

SENATE THIRD READING  
SJR 1 (Wiener)  
As Amended March 20, 2025  
Majority vote

## **SUMMARY**

Rescinds all applications previously made by the Legislature for the United States Congress to call a convention for proposing amendments to the United States Constitution.

### **Major Provisions**

- 1) Resolves that all applications previously made by the Legislature of the State of California for the United States Congress to call a convention for proposing amendments to the United States Constitution are hereby rescinded, nullified, and superseded.
- 2) Resolves that the Secretary of the Senate shall transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the United States House of Representatives, the Minority Leader of the United States House of Representatives, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, and to each Senator and Representative from California in the United States Congress.
- 3) Resolves that the Senate and Assembly of the State of California request that this resolution be published in the Congressional Record and listed in the official tally of state legislative applications for the United States Congress to call a convention for proposing amendments to the United States Constitution.

## **COMMENTS**

Like most other provisions in the United States Constitution, the paragraph that constitutes Article V poses as many questions as it answers. It warrants quoting in full:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

*The Uncertainty of Article V Conventions.* Article V of the United States Constitution provides four possible paths to amend the document: two means of proposal, and two means of ratification. Congress may propose amendments on its own initiative by a two-thirds vote, or Congress may, upon application by two-thirds of the states, call a convention for proposing amendments. Once amendments are proposed by one of these two methods, the amendments are submitted to the states for ratification either by three-quarters of the state legislatures, or by a convention in three-quarters of the states. Of the 27 amendments to the Constitution, *all* have

been initiated by Congress. All but one of these 27 amendments were ratified by state legislatures; only the 21st Amendment (repealing the 18th) was ratified by state conventions.

Because a convention by application of the several states has never occurred – and because Article V is light on detail – it is unclear how the process would unfold. Do the applications by states need to be identical, or at least on the same subject matter? Would Congress have the power (or duty) to limit the scope of the convention to that subject only? Would delegates to the convention be selected by Congress or by the states? Would each state have an equal number of delegates, or would the number of delegates be based on a state's population? Given that none of these questions are answered by the text of Article V, some scholars warn of the dangers of an unlimited, "runaway convention" that could radically alter the Constitution. Other scholars argue that Congress could, and likely would, limit the convention to a single subject and, at any rate, anything proposed by the convention requires ratification by three-quarters of the states.

For those who doubt the prospects of a "runaway convention," one need look no further than the first and only constitutional convention in 1787. Delegates from twelve of the thirteen states – Rhode Island declined the invitation – met for the ostensible purpose of amending the Articles of Confederation. Not only did the Framers jettison this idea and instead draft an entirely new document, they changed the rules of ratification. By its terms, the Articles of Confederation could only be amended by a unanimous vote. But the Framers decided to replace the Articles with an entirely new Constitution and only required that nine of the 13 states ratify the document. One of the strongest arguments against the fear of a runaway convention is that, whatever the runaway convention produces, will need to be ratified by three-quarters of the states. However, that assumes the constitutional convention does not, like the first convention, change the ratification requirement.

*California's prior applications for an Article V Convention.* Since 2012, the California Legislature has considered at least five resolutions submitting an application for an Article V convention, though only two were adopted. Three of these resolutions responded to decisions by the U.S. Supreme Court. For example, AJR 32 (2012) and AJR 1 (Gatto) Chapter 77, Statutes of 2014, sought to effectively overturn *Citizens United v. Federal Election Commission* (2010) 130 S. Ct. 876, the U.S. Supreme Court's decision striking down key provisions of the federal campaign finance reform law and, in the process, overturning several prior decisions upholding the right of Congress and the states to impose reasonable limits on campaign contributions and expenditures. Both resolutions constituted an Article V application for the "sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech." AJR 32 failed to reach the Senate. AJR 1, which was almost identical to AJR 32, was adopted in 2014. At least 10 other states submitted Article V applications to address *Citizens United* in 2014, but according to a list of applications maintained by the Clerk of the U.S. House of Representatives, the movement apparently did not come close to generating the two-thirds threshold to force a convention. (See <https://clerk.house.gov/SelectedMemorial>.)

More recently, the Legislature adopted SJR 7 (Wahab) Res. Chap. 175, Stats. 2023, largely in response to the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* (2022) 142 S. Ct. 2111. The *Bruen* decision greatly limited the ability of states to enact gun safety regulations by requiring a state to show that the regulation was deeply rooted in "history and tradition." SJR 7 called for a constitutional convention to propose an amendment affirming the ability of local, state, and federal governments to adopt gun safety regulations.

However, the Judiciary Committee staff is not aware of other states that have joined this effort by submitting applications on the subject.

Two relatively recent failed efforts include AJR 10 (2015) and AJR 30 (2016). Both measures sought to "impose fiscal restraints on the federal government, and limit the power and jurisdiction of the federal government." At least a half-dozen other states adopted Article V resolutions along these lines, however, both of these measures failed in this Committee, and the efforts of other states have failed to approach the required two-thirds threshold.

In the 20th century, between 1911 and 1952, at least five resolutions were adopted by the Legislature and, in theory, are still pending. The proposed amendments include a 1952 application relating to federal taxes on the sale, distribution, or use of motor vehicles; a 1949 application authorizing U.S. participation in a world federal government; a 1935 application relating to the taxation of government securities; a 1935 application giving Congress express power to regulate hours and wages; and a 1911 application to provide for the election of U.S. Senators by popular vote. The last two in this list are particularly interesting. Even without an amendment granting such authority, Congress enacted the Fair Labor Standards Act of 1938, regulating wages and hours, and three years later the U.S. Supreme Court upheld the Act in *Darby v United States* (1941) 32 U.S. 100. In short, the change desired by California's application was achieved by legislative enactment and constitutional interpretation, rather than formal amendment. The 1911 application called for an amendment providing for popular election of U.S. Senators, since at the time U.S. Senators were elected by state legislatures. While the state-initiated effort failed, Congress upon its own initiative enacted, and three-quarters of the states ratified, the Seventeenth Amendment providing for the direct election of U.S. Senators.

The author and supporters contend that that a group with an extreme right-wing agenda could co-opt one of California's pending resolutions and use it to trigger a constitutional convention that could radically alter the U.S. Constitution and the eviscerate the rights that it protects. This is a highly speculative proposition. The question, therefore, is whether this risk is great enough to justify rescinding propositions – one of which was only enacted two years ago – that seek reasonable and progressive ends (such as securing rational gun safety laws).

### **According to the Author**

According to the author, this resolution "proactively protects our civil rights and liberties, a measure that is more important than ever given that the Trump Administration is hostile to critical freedoms the state of California has sought to protect." The author further explains:

The damage a Constitutional Convention could do to Californians' basic rights is off the charts. There are no guardrails once a Constitutional Convention has been triggered: Once it begins, extremists could easily hijack it and drive the Convention to strip protections for women, LGBTQ people, workers, immigrants, or any number of other groups, while undermining democracy and locking in the power of the largest corporations on the planet. California must do its part to prevent this chaos, and we must not allow our state's previous calls for a Constitutional Convention to be co-opted by efforts to throw out the Constitution in pursuit of an extreme right-wing agenda.

### **Arguments in Support**

According to Common Cause:

We currently have a total absence of constitutional boundaries, case law, or statute around an Article V convention. A federal constitutional convention was last held in 1787, when the Constitution itself was drafted. At that convention, those gathered "threw out" the rules that were intended to govern their purpose and authority (limited to amending the Articles of Confederation) and instead crafted an entirely new document.

The same total remaking and reshaping is possible again. Questions raised by Common Cause in a recent report, "Constitutional Chaos," include: "Could a convention be limited to one issue? What rules, if any, would be in place to govern a convention? What role would outside special interest groups have in influencing a convention's agenda? Who would choose delegates to send to the convention? What would happen in the case of legal disputes about the convention? What role would the courts play? How would votes be delegated by state, and would the American people really be equally represented?"

None of these questions have clear legal answers.

While SJR 7 contained language indicating it should not count as an application for a constitutional convention for any other purpose, it is not clear that such a declaration has legal effect. Efforts already exist around the country to try and group together calls for conventions on different subjects to reach the two-thirds threshold of states needed to trigger a convention.

We are in dangerous territory, especially because of the ascendant forces in American politics that stand ready to remake democratic institutions and basic civil and human rights.

SJR 1, if passed, would rescind all of California's previous calls for an Article V constitutional convention, thus preventing California from being included in the count toward the constitution's two-thirds threshold.

### **Arguments in Opposition**

None on file

### **FISCAL COMMENTS**

None

### **VOTES**

#### **SENATE FLOOR: 28-0-12**

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Durazo, Grayson, Hurtado, Laird, Limón, McGuire, McNERNEY, Menjivar, Niello, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

**ABS, ABST OR NV:** Alvarado-Gil, Dahle, Gonzalez, Grove, Jones, Ochoa Bogh, Padilla, Pérez, Reyes, Seyarto, Strickland, Valladares

#### **ASM JUDICIARY: 11-0-1**

**YES:** Kalra, Dixon, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

**ABS, ABST OR NV:** Macedo

**UPDATED**

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