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Welcome to the February newsletter!

We hope you are enjoying our thought-provoking *Issue Briefs* written by Joshua Charles who is a No.1 New York Times best-selling author and historian. Josh writes for us monthly. If you missed any *Issue Briefs*, you can find them [archived on our website](#).

Here is what's happening:

- We have been invited to have a booth at the [ALEC Annual Meeting](#) this July 27-29 in Atlanta, GA.
- We will be attending meetings at the [NCSL Legislative Summit](#) this August 1-3 in Denver, CO.
- Currently, we are working on a project (Legislative Handbook) with the National Institute for Civil Discourse at the University of Arizona.

If you have any questions, or are interested in getting involved with any of these activities, please contact me at james.kallinger@nafsl.org

It seems that the ongoing unrestrained behavior of the national government has triggered heated discussions and stimulated a keen interest in [Article V of the U.S. Constitution](#), which outlines the procedure for proposing amendments to the Constitution.

To summarize the intent of Article V, if two-thirds of both Houses of Congress deem it necessary to place a check on state governments, they have been given the authority to propose amendments to that end. On the other hand, two-thirds of the several states (34) are authorized to apply for a convention to propose amendments as a cure to any mischief emanating from the national government. Either way, any proposed amendments need to be ratified by three fourths (38) of the state legislatures. This is a process handed to us by the Founders to resolve and correct the excesses and abuses of both the national and state governments.

Last month, the Nebraska Legislature passed a resolution (or “made application”) to join other states in a convention for the purpose of proposing amendments to the US Constitution. They were the 17th state to do so which is halfway to the 34 states needed to convene such a convention. The first three states to make application were Georgia, Alaska, and Florida in 2014. They were followed by Alabama in 2015; Tennessee, Indiana, Oklahoma, and Louisiana in 2016; Arizona, North Dakota, Texas, and Missouri in 2017; Arkansas, Utah, and Mississippi in 2019; and Wisconsin in 2022.

For some clarity on this process, the “application” in this case limits the states to discussing amendments that address the power and jurisdiction of the national government, impose fiscal restraints, and place term limits on federal officials. Other applications have been made in the past, and are still pending, that include such topics as the federal budget and U.S. Supreme Court decisions.

State applications are intentionally broad in scope, and without specific terms, in order to entice the comprehensive support (34 states) needed to trigger a convention, plus a generalized application increases the likelihood of similar applications being aggregated together toward the two-thirds threshold. Moreover, applications with exceeding detail are more likely to be voided by a court as an attempt to unduly restrict the deliberative freedom of the convention.

American federalism means “a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”

U.S. Supreme Court Justice Hugo L. Black

When 34 state legislatures have submitted applications on the same subject, the Constitution requires Congress to call a convention for proposing amendments. All states, not merely the applying states, are entitled to participate in the convention which is limited to the subject matter articulated in the application.

James Madison emphasized that the convention is “subject to the forms of the Constitution”. In other words, it is not a constitutional convention, but merely a convention to propose amendments without violating any other part of the Constitution.

With all this activity on Article V, it appears that state legislators are beginning to realize the balanced federalism that the Founders gave us is rapidly eroding and having a detrimental influence on state sovereignty.

Unfortunately, we have a national government that has expanded far beyond its original boundaries, involving itself in everything from healthcare and education to elections and social issues, and making every effort to further centralize and consolidate its power at the expense of state sovereignty. This approach to governance is the root cause of much of the partisanship and division in our country.

The Founders intended the states to compete amongst themselves and operate as individual [laboratories of democracy](#) for new ideas and policies. They knew a nation as diverse as ours was not able to be properly and effectively governed by a one size fits all approach. And, understanding human nature, the Founders knew centralization of power leads to corruption, tyranny and eventually the loss of individual freedom.

Federalism is the consensual agreement between the national and state governments regarding the scope and jurisdiction of their separate powers and authority. The very limited functions and powers of the national government are clearly defined and enumerated in [Article 1, Section 8 of the U.S. Constitution](#). The [10th Amendment](#) , which is the exclamation point on balanced federalism, reserves everything else to the states.

In Federalist No. 45, James Madison wrote, “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

As the states are increasingly becoming mere administrative subdivisions of the national government, maybe state legislators are beginning to understand and appreciate the principle of [subsidiarity](#) (see NAFSL [newsletter on this topic](#)) and are now prompted to look for solutions to restore the balance. Federalism only works if the states respond appropriately when the national government exceeds or abuses its power.

Clearly, Article V is one long-term solution that ought to be seriously considered. More expeditiously, however, our state legislators need a heightened awareness and to be more vigilant to the egocentric pursuits of the national government. They must exercise resolute discernment when considering national government largess and recognize the potential consequences of the “strings” attached to those appropriations. And finally, it is a requisite that our state legislators have a clear-eyed respect and comprehension of representative governance and the protections this principle bestows to individual sovereignty.



James Kallinger, President
National Association of Former State Legislators

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