

## James Madison on writing Article V and its use

Father of the Constitution and 4th President of the United States [wolf-pac.com/madison](http://wolf-pac.com/madison)



**On writing Article V:** *"Provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto."* [Resolution 13 of the Virginia Plan](#), the first draft of the Constitution written by Madison and presented by Edmund Randolph, May 29, 1787. In September, Madison proposed that Congress could write the amendment on application from the states. *"[I] did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application. [I] saw no objection however against providing for a Convention for the purpose of amendments."* [Madison's Notes on the Constitutional Convention, September 15, 1787](#). Madison believed that Congress would be obligated to act under the instructions of the States in Article V to call the convention. He thought they could just as easily be bound to write the amendment, but in response to objections by several other founding fathers, he saw no problem with giving the power to write the amendment to a Convention as opposed to Congress when the States find that, as George Mason put it, *"the Government should become oppressive."*

### **On the Convention to overturn the Alien & Sedition Acts:**

*"General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the "Alien and Sedition Acts" passed at the last session of Congress;... the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people."* [Virginia Resolutions, 21 December 1798](#).

Madison was accused by Alexander Hamilton of advocating for nullification. Madison clarified his meaning, saying: *"The legislatures of the states have a right also, to originate amendments to the constitution, by a concurrence of two thirds of the whole number, in applications to Congress for the purpose."* [The Report of 1800](#)

**On the Convention for Nullification:** The mistaken notion that Madison supported the right of the states to nullify federal law persisted. The Virginia Resolution was used as an argument in support of nullification in 1820. Madison knew this proposal was unpopular and worked behind the scenes to encourage the use of the Article V Convention procedure to obtain an amendment for nullification and [published a letter in support of that process](#). He knew the process could not lead to an amendment that lacks overwhelming support and as expected, the nullification amendment failed.

*"Should the provisions of the Constitution as here reviewed, be found not to secure the Government and rights of the States, against usurpations and abuses on the part of the United States, the final resort within the purview of the Constitution, lies in an amendment of the Constitution, according to a process applicable by the States."*

## Statements of James Madison frequently used out of context

**On the drafting of Article V:** Madison's comments in Philadelphia reflect his concern not over the Convention process in general, but of the process as then formulated, which failed to include any ratification method. "[T]he vagueness of the term, 'call a Convention for the purpose' [w]as sufficient reason for reconsidering the article. How was a Convention to be formed? By what rule decided? What the force of its act?" At the suggestion of Alexander Hamilton and concurrence of the other founders, Madison proposed the ratification language. This comment was not, as is often stated, part of the discussion of why Madison removed the Convention from the draft of the provision written later that week. See above for that discussion. [Madison's Notes on the Constitutional Convention, September 10, 1787.](#)

**On a second convention instead of ratification:** In early 1788, there was a movement among delegates to the state ratifying conventions to hold a second convention to propose amendments **before they ratified** the Constitution or else to give a conditional ratification that would not be effective until after amendments were made. Madison considered both options to be essentially equivalent and both he feared would defeat ratification of the much needed new Constitution. He feared not only the delay, but also that with such an open-ended process, unlike the process he helped write in Article V, the hard fought compromises would be opened up by those who sought, as he put it, "disunion."

*"I shall be extremely happy to see a coalition among all the real federalists. Recommendatory alterations are the only ground that occurs to me. A conditional ratification or a second convention appears to me utterly irreconcilable in the present state of things with the dictates of prudence and safety. I am confirmed, by a comparative view of the publications on the subject, and still more of the debates in the several conventions, that a second experiment would be either wholly abortive, or would end in something much more remote from your ideas and those of others who wish a salutary Government, than the plan now before the public."* [From James Madison to Edmund Randolph, April 10 1788.](#)

*"The preliminary question will be whether previous alterations shall be insisted on or not? Should this be carried in the affirmative, either a conditional ratification, or a proposal for a new Convention will ensue. In either event, I think the Constitution, and the Union will be both endangered. It is not to be expected that the States which have ratified will reconsider their determinations, and submit to the alterations prescribed by Virga. And if a second Convention should be formed, it is as little to be expected that the same spirit of compromise will prevail in it as produced an amicable result to the first."* [From James Madison to Thomas Jefferson, April 22 1788.](#)

**On the use of the Article V Convention for the Bill of Rights:** Once the Constitution was ratified, the Article V Convention procedure went into effect. When John Jay, Alexander Hamilton, and the rest of the New York Ratifying Convention proposed using it to obtain those amendments requested by the state ratifying Conventions, Madison opposed that effort. He feared having amendments so early on in the process and especially feared having a group other than Congress propose fundamental changes to Congress before they even saw Congress function. While limited to those amendments called for in the state ratifying conventions, this was still a very broad list that went to the core of the function of the new Constitution that had not yet had a chance to operate. He also feared having a convention for such a broad range of amendments as were called to be considered would lead many states to oppose the entire convention simply to block those amendments with which they disagreed. He believed it was a better tool to be used for a limited purpose for which there was general agreement in the nation. In response, Madison wrote the Bill of Rights.

See letters to Thomas Jefferson, [August 10, 1788](#), [August 23, 1788](#), and [September 21, 1788](#); to Edmund Pendleton, [October 20, 1788](#); to George Lee Turberville, [November 2, 1788](#); to Henry Lee, [November 30, 1788](#); to Thomas Jefferson, [December 8, 1788](#); to Philip Mazzei, [December 10, 1788](#); to George Eve, [January 2, 1789](#); and to Thomas Mann Randolph, [January 13, 1789](#).