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The Article V Movement:

A Comprehensive Assessment to Date and Suggested Approach for State Legislators and Advocacy Groups Moving Forward

by David F. Guldenschuh*

Introduction

In early November 2013, this author hosted a telephone conference with all the major stakeholders in the Article V movement. It was not the first time the leadership of the various groups had spoken with each other, but it was certainly one of the more well-attended meetings of the groups. After an hour-and-a-half discussion during which each group described its vision for successfully pursuing an Article V convention, we discussed whether there were ways for the groups to work together and support each other.

The consensus was that it was too soon to begin merging efforts. At that point, four major groups – the Balanced Budget Amendment Task Force (BBATF), Convention of States Project (CoS), Compact

Introduction 1

1 The Primary Article V Advocacy Groups . . 2

2 Educational Efforts 8

3 Organizations of State Legislators 17

4 Successes and Disappointments 20

5 Legislators and Other Roadblocks 25

6 Approach for Moving Forward 31

Conclusion 36

APPENDIX A: The Article V Convention Legislative Progress Report 38

APPENDIX B: BBATF Map of Successful and Targeted States 39

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for America (Compact), and Wolf-PAC – Free and Fair Elections (Wolf-PAC) – were each in their adolescence. Each group desired to test the landscape to see how successfully it could bring its individual Article V application to passage within its targeted states. Although all agreed to continue their efforts to educate state legislators and the public on the safeness of the Article V movement, the groups agreed it would take a couple of years to determine the effectiveness of each organization's strategy and likelihood for success of the entire Article V movement.

This study is intended to provide a comprehensive assessment of the Article V movement in general and of each group's success to date.

The time has come for an assessment of progress since that conference call. Each of the four major groups has had nearly two years during which to test its strategy. There were initial successes, but each group has faced struggles. This study is intended to provide a comprehensive assessment of the Article V movement in general and of each group's success to date. It concludes by proposing a strategy for the Article V movement for the next 12 to 24 months.

Part One
The Primary Article V Convention Advocacy Groups

This author has been able to identify 10 groups that purport to be advocating for an Article V convention of states on one or more subjects. Only five of those groups are actively identifying sponsors for their respective amendment convention proposals, and only four have actually succeeded in getting their resolution passed by three or more states.[1] These four major players are identified below.

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[1] In addition to the four set forth in the text, the others are: (a) Citizens Initiative, founded and largely operated by longtime Article V advocate Charles Kacprowicz, which seeks a countermand (or nullification) amendments convention [http://citizeninitiatives.org]. Although active, it has been unsuccessful in getting its resolution passed to date, and it is therefore not included here as a primary player; (b) Americans for Congressional Reform, a relatively new organization founded by several prominent Texans promoting a package of two amendments for proposal via Article V: one for equal application of the laws to Congress as to the people and one for term limits for Congress [http://americansforcongressionalreform.org]; (c) Single Subject Amendment PAC, a super PAC promoting an amendment, which successfully passed a resolution in Florida, providing a law cannot be enacted by Congress unless it pertains to a single subject [http://singlesubjectamendment.com]; (d) Term Limits for Congress, a grassroots group seeking signatures for online petitions for a 12-year term limit amendment for submission to individual state legislatures [http://singlesubjectamendment.com]; (e) Term-Limit Convention, another online term-limits-oriented advocacy group [http://termlimitconvention.org]; and (f) RestoringFreedom.Org, Inc., formerly headed by retired North Dakota Sen. Curtis Olafson. It passed a national debt limit amendments convention resolution in North Dakota and Louisiana in 2011 [www.restoringfreedom.org]. Olafson has since joined Compact for America to promote its legislation. At least two other groups view the Article V convention process as a useful tool in their efforts to amend the Constitution: The Act 2 Movement [http://www.act2movement.org/] and The American Opportunity Project [http://www.americanopportunityproject.org/]. Still another group, U.S. Term Limits, led by Floridian Philip Blumel, announced on August 31, 2015 a campaign for an Article V term limits convention; see https://www.termlimits.org/huge-term-limits-announcement/.

A. The Balanced Budget Amendment Task Force

The Balanced Budget Amendment Task Force (BBATF) is a collection of national and state organizations and individuals dedicated to adding a balanced budget amendment (BBA) to the Constitution of the United States by way of a convention convened under Article V. In addition to multiple state legislators from across the country, among its many cofounders are the following prominent leaders:[2]

> The Balanced Budget Amendment Task Force is dedicated to adding a balanced budget amendment to the Constitution of the United States by way of a convention convened under Article V.

David Biddulph, a semi-retired entrepreneur and citizen activist, perhaps best known until recently for leading a citizens initiative in Florida that capped the rate of increase in property taxes through passage of a state constitutional amendment;

Pete Sepp, president of the National Taxpayers Union, author, and frequent television political commentator and guest;

Barry W. Poulson, a professor of economics at the University of Colorado, adjunct scholar of The Heritage Foundation, senior fellow of the Independence Institute, and policy advisor to The Heartland Institute;

Scott Rogers, executive director of BBATF and a West Virginia native with 15 years of experience in government affairs and campaign management;

Bill Fruth, president of Policom Corporation, an independent economics research firm located in Palm City, Florida, which specializes in studying the dynamics of local economies. Fruth is author of the book *10 Amendments for Freedom*[3] and in 2010 led a nationwide effort to pass a 10-amendment Article V resolution;

Lew Uhler, a California attorney, former Reagan confidante, and founder and president of the National Tax Limitation Committee, one of the nation's leading grassroots taxpayer lobbies;

Fritz Pettyjohn, a California lawyer, former Alaska state legislator, political columnist, radio talk show host, and writer of a blog at reaganproject.com;

Lou Marin, Florida businessman and leader of *IAmAmerican.org*, a nationwide organization supporting a balanced budget and fair tax amendment, which provide the grassroots support for the BBATF in targeted states;

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[2] "Meet Our Cofounders," Balanced Budget Amendment Task Force, http://www.bba4usa.org/meet-our-team.html.

[3] William H. Fruth, *10 Amendments to Freedom* (Palm City, FL: Policom Corporation, 2010), https://books.google.com/books/about/10_Amendments_for_Freedom.html?id=bqgKtwAACAAJ.

Loren Enns, a network engineering instructor and author of an Article V novel, *The Sword of Liberty*.[4] He was a leader in the successful campaign to get Florida to adopt a BBA resolution;

Michael Stern, former senior counsel to the U.S. House of Representatives and a published legal scholar on the Article V convention of states process;

Stu MacPhail, small businessman, community leader, and conservative activist in Denver, Colorado and editor of *The State Legislators' Article V Caucus Newsletter*; and

Mark Guyer, a former legislative assistant to the U.S. House of Representatives, author, and director of BBATF donor fundraising.

Florida passed a two-subject resolution to address federal mandates and a balanced budget in 2010. In 2011, Alabama passed the first new-generation single-subject BBA resolution.

BBATF came together in 2008 at an Article V conference hosted by David Biddulph in Florida. The original cofounders were Biddulph, Rogers, Sepp, and Poulsen. Simultaneously, Bill Fruth was promoting his concept for a multi-amendment convention set forth in his book, *10 Amendments for Freedom*. Following a series of meetings of the American Legislative Exchange Council (ALEC) where various Article V resolutions were considered, the groups merged their talents and efforts to focus primarily on a single-subject balanced budget amendment. The merge resulted in Florida passing a two-subject resolution to address federal mandates and a balanced budget in 2010. In 2011, Alabama passed the first new-generation single-subject BBA resolution. Ten states have since followed.

The affiliation of BBATF with such national and grassroots organizations as I Am American.org,[5] the National Federation of Independent Business,[6] Tea Party Express,[7] and the National Tax Limitation Committee[8] has provided it with a formidable ground game as the groups work together to lobby targeted state legislatures.

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[4] Loren Enns, *The Sword of Liberty* (Harrisonburg, VA: Liberty Press Inc. 2009).

[5] I Am American.org, http://iamamerican.org/.

[6] National Federation of Independent Business, http://www.nfib.com/.

[7] Tea party Express, http://www.teapartyexpress.org/.

[8] National Tax Limitation Committee, http://limittaxes.org/.

B. The Convention of States Project

The Convention of States Project[9] is the brainchild of constitutional lawyer Michael Farris and former Tea Party leader Mark Meckler. Farris is chancellor of Patrick Henry College in Virginia and chairman of the Home School Legal Defense Association. He is founder of both organizations.[10] Meckler is a California attorney and was a cofounder of the Tea Party Patriots (TPP) national organization. Meckler split from TPP in 2012 to found Citizens for Self Governance (CSG) with the mission of broadening the philosophical reach of the idea of "self-governance" outside of the Tea Party movement.[11]

> The Convention of States Project aims to call a convention on the topic of reining in and limiting the power and jurisdiction of the federal government.

In 2013, CSG announced the launch of the Convention of States Project (CoS). Having considered the different single-issue Article V advocacy groups in place, Farris concluded the problems in the structure of the federal government had become so serious that a single subject amendment application was insufficient to address the concerns. Thus, CoS was designed to come up with "a solution big enough to solve the problem," which consisted of calling a convention on the topic of reining in and limiting the power and jurisdiction of the federal government.[12]

To accomplish that task, CoS began promoting an Article V application for adoption by 34 states on three related subjects: "to impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials."[13]

Coincidentally, CoS was launched at roughly the same time conservative radio host Mark Levin published his bestseller *The Liberty Amendments*, which called for the adoption of 11 constitutional amendments designed largely to reduce the power of the federal government through the Article V convention process.[14] The book and CoS, though formulated independently of each other, quickly became synonymous, and Levin's nationwide radio show quickly endorsed and became a vast marketing resource for CoS.[15]

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[9] Information regarding the Convention of States Project comes from the author's personal discussions with Michael Farris as well as the CoS Project's website at http://www.conventionofstates.com/.

[10] "National Leadership," Convention of States, http://www.conventionofstates.com/national_leadership.

[11] "Mark Meckler," Wikipedia, https://en.wikipedia.org/wiki/Mark_Meckler.

[12] "Volunteer," Convention of States Action, http://www.cosaction.com/strategy.

[13] *Application for a Convention of the States under Article V of the Constitution of the United States*, Convention of States, https://d3n8a8pro7vhmx.cloudfront.net/conventionofstates/pages/142/attachments/original/1410009563/Application-for-a-Convention-of-States-v.5.pdf?1410009563.

[14] Mark Levin, *The Liberty Amendments: Restoring the American Republic* (New York, NY: Simon & Schuster 2013).

[15] "Endorsements," Convention of States, http://www.conventionofstates.com/endorsements.

As both Farris and Meckler came from huge grassroots organizations, the strategy of CoS was to develop citizen leadership and volunteer teams in at least 40 target states.[16] In 75 percent, or approximately 3,000, of the House Districts within each of those states, district captains were recruited who in turn were responsible for recruiting an additional 100 volunteers in each district to make telephone calls, send e-mails, and personally appear at state legislative committee hearings and rallies to promote and support the CoS resolution.[17] With generous funding provided by CSG and the equivalent of 300,000 grassroots supporters nationwide, CoS communicated the message that state legislators would be hard-pressed not to support its resolution.

C. Wolf-PAC – Free and Fair Elections

> Wolf-PAC, rebranded as "Free and Fair Elections," claims to have more than 20,000 volunteers in every state.

Wolf-PAC is the "super-PAC to end all super-PACs." It was established by progressive political activist and talk show host Cenk Uygur.[18] In late 2011, after seeing the momentum of Occupy Wall Street, Uygur launched Wolf-PAC, which uses an extensive online network of volunteers to lobby state legislators to pass resolutions calling for an Article V convention of the states to overturn the portion of the U.S. Supreme Court's campaign finance decision in *Citizens United* v. *FEC* protecting corporate contributions.[19]

Wolf-PAC has since rebranded itself as "Free and Fair Elections." It claims to have more than 20,000 volunteers in every state.[20] It provides those volunteers with a "toolbox" consisting of educational materials and suggestions for contacting state legislators to inquire about their openness to an Article V convention and Wolf-PAC resolution.[21] Volunteers can record each of their legislative contacts online, and the information is used to target specific states where success is most likely. Uygur provides regular updates on Wolf-PAC's progress through his Internet talk show, *The Young Turks*.[22]

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[16] "Volunteer," *supra* note 12.

[17] *Ibid.*

[18] "The Plan," WolfPAC, http://www.wolf-pac.com/the_plan.

[19] *Citizens United* v. *Fed. Election Comm'n*, 130 S. Ct. 876, 175 L. Ed. 2d 753, 558 U.S. 310, 78 USLW 4078 (2010)

[20] "States," WolfPAC, http://www.wolf-pac.com/states; "Wolf PAC Hawaii Unanimously Takes House Of Representatives," The Young Turks, March 19, 2015, https://www.youtube.com/watch?v=Bur32yOxmg8.

[21] WolfPAC toolbox, https://docs.google.com/document/d/1gBwusEsdUgrrqYA1i_bfUqtu1BhPqGiKjfFViQsOJOg/edit (access by permission only).

[22] "New Jersey Becomes 4th State To Call For An Article V Convention," The Young Turks, February 24, 2015, https://www.youtube.com/watch?v=sCtZKOkqpBI.

D. Compact for America

The Compact for America is a hybrid Article V convention movement, or as it describes itself, "Article V 2.0."[23] The initiative condenses four state legislative acts (the Article V application, delegate appointment, prohibition of an invalid convention conducted without authority, and ratification) into one legislative act: Compact for America.[24]

The compact consists of two pieces of legislation.[25] The first is a state legislative bill that calls for an Article V convention for the limited purpose of proposing a specific balanced budget amendment, the text of which is in the bill.[26] It simultaneously appoints the state's governor as a delegate to the convention and adopts the rules of the convention, which preclude any deviation from an up-or-down vote on the specific BBA proposal.[27] Finally, it ratifies in advance the BBA, assuming it is referred out to the states by the convention and Congress.[28] The second piece of legislation is a congressional resolution approving the states' use of the compact mechanism to propose the amendment, calls the convention upon adoption of the compact by a 38th state, and then refers the BBA to the state legislatures for ratification, assuming it is adopted at the convention of governors.[29]

This state compact approach to Article V was designed principally by Nick Dranias, former general counsel and constitutional policy director for the Goldwater Institute. Unlike the other Article V movements, the compact is not triggered at the two-thirds or 34 state application threshold for calling a convention, but rather at the three-fourths or 38 state threshold for ratifying a constitutional amendment. The "all-in-one" concept was intended to put to rest the concerns of the John Birch Society and Eagle Forum regarding the alleged "runaway convention" scenario and to offer up front a very specific, effective BBA that would rein in federal spending without the unintended consequences of a massive tax increase or destruction of the economy.

The Compact for America's "all-in-one" concept was intended to put to rest the concerns of the John Birch Society and Eagle Forum regarding the alleged "runaway convention" scenario.

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[23] "Compact for America Asks: Are You Ready to Upgrade? "Article V 2.0" is Here," Compact for America, August 15, 2014, http://www.compactforamerica.org/#!Compact-for-America-Asks-Are-You-Ready-to-Upgrade- Article-V-20-is-Here/c213a/971A0C4D-110E-4546-A3D4-3FD9CCBE5197.

[24] "Compact for America: Balanced Budget Amendment," American Legislative Exchange Council, January 28, 2013, http://www.alec.org/model-legislation/resolution-to-effectuate-the-compact-for-america.

[25] "The Solution," Compact for America, http://www.compactforamerica.org/#!solution/c1flq.

[26] *Ibid.*

[27] *Ibid.*

[28] *Ibid.*

[29] *Ibid.*

The compact is designed to give the states a more convenient, targeted, and powerful vehicle to originate constitutional amendments than the ordinary Article V process. It is intended to resolve many of the scholarly disputes and minimize court interference by providing an allegedly clearer legal framework to govern the Article V process, regardless of the observer's jurisprudential view on the process.[30]

Part Two
Educational Efforts

With the growth of the Article V movement, the need for educational efforts to develop grassroots support and legislative passage has also grown.

With the growth of the Article V movement, the need for educational efforts to develop grassroots support and legislative passage has also grown. The movement's educational efforts to date are described below.

A. The Work of Professor Rob Natelson

Perhaps more than any other individual, professor Rob Natelson is most responsible for the reemergence of the Article V convention movement in the twenty-first century. Natelson is especially known for his studies of the Constitution's original meaning, and he is widely acknowledged to be the country's leading scholar on Article V of the U.S. Constitution.[31]

As a senior fellow at the Goldwater Institute, Natelson researched and published a series of three articles in 2010–11 that brought new light and perspective to the safeness and propriety of an Article V convention, such that state legislators and advocacy groups were willing to give it a renewed look.[32]

Natelson's 2011 article, "Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers," led to his authorship of *Proposing Constitutional Amendments by a Convention of the States: A Handbook for State Lawmakers* published by the American

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[30] "Compact for America: Balanced Budget Amendment," *supra* note 24.

[31] "Freedom's Front Line," Independence Institute, http://www.i2i.org/robnatelson.php.

[32] Robert G. Natelson, "Amending the Constitution by Convention: A Complete View of the Founders' Plan" (Phoenix, AZ: Goldwater Institute, 2010), https://goldwater-media.s3.amazonaws.com/cms_page_media/2015/4/30/091010%2C%20Article%20V%20Policy%20Report%20FINAL.pdf; Robert G. Natelson, "Learning from Experience: How the States Used Article V Applications in America's First Century" (Phoenix, AZ: Goldwater Institute, 2010), https://goldwater-media.s3.amazonaws.com/cms_page_media/2015/4/30/Final%20110310%2C%20Article%20V%20Part%202%20FINAL.pdf; and Robert G. Natelson, "Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers" (Phoenix, AZ: Goldwater Institute, 2011), https://goldwater-media.s3.amazonaws.com/cms_page_media/2015/2/2/PB%2011-02%20Article%20V%20Part%203%20of%203_0.pdf.

Legislative Exchange Council in 2011.[33] Through ALEC, state legislators have come to learn more about the Article V process and advocacy groups have had the opportunity to network with them, thereby bringing the movement to its current pace.

Since his entry into the Article V arena in 2010, Natelson has spoken before and moderated or served on panels at numerous Article V convention seminars and symposiums.[34] He has continued to research and write extensively on the subject and to debunk many of the opposition arguments posed by such groups as the John Birch Society and Eagle Forum.[35] One of his more recent and prominent efforts is the legal treatise *State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters*, prepared in 2014 and since updated for the Convention of States.[36]

Through the American Legislative Exchange Council, state legislators have come to learn more about the Article V process and advocacy groups have had the opportunity to network with them.

Natelson is the Independence Institute's senior fellow in constitutional jurisprudence and heads the institute's new Article V Information Center, a website designed to provide journalists, state lawmakers, and other citizens with up-to-date, accurate, and unbiased information on the Article V movement.[37] He was a law professor for 25 years, serving at three universities. He is also senior fellow in constitutional jurisprudence at the Montana Policy Institute and a policy advisor to The Heartland Institute.[38]

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[33] Robert G. Natelson, *Proposing Constitutional Amendments by a Convention of the States: A Handbook for State Lawmakers* (Washington, DC: American Legislative Exchange Council, 2011), http://www.alec.org/docs/ArticleVHandbook.pdf.

[34] Google and YouTube search of "Rob Natelson Article V convention" results in hundreds of hits reflecting the many seminars in which Natelson has participated.

[35] A sampling of Natelson's research is listed at http://www.articlevinfocenter.com/researchresources. His continuing updates on Article V can be found at http://www.articlevinfocenter.com/. His most recent rebuttal of the frivolous claims of the naysayers can be found at: "A Response to the 'Runaway Scenario,'" Independence Institute, February 15, 2013, http://constitution.i2i.org/2013/02/15/a-response-to-the-%E2%80%9Crunaway-scenario%E2%80%9D/.

[36] Robert G. Natelson, *State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters*, Convention of States, third edition, April 2014, https://www.heartland.org/policy-documents/state-initiation-constitutional-amendments-guide-lawyers-and-legislative-drafters.

[37] "Freedom's Front Line," *supra* note 31; "New "Article V Information Center" Helps Federal Reform Efforts," Article V Information Center, April 16, 2015, http://www.articlevinfocenter.com/new-article-v-information-center-helps-federal-reform-efforts/.

[38] "About Rob Natelson," Independence Institute, http://constitution.i2i.org/about/.

B. The Article V Debates and Educational Efforts

With the renewed interest in the Article V convention process, many advocacy groups, think tanks, and law schools have sponsored seminars and debates designed to discuss and educate the public and state legislators on this constitutional process.[39] It would not be possible to list or describe all such efforts here; however, three are notable for the presenters and organizations involved.

> Many advocacy groups, think tanks, and law schools have sponsored seminars and debates designed to discuss and educate the public and state legislators on the Article V convention process.

The first occurred at the Council for National Policy meeting in St. Petersburg, Florida on February 7–8, 2014. CNP is an exclusive organization of many of the wealthiest conservative individuals in the country.[40] The Article V debate occurred between Michael Farris of CoS and Trent England of the Freedom Foundation.[41]

The debate was first notable because, at the outset, England virtually conceded the likelihood of a "runaway" convention was remote. His chief argument against an Article V convention was that the Constitution was a sacred document that should not readily or easily be amended; to hold a convention to propose multiple amendments to the Constitution was not in the best interests of the document or the country. Asked by a member of the audience to identify "the worst case amendment that he believed an Article V convention could realistically adopt and that could get ratified by 38 states," England deemed the worst case scenario to be an amendment eliminating the Electoral College.[42] Given the presence of two of the finer constitutional scholars in the Article V arena, one would have expected the runaway convention scenario to have been fully explored, but that discussion never materialized given England's concession.

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[39] Among the many not addressed in the text above are: The Cooley Law School Article V Symposium, September 16, 2010 (http://www.cooley.edu/news/2010/091710_ArticleV_Symposium.html); Conference on the Constitutional Convention, Harvard Law School, September 24, 2011 (https://www.youtube.com/watch?v=ivdnxcVS5U0); Goldwater Institute Article V Seminar, September 25, 2011 (https://www.youtube.com/watch?v=IR1nY-t-Cws); Colorado First Committee Article V Symposium, March 27, 2014 (https://www.youtube.com/watch?v=P3hHSv0nC7Q); Federalist Society Debate on an Article V Convention of States, April 15, 2015 (http://www.fed-soc.org/events/detail/a-debate-on-an-article-v-convention-of-the-states); and Hillsdale College, "The Practicality and Desirability of an Article V Convention," September 8, 2014 (https://www.youtube.com/watch?v=JhzgA_k6XrE).

[40] "Council for National Policy," Wikipedia, https://en.wikipedia.org/wiki/Council_for_National_Policy.

[41] Because of the Council for National Policy's exclusivity, there is no available video or audio of the debate; however, this author was in attendance to hear the presentation.

[42] Of course, it is highly unlikely liberals or progressives would in the current environment push for the elimination of the Electoral College. In the past six presidential elections dating back to 1992, 19 states totaling 242 electoral votes have voted for the Democratic candidate, just 28 votes shy of the number necessary for election. See http://www.dailykos.com/story/2014/12/07/1349409/-Democrats-have-a-built-in-edge-in-the-Electoral-College-But-it-guarantees-them-nothing-for-2016. With such a stranglehold on the Electoral College, the left would be foolish to propose such an amendment. Thus, even Mr. England's worst-case scenario does not seem currently plausible.

A second notable debate occurred in Norman, Oklahoma in March 2014 between Michael Farris and Oklahoma state Sen. Rob Standridge (R-Norman) on the pro-Article V side and Oklahoma John Birch Society (JBS) leaders Bob Donahoo and Charlie Meadows on the anti-Article V side.[43] At the outset, both sides described the problems facing the country and its federal government as "severe"; however, as is typically the case, they differed over how to solve them.

The JBS team argued in favor of nullification, despite conceding nullification has never systemically succeeded among the states. JBS argued the people are the ultimate check and balance on the federal government, but they conceded an important point that voters are not sufficiently engaged to exercise the needed check. In a surprising final argument, JBS argued if nullification were not effective, the next step would be secession.

The primary argument opposing an Article V convention was that Congress would interject itself into the process and take control of the convention away from the states: "[W]hoever sets the rules controls the convention." JBS pointed to 41 bills regarding Article V that had unsuccessfully been introduced into Congress during the late twentieth century. JBS did not address the fact none of those bills came close to passing in a primarily Democratic-controlled Congress and would be much less likely to pass in the current Republican-controlled Congress. In the absence of further explanation, JBS failed to persuasively argue the present Congress would intervene in a convention's proceedings.

The primary argument made by the John Birch Society opposing an Article V convention was that Congress would interject itself into the process and take control of the convention away from the states.

In summary, JBS offered no plausible argument as to how to solve this country's "severe" problems, nor could it offer a politically realistic argument as to why a convention would not be controlled by the states. Nevertheless, its arguments have for the time being played a role in keeping Oklahoma from voting to support an Article V resolution.

The third most notable debate regarding the efficacy of the Article V convention process occurred in Hillsborough, New Jersey on May 13, 2014, when Michael Farris squared off against Andy Schlafly of Eagle Forum.[44]

Schlafly argued, as had England earlier, the Constitution is a magnificent document crafted by Christian conservative men of a character that no longer exists today. He too claimed Congress would insert itself into the process and choose the delegates for the convention, write the rules,

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[43] "Michael Farris Debates Leaders of John Birch Society in Oklahoma," Convention of States, April 15, 2014, https://www.youtube.com/watch?v=5HBVzS9c8ZQ.

[44] "Michael Farris Debates Andy Schlafly in New Jersey," Convention of States, June 9, 2014, https://www.youtube.com/watch?v=xHd1xUo-_XE.

and appoint retired Supreme Court Justice John Paul Stevens[45] to be convention chair. He argued liberals, with the support of the media, would hijack the convention, that voice votes would be used to push the liberal agenda, and that Republicans and conservatives would wilt under the bright lights of the media. He cited the 17th Amendment and the Arizona governor's veto of religious freedom legislation as evidence of how Republicans are unwilling to take on the media. He argued if conservatives fought back, the media would perform background checks and run smear campaigns against them. The momentum, he claimed, would cause the states to ratify amendments repealing the Second Amendment and guaranteeing abortion on demand.[46]

> The best way to eliminate arguments against an Article V convention is to get a popular single-subject amendment to the 34-state threshold, call and then convene a convention, and show the world it can stick to task.

Farris systematically pointed out the errors in Schlafly's arguments: Congress has never successfully passed an Article V bill; a conservative Congress will not interject itself into a convention called by conservative states; historical and legal precedent establish that states control a convention; Congress's authority under Article V is purely ministerial; and the ratification requirement eliminates pragmatically any chance of a harmful amendment ever passing.

Schlafly did not offer a realistic solution to the serious problems everyone on the right agrees afflict the national government. Instead, Schlafly supported the tried and failed practice of winning supermajorities through elections and implementing change one small step at a time. In closing, Farris perhaps fortuitously called for the solution all Article V advocates need to support, the solution this study ultimately proposes. In explaining what needs to happen with the movement to resolve first the political problems facing our country and then subsequently the social ills, Farris proposed the following:

> The best thing we can possibly do is to validate this process on something the American public is united behind: People want to fix the fiscal problems, and then we can come right back after it. Once we validate this process, we can use it again to fix [other problems].[47]

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[45] It is ironic that Schlafly would cite Justice Stevens, who as an appellate judge interpreted Article V to hold that conventions thereunder are responsible for setting their own rules and are not subject to the kind of external interference Schlafly claimed a Stevens-chaired convention would invite. See *Dyer* v. *Blair*, 390 F.Supp. 1291, 1307 (N.D. Ill. 1975) ("Article V identifies the body – either a legislature or a convention – which must ratify a proposed amendment. The act of ratification is an expression of consent to the amendment by that body. By what means that body shall decide to consent or not to consent is a matter for that body to determine for itself."). While *Dyer* addresses ratifying conventions, the same rule applies to a proposing convention.

[46] "Michael Farris Debates Andy Schlafly," *supra* note 44.

[47] "Convention of States New Jersey Debate," Convention of States, May 14, 2014, https://www.youtube.com/watch?v=7xUXQvOTkr4 [at 1:31:08 mark].

Indeed, the best way to eliminate the argument against an Article V convention is to get a popular single-subject amendment to the 34-state threshold, call and then convene a convention, and show the world it can stick to task: one state/one vote/one amendment.

C. Media and High-Profile Endorsements

Perhaps the single greatest boost to the Article V movement over the past few years has been the publication of Mark Levin's best-seller *The Liberty Amendments*, which called for the adoption of 11 constitutional amendments designed largely to reduce the power of the federal government through the Article V convention process.[48] Levin's book burst onto the scene while BBATF was picking up steam in passing its resolution among the states, CoS and the Compact were commencing their programs, and the educative efforts of state legislators at ALEC and other efforts were reaching a critical mass. The resulting convergence of these events brought the Article V movement into the forefront.

Perhaps the single greatest boost to the Article V movement over the past few years has been the publication of Mark Levin's *The Liberty Amendments*.

Endorsements by numerous high-profile politicians and conservative pundits soon followed. CoS got the endorsement of Levin and also received the support of then-Fox television host Mike Huckabee.[49] Others offering support include Glenn Beck, former Oklahoma Sen. Tom Coburn (R), Sean Hannity, former Alaska Gov. Sara Palin (R), and Wisconsin Sen. Ron Johnson (R), among others.[50] In September 2014, CoS established a Legal Board of Reference consisting of several highly recognized legal figures who signed what is known as The Jefferson Statement, a document endorsing the use and safeness of the Article V convention process.[51]

The BBA resolution similarly has received the support and endorsement of several high-profile politicians and public figures. Among its endorsers are Gov. John Kasich (R) of Ohio, Gov. Bobby Jindal (R) of Louisiana, Sen. Rand Paul (R) of Kentucky, Dr. Ben Carson, and nationally syndicated talk show host Herman Cain.[52] It received its most significant endorsement in the 1980s, from President Ronald Reagan.[53]

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[48] Mark Levin, *supra* note 14.

[49] "Endorsements," *supra* note 15.

[50] *Ibid.*

[51] "The Jefferson Statement," Convention of States, September 11, 2014, http://www.conventionofstates.com/the_jefferson_statement.

[52] Garrett Humbertson, "Conservative Leaders Unite Behind Convention of States Movement," *Red Millennial*, June 6, 2014, http://redmillennial.com/2014/06/06/conservative-figures-unite-around-convention-of-states-movement/.

[53] *Ibid.*

Finally, the Compact for America effort has been endorsed by author and syndicated columnist George Will, judicial analyst and scholar Judge Andrew Napolitano, Fifth Circuit U.S. Court of Appeals senior Judge Harold DeMoss, national radio personality Mike Church, the Cato Institute's senior fellow in constitutional studies, Ilya Shapiro, who is editor-in-chief of the *Cato Supreme Court Review*, and Dr. Kevin Gutzman, author of the New York Times bestseller *James Madison and the Making of America*.[54]

D. Friends of the Article V Convention

It would not be possible to record the development of the Article V movement without reference to Friends of the Article V Convention.

It would not be possible to record the development of the Article V movement without reference to one of the seminal groups formed to promote its benefits: Friends of the Article V Convention. FOAVC was founded in 2007 by several political activists, including (in alphabetical order):

Judge Thomas Brennan, former chief justice of the Michigan Supreme Court and a founder and first dean of the Thomas M. Cooley Law School, the largest accredited college of law in the United States. Brennan has advocated for the calling of an Article V convention since publishing his seminal article on the topic in 1982.[55] Given the number of state applications that have been submitted to Congress and Congress's failure to count them, much less call a convention, Brennan has more recently begun leading an effort to organize a virtual Article V Convention on the Internet. That parallel effort is known as ConventionUSA.[56] Most recently, Brennan authored the book *The Article V Amendatory Constitutional Convention*;[57]

Byron Delear, CEO of Energy Equity Funding, LLC, an energy equity funding service. He is a national columnist for Examiner.com, a past candidate for the U.S. House of Representatives, an independent media producer, and a political activist on multiple other projects;

Joel Hirschhorn, author of *Delusional Democracy – Fixing the Republic Without*

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[54] "Compact for a Balanced Budget Now!" Compact for America, August 23, 2014, http://www.compactforamerica.org/#!Compact-for-a-Balanced-Budget-Now/c213a/F5AAFF64-D733-4916-A47D-914B44072BA1.

[55] Thomas E. Brennan, "Return to Philadelphia," *Cooley Law Review* **1** (1982), http://www.article-5.org/file.php/1/Articles/return_to_philadelphia.pdf.

[56] "The Constitutional Convention of 2017," Convention USA, http://www.conventionusa.org/.

[57] Thomas E. Brennan, *The Article V Amendatory Constitutional Convention: Keeping the Republic in the Twenty-First Century* (Lanham, MD: Lexington Books, 2014).

Overthrowing the Government,[58] which advocates the calling of an Article V convention. He is a former senior staffer for the U.S. Congress and for the National Governors Association;

Dennis Murphy, a Nebraska business owner and longtime political activist. He has served as state director of the Nebraska Minutemen and as chairperson of the Nevada Reform Party, and he is an active member of the U.S. Coast Guard Auxiliary; and

Bill Walker, a former journalist and newspaper publisher. He graduated from Washington State University with a bachelor's degree in journalism. He has brought two federal lawsuits, *Walker* v. *United States* (2000) and *Walker* v. *Members of Congress* (2004), the latter appealed to the U.S. Supreme Court. Both suits sought to compel Congress to call an Article V Convention. The courts never reached a decision on the merits of his claims. Walker is the face of FOAVC and has been a guest speaker at numerous events on Article V.[59]

FOAVC is a nonpartisan organization that does not support any specific subject matter or topic for the call of an Article V convention. Instead, based on its reading of the Article V historical record, it believes any application passed by a state, regardless of the subject matter, should be counted toward the two-thirds threshold. Since more than 34 states have passed some form of an application, FOAVC advocates that Congress immediately call a convention. For the first time in history, FOAVC has gathered into a photographic collection taken from official government records the actual texts of hundreds of applications for Article V conventions from 49 states. Its website provides a wealth of articles, videos, and other information for Article V activists.[60]

Since more than 34 states have passed some form of an application, FOAVC advocates that Congress immediately call a convention.

E. The Article V Library

Still another excellent resource for Article V information has been provided online by Robert Biggerstaff, a South Carolina attorney and Article V researcher. Biggerstaff has created an enormous repository of Article V information known as the Article V Library.[61] The library contains a searchable database of virtually every Article V application known to have been passed. It likewise contains links to a wealth of Article V materials.

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[58] Joel E. Hirschhorn, *Delusional Democracy – Fixing the Republic Without Overthrowing the Government* (Monroe, ME: Common Courage Press, 2006).

[59] See Cooley Symposium September 10, 2010: part 1, https://www.youtube.com/watch?v=tNZxlpxyxSg; Harvard Conference on the Constitutional Convention 2011, https://www.youtube.com/watch?v=UO5I0isDEtY.

[60] "Images of Article V Applications," Friends of the Article V Convention, http://foavc.org/file.php/1/Amendments.

[61] "Welcome to the Article V Library," http://www.article5library.org./.

F. The Article V Convention Legislative Progress Report

In January 2015, it became apparent that before the legislative season was over, more than 200 Article V-related pieces of legislation would be introduced in the 99 Senate and House chambers across the country. Although each of the advocacy groups was quick to tout its own successes, it was unclear what successes and failures were in fact occurring within the movement.

> In January 2015, *The Article V Convention Legislative Progress Report* began to publish weekly updates on the status and progress of each of the Article V advocacy groups.

Accordingly, this author undertook to research and identify every Article V-related piece of legislation pending in the 50 states. The time and effort to track down that volume of legislation was not inconsequential, and requests to several of the advocacy groups for their cooperation went unanswered. Nevertheless, by the end of January, the *Article V Convention (AVC) Legislative Progress Report* began to publish weekly updates on the status and progress of each of the Article V advocacy groups.

The *Progress Report* provides a listing of all states where each advocacy group's resolution has been either introduced or passed. It also tracks the movement of pending legislation through committee and floor votes in each chamber. Finally, in an effort to provide meaning to each group's progress, the *Progress Report* attaches a total score and percentage-of-completion score to each group's efforts. As of the date of publication of this article, the major groups compare as follows:

Group	Score	Percentage to Goal
BBATF	172	83%
CoS	54	27%
WP-FFE	40	20%
Compact	30	15%

The *AVC Legislative Progress Report* is the only nationally recognized tracker of the status of all Article V legislation in the country. It is now published by the State Legislators Article V Caucus,[62] the Independence Institute's Article V Information Center,[63] and Friends of Article V Convention.org.[64] A copy of the *AVC Legislative Progress Report* appears below as Appendix A.

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[62] "Progress Report," State Legislators Article V Caucus, http://articlevcaucus.org/?p=148.

[63] David F. Guldenschuh, "Article V Convention Legislative Progress Report," 2015 http://constitution.i2i.org/files/2015/06/AVC-Progress-Report-6-15.pdf.

[64] Bill Walker, "FOAVC Presents New AVC Feature," www.foavc.org/reference/file62.pdf.

Part Three
Article V Organizations of State Legislators

> Four groups of state legislators have formed or are in the process of forming to discuss and plan for an eventual Article V convention.

At the same time different advocacy groups have arisen within the Article V movement, state legislators – no doubt spurred on by the workshops and training provided by ALEC – have begun to coalesce to discuss and plan for an eventual Article V convention. At present, four groups have formed or are in the process of forming, with a number of legislators participating in more than one group.

A. The State Legislators Article V Caucus

The State Legislators Article V Caucus was founded in 2013 after the annual meeting of ALEC in Chicago, the same week CoS was launched. The stated purpose of the Article V Caucus is to encourage state legislators to "re-establish federalism as our Founders intended, and limit the runaway growth of the Federal Government."[65] It is the oldest of the four established state legislative groups. Its founding members, all Republicans, include Sen. Kevin Lundberg (Colorado), Sen. Bill Cowsert (Georgia), Sen. Bill Coley (Ohio), Rep. Yvette Herrell (New Mexico), Rep. Lori Saine (Colorado), Rep. Lynne Riley (Georgia), Rep. Manny Steele (South Dakota), Rep. Gary Banz (Oklahoma), Rep. Robert Thorpe (Arizona), Rep. Chris Kapenga (Wisconsin), Rep. Jordan Ulery (New Hampshire), and Rep. Andrew Welch (Georgia). The caucus, co-chaired by Lundberg and Herrell, has grown to number more than 90 state legislators from 32 states.[66]

The caucus states it believes an Article V convention is the most efficacious means of meeting its goals, and it is encouraging the states to adopt resolutions to call for an Article V convention. It also states a convention is only the means to that end, and thus its focus remains on the goal of federalism and limited government.[67] The Article V Caucus seeks to encourage state legislators to uphold its founding principles, using web-based information, model legislation, and strategic meetings.[68] It publishes a monthly newsletter updating its members and the public on recent developments in the Article V movement.[69]

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[65] "About," State Legislators Article V Caucus, http://articlevcaucus.com/about/.

[66] *Ibid.*

[67] *Ibid.*

[68] *Ibid.*

[69] "Article V News," State Legislators Article V Caucus, http://articlevcaucus.com/news/.

B. The Assembly of State Legislatures

The Assembly of State Legislatures (ASL) was formed in December 2013 at the call of five state legislators: Indiana Senate President Pro Tem David Long (R-Fort Wayne), Wisconsin state Rep. [now Sen.] Chris Kapenga (R-Delafield), Ohio Speaker Pro Tem Matt Huffman (R-Lima), Oklahoma state Rep. Gary Banz (R-Midwest City), and Kansas state Sen. Caryn Tyson (R-Parker). It considers itself a bipartisan group of currently serving state legislators from across the country who recognize the states have a responsibility under a federalist system to work together to solve problems of national concern.[70]

> The Assembly of State Legislatures was formed in December 2013.

Just over 100 legislators from 32 states initially met at Mt. Vernon in December 2013 and adopted a resolution putting into place committees to plan for an anticipated call of an Article V convention. Among other things, the committees are assigned to draft model rules for the convention, examine the status and content of applications passed by the states to date with a mind toward notifying Congress as appropriate when they believe the threshold of 34 state applications has been met, and plan for credentialing, scheduling, financing, and facilitating of such a convention.[71]

ASL has since met twice: In June 2014 in Indianapolis, where 33 states were again represented, and in December 2014 just outside Washington, DC, where 29 states were represented.[72] Its executive committee met in Denver in June 2015, and the next scheduled full meeting will be in Salt Lake City in November 2015, where ASL is expected to adopt a set of model rules for any future Article V convention.[73]

In order to avoid any appearance of bias or political affiliation, ASL has steadfastly declined any efforts of advocacy or other groups to interject themselves into the organization's work.[74]

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[70] Mount Vernon Assembly, https://www.facebook.com/mountvernonassembly/info?tab=page_info; Brian A. Howey, "Sen. Long calls for bipartisan 'Mount Vernon Assembly'," Howey Politics Indiana, October 22, 2013, http://howeypolitics.com/Content/HPI-News/HPI-News/Article/Sen-Long-calls-for-bipartisan-Mount-Vernon-Assembly-/39/123/10497; The Assembly of State Legislatures, http://www.theassemblyofstatelegislatures.org/index.html.

[71] "Resolution of The Mount Vernon Assembly - December 7, 2013," The Assembly of State Legislatures, http://www.assemblystatelegislatures.com/mount-vernon-assembly-resolution.html.

[72] Matthew Butler and Brian A. Howey, "'Assembly of State Legislatures' plots Article V Convention in Indy," June 12, 2014, http://howeypolitics.com/Content/Default/Lead-Story/Article/-Assembly-of-State-Legislatures-plots-Article-V-Convention-in-Indy/-3/346/11483; Chris Kapenga, "The Assembly of State Legislatures to Meet at the Naval Heritage Center on December 8 and 9," December 5, 2014, http://www.thewheelerreport.com/wheeler_docs/files/1205kapenga.pdf.

[73] The Assembly of State Legislatures, http://www.theassemblyofstatelegislatures.org/.

[74] Garrett Humbertson, "State Legislators Lay Groundwork for a Convention of States," *Red Millennial*, December 8, 2014, http://redmillennial.com/2014/12/08/state-legislators-lay-groundwork-for-a-convention-of-states/.

Although it remains a heavily conservative assemblage, it has actively reached and recruited across the aisle to maintain a bipartisan presence. Three Democrats sit on its Executive Committee.[75]

C. Newest Groups: The Federal Assembly and CoS Caucus

At the annual ALEC meeting held in San Diego in July 2015, two new groups were created. The Federal Assembly of State Presiding Officers was formed following a day-long meeting hosted by the National Tax Limitation Foundation, in coordination with BBATF. The BBA-focused event, announced by Ohio Senate President Keith Faber (R-Celina), extended a personal invitation to the Senate president and House speaker in each of the 50 states. The principal purpose of the Federal Assembly is to get state presiding officers from 26 or more states to go on the record in favor of a "one state/one vote/one amendment" resolution should an Article V convention be called to consider a BBA.

Simultaneously, CoS announced the formation of the COS Caucus. It purports to have more than 200 members, and its first order of business will be to review a proposed set of convention rules drafted by professor Rob Natelson.[76]

D. Faithful Delegate Limitation Bills

In an effort to further assert their control over the Article V process, seven states have adopted some form of "delegate limitation" or "faithful delegate" legislation.[77]

> Many states have adopted or are considering enactment of "delegate limitation" or "faithful delegate" legislation to address concerns about a runaway convention.

It is widely acknowledged states may limit the authority of their delegates to an Article V convention. During the founding era, a state typically would provide its delegates with a commission setting forth the scope of authority delegated. These delegate bills are intended to address the concerns about a runaway convention and to enforce the legal obligation of delegates to act only within the scope of their commissions. These acts typically bind a delegate to act only on those matters within the scope of the call of the convention and to support the one state/one vote mechanism for voting at the convention. A

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[75] Matthew Butler and Brian A. Howey, *supra* note 72; see also Byron DeLear, "State legislators lead effort to diversify Article V Convention movement," *Examiner*, November 17, 2014, http://www.examiner.com/article/state-legislators-lead-effort-to-diversify-article-v-convention-movement.

[76] See Tamara Colbert, "Convention of States Project launches legislator caucus and website at American Legislative Exchange Council meeting July 23–24," Convention of States, July 23, 2015, http://www.conventionofstates.com/convention_of_states_project_launches_legislator_caucus.

[77] Georgia: O.C.G.A. § 50-1-30 et seq.; Florida: Fla. Stat. § 11.93; Indiana: IC 2-8-1-1 et seq.; North Dakota: NDCC § 54-03-01 et seq.; South Dakota: HB 1069 (signed March 8, 2015); Tennessee: Tenn. Code Ann. § 3-1-1801 et seq.; Utah Code 20A-17-101.

delegate who acts outside the scope of commission is automatically recalled and in some cases replaced with a substitute delegate.

Part Four
Successes and Disappointments of the Primary Advocacy Groups

Each of the primary Article V advocacy groups has experienced success and failures in the past two years. Here is a quick glance at their efforts.

A. Balanced Budget Amendment Task Force

> The Balanced Budget Amendment Task Force has experienced multiple successes. It has passed more modern-era applications (11) than the next closest group (4).

Thanks to 16 BBA resolutions still alive from the Reagan-era push for a balanced budget amendment, BBATF had a healthy start toward reaching its goal of 34 states submitting applications to Congress on the same or similar subject, in this case a BBA.[78] With 11 modern-era applications having passed, BBATF is well on its way to 34.[79] Attached as Appendix B is a map designating states where the BBA has passed and targeted states.

BBATF has experienced multiple successes. It has passed more modern-era applications (11) than the next closest group (4). In 2013 and 2014, respectively, it passed applications in Michigan and Ohio, two states that had declined to pass BBA resolutions during the Reagan-era push. BBA resolutions passed with overwhelming bipartisan votes in Louisiana and Tennessee, and BBATF is the only group to have garnered significant bipartisanship in other states as well. It was successful in getting its application passed in South Dakota and Utah, where other groups failed. It has passed at least one chamber in six other target states: Arizona, Oklahoma, South

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[78] There exists the question of whether these 16 applications passed primarily between 1976 and 1983 will aggregate with each other and with modern-era applications. Congress will have the duty of initially making that assessment. To date, we have limited indications of how inclusive Congress will be in its counting of applications. Rep. Bob Goodlatte (R-VA), chairman of the House Judiciary Committee, which has been assigned the task of tracking state applications, has been quoted as at least unofficially agreeing with BBATF's count of 27 to date. See Samantha Ellis, "Virginia house representative Bob Goodlatte visits JMU SGA," *The Breeze*, April 1, 2015, http://www.breezejmu.org/news/virginia-house-representative-bob-goodlatte-visits-jmu-sga/article_7547c20e-d877-11e4-b877-5f3e9a9813c8.html.

[79] In 2011, Alabama passed the first new-generation single-subject BBA resolution. New Hampshire, which had rescinded its application just two years before, passed a BBA in 2012. In 2013, Ohio, having rejected a BBA resolution three times, passed the BBA. Five states (Florida, Georgia, Louisiana, Michigan, and Tennessee) passed the BBA resolution in 2014, and three more (North Dakota, South Dakota, and Utah) passed in 2015, bringing the count to 27, including all non-rescinded resolutions passed during the 1970s and 1980s.

Carolina, West Virginia, Wisconsin, and Wyoming. It appears to have the votes to pass in Idaho, is very close in Virginia, and despite the strength of the John Birch Society in Montana, its prospects there remain attainable. In each of those nine target states, the GOP controls both legislative chambers, typically by healthy margins; thus, BBATF's path to 34 remains realistic and easily represents the best opportunity among the advocacy groups to reach a convention.

B. The Convention of States Project

CoS rang in 2014 with a bang. During its first full year of legislative activity, CoS introduced its resolution in approximately 15 states. Its first success came in Georgia, where in just 52 calendar days the resolution swept through both chambers of the legislature, and Georgia became the first state in the country to pass a historic call for an Article V convention to rein in the power and jurisdiction of the federal government. Before the year was over, Alaska and Florida also had passed the CoS resolution.

> The interactive website and numerous educational events held by the Convention of States Project across the country did much to advance the cause of the entire Article V movement.

Of perhaps greater significance, CoS spent much of that first year establishing grassroots organizations, eventually in all 50 states. Its interactive website and numerous educational events across the country did much to advance the cause of the entire Article V movement. It received numerous endorsements from high-profile politicians and pundits, and as evidenced by the consistent support shown for CoS at state legislative committee hearings, CoS made its grassroots presence known throughout the country.

In 2015, Alabama became the fourth state to pass the CoS resolution. The CoS application was filed in 36 other state legislatures. Of those 36 states, 19 passed initial committee votes. Three state Senate chambers and eight House chambers passed the resolution on a floor vote.

Despite the successes of its first two years of efforts, CoS had its setbacks. It dramatically failed to meet its very lofty and optimistic goal of getting 34 states to adopt its convention resolution by the end of 2015.[80] Of greater concern is that on multiple occasions in Louisiana, North Dakota, Texas, and other states that have shown friendliness toward the Article V Convention movement, CoS came up short.

One of the most consistently cited hesitations about CoS is that its application seeks to do too much at once. Given the common fear of a runaway convention, legislative opponents of CoS have in several states been able to successfully argue its general call on the subject matter of reducing the power and jurisdiction of the federal government is nothing more than a

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[80] CoS projected reaching the 34-state threshold by passing its resolution in 14 or 15 states in 2014 with 19 or 20 to follow in 2015. "Jacqueline Peterson State Director Convention of States Georgia 7/13/14," MeatandPotatoes2012, https://www.youtube.com/watch?v=EGQ1DEPJL4c&list=PLnUqWRINGMAjCVIXFT6Yw9cuxndE-rlp&index=68 [30:25 – 30:50].

smokescreen for an open convention.[81] However unfounded the criticism, it has slowed down the initial momentum established by CoS.

C. Wolf-PAC – Free and Fair Elections ("WP-FFE")

With money and power creating scandal in the federal government every day, WP-FFE's campaign finance reform resolution would appear to be gaining momentum. Working with volunteers on a shoestring budget and making optimal use of the Internet, WP-FFE has passed its resolution in four states, large and small, east and west, but all Democratically controlled. It has taken a very low-key, under-the-radar approach to advocacy, which to date has proved every bit as successful as that of the higher-profile advocacy groups.

It appears to be part of the group's strategy to gather momentum as Washington self-destructs, and again, there is some wisdom in this approach. To get ultimately to 34 states anywhere in the near future, WP-FFE is going to have to find ways to build coalitions in more moderate and conservative states where campaign finance reform is likely popular among the citizenry but less so among the politicians. It has the opportunity to build those coalitions in the next two years as BBATF approaches its 34-state threshold. Despite early indications to the contrary, one hopes WP-FFE's leadership will see fit to take that step.

D. Compact for America

> Nick Dranias is the architect of the Compact, and his full-time attention to the cause is critical to its ultimate success.

In October 2014, Nick Dranias left his position at the Goldwater Institute to work full time for the Compact for America Educational Fund, Inc.[82] This was undoubtedly the most important move forward for the Compact since its founding. Dranias is the architect of the Compact, and his full-time attention to the cause is critical to its ultimate success.

As for the legislative landscape, the Compact has spent much of its first two years organizing the grassroots and educating legislators about its concept. Because of its all-in-one approach, the Compact requires far more educating of state leaders than do the other Article V resolutions. The energy and time put in on the front end with the Compact stands to reap tremendous benefits on

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[81] See, e.g., hearing before Louisiana Senate Judiciary Committee B on June 2, 2015 at http://senate.la.gov/video/videoarchive.asp?v=senate/2015/06/060215JUDB_0; hearing before Texas Senate Committee on State Affairs on May 25, 2015 at http://tlcsenate.granicus.com/MediaPlayer.php?view_id=30&clip_id=10305 (commencing approximately at 7:45 mark); and Oklahoma House debate on SJR4 on April 21, 2015 at http://okhouse.granicus.com/MediaPlayer.php?view_id=57&clip_id=1838.

[82] "Nick Dranias Joins Compact for America's Educational Foundation as its Vice President!," Compact for America, October 10, 2014, http://www.compactforamerica.org/#!Nick-Dranias-Joins-Compact-for-Americas-Educational-Foundation-as-its-Vice-President/c213a/788E1806-766D-417F-B2F4-E6AE76217A45.

the back end, where concerns of a runaway convention, drafting of an amendment, and difficulty of ratification are all put to rest.

As is discussed in more detail below, the Compact has taken a more targeted approach to its introduction into the states. It has passed in four of 16 states where it has been introduced. However, it faces numerous institutional difficulties in "must have" states[83] that will be difficult if not impossible to overcome. There is a significant and narrow road ahead for the Compact to get to its ultimate goal of 38 states.

E. An Overall Recap of Legislative Progress Through 2015

The Article V movement had an encouraging run through the various state legislatures in the first half of 2015, with potentially a success or two left to come in the final months of the year. At least one Article V resolution was introduced into 47 of the 50 states in 2015. One inactive state, Georgia, passed three Article V resolutions in 2014; thus, it had nothing left to address this year. A second state, Colorado,[84] considered but elected to postpone action on two Article V resolutions during 2014. The third state, Wisconsin, passed a BBA resolution in 2014 in its House[85] and is likely to have at least one resolution introduced before the end of the year. Thus, all 50 states have engaged in Article V activity over the past two years.

At least one Article V resolution was introduced into 47 of the 50 states in 2015. One inactive state, Georgia, passed three Article V resolutions in 2014.

Six states passed seven Article V resolutions or bills in 2015. BBATF led the way, passing in North Dakota, South Dakota, and Utah. The Compact passed in North Dakota and Mississippi. The CoS resolution passed in Alabama, and the WP-FFE resolution passed in New Jersey.

Each of the Article V advocacy groups had successes in getting its resolutions passed in at least one chamber of a legislature, creating the opportunity to finish passage in 2016 in those states where legislation carries over from one year to the next.

BBATF, which needs only seven more states to meet the 34-state constitutional threshold for calling a convention, passed in the West Virginia Senate, the Oklahoma House, and the Wyoming House, although only the first two will carry over to 2016. CoS passed and will carry

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[83] "The Solution," *supra* note 25.

[84] Colorado considered two different Article V resolutions during 2014 and voted to postpone both indefinitely: SJR 14-023, the CoS resolution sponsored primarily by state Sen. Kevin Lundberg (R-Berthoud), and HR 14-1016, the National Debt Relief Amendment resolution sponsored by state Rep. Lori Saine (R-Dacono). See http://www.leg.state.co.us/CLICS/CLICS2014A/csl.nsf/BillFoldersAll?OpenFrameSet and http://www.leg.state.co.us/CLICS/CLICS2014A/csl.nsf/BillFoldersAll?OpenFrameSet.

[85] "Assembly Joint Resolution 81," Wisconsin State Legislature, 2013–2014, http://docs.legis.wisconsin.gov/2013/proposals/ajr81.

over in the Iowa House and likely in the New Mexico House, and in the Oklahoma and Tennessee Senates. CoS passed in one chamber in seven other states, but it will have to restart its efforts in those states in 2016. The Compact passed in one chamber in five states, but none carries over to 2016. WP-FFA passed different versions of its resolution in both the Maryland House and Senate, but because they could not iron out the differences before the legislative session concluded, they will have to start over in 2016. WP-FFA also passed and will carry over in the Hawaii House and the Delaware Senate. Thus, eight resolutions remain pending at the end of 2015, having passed one chamber and requiring but passage in the other chamber to become final.

In the final analysis, it was a productive year in terms of introducing Article V resolutions, but significant challenges remain, as evidenced by the overall success or "passage rate" of resolutions.

> Since Alabama passed the first new-generation single-subject balanced budget amendment resolution in 2011, the Balanced Budget Amendment Task Force has targeted 23 states and obtained passage in 11, for a passage rate of 48 percent.

Since 2010, 17 states have passed a total of 26 Article V resolutions. Over the past two years, CoS introduced its resolution in 40 total states, and it passed in four. That gives CoS an overall passage rate of 10 percent. Given the "low-hanging fruit" one would have expected CoS to pluck during its first two years, particularly given its initial successes in Alaska, Florida, and Georgia, the one-state gain in 2015 suggests the hurdles contemplated at the announcement of the project in 2013 are proving to be much higher than originally anticipated. The same holds true for both the Compact and WP-FFE. The latter has been introduced in 30 states so far and passed in four, for a passage rate of 13 percent. The Compact has been much more targeted in its efforts, passing in four of 16 states for a 25 percent passage rate.

Unquestionably, BBATF, with the benefit of the momentum established by 16 applications surviving from the Reagan-era BBA surge, has led the way in successfully passing its single-subject resolution. Since Alabama passed the first new-generation single-subject BBA resolution in 2011, BBATF has targeted 23 states and obtained passage in 11, for a passage rate of 48 percent. This is particularly impressive given BBATF had far fewer jurisdictions to choose from, with the available states being the more difficult ones in which to obtain passage. For example, passage in Arizona is virtually impossible as long as anti-Article V Senate Majority Leader Andy Biggs remains in authority, although it remained on the targeted list of states.

Thus, although each of the groups has enjoyed successes over the past two years, it is undeniable BBATF has shown the most resiliency and acceptability within the movement, and that has translated into success in getting its Article V resolutions passed.

Part Five
Individual Legislators and Other Roadblocks Within Specific States

The road to passing an Article V convention resolution is steep with hurdles and pitfalls.

The starting point is finding one or more key legislators willing to introduce and carry the legislation through their respective chamber and across the capitol building to their fellow chamber. It requires educating colleagues and obtaining cosponsors for the resolution. Once introduced, the resolution goes through one or more committees, where an affirmative vote is usually required to move the resolution to the floor. Often legislative maneuvers by a single individual or threats of filibuster can keep the resolution from coming up on the calendar for a vote. Because these are resolutions, they are often viewed as secondary pieces of legislation and must take a back seat to more pressing budget, transportation, and other matters. Assuming a resolution gets to the floor and obtains a favorable vote, it must then start the process over in the corresponding chamber. All of this has to be done within a limited number of days on a legislative calendar containing crossover and other potentially killer deadlines.

There remain several legislators in important positions of leadership who, for a variety of reasons – some good and some not so good – are unwilling or unable to allow debate and an up-or-down vote in their chambers.

It is thus truly remarkable the Article V movement has enjoyed the success it has over the past few years. Although the momentum is building, the opportunities for failure are numerous.

During the past year, the movement experienced those pitfalls in multiple states. There remain several legislators in important positions of leadership who, for a variety of reasons – some good and some not so good – are unwilling or unable to allow debate and an up-or-down vote in their chambers. Set forth below is a sampling of the concerns these legislators have raised about Article V, which the advocacy groups must ultimately address to continue their successes.

A. Sen. Majority Leader Andy Biggs of Arizona

No legislator in the country has proved to be a more determined skeptic of the Article V movement than Arizona Senate Majority Leader Andy Biggs (R). BBATF, CoS, and Compact have all successfully passed their legislation in the Arizona House with seemingly the requisite votes needed for passage in the Senate, only to be thwarted by Biggs.

As Senate Majority Leader, Biggs is responsible for assigning bills to committee and for deciding what resolutions come up for a vote. He has steadfastly refused to allow any Article V legislation to be finally considered in the Arizona Senate.

Biggs is a retired attorney who has scored well with conservative groups, having been designated "Champion of the Taxpayer" by Americans for Prosperity for his cumulative service in the state

legislature. He has similarly been honored by the Goldwater Institute as a "Friend of Liberty."[86] He is well-respected and admired by his colleagues. When it comes to Article V, however, he strongly opposes a convention, citing fears of its potential harming of the Constitution.

In 2015, Biggs authored the paperback *The Con of the Con Con*, in which he argued if the Constitution isn't the problem, then there's no need to fix it, and if it is the problem, then we shouldn't trust its own provisions to fix it.[87] Biggs is likely immovable, but there is overwhelming support in Arizona and in his district for, at a minimum, a federal balanced budget amendment. The hope is that with all of the efforts to eliminate the chance of a runaway convention through delegate limitation bills and model convention rules, he will eventually allow at least one of the advocacy groups to obtain a test vote in the Arizona Senate.

B. Sen. Bart Davis in Idaho

In Idaho, resolutions such as those involving Article V often do not get introduced into either chamber unless it can be shown the votes exist to pass them first. In the Idaho House, it appeared there were ample votes to pass both the BBA and CoS resolutions in 2015.

> In 2015, advocacy groups were unable to provide Senate Majority Leader Bart Davis with sufficient comfort about the safeness of the Article V process and the ability of the states to control the convention.

On the other side of the capitol, Senate Majority Leader Bart Davis (R) is a well-respected, thoughtful lawyer from Idaho Falls.[88] He is viewed by his colleagues as reliable on matters of constitutional significance. Thus, his support for any Article V resolution is critical to its success. In 2015, however, the advocacy groups were unable to provide Davis with sufficient comfort about the safeness of the Article V process and the ability of the states to control the convention to allow their resolutions to come up for vote. Movement leaders hope the efforts of such groups as ASL and the Federal Assembly, as well as continuing educational efforts, can convince Davis to allow a vote in 2016.

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[86] Andy Biggs, Arizona State Legislature, http://www.azleg.gov/MembersPage.asp?Member_ID=88&Legislature=51&Session_ID=110.

[87] Andy Biggs, *The Con of the Con-Con: The Case Against the States Amending the U. S. Constitution* (Gilbert, AZ: Free Man Press 2015). Reviews of the book have alternatively described it as "silly rhetoric" and "unseemly" and "misleading." See Dr. Kevin Gutzman, "Review: Andy Biggs' The Con of the Con Con," *Arizona Daily Independent*, July 2, 2015, https://arizonadailyindependent.com/2015/07/02/review-andy-biggs-the-con-of-the-con-con/; and Jeff Utsch and Barney Brenner, "Book review of 'The Con of the Con Con,' by Arizona Senate President Andy Biggs," *Western Free Press*, June 15, 2015, http://www.westernfreepress.com/2015/06/15/book-review-of-the-con-of-the-con-con-by-arizona-senate-president-andy-biggs/.

[88] Senator Bart M. Davis, http://www.senatordavis.com/about.html.

C. The South Carolina Minority Report

South Carolina appeared ripe in 2015 to pass at least one of the Article V resolutions. It is the only Deep South state that has not passed a BBA resolution, having come close in 2014 when it passed the House but fell short in the Senate. In 2015, BBATF and CoS introduced applications in both chambers. Both resolutions passed in the Senate Judiciary Committee, but state Sen. Bart Hutto (D) pulled a legislative maneuver by assigning a "minority report" to the votes, thereby removing the resolutions from further consideration in the Senate absent a supermajority "special orders" vote.[89] Thereafter, arguments in the Senate over an ethics bill and a transportation bill effectively killed the resolutions for the remainder of the session. Senate President Hugh Leatherman (R) either declined or simply could not find a way to place the resolutions on "special orders" before the session ended.

In the House, the resolutions were assigned to a Judiciary subcommittee, which held five hearings. The subcommittee chose not to vote on the resolutions.[90] Despite a promise from House leadership to vote on the resolutions in 2015, it appears the lack of a clear path to passage in the Senate spilled over to the House, making what was perceived by some as a controversial vote seem undesirable and ultimately unnecessary.

D. Threats of Filibuster in West Virginia House

> In the Judiciary Committee of the West Virginia Senate, Democrats threatened to filibuster other legislation if the balanced budget amendment resolution were brought to the floor for a vote.

For the first time in 80 years, the West Virginia House convened in 2015 under the control of a Republican majority. Spurred on by the strong support of neighboring Ohio Gov. John Kasich (R),[91] the BBA resolution passed the Senate on a voice vote and moved to the House, where it was assigned to the Judiciary Committee.[92] The West Virginia House has 100 delegates, 64 of whom were Republican in 2015. Of those, 56 had expressed support for the BBA resolution. On the last day of the session, SCR 13 came before the Judiciary Committee, where Democrats threatened to filibuster other legislation if the BBA resolution were brought to the floor for a vote. Speaker of the House Tim Armistead (R) thus decided not to allow the BBA resolution to go to vote, despite overwhelming support for it.

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[89] See BBA SCR30 at https://legiscan.com/SC/bill/S0030/2015; CoS SCR198 at https://legiscan.com/SC/bill/S0198/2015.

[90] See BBA HCR3096 at https://legiscan.com/SC/bill/H3096/2015; CoS HCR3177 at https://legiscan.com/SC/bill/H3177/2015.

[91] Jonathan Mattise, "John Kasich touts federal balanced budget amendment in West Virginia," Associated Press, *The Morning Journal News*, February 20, 2015, http://www.morningjournal.com/general-news/20150220/john-kasich-touts-federal-balanced-budget-amendment-in-west-virginia.

[92] See SCR 13 at https://legiscan.com/WV/bill/SCR13/2015.

E. Wyoming Fears Loss of Federal Subsidies

Wyoming is a conservative Western state under GOP control, which makes it a likely target for conservative advocacy groups. In 2015, CoS was unsuccessful in getting its resolution out of Senate committee, with attorney and Senate Majority Leader Phil Nicholas (R) being the crucial swing vote against it.[93] The BBA resolution was introduced in the House, where it sailed through committee and passed on the House floor by a 44–16 vote.[94]

> The Wyoming Senate consists of 26 Republicans and four Democrats, so prospects for success of the BBA resolution should have been high.

The Wyoming Senate consists of 26 Republicans and four Democrats, so prospects for success of the BBA resolution in the Senate appeared to be high. In the Senate committee, however, Nicholas moved to amend the resolution to attach a series of riders providing Wyoming's participation in a BBA convention would not be used to penalize the state in its federal subsidies, which make up a substantial portion of Wyoming's annual budget. Although the resolution passed out of committee, the amendments effectively doomed the resolution, and it failed in a 22–7 vote.[95]

F. Oklahoma – One Resolution's Impact on Another

Oklahoma in 2015 proved to be an example of how one group's success or failure can directly impact another. Both BBATF and CoS were actively pursuing their resolutions, CoS having filed in the Senate under Senate sponsor Rob Standridge (R)[96] and the BBA filing in the House under the sponsorship of state Rep. Gary Banz (R),[97] a national leader among legislators in the Article V movement. Each resolution passed a test vote in their respective chambers of introduction and moved to the opposite chamber for a record vote.

On Tuesday, April 21, 2015, each chamber was scheduled to debate and vote on its respective resolution, but the Oklahoma House got to the CoS resolution before the Senate reached the BBA resolution. The CoS narrowly lost in the House, appearing to fall approximately four votes shy.[98] Even though the whip count in the Senate showed 32 of 48 Senators in favor of the BBA

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[93] See SCR4 at https://legiscan.com/WY/rollcall/SJ0004/id/403696.

[94] See HJR4 at http://legisweb.state.wy.us/2015/Digest/HJ0004.pdf.

[95] *Ibid.*

[96] SJR4 at https://legiscan.com/OK/bill/SJR4/2015.

[97] HJR1018 at https://legiscan.com/OK/bill/HJR1018/2015.

[98] The final recorded vote on SJR4 was 56–42 against; however, the Yea votes reached 47 of the 51 required votes for passage before five representative changed their votes to No, presumably for political cover, before the final vote was locked out. See Oklahoma House Floor Debate and Vote of April 21, 2015 at http://okhouse.granicus.com/MediaPlayer.php?view_id=57&clip_id=1838 [2:46:20 mark].

resolution, Senate leadership pulled BBA from further debate and carried it over to the 2016 session. Ironically, a motion to reconsider the CoS resolution passed the House two days later,[99] thus leaving both efforts with nothing tangible to show in 2015, but both alive for 2016.

G. Kansas – Speaker of the House Ray Merrick

According to CoS, Kansas Speaker of the House Ray Merrick (R) chose to squash attempts in Kansas in 2015.[100] CoS-sponsored resolution HCR 5010 was introduced into the Kansas House with 41 cosponsors, including most of the leadership.[101] After receiving a favorable committee report recommendation, Merrick, a former chairman of ALEC, refused to allow HCR 5010 to come to a vote on the House floor and apparently offered no reason to CoS state leadership.[102] Despite endorsements from the Kansas National Federation of Independent Business and the Kansas Association of Counties, no vote was taken, causing CoS to conclude Merrick was simply "running out the clock."[103]

H. Texas – GOP Senator Craig Estes Threatens Filibuster

One of the longest-serving state senators in Texas personally threatened a filibuster to shut down the Texas Senate if the CoS resolution were allowed to go to the Senate floor.[104] As a result, the State Affairs Committee left the resolution on the table and refused to vote on it.[105] GOP Sen. Craig Estes (R) succumbed to the fearmongering of naysayers, saying he was convinced an Article V convention could not be controlled.[106] Ironically, a single legislator was able to control the agenda in Texas using the argument the agenda could not be controlled at an Article V convention.

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[99] See CoS SJR4 at https://legiscan.com/OK/bill/SJR4/2015.

[100] David Schneider, "Call To Action Kansas & American Patriots!," Convention of States, May 21, 2015, http://www.conventionofstates.com/call_to_action_kansas_american_patriots.

[101] See HCR5010 at https://legiscan.com/KS/bill/HCR5010/2015.

[102] David Schneider, *supra* note 100.

[103] *Ibid.*

[104] See Hearing before Texas Senate Committee on State Affairs on May 25, 2015, http://tlcsenate.granicus.com/MediaPlayer.php?view_id=30&clip_id=10305 [7:45 mark].

[105] *Ibid.*

[106] *Ibid.* As Texas does not have a general legislative session in 2016 and as it is unlikely that a special Article V session will be called by the governor, CoS will have to wait until 2017 to target Texas again.

I. Louisiana Sen. President John Alario Accused of Sabotaging CoS Bill

Louisiana is a conservative state that in 2014 passed the BBA resolution by a nearly unanimous vote. Louisiana Gov. Bobby Jindal (R) has endorsed the Article V convention movement. Louisiana should have been a low-hanging fruit state for CoS.

In 2015, CoS resolution HCR2 was introduced in the House, where it passed comfortably by a 60–38 vote.[107] When it crossed over to the Senate, it was assigned by Senate President John Alario (R) to the Senate Judiciary B committee, which is majority-Democrat. CoS cried foul, reporting, "According to Senate rules, any bills or resolutions dealing with 'intergovernmental relations between the state and the United States or other states' must go to Senate and Governmental Affairs, where other Article V applications in the past have always been assigned."[108] According to CoS, Alario "colluded with Senate Democrats JP Morrell and Karen Carter Peterson to assign the CoS resolution to the Judiciary B committee, so they could effectively kill HCR2 and prevent it from getting to the floor, where it appeared there were sufficient votes to pass it."[109] CoS claimed Alario, a longtime Democrat turned Republican in 2010, teamed with his former Senate Democratic colleagues and deviated from Senate protocol to stop the CoS resolution.[110]

Coordination and cooperation are critical among the advocacy groups and with the state legislator groups, if the movement is ultimately to succeed.

The above-mentioned are by no means the only examples of Article V resolutions seemingly destined for passage being sidetracked by clever legislative tactics or individual power moves. They signify, however, the extreme difficulty the Article V movement faces in getting resolutions to the 34-state threshold for calling a convention. They strongly counsel all aspects of the movement that coordination and cooperation are critical among the advocacy groups and with the state legislator groups, if the movement is ultimately to succeed.

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[107] See HCR2 at https://legiscan.com/LA/bill/HCR2/2015.

[108] Bryce Barras, "Louisiana Senate President sabotages Convention of States resolution," Convention of States, June 4, 2015, http://www.conventionofstates.com/louisiana_senate_president_sabotages.

[109] *Ibid.*

[110] *Ibid.*

Part Six
A Suggested Approach for State Legislators and Advocacy Groups Moving Forward

Over the past two years, this author has supported all the active advocacy groups as a volunteer either in a leadership position or by working at the grassroots level on their behalf. I have spent hours testifying and observing committee and floor debates on all of the active Article V resolutions across the country. I have had the opportunity to listen to numerous legislators and answer the most basic to the most complex questions about Article V and the movement. I have made presentations to and listened to literally thousands of activists at the grassroots level. I have spoken with and offered my support to leadership in all of the groups, and my communications have spread across the entire Article V spectrum, from conservative to liberal.

The thoughts set forth in this section represent not only my own but those of many legislators, grassroots activists, and legal experts and scholars within the movement. It might fairly be described as a developing consensus. To the extent that leadership of the active advocacy groups might read these suggestions, I ask that you do so with an open mind, focusing on the landscape of the movement as a whole, not the trees and shrubs that make up your portion of the movement, valuable though they are.

The thoughts set forth in this section represent not only my own but those of many legislators, grassroots activists, and legal experts and scholars within the movement. It might fairly be described as a developing consensus.

A. Lessons Learned

There are several lessons to be learned from the 2015 Article V convention performance in the state legislatures.

- First, the single-subject popular amendment strategy adopted by BBATF continues to find more acceptance and smoother sailing than the other, more complicated proposals. This is likely a response to the fearmongering of such groups as Eagle Forum and the John Birch Society regarding the runaway convention scenario. The 70 to 80 percent polling support for a balanced budget amendment makes it easier for a concerned legislator to support that simple proposal than the multi-subject strategy of CoS or the more complicated Compact multi-front legislative approach.

- Second, the average window from introduction to passage of an Article V resolution in a state is longer than some had anticipated, as it appears to average out to three to four years even in the "low-hanging fruit" states. No group has captured more than five states in any one year, that occurring once by BBATF in 2014, so progress toward 34 is slow.

- Third, although the advocacy groups have to some extent supported each other in states where multiple resolutions have been introduced, their multi-resolution presence has caused and is causing confusion among legislators and reducing the effort's overall success rate.

We are now two full years into the Article V movement, and there is sufficient evidence available from which to draw a more fundamental conclusion. The difficulty of passing Article V resolutions in the states is much greater than was envisioned just two years ago, when the movement began in full measure. Despite the voluminous legal scholarship establishing the numerous checks and balances in place to avoid a runaway convention, and despite the work of the state legislator groups to exercise control and authority over the Article V process, the fearmongering of Eagle Forum and the John Birch Society still holds a strong grip on some state legislators. The naysayers have made some of the most conservative states, including Idaho, Montana, Oklahoma, and South Carolina, difficult targets for passage of Article V resolutions. Individuals in leadership positions, such as Andy Biggs in Arizona and John Alario in Louisiana, have blocked or killed votes on Article V resolutions that would almost certainly have passed but for their personal opposition.

One recurring theme appears to be almost universally viewed as the guiding principle to success for the Article V movement: We need to get at least one of the advocacy groups to 34 states, so a convention can be called.

In speaking with legislators and Article V activists across the country, one recurring theme appears to be almost universally viewed as the guiding principle to success for the Article V movement: We need to get at least one of the advocacy groups to 34 states, so a convention can be called. Holding a convention can show America such a gathering can stick to the guiding principle of one state/one vote/one amendment. If we can show an Article V convention can meet, stay on task, propose a single amendment, and go home, that success will open the floodgates for the states to exercise their newly discovered Article V powers in the future.

Only one group stands a realistic chance of reaching the 34-state threshold within the next two years, and that is the Balanced Budget Amendment Task Force.[111] Were the BBA to pass in

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[111] Some will argue the present 27 applications won't aggregate and will lead to litigation, thus endangering the success of the movement. The fact is, we don't know what Congress will do when confronted with 34 or even 35 or 36 applications. There are reasons to believe Congress will take an inclusive approach to aggregation. See note 78 *supra*. A review of the BBA applications shows there are likely no more than three that may require some modification to aggregate. To the extent there may be one or more problematic applications, the BBATF strategy needs to clean up the most obvious problematic ones and work to pass resolutions in more than 34 states to moot out any others. Regardless of the outcome of aggregation, media attention and focus on such a convention can only help the Article V movement. Moreover, if the aggregation were to lead to litigation, that could turn out to be positive in allowing for the lingering questions about the role of the courts in the Article V process to be addressed. This would eliminate an argument that is routinely used by naysayers to reject a convention. It should further be noted there already are differences at some level in the applications passed to date for both CoS and WP-FFE. Litigation can perhaps provide a standard these groups can use as they move through the process of getting to 34. Finally, should the BBA call end up in litigation, it would not sideline the other movements. There would be one fewer player to deal with, and the newer movements could focus legislators on the benefits of their strategies. All of these are positive reasons to pursue this strategy.

seven or more states in 2016 and were Congress to aggregate the applications and call a convention, the entire focus of the 2016 presidential election cycle would change. Using the state convention method for ratification, it might be possible to have a balanced budget amendment measure on the presidential election ballot in November 2016. If a BBA convention were called, convened, and stayed on task, it would be markedly easier for the other groups eventually to reach a convention.[112] This is such a significant window of opportunity that all groups should consider what efforts they might be able to offer, without significantly sacrificing their own strategies, to make this happen.

B. Specific Suggestions for Coordination and Cooperation

There are several ways the groups can coordinate their efforts to seize the opportunity that exists for the Article V movement. The target states for BBA in 2016 are likely to be Arizona, Idaho, Kentucky, Maine, Minnesota, Oklahoma, South Carolina, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The starting point for coordination would be an agreement among the advocacy groups that in these target states all the groups will on the record endorse and speak favorably of the others as they pursue their efforts. Such a symbolic showing of support and unanimity might very well make a difference in states where passage might be close.[113]

There are several ways the groups can coordinate their efforts to seize the opportunity that exists for the Article V movement.

BBATF and CoS can mutually support each other in several key states. Both groups have resolutions introduced in Oklahoma, South Carolina, and West Virginia, which carry over to 2016. Both groups will be reintroducing their resolutions in 2016 in Arizona, Virginia, and

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[112] In a recent speech in Dallas, former Sen. Tom Coburn (R-OK), speaking on behalf of the CoS Project, suggested an Article V convention limited to a balanced budget amendment could take away momentum from the Article V movement because a single amendment would not implement enough of the many structural changes needed in Washington. The suggestion was citizens would be let down if the convention didn't do more and would somehow lose confidence in the process. It is difficult to perceive how an Article V convention, which virtually all in the movement concede would be one of the most historic political events in our nation's history, could create such a result. First, even Coburn conceded a balanced budget amendment would solve, by his estimate, approximately 40 percent of the problem in Washington. That is significantly better than any other political efforts have accomplished. Second, such a limited convention would arm legislatures with precedent that their ultimate check on Washington overreach could be used safely, thus spurring the passage of more applications to address subjects such as term limits and other matters within the scope of the CoS resolution. Finally, as has happened in the past, an Article V convention would force Washington to step back and proceed far more cautiously because of its recognition that the states do ultimately possess through Article V the power to rein in Washington.

[113] Unfortunately, at the American Legislative Exchange Council's annual meeting July 22–24, 2015, the Compact challenged the efforts of the CoS and to a lesser degree the BBATF. Based on feedback from the various audiences, this likely backfired. At least one effort by the Compact to have its standard bill adopted as a "model application" by ALEC was tabled. The Compact has since adopted a formal policy not to criticize other groups.

Wyoming. CoS will no doubt reintroduce its resolution in 2016 in Mississippi, where a BBA-specific resolution passed in 1979 but could use some cleaning up for aggregation purposes. In each of these states, it would potentially be beneficial to CoS to add a severability/aggregation provision to their resolution, similar to the one added by amendment to the CoS resolution in Georgia, the first state to pass the CoS resolution.[114] The following language, which closely tracks the Georgia amendment, should be considered:

> BE IT FURTHER RESOLVED that this application shall be deemed an application for a convention to address each or all of the subjects herein stated. For the purposes of determining whether two-thirds of the states have applied for a convention addressing any of the subjects stated herein, this application is to be aggregated separately with the applications of any other state legislatures for the single subjects of balancing the federal budget and/or imposing other fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of federal officials.

The addition of such language in Oklahoma, South Carolina, and West Virginia would not affect the status of CoS's resolutions pending there, because CoS still needs floor passage in each chamber in those states. It would, however, send a powerful message of unanimity within the Article V movement. Furthermore, based on debate and feedback in several states where certain legislators expressed concerns about the CoS term limits provision, it might also give CoS an additional argument for support with those legislators voicing those specific concerns, because the amendment would render that provision severable from the other two amendment topics.

> In some states, it might very well be possible to call for a BBA and campaign finance reform amendment convention or to adopt separate resolutions, with each requiring adoption of the other to become final.

Kentucky, Maine, Minnesota, and Washington are "split states," in which one chamber has a Republican majority and the other a Democratic majority. Since BBA support tends to come from the conservative side and campaign finance reform from the more liberal side, such states present an opportunity for BBATF and WP-FFE to pursue passage of a resolution beneficial to both groups. It might very well be possible for each group to use its influence with its respective side of the aisle to adopt a joint Article V resolution calling for both a BBA and campaign finance reform amendment convention or to adopt separate resolutions, with each requiring adoption of the other to become final. With such coordination of efforts, it might be possible for both groups to accomplish a "win-win."

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[114] See Ga. SR 736 (2014), http://www.legis.ga.gov/legislation/en-US/Display/20132014/SR/736, lines 24–29. It should be noted the 2015 CoS resolution introduced in Mississippi contained a severability provision for a balanced budget amendment application. See Mississippi HCR 78 (introduced March 2, 2015), copy available at http://billstatus.ls.state.ms.us/documents/2015/html/HC/HC0078IN.htm.

The strategies proposed here are not intended to permanently commit the advocacy groups to focusing on BBA. Instead, they are merely suggestions for emphasis for the next two years, and in particular for the 2016 state legislative sessions. If they do not work, a reassessment would be appropriate, perhaps as soon as 12 months from now.

C. The Role of the State Legislator Groups

The establishment of state legislator groups has been an extremely positive development for the Article V movement. The willingness of the states to begin organizing for an Article V convention preempts Congress from interjecting itself into the process. Feedback from some in Congress makes it clear many want to see the Article V movement succeed because they recognize Congress and the federal government are far too broken to fix themselves.[115] There are thus important roles for each of the state legislator groups to play.

The willingness of the states to begin organizing for an Article V convention preempts Congress from interjecting itself into the process.

- First, the Federal Assembly of State Presiding Officers should continue its drive to get presiding officers from a majority of states to commit to the one state/one vote/one amendment proposal for any BBA convention that might be called. Such an agreement can provide important assurances to leaders in the targeted states that BBATF needs to reach its 34-state threshold.

- Second, it is extremely important ASL adopt a model set of rules for an Article V convention at its November 2015 meeting. Such a set of rules can reiterate assurances to leaders in states where resolutions are under consideration that any convention will be controlled by the delegates, not Congress, will operate on a one state/one vote rule, will not allow for consideration of matters not germane to its limited call, and will be transparent and open to the public in its deliberations.[116]

- Finally, there remains an important role for the State Legislators Article V Caucus. The Article V movement would be well-served if a group of state leaders could offer guidance to the advocacy groups on how they might better present their resolutions in 2016, and, in particular in those states where multiple resolutions are to be introduced, how the groups might better work together. As the Federal Assembly and COS Caucus are in their infancies

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[115] See, e.g., Barbara Hollingsworth, "Coburn: Convention of States Needed Because Washington Will Never Fix Itself," *CNSNews*, March 5, 2015, http://www.cnsnews.com/news/article/barbara-hollingsworth/coburn-convention-states-needed-because-washington-will-never-fix.

[116] At the July 2015 ALEC annual meeting, Professor Rob Natelson drafted and released to a group of legislators and attendees (including this author) a set of proposed rules for an amendments convention called to address the subject matter set forth in the CoS application and presumably adaptable to any convention. Those rules are expected to be published shortly for public comment by CoS. See www.conventionofstates.com/.

and as ASL has steadfastly sought not to interject itself into the affairs of the advocacy groups so as to remain accountable only to itself, the more senior Article V Caucus is in a unique position to assist. It is my hope this study might spur legislators to consider acting in this regard.

Conclusion

The Founders certainly foresaw a time when our national government would overreach its authority and impose upon the sovereignty of the states and the privacy and freedom of its citizens. That is precisely why they gave the states the Article V power to rein in the national government.

For decades, the American people and their state legislatures have watched as Washington, DC has expanded its power and increasingly asserted itself into the privacy and everyday lives of American citizens. Despite multiple "wave elections," changes in leadership and party control in Washington, DC have not lessened the overreach of the federal government. The United States continues to spend and borrow money at an ever-increasing rate, such that this country is approaching bankruptcy and economic collapse. The desire for power and the influence of special-interest money has so utterly corrupted Washington, DC that citizens no longer feel their leaders and representatives are looking out for the nation's best interests. The Article V convention movement may be the last opportunity for this country to right itself. The Founders certainly foresaw a time when our national government would overreach its authority and impose upon the sovereignty of the states and the privacy and freedom of its citizens. That is precisely why they gave the states the Article V power to rein in the national government.

The Article V movement has the resources, the grassroots support, and the ability to accomplish this task. The question is, can leaders within the movement coordinate their efforts and cooperate with each other to accomplish this mighty goal, or will the movement devolve into a circular firing squad as unfortunately happens all too often among conservative groups?

Time will tell, if it doesn't first run out on us all.

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About the Author

David Guldenschuh is an attorney and publisher of the *Article V Convention Legislative Progress Report*, the only nationally recognized tracker of the status of all Article V legislation in the country. He is the former legislative liaison director for the Convention of States Project, where in 2014 he led Georgia to become the first state in the country to pass the CoS Article V application for a convention of states.

Guldenschuh currently serves as special counsel to the Balanced Budget Amendment Task Force and was recently named to the Board of Policy Advisors of The Heartland Institute's Center for Constitutional Reform. Perhaps more than any other individual in the country, Guldenschuh has established working relationships with virtually all groups and individuals in the Article V movement. He is a 1981 cum laude graduate of the University of Notre Dame Law School, a member of the bar of the U.S. Supreme Court, and has on multiple occasions been named one of Georgia's "Top Lawyers" by *Atlanta Magazine*.

ARTICLE V CONVENTION LEGISLATIVE PROGRESS REPORT

(as of October 21, 2015)

AVC Group	States Passed	States Introduced and Pending in 2015	House Committees Passed/DNP	House Chamber Passed/DNP	Senate Committees Passed/DNP	Senate Chamber Passed/DNP	Total Score*	% to Completion
BBA Task Force	27: ND SD UT *(2015)*; AL AK AR CO DE FL GA IA IN KS LA MD MI MO MS NC NE NH NM NV OH PA TN TX	*4 Active*: MA OK SC WV; *8 DNP*: AZ ID KY ME MT OR VA WY	Passed: OK; MT WY DNP: AZ ID KY VA	Passed: OK; WY DNP: MT	Passed: OK SC WV; WY DNP:	Passed: WV; DNP: WY	172	83%
COS Project	4: AL *(2015)*; AK GA FL	*19 Active*: CA DE IA IL KA MI MN NC NE NH NJ NM OH OK PA SC TN VT WV *17 DNP*: AR AZ IN KY LA ME MS MO MT NV ND OR SD TX VA UT WY	Passed: IA NM OK; AR AZ LA MO NH ND TX UT DNP: KY ME MS MT NV SD VA	Passed: IA NM; AR AZ LA ND TX DNP: ME MO NH OK UT	Passed: NE OK SC TN; ME MO DNP: AR AZ IN LA ND NM TX WY	Passed: OK TN; ME MO DNP: ND	54	27%
WP Free and Fair Elections	4: NJ *(2015)*; CA IL VT	*11 Active*: DE HI IA NC MA NY OK PA WA WV WI *15 DNP*: AZ CT FL MS MD ME MO MT NH NM ND OR RI TX VA	Passed: DE HI; CT MD MO NH DNP: AZ FL ME MS MT ND RI TX VA	Passed: HI; MD NH DNP: ME MO ND	Passed: DE; MD MO DNP: FL ME NH NM	Passed: DE; MD MO DNP: ME	40	20%
Compact for America	4: MS ND *(2015)*; AK GA	*4 Active*: MI NC OH OK *8 DNP*: AL AR AZ FL MO NM TX WY	Passed:-; AL AR AZ MO TX WY DNP: FL NM	Passed: -; AR AZ WY DNP: AL MO TX	Passed: MI; AL MO DNP: AR AZ FL WY	Passed: MI; AL MO DNP:	30	15%
Restoring Freedom. Org, Inc.	2: LA ND	*1 DNP*: MS	Passed: DNP: MS	Passed: DNP:	Passed: DNP:	Passed: DNP:	12	6%
Single Subject Amendment PAC	1: FL	0	Passed: DNP:	Passed: DNP:	Passed: DNP:	Passed: DNP:	6	3%
Citizens Initiative	0	*3 Active*: AK NJ NC *4 DNP*: NH NM ND UT	Passed: AK; ND DNP: NH NM UT	Passed: -; ND DNP:	Passed: DNP: ND	Passed: DNP: ND	4	2%
Term Limits for Congress Term Limit Convention	0 but note [FL GA] have term limits in the COS resolution	*1 DNP*: MO	Passed: DNP:	Passed: DNP:	Passed: DNP:	Passed: DNP:	0	0%
Americans for Congressional Reform	0	0	Passed: DNP:	Passed: DNP:	Passed: DNP:	Passed: DNP:	0	-

*Each group receives 1 point for each state into which their Article V resolution is introduced; 1 point in each chamber if it passes all committees (2 pts for unicameral NE); 1 point in each chamber when it passes on the floor (2 pts - NE); and 1 point when the application is final. Thus, a total of 6 points can be earned in each state. The completion goal is 204 points (34 states passed x 6 pts./state). If an application dies during or at the end of a non-carryover legislative session, then points generated for that cycle are not counted. **NOTE:** DNP = voted down, tabled, withdrawn, died on calendar, not reached, or otherwise did not progress. Underscored states carry legislation over to 2016. Some groups did not respond to contact efforts so scoring is based on available public information and may have some inaccuracies. General or open convention calls are not aggregated in this report.

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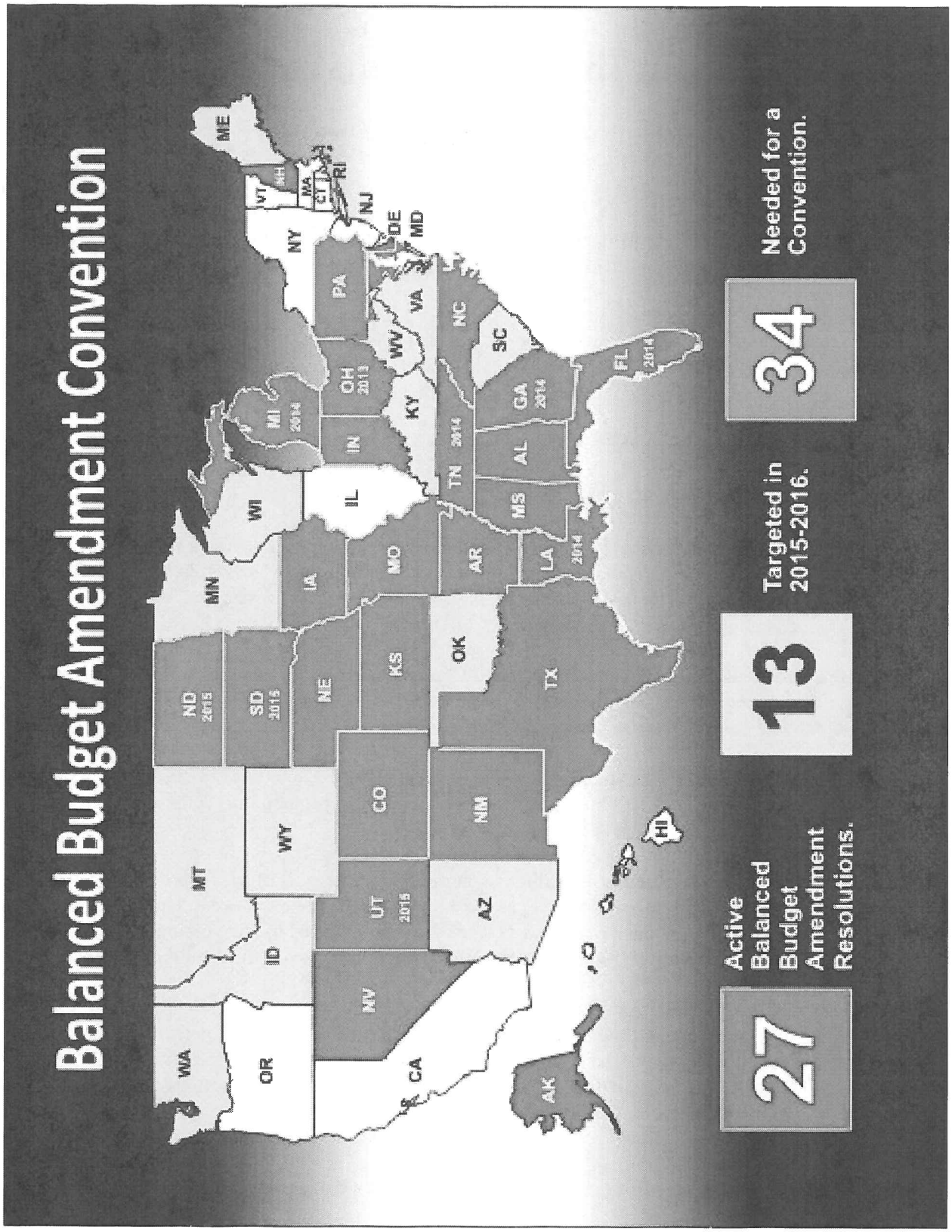
Appendix B


Balanced Budget Amendment Convention
WA
OR
CA
ID
NV
MT
WY
UT 2015
AZ
CO
NM
ND 2015
SD 2015
NE
KS
OK
TX
MN
IA
MO
AR
LA 2014
WI
IL
MI 2014
IN
OH 2013
KY
TN 2014
MS
AL
GA 2014
FL 2014
SC
NC
VA
WV
PA
NY
VT
NH
ME
MA
CT
RI
NJ
DE
MD
AK
HI
27
Active Balanced Budget Amendment Resolutions.
13
Targeted in 2015-2016.
34
Needed for a Convention.

About The Heartland Institute

The Heartland Institute is an independent national nonprofit research organization founded in Chicago in 1984. It is a tax-exempt charity under Section 501(c)(3).

The mission of The Heartland Institute is to discover, develop, and promote free-market solutions to social and economic problems. Three things make Heartland unique among free-market think tanks:

- We communicate with more national and state elected officials, more often, than any other think tank in the U.S. In 2014 we recorded more than 1.1 million contacts with elected officials.

- We produce four monthly public policy newspapers – *Budget & Tax News, Environment & Climate News, Health Care News,* and *School Reform News* – which present free-market ideas as news rather than research or opinion.

- We promote the work of other free-market think tanks on our Web sites, in our newspapers, at our events, and through our extensive Government Relations and Media Relations efforts. Nobody else does more to promote the work of other think tanks than we do.

A telephone survey of randomly selected state and local elected officials conducted in 2014 found 74 percent of state legislators read at least one of our publications. Sixty-six percent say Heartland publications are a useful source of information.

We appeared in print and online, and on television or radio, nearly 3,300 times in 2014. Our Facebook page has nearly 100,000 fans. Heartland uses Twitter to promote its events and free-market mission to nearly 10,000 followers every day.

Heartland's annual budget of nearly $7 million supports a full-time staff of 37. Approximately 250 academics and professional economists participate in our peer-review process, and nearly 200 elected officials serve on our Legislative Forum. We are supported by the voluntary contributions of approximately 5,500 supporters. We do not accept government funding.

Heartland is rigorously nonpartisan, working closely with Democrats and Republicans alike to solve public policy problems. While our focus is on market-based solutions, 72 percent of state Democratic legislators said they read at least one Heartland publication sometimes or always, 62 percent of those legislators said they consider one or more publications a useful source of information, and 30 percent said a Heartland publication influenced their opinions or led to a change in public policy.

For more information, please visit our Web site at www.heartland.org or call 312/377-4000.