

ISSUE BRIEF

“Information to Action”

Topic: State Sovereignty

Title: *HOW ARTICLE V OF THE CONSTITUTION EMPOWERS STATES TO CHECK THE FEDERAL GOVERNMENT* by Joshua Charles

Many are not aware that an entire Article of the Constitution is devoted to empowering States to exercise a powerful check on the Federal government.

I refer to Article V, which reads as follows:

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.

In short, Article V empowers States to propose and ratify amendments to the Constitution *entirely independent of the Federal government*.

First, so long as two-thirds of the States apply for a Convention, Congress is *required* to call a Convention of the several states to propose such amendments.

Second, Congress cannot declare how many of the States must approve the amendments before they are made part of the Constitution. The Constitution itself specifies three-quarters.

Third, Article V specifies the one thing that can (virtually) never be changed in the Constitution: the equal representation of each state in the Senate.

For example, many have argued that Senators should be apportioned among the States according to population, rather than, as the Constitution currently requires, equally for each State, regardless of population.

But if attempted to do so, not even the approval of three-quarters of the States would suffice. Each State would have to *consent* to an unequal system of representation in the Senate. That means that unless *every* State agreed, then nothing could be changed—a scenario that is difficult, if not impossible to imagine.

Article V thus represents one of the great bulwarks of State sovereignty in the Constitution. This sovereignty is not only protected vis-a-vie the Federal government, but also against even a super-majority of other States who may seek to augment their own power in the Senate.