> of the 7<sup>th</sup> May 1787, for rendering the accounts of the several States with the Union, appears to be founded on an Idea entertained by the Executive, that the Accounts of the State cannot be rendered in season, under the heads which they apprehend may be required by the Commissioner; and that consequently they would be precluded from exhibiting them at a subsequent period.

On which the Board beg leave to observe

That although the different heads, under which the accounts of several States with the Union, are pointed out by the Ordinance aforesaid, and the Commissioner for the district, in which the State of Virginia is comprehended, may have suggested to the State the propriety of stating their accounts under such heads for the sake of facilitating their adjustment, yet that the States are not precluded by any clause in the said Ordinance from rendering their accounts, under such forms as their particular situation may render most adviseable.

That the great and desireable object is to obtain from the several States all their accounts against the Union, so that a proper statement may be made of the same with as little delay as possible; but nevertheless, as the District Commissioners are limited to the period of Six months, after they have received the State accounts for adjusting such of them as fall under their respective cognizance, it is to be wished that the several States would render the same under the heads pointed out by the Ordinance.

It is however the intention of the Board (unless otherwise directed by Congress) to direct the district Commissioners to receive from the several States all their Accounts against the Union, under such Forms, as they may judge it adviseable to exhibit the same, should the time limited for their reception not enable the States to class them under the several heads, as stated in the Ordinance.

<sup>1</sup> *Papers of the Continental Congress*, No. 138, II, pp. 77-80, read May 7, 1788. The covering letter of the Board, also read, is in *Papers of the Continental Congress*, No. 140, I, p. 499. See May 5, 1788. See also June 23, 1788.

<sup>2</sup> *Journals*, vol. XXXII, pp. 262-266.

For this reason (without the necessity of suggesting others which will obviously present themselves to the consideration of Congress) they are of opinion, it would not be expedient to extend the time assigned by the Ordinance of the 7<sup>th</sup> May 1787, for exhibiting the Accounts of the several States against the Union.

All which is humbly submitted.

May 7<sup>th</sup> 1788

SAMUEL OSGOOD  
WALTER LIVINGSTON  
ARTHUR LEE

[Report of Board of Treasury on memorial of J. May <sup>1</sup>]

The Board of Treasury to whom was referred the Memorial of John May

Beg leave to Report

That the protested bill, for the payment of which application is made by the Memorialist is drawn by the Agent of the Contractors for the Western Posts, on the Contractors in Philadelphia.

That the Accounts of the said Contractors have been adjusted at the Treasury, and the balance found due to them (so far as they have produced Vouchers) paid; but should any further Sums hereafter accrue to the credit of the Contractors, the same can only be paid to them, or their legal Assigns; as the engagements made by the Contractors are on their private Credit, and the public are in no wise bound to make good the demands which Individuals may have against them.

For the reasons above stated,

The Board of opinion, That the application of John May for the Relief mentioned in his letter of the 15<sup>th</sup> of January last, cannot be complied with; the United States not being liable for any engagements, made by public Contractors on their private Credit.

All which is humbly submitted.

May 7, 1788.

SAMUEL OSGOOD  
WALTER LIVINGSTON  
ARTHUR LEE <sup>2</sup>

<sup>1</sup> *Papers of the Continental Congress*, No. 138, II, pp. 81-82, read May 7, 1788. See March 25, 1788.

<sup>2</sup> MAY 7, 1788. According to indorsement the petition of Rapalje and Woods was debated and negatived. See March 12, 19 and 25 and May 2 and 5, 1788.

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***Appendix B***  
***(Examples of States Using their***  
***Article V Application to Specify their***  
***Desired Amendment and***  
***Convention Logistics)***



by the governor of such State from the senate or house of its legislature or the State at large, respectively, as the case may be; that during such vacancy and during the absence of a delegate from the floor of the convention the delegates present from such State shall be empowered to exercise the vote of the absent delegate or delegates from such State; that the legislature of any State may choose its delegates to such convention, other than hereinabove designated, in which case the delegates so chosen shall be certified to the convention by the secretary of state of such State and shall constitute the delegates of such State at such convention in lieu of the delegates otherwise hereinabove designated.

"3. That such convention shall be limited and restricted specifically to the consideration and proposal of this amendment or such other amendments as may be proposed by the several States of these United States; the choosing of officers and adoption of rules of procedure for the conduct of such convention and the maintenance of order thereat, the determination of any issue respecting the seating of delegates, adjournment from day to day and to a day certain and from place to place within said city as may be convenient, and adjournment sine die; and such convention shall not be held for any other purpose nor have any other power, and the delegates thereto shall have no power other than within the limitations herein prescribed;

"4. That a permanent record shall be made of the proceedings of such convention, which shall be certified by the secretary of the convention, the original of which shall be placed in the Library of Congress and printed copies of which shall be transmitted to the Senate and the House of Representatives of the Congress, to the Secretary of State of the United States, and to each house of the legislature and to the secretary of state of each of the several States;

"5. That the powers of such convention shall be exercisable by the States, represented at such convention by duly constituted delegates thereat, by majority vote of the States present and voting on such proposal, and not otherwise.

"Sec. 5. The State of Indiana requests that this application shall constitute a continuing application for such convention under article V of the Constitution of the United States until the legislatures of two-thirds of the several States shall have made like applications and such convention shall have been called and held in conformity therewith, unless the Congress itself propose such amendment within the time and manner herein provided.

"Sec. 6. The State of Indiana requests that proposal of such amendment by the Congress and its submission for ratification to the legislatures of the several States in the form of the article hereinabove specifically set forth, at any time prior to 60 days after the legislatures of two-thirds of the several States shall have made application for such convention, shall render such convention unnecessary and the same shall not be held; otherwise such convention shall be called and held in conformity with such applications.

"Sec. 7. The State of Indiana requests that as this application under article V of the Constitution of the United States is the exercise of a fundamental power of the sovereign States under the Constitution of the United States, a receipt of this application by the Senate and the House of Representatives of the Congress of the United States be officially noted and duly entered upon their respective records, and that the full context of this resolution be published in the official publication of both the Senate and the House of Representatives of the Congress.

"Sec. 8. Certified copies of this resolution shall be transmitted forthwith to the Senate and the House of Representatives of the

Congress of the United States, to each Senator and Representative in the Congress from this State, and to the Secretary of State of the United States, and to each house of the legislature and to the secretary of state of each of the several States, attesting the adoption of this resolution by the legislature of this State.

"CRAWFORD F. PARKER,  
"President of Senate.

"GEORGE S. DIENER,  
"Speaker of House of Representatives.

"Approved: March 12, 1957.

"HAROLD W. HANDLEY,

"Governor of the State of Indiana.

"Filed March 12, 1957.

"FRANK A. LENNING,

"Secretary of State of Indiana."

"House Enrolled Concurrent Resolution 9

"A concurrent resolution making application to the Congress of the United States pursuant to article V of the Constitution of the United States for a convention proposing an amendment to the Constitution of the United States

"Be it resolved by the House of Representatives of the General Assembly of the State of Indiana (the Senate concurring)—

"SECTION 1. The General Assembly of the State of Indiana, pursuant to article V of the Constitution of the United States, hereby makes application to the Congress of the United States to call a convention for proposing the following article as an amendment to the Constitution of the United States:

"ARTICLE—

"SECTION 1. On or before the 15th day after the beginning of each regular session of the Congress, the President shall transmit to the Congress a budget which shall set forth his estimates of the receipts of the Government, other than trust funds, during the ensuing fiscal year under the laws then existing and his recommendations with respect to expenditures to be made from funds other than trust funds during such ensuing fiscal year, which shall not exceed such estimate of receipts. If the Congress shall authorize expenditures to be made during such ensuing fiscal year in excess of such estimated receipts, it shall not adjourn for more than 3 days at a time until action has been taken necessary to balance the budget for such ensuing fiscal year. In case of war or other grave national emergency, if the President shall so recommend, the Congress by a vote of three-fourths of all the Members of each House may suspend the foregoing provisions for balancing the budget for periods, either successive or otherwise, not exceeding 1 year each.

"Sec. 2. This article shall take effect on the first day of the calendar year next following the ratification of this article."

"Sec. 2. The State of Indiana requests that such amendment shall be valid to all intents and purposes as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the several States.

"Sec. 3. For the reason that the power of the sovereign States to propose amendments to the Constitution of the United States by convention under article V has never been exercised and no precedent exists for the calling or holding of such convention, the State of Indiana hereby declares the following basic principles with respect thereto: That the power of the sovereign States to amend the Constitution of the United States under article V is absolute; that the power of the sovereign States to propose amendments to the Constitution by convention under article V is absolute; that the power of the sovereign States extends over such convention and the scope and control thereof and that it is within their sovereign power to prescribe whether such convention shall be general or shall be limited to the proposal of a specified amendment or of amendments in a

specified field; that the exercise by the sovereign States of their power to require the calling of such convention contemplates that the applications of the several States for such convention shall prescribe the scope thereof and the essential provisions for holding the same; that the scope of such convention and the provisions for holding the same are established in and by the applications therefor by the legislatures of the two-thirds majority of the several States required by article V to call the same, and that it is the duty of the Congress to call such convention in conformity therewith; that such convention is without power to transcend, and the delegates to such convention are without power to act except within, the limitations and provisions so prescribed.

"Sec. 4. The State of Indiana requests that such convention shall be called and held in conformity with the following limitations and provisions, and that the Congress, in the call for such convention, hereby is requested to and shall prescribe:

"1. That such convention shall be held in the city of Philadelphia, in the State of Pennsylvania, on the first Monday of the first December following transmission to the Senate and the House of Representatives of the Congress of the United States of applications for such convention by the legislatures of two-thirds of the several States and, in honor of the Nation's founders and for invocation, shall convene at Constitution Hall, at Independence Square, at the hour of 10 o'clock in the morning of such day, and thereupon adjourn to more commodious quarters within said city for session as the convention shall determine;

"2. That the several States shall have equal suffrage at such convention; that each of the several States shall be entitled to 3 delegates thereat and that each of such delegates shall be entitled to 1 vote; that the delegates to such convention from the several States shall be the highest officer of the senate and the highest officer of the house of representatives of their respective legislatures at the time of such convention, except that in States where the lieutenant governor is president of the senate, the president of the senate pro tempore or other highest officer from the membership of the senate shall be such delegate from the senate and in States having a unicameral legislature the 2 highest officers of its legislature shall be such delegates, which 2 delegates in each of the several States shall jointly designate a citizen of such State at large who shall be the third delegate from such State to such convention; that in case of a vacancy in the office of any delegate during such convention, not otherwise filled pursuant to law or by legislative act or as herein provided, such vacancy shall be filled by the Governor of such State from the senate or house of its legislature or the State at large, respectively, as the case may be; that during such vacancy and during the absence of a delegate from the floor of the convention the delegates present from such State shall be empowered to exercise the vote of the absent delegate or delegates from such State; that the legislature of any State may choose its delegates to such convention, other than hereinabove designated, in which case the delegates so chosen shall be certified to the convention by the secretary of state of such State and shall constitute the delegates of such State at such convention in lieu of the delegates otherwise hereinabove designated;

"3. That such convention shall be limited and restricted specifically to the consideration and proposal of this amendment or such other amendments as may be proposed by the several States of these United States; the choosing of officers and adoption of rules of procedure for the conduct of such convention and the maintenance of order



thereat, the determination of any issue respecting the seating of delegates, adjournment from day to day and to a day certain and from place to place within said city as may be convenient, and adjournment sine die; and such convention shall not be held for any other purpose nor have any other power, and the delegates thereto shall have no power other than within the limitations herein prescribed;

"4. That a permanent record shall be made of the proceedings of such convention, which shall be certified by the secretary of the convention, the original of which shall be placed in the Library of Congress and printed copies of which shall be transmitted to the Senate and the House of Representatives of the Congress, to the Secretary of State of the United States, and to each house of the legislature and to the secretary of state of each of the several States;

"5. That the powers of such convention shall be exercisable by the States, represented at such convention by duly constituted delegates thereat, by majority vote of the States present and voting on such proposal, and not otherwise.

"Sec. 5. The State of Indiana requests that this application shall constitute a continuing application for such convention under article V of the Constitution of the United States until the legislatures of two-thirds of the several States shall have made like applications and such convention shall have been called and held in conformity therewith, unless the Congress itself propose such amendment within the time and the manner herein provided.

"Sec. 6. The State of Indiana requests that proposal of such amendment by the Congress and its submission for ratification to the legislatures of the several States in the form of the article hereinabove specifically set forth, at any time prior to 60 days after the legislatures of two-thirds of the several States shall have made application for such convention, shall render such convention unnecessary and the same shall not be held; otherwise such convention shall be called and held in conformity with such applications.

"Sec. 7. The State of Indiana requests that as this application under article V of the Constitution of the United States is the exercise of a fundamental power of the sovereign States under the Constitution of the United States, a receipt of this application by the Senate and the House of Representatives of the Congress of the United States be officially noted and duly entered upon their respective records, and that the full context of this resolution be published in the official publication of both the Senate and the House of Representatives of the Congress.

"Sec. 8. Certified copies of this resolution shall be transmitted forthwith to the Senate and the House of Representatives of the Congress of the United States, to each Senator and Representative in the Congress from this State, and to the Secretary of State of the United States, and to each house of the legislature and to the secretary of state of each of the several States, attesting the adoption of this resolution by the legislature of this State.

"CRAWFORD F. PARKER,  
"President of Senate.

"GEORGE S. DIENER,  
"Speaker of House of Representatives.  
"Approved: March 12, 1957.

"HAROLD W. HANDLEY,  
"Governor of the State of Indiana.  
"Filed March 12, 1957.

"FRANK A. LENNING,  
"Secretary of State of Indiana."

A concurrent resolution of the Legislature of the State of Florida to the Committee on the Judiciary.

#### "House Concurrent Resolution 174

"A resolution to declare the United States Supreme Court decisions usurping the powers reserved to the States and relating to education, labor, criminal procedure, treason and subversion to be null, void, and of no effect; to declare that a contest of powers has arisen between the State of Florida and the Supreme Court of the United States; to invoke the doctrine of interposition; and for other purposes

"Be it resolved by the House of Representatives of the State of Florida (the Senate concurring), That the Legislature of Florida doth hereby unequivocally express a firm and determined resolution to maintain and defend the Constitution of the United States, and the constitution of this State against every attempt, whether foreign or domestic, to undermine and destroy the fundamental principles, embodied in our basic law, by which the liberty of the people and the sovereignty of the States, in their proper spheres, have been long protected and assured;

"That the Legislature of Florida doth explicitly and preemptorily declare that it views the powers of the Federal Government as resulting solely from the compact, to which the States are parties, as limited by the plain sense and intention of the instrument creating that compact;

"That the Legislature of Florida asserts that the powers of the Federal Government are valid only to the extent that these powers have been enumerated in the compact to which the various States assented originally and to which the States have assented in subsequent amendments validly adopted and ratified;

"That the very nature of this basic compact, apparent upon its face, is that the ratifying States, parties thereto, have agreed voluntarily to surrender certain of their sovereign rights, but only certain of these sovereign rights, to a Federal Government thus constituted; and that all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, have been reserved to the States respectively, or to the people;

"That the State of Florida has at no time surrendered to the General Government its right to exercise its powers in the field of labor, criminal procedure, and public education, and to maintain racially separate public schools and other public facilities;

"That the State of Florida, in ratifying the 14th amendment to the Constitution, did not agree, nor did the other States ratifying the 14th amendment agree, that the power to regulate labor, criminal proceedings, public education, and to operate racially separate public schools and other facilities was to be prohibited to them thereby;

"And as evidence of such understanding as to the inherent power and authority of the States to regulate public education and the maintenance of racially separate public schools, the Legislature of Florida notes that the very Congress that submitted the 14th amendment for ratification established separate schools in the District of Columbia and that in more than one instance the same State legislatures that ratified the 14th amendment also provided for systems of racially separate public schools;

"That the Legislature of Florida denies that the Supreme Court of the United States had the right which it asserted in the school cases decided by it on May 17, 1954, the labor-union case decided on May 21, 1956, the cases relating to criminal proceedings decided on April 23, 1956, and January 16, 1956, the antiseditious case decided on April 2, 1956, and the case relating to teacher requirements decided on April 9, 1956, to enlarge the language and meaning of the compact by the States in an effort to withdraw from the States powers reserved to them and as daily exercised by them for almost a century;

"That a question of contested power has arisen; the Supreme Court of the United States asserts, for its part, that the States did in fact prohibit unto themselves the power to regulate labor matters, criminal proceedings, and public education, and to maintain racially separate public institutions and the State of Florida, for its part, asserts that it and its sister States have never surrendered such rights;

"That these assertions upon the part of the Supreme Court of the United States, accompanied by threats of coercion and compulsion against the sovereign States of this Union, constitute a deliberate, palpable, and dangerous attempt by the Court to prohibit to the States certain rights and powers never surrendered by them;

"That the Legislature of Florida asserts that whenever the General Government attempts to engage in the deliberate, palpable, and dangerous exercise of powers not granted to it, the States who are parties to the compact have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them;

"That failure on the part of this State thus to assert its clear rights would be construed as acquiescence in the surrender thereof; and that such submissive acquiescence to the seizure of one right would in the end lead to the surrender of all rights, and inevitably to the consolidation of the States into one sovereignty, contrary to the sacred compact by which this Union of States was created;

"That the question of contested power asserted in this resolution is not within the province of the Court to determine because the Court itself seeks to usurp the powers which have been reserved to the States, and, therefore, under these circumstances, the judgment of all of the parties to the compact must be sought to resolve the question. The Supreme Court is not a party to the compact, but a creature of the compact and the question of contested power should not be settled by the creature seeking to usurp the power, but by the parties to the compact who are the people of the respective States in whom ultimate sovereignty finally reposes;

"That the constitution of the State of Florida provides for full benefits to all its citizens with reference to educational facilities and under the laws of Florida enacted by the legislature through the minimum foundation program its citizens under States' rights, all are being educated under the same general law and all teachers are being employed under identical educational qualifications and all are certified by the State Board of Education alike, which enables the people, themselves, in Florida to provide an educational establishment serviceable and satisfactory and in keeping with the social structure of the State. The people of Florida do not consent to changing State precedents and their rights by having doctrines thrust upon them by naked force alone, as promulgated in the school cases of May 17, 1954, and May 31, 1955;

"That the doctrines of said decisions and other decisions denying to the States the right to have laws of their own dealing with subversion or espionage, and criminal proceedings, and denying the States the right to dismiss individuals from public employment who refuse to answer questions concerning their connections with communism by invoking the fifth amendment, and denying the States the right to provide for protective 'right to work' laws, should not be forced upon the citizens of this State for the Court was without jurisdiction, power or authority to interfere with the sovereign powers of the State in such spheres of activity.

"That the Court in its decisions relating to public education was without jurisdiction



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SENATE CONCURRENT RESOLUTION NO. 15

RESOLVED, By the Senate of the State of Texas, the  
House of Representatives concurring:

That the Legislature of the State of Texas, pursuant to  
Article V of the Constitution of the United States, hereby makes  
application to the Congress of the United States to call a  
convention for proposing the following Article as an amendment to  
the Constitution of the United States in lieu of Article V:

"ARTICLE V

"Section 1. 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; or the Legislature of any State, whenever two-thirds  
of each House shall deem it necessary, may propose amendments to  
this Constitution by transmitting to the Secretary of State of the  
United States and to the Secretary of State of each of the several  
States a certified copy of the resolution proposing the amendment,  
which shall be deemed submitted to the several States for ratifica-  
tion when certified copies of resolutions of the Legislatures of  
any twelve of the several States by two-thirds of each House shall  
have been so transmitted concurring in the proposal of such amend-  
ment; which, in any 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. Provided,  
that no State, without its consent, shall be deprived of its equal  
suffrage in the Senate.

"Sec. 2. The act of proposal, concurrence in a proposal, or  
ratification of an amendment, shall not be revocable.



"Sec. 3. A proposal of an amendment by a State shall be inoperative unless it shall have been so concurred in within seven years from the date of the proposal. A proposed amendment shall be inoperative unless it shall have been so ratified within fifteen years from the date of its submission, or shorter period as may be prescribed in the resolution proposing the amendment.

"Sec. 4. Controversies respecting the validity of an amendment shall be justiciable and shall be determined by the exercise of the judicial power of the United States."

RESOLVED FURTHER, That such amendment shall be valid to all intents and purposes as part of the Constitution of the United States when ratified by the Legislatures of three-fourths of the several States;

RESOLVED FURTHER, That as the power of the sovereign States to propose amendments to the Constitution of the United States by convention under Article V has never been exercised and no precedent exists for the calling or holding of such convention, the State of Texas hereby declares the following basic principles with respect thereto: that the power of the sovereign States to amend the Constitution of the United States under Article V is absolute; that the power of the sovereign States to propose amendments to the Constitution by convention under Article V is absolute; that the power of the sovereign States extends over such convention and the scope and control thereof and that it is within their sovereign power to prescribe whether such convention shall be general or shall be limited to the proposal of a specified amendment or of amendments in a specified field; that the exercise by the sovereign States of their power to require the calling of such convention contemplates that the applications of the several States for such

in and by the applications therefor by the Legislatures of the two-thirds majority of the several States required by Article V to call the same, and that it is the duty of the Congress to call such convention in conformity therewith; that such convention is without power to transcend, and the delegates to such convention are without power to act except within, the limitations and provisions so prescribed;

**RESOLVED FURTHER**, That such convention shall be called and held in conformity with the following limitations and provisions, and that the Congress, in the call for such convention, hereby is requested to and shall prescribe:

(1) That such convention shall be held in the City of Philadelphia, in the State of Pennsylvania, on the first Monday of the first December following transmission to the Senate and the House of Representatives of the Congress of the United States of applications for such convention by the Legislatures of two-thirds of the several States and, in honor of the nation's founders and for invocation, shall convene at Constitution Hall, at Independence Square, at the hour of 10:00 o'clock in the morning of such day, and thereupon adjourn to more commodious quarters within said city for session as the convention shall determine;

(2) That the several States shall have equal suffrage at such convention; that each of the several States shall be entitled to three delegates thereat and that each of such delegates shall be entitled to one vote; one of whom shall be selected by the Lieutenant Governor from among the membership of the Senate of Texas, one by the Speaker of the House of Representatives from the membership of the House of Representatives, and one to be chosen by the Governor of the State: that in case of a vacancy in

such vacancy shall be filled by the Governor of such State from the Senate or House of its Legislature or the State at large, respectively, as the case may be; that during such vacancy and during the absence of a delegate from the floor of the convention the delegates present from such State shall be empowered to exercise the vote of the absent delegate or delegates from such State; that the Legislature of any State may choose its delegates to such convention, other than hereinabove designated, in which case the delegates so chosen shall be certified to the convention by the Secretary of State of such State and shall constitute the delegates of such State at such convention in lieu of the delegates otherwise hereinabove designated.

(3) That such convention shall be limited and restricted specifically to the consideration and proposal of such amendment to Article V, the choosing of officers and adoption of rules of procedure for the conduct of such convention and the maintenance of order thereat, the determination of any issue respecting the seating of delegates, adjournment from day to day and to a day certain and from place to place within said city as may be convenient, and adjournment sine die; and such convention shall not be held for any other purpose nor have any other power, and the delegates thereto shall have no power other than within the limitations herein prescribed;

(4) That a permanent record shall be made of the proceedings of such convention, which shall be certified by the secretary of the convention, the original of which shall be placed in the Library of Congress and printed copies of which shall be transmitted to the Senate and the House of Representatives of the Congress, to the Secretary of State of the United States, and to

(5) That the powers of such convention shall be exercisable by the States, represented at such convention by duly constituted delegates thereat, by majority vote of the States present and voting on such proposal, and not otherwise;

RESOLVED FURTHER, That this application shall constitute a continuing application for such convention under Article V of the Constitution of the United States until the Legislatures of two-thirds of the several States shall have made like applications and such convention shall have been called and held in conformity therewith, unless the Congress itself propose such amendment within the time and the manner herein provided;

RESOLVED FURTHER, That proposal of such amendment by the Congress and its submission for ratification to the Legislatures of the several States in the form of the Article hereinabove specifically set forth, at any time prior to sixty days after the Legislatures of two-thirds of the several States shall have made application for such convention, shall render such convention unnecessary and the same shall not be held; otherwise such convention shall be called and held in conformity with such applications;

RESOLVED FURTHER, That as this application under Article V of the Constitution of the United States is the exercise of a fundamental power of the sovereign States under the Constitution of the United States, it is requested that receipt of this application by the Senate and the House of Representatives of the Congress of the United States be officially noted and duly entered upon their respective records, and that the full context of this Resolution be published in the official publication of both

**RESOLVED FURTHER, That copies of this Resolution be transmitted forthwith to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States; to the Secretary of State of the United States; and to the Secretary of State of each State.**

1955

## CONGRESSIONAL RECORD — SENATE

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Congress of the United States be officially noted and duly entered upon their respective records, and that the full context of this resolution be published in the official publication of both the Senate and the House of Representatives of the Congress; and further

*"Resolved, That copies of this resolution be transmitted forthwith to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States; to the Secretary of State of the United States; and to the secretary of state of each State.*

*"BEN RAMSEY,  
"President of the Senate.  
"JIM LINDSEY,  
"Speaker of the House."*

The petition of Frank C. Tobian, and sundry other citizens of the State of New York, praying for the enactment of Senate Joint Resolution 1, relating to the treatymaking power; to the Committee on the Judiciary.

By Mr. SALTONSTALL (for himself and Mr. KENNEDY):

Resolutions of the House of Representatives of the General Court of the Commonwealth of Massachusetts; to the Committee on Labor and Public Welfare:

"Resolutions memorializing Congress to prevent the closing of the United States Pub-

prising this American Republic: Now, therefore, be it

*"Resolved by the Legislature of the State of Minnesota, in regular session assembled, That the Congress of the United States is respectfully urged to admit the Territories of Alaska and Hawaii to statehood and that the necessary enabling legislation therefor be enacted during the current session of Congress: Be it further*

*"Resolved, That the secretary of state of the State of Minnesota is instructed to transmit copies of this resolution to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives of the United States, and to each Member of Congress from the State of Minnesota.*

*"KARL F. ROLVAAG,  
"President of the Senate.  
"ALFRED I. JOHNSON,  
"Speaker of the House of Representatives.*

"Passed the senate this 15th day of February, in the year of our Lord 1955.

*"TEX DORCEY,  
"Secretary of the Senate.*

"Passed the house of representatives the 28th day of February, in the year of our Lord 1955.

*"G. H. LEAHY,  
"Speaker of the House of Representatives.*

"Passed the senate the 2d day of March in the year of our Lord 1955.

*"H. Y. TORREY,  
"Secretary of the Senate.*

"Approved March 7, 1955.

*"ORVILLE L. FREEMAN,  
"Governor of the State of Minnesota."*

A joint resolution of the Legislature of the State of Minnesota; to the Committee on Interstate and Foreign Commerce:

"A joint resolution memorializing the President, the United States Public Health Service, and the Congress of the United States to further develop requirement for interstate transportation of dairy products and to eliminate artificial trade barriers

"Whereas Minnesota is in that section of the Nation which comprises the greatest interstate dairy products export area and which excels in the quality of its dairy products; and

"Whereas the movement of dairy products in interstate commerce is restricted by locally established artificial trade barriers, some in the form of restrictive devices on sales, others in the guise of quality and sanitation standards which vary from one local jurisdiction to another to favor local producers and discriminate against imported products;





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