

Second Method Procedures Amendment, Canady Bliley, H.J. Res. 84, 105th Congress, (Mar. 1998)

(It would permit Congress to veto a States' application for a Constitutional Convention if two-thirds of each house of Congress disapproves of their proposed amendment. Failed to Gain Congressional Support—No Vote Taken on the Issue)

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROVIDE A PROCEDURE BY WHICH THE STATES MAY PROPOSE CONSTITUTIONAL AMENDMENTS

HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTH CONGRESS SECOND SESSION ON
H.J. RES. 84, March 25, 1998 [Extract: pp 7 -16](#)

OPENING STATEMENT OF CHAIRMAN CANADY

Mr CANADY. The subcommittee will be in order.

Good morning. I welcome everyone to the hearing this morning. We're very pleased to have many distinguished Virginians in our midst, including our ranking member.

I would like to begin by reading from a letter written by a distinguished Virginian to a friend. That distinguished Virginian was Thomas Jefferson. He said:

"I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors."

As the Constitutional Convention in 1787 considered our Constitution, there was significant debate over the procedure for amending the Constitution. Article V of the United States Constitution provides that amendments to the Constitution can be proposed in two ways—by Congress or by constitutional convention. After an amendment is proposed by either method, it must be ratified by the State legislatures or State conventions in three-fourths of the States (currently 38) to become a part of our Constitution.

Under the first method, Congress can propose amendments to the Constitution by a vote of two-thirds in both the House and Senate. This is the method of proposing constitutional amendments that has, in fact, been used. Since the First Congress through the present day, a total of more than 10,000 proposals have been introduced to amend the Constitution. Thirty-three of these were proposed by Congress to the States, and 27 have been ratified.

The second method of proposing amendments is triggered upon the applications or petitions of two-thirds of the State legislatures. Under this method, after Congress receives the applications, Article V provides that Congress shall call a constitutional convention to propose constitutional amendments.

The convention method has never been formally used, although there have been some efforts that have come close to the requisite two-thirds of the States. For example, 32 of the necessary 34 State legislatures have passed resolutions petitioning Congress to call a constitutional convention to propose an amendment requiring a balanced Federal budget.

History shows that the Framers likely intended the convention process to be a viable method of amending the Constitution. In The Federalist No. 43, James Madison wrote of Article V's amendment process that it "equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side or on the other."

However, the process by which States may apply for a constitutional convention under Article V is unclear, and there is disagreement over what shape such a convention would take if it were called. As a result of this uncertainty, many commentators have warned of the dangers of a "runaway convention" that would exceed its mandate and not necessarily reflect the true spirit of the Constitution and the wishes of the people. The specter of a "runaway convention" seems to have been accepted by many as a convincing political argument.

Some scholars counter with a different perspective, which is that the mere threat of a convention can prod the Federal Government into action on the specific issue or amendment that initially drove the effort for a convention. Even though no convention has been called, these commentators reason the existence of the option can have what they refer to as a "prodding" effect.

House Joint Resolution 84 proposes an amendment to the Constitution to provide a procedure by which the States may propose constitutional

amendments. Also called the "States' Initiative", the resolution is sponsored by Representative Tom Bliley, one of our distinguished Virginians with us today, and it currently has eight House cosponsors.

I want to thank Chairman Bliley for his leadership in introducing this measure, and I look forward to continuing the important discussion in Congress over the balance of powers within our constitutional system.

Another distinguished Virginian, Mr. Scott, is recognized.

Mr. SCOTT. Thank you, Mr. Chairman. I appreciate the opportunity to participate in today's hearing on H.J. Res. 84. I am particularly appreciative of the presence, as you have noted, of Virginians here today. Not only is the chief sponsor of the resolution a Virginian, my friend Tom Bliley, with whom I share the City of Richmond and the County of Henrico, but we will also hear from our former Governor, George Allen, who is with us today. I welcome all the witnesses to today's hearing and I look forward to learning more about the proposal.

Thank you very much.

Mr CANADY. Thank you, Mr. Scott.

On our first panel this morning we will hear from the Honorable Tom Bliley of the Seventh Congressional District of Virginia. Congressman Bliley, who is Chairman of the House Commerce Committee, is the primary sponsor of House Joint Resolution 84.

Representative Bliley, we are grateful for your participation here this morning and we appreciate your bringing this issue to the attention of the subcommittee.

Without objection, your full written statement will be made a part of the permanent record of this hearing.

Please proceed, Congressman.

STATEMENT OF HON. TOM BLILEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Thank you, Mr. Chairman. I want to thank you for holding the hearing today on H.J. Res. 84. This legislation, which I have sponsored with Congressman Virgil Goode of Rocky Mount, and seven others, symbolizes what we in Virginia call the "States' Initiative."

I thank you. I will submit my full statement for the record and I will summarize.

In 1787, the Founding Fathers included Article V of the Constitution to allow for changes in the Constitution, realizing that as time goes forward, there will be new ideas and there ought to be a mechanism for amendment. It shouldn't be easy, but it should be provided for.

Federalist Paper 43 allows that Madison wanted both the States and the Federal Government to be able to amend the Constitution. As you have stated, Mr. Chairman, in your opening statement, there are two methods that are available today to amend the Constitution. However, only one has been used, and that is the two-thirds vote of both Houses of Congress and then the proposed amendment is sent to the States and, upon ratification by three-quarters of the States, it becomes a part of the Constitution.

The reason the second option has not been utilized you also addressed, in that many people were afraid of a "runaway convention"; that is, that the convention might be called to deal with a specific problem, or perceived problem, and then, once it convened, it goes forward to do a lot of other things that were unforeseen and unasked for in the original call.

So what we have here is a way to involve the States, which Madison and the Founding Fathers clearly wanted to be involved, and it says that if two-thirds of the States pass an identical resolution to amend the Constitution, it comes to Congress, and if Congress doesn't disapprove by a two-thirds vote of each House, then it would go back to the States, and if three-quarters of the States ratify it, it would become part of the Constitution.

Now, in the last Congress, Senator Ashcroft introduced a similar bill in the Senate. As you mentioned, we have eight cosponsors. It is supported by former Governor Allen, who will testify after me this morning, as well as Governor Jim Gilmore, the current Governor of Virginia, Governor Leavitt of Utah, Governor Sundquist of Tennessee, Governor Voinovich of Ohio, and the Western Governors Association.

I'm not hung up on the two-thirds vote here to block it. I think that number can be dealt with. But I think it certainly should be more than just a simple majority, after two-thirds of the States have already done it.

With that, I will close my remarks and would be happy to answer questions.

[The prepared statement of Mr. Bliley, with attachments, follows:

PREPARED STATEMENT OF HON. TOM BLILEY A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman:

I want to thank you for holding this hearing today on H.J. Res. 84. This legislation I have sponsored with Congressman Virgil Goode of Rocky Mount, Virginia and 7 others symbolizes what we call in Virginia the States' Initiative.

When the Founding Fathers wrote the Constitution in Philadelphia in 1787, they drew upon life's experiences and history to perfect the ideas and ideals the Constitution embraces. After they finished writing the Constitution, the Founding Fathers were wise enough to know they could not foresee the future. As a result, Article V provides for a mechanism to amend the Constitution.

We all know the Constitution is not perfect, even after 27 amendments. The Constitution has, although, protected the individual liberties all

Americans have enjoyed for over two hundred years.

As the proud holder of the seat first held by James Madison, my first objective is to never do any harm to the Constitution. However, the Founding Fathers acknowledged a need to amend the Constitution. The States' Initiative is a direct descendant of Madison's writings.

In [Federalist Paper 43](#), James Madison wrote, "useful alterations will be suggested by experience. **The Constitution moreover equally enables the general and the state governments to originate the amendment** of errors as they may be pointed out by the experience on one side or on the other".

At present, Article V provides for two ways to amend the Constitution.

The first involves the presentation of an amendment by Congress to the states for ratification.

The second is by [Constitutional Convention](#), convened at the request of the state legislatures.

Even with both methods available, to date, all amendments to the Constitution have been enacted following passage by the Congress and ratification by three-fourths of the states.

Some have asserted that the second method has not been as effective as intended by the Framers.

On the Op/Ed pages of the Richmond Times-Dispatch, my local newspaper, Edward Grimsley wrote about the dilemma which would be remedied by the States' Initiative. Edward Grimsley wrote, "In the hands of the people the amending process could produce some truly wonderful results."

By allowing the States an effective mechanism to amend the Constitution, more power can be returned to the people. After all, "We the People" are the first 3 words of the Constitution.

Why is the States' Initiative necessary? Persuasive arguments have been made that a Constitutional Convention might alter the Constitution more expansively than intended by proponents of a specific proposed amendment. This is known as the fear of a "run-away" convention.

The States Initiative implements a more effective method by which states could take the initiative in the process by which the Constitution is amended. This bill allows the states to initiate the amending process that is devoid of the perils of a "run-away" Constitutional Convention.

Another problem with a Constitutional Convention is that even if it isn't a "run-away" convention (that is, even if the Constitutional Convention met to adopt only one amendment), the mere fact that the states met could have a far-reaching jurisprudential impact. Would the Supreme Court view a Constitutional Convention which kept the pre-existing Constitution as an implicit ratification of prior Supreme Court rulings? This would cause those on the left (who oppose certain Rehnquist Court rulings) and those on the right (who oppose certain Warren Court rulings) a considerable amount of trouble.

To restore the Framers' design, that is a design where the states could initiate the amendment process, our proposal would allow a Constitutional amendment to be presented to Congress **after two-thirds of the states indicated approval of an identical amendment via their state legislatures.**

If two-thirds of each house of Congress does not agree to disapprove of the proposed amendment, it would be submitted to the states for ratification.

Upon ratification by three-fourths of the states legislatures, the amendment would become part of the Constitution.

I urge your support for this common sense legislation that returns as an option, the power to amend the Constitution to the states, as the Framers intended. While I am **not beholden to the exact ratios specified in my amendment,** I believe they stand as a good starting point for a discussion of providing states with the power that the Framers envisioned.

The States Initiative is supported by Rep. Nathan Deal (R- GA), Rep. Floyd Spence (R-SC), Rep. Bob Stump (R-AZ), Rep. Jim Kolbe (R-AZ), Rep. Paul Gillmor (R-OH), Rep. Merrill Cook (R-UT), and Rep. John Shadegg (R-AZ). It also is supported by Governor Mike Leavitt of Utah (R), Governor Don Sundquist of Tennessee (R), Governor George Voinovich of Ohio (R), and George Allen, former Governor of Virginia (R) who will testify today in support of the States' Initiative.

H.J. Res. 84 also has the support of the Arizona State Senate President Brenda Burns (R), Speaker of the Ohio House of Representatives Jo Ann Davidson (R) and Ohio State Senate President Richard Finan (R). The Western Governors Association also has endorsed the States's Initiative.

I urge my fellow colleagues to support this common sense legislation that returns as an option, the power to amend the Constitution to the States, as the Founding Fathers intended.

Note: The content of this web page is republished on the Internet from [pages 7-16 of the minutes](#) from the Hearing Before the Subcommittee on the Constitution of the Committee on the Judiciary House of Representatives One Hundred Fifth Congress Second Session on H.J. Res. 84, March 25, 1998 and is not a copyright of Citizens for United States Direct Initiatives.