

Supreme Court Justice Antonin Scalia, discussing the Art. V Convention in depth

[AEI, A Constitutional Convention: How Well Would it Work, 1979](#)

wolf-pac.com/scalia



On the chances of a runaway convention: Just as it is possible that the Congress tomorrow might pass a law... eliminating Christmas, such things are possible, remotely possible. I have no fear that such extreme proposals would come out of a constitutional convention.... It is not much of a risk. Three-quarters of the states would have to ratify whatever came out of the convention; therefore, I don't worry about it too much. I would also be willing to run that risk for issues primarily involving the structure of the federal government and a few other so-called single issues....

On the fear-mongering of opponents: The Congress, and its inaction is the whole reason for the call for the convention. [Op]position is essentially a throwing up of the hands.... [W]hat is the alternative? The alternative is continuing with a system that provides no means of obtaining a constitutional amendment, except through the kindness of the Congress, which has demonstrated that it will not propose amendments-no matter how generally desired-of certain types.... I have not proposed an open convention. Nobody in his right mind would propose it in preference to a convention limited to those provisions he wants changed.... In any case, I do not have any great fear of an open convention, since three-quarters of the states do have to ratify what comes out of it. The clucking that... others do about it is simply an intentional attempt to create panic and to make the whole idea sound unthinkable....

On the need for a convention: I am the one here who is least terrified of a convention. We have come a long way. We have gotten over many problems. But the fact remains that a widespread and deep feeling of powerlessness in the country is apparent with respect to many issues.... The people do not feel that their wishes are observed. They are heard but they are not heeded, particularly at the federal level.... Part of the problem as I have noted is simply that the Congress has become professionalized; its members have a greater interest than ever before in remaining in office; and it is served by a bureaucracy and is much more subject to the power of individualized pressure groups than to the unorganized feelings of the majority of the citizens. This and other factors have created a real feeling of disenfranchisement that I think has a proper basis. The one remedy specifically provided for in the Constitution is the amendment process that bypasses the Congress. I would like to see that amendment process used just once. I do not much care what it is used for the first time, but using it once will exert an enormous influence on both the Congress and the Supreme Court.... I would not want a convention for some silly purpose, of course. But I think there are many serious purposes around, many matters that profoundly concern the American people and about which they do not now have a voice. I really want to see the process used responsibly on a serious issue so that the... alarm about the end of the world can be put to rest....

Out of Context Sources Claimed to Show Scalia Changed his Mind

[2014 Q&A after Justice Scalia and Justice Ginsberg speak about The First Amendment and Freedom:](#)

Question: Justice Stevens recently suggested a constitutional amendment to modify the 2nd amendment. If you could amend the Constitution in one way, what would it be and why?

Answer: I certainly would not want a Constitutional Convention. I mean, whoa, who knows what would come out of that. But if there were a targeted amendment that were adopted by the States I think the only provision I would amend is the amendment provision. I figured out one time what percentage of the populis could prevent an amendment to the Constitution and if you take a bare majority in the smallest states by population, I think something less than 2% of the people can prevent a constitutional amendment. It ought to be hard, but it shouldn't be that hard.

Opponents of the Convention process, particularly on the left, often quote that first sentence from Justice Scalia out of context. But in context, the meaning is clear. He is not opposing an Article V Convention, but a Constitutional Convention and he clearly knew the difference. He seems to mean here only that his changes to the Constitution would not be so major as to require a rewrite of the document. This has absolutely no bearing on his views expressed in great detail earlier in his career. If anything, this quote shows his belief that an Article V Convention ought not be feared because it would be so easy to stop any unwanted amendments proposed there.

[2015 Notes from Unrecorded Closed Door Talk to New Jersey Federalist Society:](#)

Scalia called it a "horrible idea" to hold a constitutional convention in the age of special interests.

"Once you get those people together, you never know what they're going to do," he said, citing other nations where such issues as minimum wage have been included in the text. "You'll get everything but the kitchen sink written into the Constitution."

Opponents of the Convention process, particularly on the right, often use this to indicate Scalia's opposition to the Article V Convention process. Once again, he does not appear to be talking about an Article V Convention, but of a true Constitutional Convention. He is certainly not under the allusion that other nations have Article V in their Constitutions, but they do have Conventions to write new Constitutions, which he has repeatedly opposed including in his 1979 remarks. This has no bearing on his views on the Article V Convention. Furthermore, with no recording of the event and rather sparse notes, it is difficult to really discern what he was talking about here. Basing the idea that he reversed his carefully considered and in depth remarks from earlier in his career on a source like this is irresponsible.