

Reasons Why States Should Support the U.S. Citizens' Ballot Initiatives Constitutional Amendment

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Introduction

Previous sections this [Plan](#) have established that:

1. The U.S. Congress tolerates critical [Problems](#) that seriously harm the People. Excessive influences by special interests are dysfunctional and the primary cause of the Problems. Moreover, [Congress exacerbates two major violations of the Constitution](#).
2. The only effective [Solution](#) is oversight by nationwide Citizens' Initiatives. The People can trust only themselves to correct these Problems. Any lesser solution will ultimately fail.
3. A Constitutional Amendment is the only way to [implement](#) the Solution. There is no expectation that Congress can act against its members' personal benefits and propose the Amendment by the first method. As [planned by the Founding Fathers in the U.S. Constitution](#), the People place their faith in their State Legislatures to use the second method of proposing the Amendment.

If the reader believes that the preceding sections are essentially correct, the next step is to determine if the second method is feasible. The major question is will enough State Legislatures support the Amendment.

Procrastination is a very dangerous option lest our republic descends into irreversible [surrogate plutocracy](#)—i.e., wealthy special interests have the supreme power and arrange the continual reelection of representatives who govern as their surrogates. [Madison warned](#) about procrastination with the words "I believe there are more instances of the abridgement of freedom of the people by gradual and silent encroachments by those in power than by violent and sudden usurpations."

The States should find their constitutional obligations and their benefits to be compelling reasons to support the Plan. [Polls show](#) the People's support by a large majority.

The current Problems have many components. However, to focus on constitutional issues, two problems are clear violations of the U.S. Constitution: [Congress denies](#) the People's constitutional rights that Government must [promote the general welfare \(original meaning: well-being, health, happiness, prosperity\)](#) of the People and [Congress denies](#) the People their [constitutional right to choose](#) their congressional representatives. Both issues are clearly dysfunctional: they are contrary to the Constitution's intended functions of Congress.

The discussion below addresses key issues of state support.

U.S. Constitution Requires State Legislators' Support

The Founding Fathers anticipated the nature of our current [Problems](#) and provided [Article V's](#) second method of amending the U.S. Constitution to solve them. For quick reference, the wording of the second method follows:

Second Method

The Congress, on the application of the legislatures of [two thirds](#) of the several states, [shall call](#) a convention for proposing amendments, which 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.

When drafting the Constitution, [Anti-Federalists](#) were fearful that the "[necessary and proper](#)" or "[Basket Clause](#)" would permit federal power to grow—as has occurred. The Founding Fathers at the Philadelphia Convention included the [Article V's](#) second method to allay the Anti-Federalist fears. Read literally, [the second method explicitly grants the States the power to propose and to ratify amendments. It grants Congress no explicit authority to hinder the States in exercising their power.](#)

Contemporaneous writings by the Founding Fathers explain the second method's meaning—and confirm a literal reading. The Founding Fathers published them widely to gain state support for the Constitution. Since

these writings were instrumental in gaining the States' approval of the Constitution, they carry great weight for legal interpretation of the Constitution.

1. In Federalist No. 43, January 23, 1788 James Madison wrote, "[The Constitution] equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

Clearly, Article V intends that the **second method is the equal of the first method**. Congressional relegation of the second method to the status of a "prodding effect" is not part of the Constitution.

2. In Federalist No. 85, August 13, 1788 Alexander Hamilton wrote, "The words of this article are peremptory. The Congress shall call a convention. Nothing in this particular is left to the discretion of that body."

Consequently, **Congress cannot hinder Article V's second** method. The Constitution uses the words "shall call" not "may call," and Federalist 85 validates this.

3. Federalist No. 85 continues "persons delegated to the administration of the **national government will always be disinclined to yield up any portion of the authority of which they were once possessed...** By the fifth article of the plan, the Congress will be obliged on the application of the legislatures of two thirds of the States... "

Therefore, **the U.S. Constitution trusts the States to use the second method to control federal excesses**. The Founding Fathers were fully aware of the risks of congressional excesses and intended the second method as the guardian to control these excesses.

4. Furthermore, in Federalist No. 85 "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority"

The Founding Fathers believed that the Constitution could rely on the States to take responsibility for resolving congressional Problems of the type now confronting us. **The Founding Fathers clearly had no doubt that the States could be trusted with this constitutional duty.**

5. In Federalist No 49, Madison wrote "As the people are the only legitimate fountain of power...it seems strictly consonant to the republican theory, to recur to the same original authority...whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others."

The Founding Fathers expected that it might be necessary to **check encroachments and diminish powers of government by returning to People as the only legitimate fountain of power.**

The Founding Fathers did **not see how direct democracy** could apply to a whole nation and did not include it in or exclude it from the Constitution. However, **all state constitutions** now include varying degrees of direct democracy, which has become a *de facto* part of U.S. constitutional philosophy. Thus, Madison's view that the people are the fountain of power can today be implemented through a direct democracy process—it is consonant with the Founding Father's view of the people as the source of all power and with the current U.S. political philosophy that direct democracy is a legitimate power of the people.

6. State legislators have taken oaths to support the U.S. Constitution. Legislators take these oaths seriously. They cannot ignore congressional violations of their people's U.S. constitutional rights and cannot fail to provide feasible remedy.

Therefore, in accordance with the U.S. Constitution, and validated by the contemporaneous writings of the Founding Fathers, **the States have the U.S. Constitutional right, power and duty to use the second method to solve the Problems—by means of this planned Solution or equal.**

State Constitutions Also Require Legislators' Support

Each of the 50 State Constitutions is unique and reflects its special character. However, they have common ideals and themes. From these, this Plan can confirm that it complies with state constitutions and can derive a view of the amount of support mandated by the state constitutions.

The place to start is in each state's bill or declaration of rights, where the constitutions set forth the basic relationships between the people and the government. This Plan assembles relevant extracts from each

state's constitution in a [reference web page](#) for the reader's convenience. The page contains hyperlinks to the source constitutional texts of each state and some key issues are color-coded. The following table summarizes and totals the information on the [reference page](#):

People's State Rights for Each State and Collectively		
Right	Typical Explicit Statements	Number States
Political Power	<p>Almost all state constitutions declare that the people's authority is paramount. (Exceptions appear to be CA, GA, MA, NY, RI, and VT.) E.g.,</p> <ol style="list-style-type: none"> 1. All political power is inherent in the people... 2. All government, of right, originates from the people... 3. Governments derive their just powers from the consent of the governed... 	44
Right to Pursuit of Happiness	<p>Almost all state constitutions include words to the effect that all men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness. (Exceptions appear to be HI, NY, SC, and WA.)</p>	46
Right of Suffrage	<p>All state constitutions include words guaranteeing the free exercise of the right of suffrage.</p>	50
Constitutional Amendment	<p>In total, 39 states have affirmed the people's right to alter government and/or make state constitutional amendments:</p> <ol style="list-style-type: none"> 1. Eight state constitutions explicitly recognize the people's right to alter their form of government and also have state constitutional Initiatives (CO, MA, NV, ND, OH, OK, OR, SD). 2. Ten additional states have state constitutional Initiatives (AZ, AR, CA, FL, IL, MI, MS, MO, MT, NE). 3. 21 additional states explicitly recognize the people's right to alter their form of government (AL, CT, DE, ID, IN, IA, KY, ME, MD, MN, NJ, PA, RI, SC, TN, TX, UT, VT, VA, WV, WY). 	39
All Rightful Governments	<p>Two-thirds of the States base their definition of just or rightful government on the general case of all governments—i.e., it also defines rightful federal government. (Exceptions appear to be CA, FL, GA, ID, IA, MA, MI, MN, NV, NJ, NY, ND, OH, OK, SC, and WV.) The use of the plural or general case is significant, e.g.,</p> <ol style="list-style-type: none"> 1. All government, of right, originates from the people... 2. All free governments... 3. Governments are instituted... 	34

Having established that these rights are ubiquitous in state constitutions—explicitly recognized in more than two-thirds of the States—the importance of their meaning becomes apparent as follows:

1. **Protection of the People's State Rights**

A covenant exists in each state between the people's consent to the States' [political power](#) and the state's guarantees to protect the people's rights. This is a proper contract since the people have transferred many of their rights to the state. Therefore, [each state has an absolute obligation to protect its people's rights](#).

2. **Federal Violation of the People's State Rights**

The States proclaim that their people have the [right to pursue happiness](#). On the other hand,

Congress places special interests ahead of the People's interests. Thus, Congress denies the People's constitutional right that Government must [promote the general welfare \(i.e., well-being, happiness, prosperity\)](#) of the People. This is a [violation of the people's state rights](#)—rights that the state is obliged to protect.

In addition, every state affirms the people's [right to choose their representatives](#). This right is nowhere limited to state candidates and therefore includes congressional candidates. However, special interest groups pre-select the slate of congressional candidates for whom the People may vote. Special interests ensure that voters elect their candidates by means of their massive campaign financing and their consolidated media industry. Congress disregards the issue and permits it to continue. Thus, Congress denies the People their [state constitutional right to choose](#) their congressional representatives, thereby [violating the people's state rights](#)—rights that the state is obliged to protect.

Additionally, the People have implied rights to good governance. Congress has [demonstrated an unacceptable and deteriorating standard of governance](#) by its shortsightedness and its favor to special interests.

Congress [has institutionalized](#) these problems and cannot solve them. However, when states have the power, they take appropriate action to correct federal malfeasance and deficiencies. Thus, the [Solution](#) described in this Plan is a proper U.S. Constitutional response by the States to correct these [violations of the people's state rights](#).

3. **State Right to Alter Government by Constitutional Amendment**

The states recognize that the people have a right to alter their government. Every state except Delaware requires voter approval by referendum for constitutional amendments proposed by the legislature. In [24 states](#), a power reserved by the people is the initiative. Moreover, in [16 initiative states](#) (AZ, AR, CA, CO, FL, IL, MI, MO, MT, NE, NV, ND, OH, OK, OR and SD) the people may enact constitutional amendments by direct initiative and in two states (MA and MS) by indirect initiative. In these initiative States, their state's political philosophy gives Legislators' an even more compelling obligation to support this planned Amendment.

The States recognition of the People's right of direct democracy impels them to carry the philosophy to the federal level, where the federal constitution's earlier date made the [concept premature](#). However, [the U.S. Constitution, which the Founding Fathers wrote and the States ratified in the name of the people, does not provide the people with a method to alter their federal constitution](#). Nevertheless, it provides the second method, by which the states can amend the Constitution. In over 200 years and over [500 applications](#), the second method has never produced an Article V Convention. Though had not the Congress preemptively proposed the desired amendments, the second method may well have lead to an Article V Convention.

Consequently, [since the second method is the only constitutional option available to the States and their people, it is the process used in this Plan](#) to remedy the U.S. Congress's violations of state rights.

4. **State and Federal Governments**

Opponents may argue that the States alone, not their people, have the U.S. Constitutional right to alter the U.S. Constitution. However, [34](#) of the States base their definition of just or rightful government on the general case of all [governments](#). Consequently, their judgment is that [all rightful governments](#)—state and federal—derive their power from the consent of the people.

More importantly, the Declaration of Independence is the source of the state constitutions' wording "[deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it](#)". Since the Declaration precedes and underpins the U.S. Constitution, its words are decisive. The States' peoples through their states have the state right to alter the U.S. Constitution.

Moreover, the affirmative 1983 decision by [Washington State](#) confirms that [the People can apply for an Article V Convention by using state initiatives or referenda](#) ([Mullen v Howell 1919](#)). A state application for a Convention is a state function not a [federal function](#). However, decisions by the States of Maine

and Oregon indicate the opposite ^(Maine Opinion 1919, Herbring v Brown 1919). It follows that the planned use of state referenda and initiatives to apply for an Article V Convention to propose a Citizens' Initiatives Amendment may perhaps be constitutional, but **an early Supreme Court confirmation that this conclusion is without defect will be prudent**. Moreover, in the federal Supreme Court decision most relevant to the issue ^(Hawke v Smith 1919), it ruled that referenda could not ratify a Federal Constitutional Amendment. Thus, until the Supreme Court rules, each legislature should support referenda and initiatives to call for an Article V Convention, but must always back them with similar but separate state legislative bills.

Note that the contents of state referenda and initiatives will bind neither persons who attend the Convention and propose the final version of the Amendment nor the **States during ratification**, since these are **federal functions**. Note also that no state should enter into an agreement or compact with another state in violation of **Article 1, Section 10, Clause 3**.

5. **Legislators' Responsibility**

State legislators have taken oaths to uphold their State Constitution. Legislators take these oaths seriously. They cannot ignore congressional violations of their people's state rights and cannot fail to provide feasible remedy.

Many state constitutions include phrases such as "provided, such change be not repugnant to the Constitution of the United States" and "but that the constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all". The Plan addresses these constraints by following precisely the words and the most authoritative meaning of the U.S. Constitution and the state constitutions.

Therefore, each state has an obligation to protect its people's rights and to take action to remedy the federal government's violations of its people's rights. In accordance with their state constitutions, **each state has the state constitutional right, power and duty to use the second method to solve the Problems—by means of this planned Solution or its equal**.

For state legislators who decide that they need not declare support for this Plan, their constitutional duty still remains clear and unfulfilled. They must find and implement an equal or better solution.

Practical State Benefits from Supporting the Citizens' Initiatives Amendment

The following discussion looks at some areas in which the People could use nationwide Initiatives in ways that may benefit the States and their people. However, it takes a neutral position on any specific Initiative's desirability.

1. **Unilaterally Mandated Federal Obligations**

Congress legislation unilaterally **mandates programs** that obligate the States' support. The U.S. government does not fund some of these programs. Consequently, the States are obliged to pay their costs. This distorts the allocation of taxes and resources, thereby reducing the nation's overall economic effectiveness and efficiency.

A nationwide Ballot Initiative process will permit states to modify, limit or remove unilateral federally mandated programs. The cost of the programs to the States is about **\$30 billion per year**. The U.S. **REAL ID** act will obligate significant **additional costs**. These costs generally appear as a visible state tax, but are really a hidden federal tax.

Of course, Initiatives are not suitable to micro-manage these mandated obligations. Instead, they are suitable to establish overall policies, procedures and limitation. The National Conference of State Legislatures (NCSL) might coordinate this—as a U.S. organization, NCSL will have the right to propose Initiatives. The Initiative process could address policies that control unilaterally mandated obligations.

2. **Unreasonable Strings Attached to Federal Funds**

Federal funds currently account for about **\$350 billion per year or 29.5 percent** of state funds. Congress often attaches strings on all state funds that commingle with any federal funds. Consequently, the total federal influence on the states is greater than the funding amount suggests. The attached strings enable the Congress and the Presidency to exert powerful and perhaps

unreasonable influences on the states and the citizens of those states.

On the one hand, states generally are satisfied to let the U.S. government collect taxes on their behalf, which the Internal Revenue Service does very efficiently. On the other hand, a compelling question often raised is "whose money is it anyway?" Use of nationwide Initiatives could address policies regarding this issue.

3. **Wishes of the People for Nationwide Initiatives**

Today, over 70 percent of Americans use initiatives in their states and cities. The 24 initiative states have experience of their people's support for initiatives and their criticisms of the initiative process. In general, these experiences show that the state's people jealously guard their right to have an initiative process.

However, the extent of special interest influence and the high cost of the initiative process frustrate the voters. **These are non-issues in the planned Solution**, because the nationwide process using an Assembly is **inherently immune to special interests' influence**, the cost of proposing an initiative is low, and the cost per voter is insignificant. This gives reason to expect that the nationwide Initiative process should receive even greater public support than enjoyed by the state initiatives.

There have been four polls on nationwide initiatives—Gallup 1987, Washington Post 1994, Gallop 1997 and Portrait of America 1999-2000. Averaging the four polls, Citizens are 63.5% in favor and 21.3% against Initiatives. In other words, **voters overwhelmingly support nationwide initiatives by three to one**. **A separate page describes the polls**. The public's deteriorating view of federal government and their growing frustration with special interests' influence may make today's opinions even stronger.

The great support for nationwide initiatives will probably influence State legislators when making their decisions. State legislators have an obligation to fulfill their constituents' wishes whenever possible.

4. **States' Inherent Efficiency**

In a federal republic, delegation to the States is generally desirable and should be encouraged. The fifty states compete with each other on a long-term basis and thereby improve their efficiency and effectiveness to the benefit of the people. The Federal government, on the other hand, is a monopoly without U.S. competition and therefore inevitably less efficient. This fundamental philosophy of competition is a cornerstone of our capitalist system. The Initiative process could address policies that encourage efficiency.

5. **States' Inherent Ability to Innovate and Stimulate Economic Growth**

The states are on average only two percent of the size of the U.S. This is comparable to the relationship between small and large businesses. A disproportionately large proportion of our innovation and growth occurs in the small business sector. Analogously, the States are a valuable and often untapped source of innovation in government. An inherent key reason it that it is easier to adjust the goals, change direction, revise technology and even abandon a small project than to make such changes to a big program.

Therefore, it makes sense to test innovations and improvements on a state level whenever possible before applying them to the whole nation. In the past, Congress has made many **preemptive** nationwide changes at great expense without first verifying that they work, ignoring appeals that the States should **try** them first in a few States. Use of nationwide Initiatives could address this situation.

6. **Term Limits**

On one hand, elected representatives at all levels dislike term limits, feeling that their years of experience are valuable and that enforced retirement from office is a waste that harms the people. On the other hand, **public polls** indicate that they are popular with voters. In the first half of our Republic, House members had a tradition of only one or two terms. From 1830 to 1850, turnover in the House averaged **51.5 percent**. From 1998 to 2002, House turnover during re-election averaged about **two to four percent**. The Plan takes no position on term limits except to note the facts relating to the States' support of the Plan.

- i. **This Plan can have no effect on state term limits.** Currently, they affect **fifteen states** AZ, AR, CA, CO, FL, LA, ME, MI, MO, MT, NE, NV, OH, OK, and SD. **State term limits took effect in 1996.** In the last few years, **six states** removed term limits—two (ID and UT) by legislative vote and four (MA, OR, WA, and WY) by court invalidation.
- ii. In terms of representatives' authority to spend funds, and consequently their appeal to special interests' as a locus to attempt influence, there is a huge difference between federal representatives and state representatives. The table shows that **on average a congressperson controls 28 times more government money than a state legislator does.** In fact, the effect is greater than 28 times because of factors like **federally mandated obligations** and **strings attached to federal funds.**

Funds (in \$ Millions) Authorized for Spending per Member by State and U.S. Representatives		
	State Legislatures	U.S. Congress
Total Membership	7,382	535
Total Spending (2004, \$ Millions)	1,200,000	2,400,000
Spending per Member (\$ Millions)	163	4,486
Congressperson v. Legislator Authorizations		28 times more

Consequently, if term limits are an effective and worthwhile method to reduce the influence of special interests, the order of importance should be as follows:

- I. The Presidency has many times more appeal to special interests' influence than Congress. Congress imposed term limits on the President. Prior to Franklin D. Roosevelt, no president served more than two terms. President Roosevelt died in 1945 during his fourth term. In 1947, Congress proposed Amendment XXII to limit Presidential terms and the States ratified it in 1951.
- II. The Congress has many times more appeal to special interests' influence than the state Legislatures. In 1995, Congress considered a bill proposing a Term Limits Constitutional Amendment (H J Res 73) but it failed to get the necessary **two-thirds majority** in the House. On the other hand, many states considered that they had a duty to impose term limits on the Congress. Consequently, **between 1990 and early 1995, 23 States passed congressional term limit legislation.** However, in 1995 the **Supreme Court determined** that the state actions were unconstitutional. The status has not changed since then. Except for over a dozen **self-limiters**, congresspersons disregard their voters' wishes.
- III. State Legislators have far less appeal to special interests' influence than congresspersons. Therefore, if term limits are a sound way to control special interests' influence, they are far more important at federal level than at a state level.

In all States, the **continuous reelection** of congresspersons locks out numerous excellent state legislators from **congressional service** throughout their best years. State legislators are an important source of congressional talent. In 2004, **24 retiring congresspersons** were prior state legislators. At the same time, **293 congressional candidates** were current or prior state legislators. Congresspersons' continuous reelection is probably galling to many legislators—especially for legislators in states with term limits—where **257 state legislators** were termed out in 2004.

Though nationwide initiatives can have no affect on state term limits, they could affect the congressional situation.

7. Line Item Veto

Almost all of the States consider a **line item veto** authority to be vital to trim "pork barrel" spending from budget bills. **Gubernatorial line-item veto authority** on major budget bills now **exists in forty-**

three states. (The seven exceptions are IN, MD, NV, NH, NC, RI, and VT.) Generally, a supermajority legislative override can overturn a line item veto. The States demonstrate a fiscal vigilance in this matter that is missing at a federal level.

The concept of a federal line-item veto authority goes back to the Confederate States Constitution of 1861, which incorporated the words "The [Confederate] President may veto any appropriation or appropriations and approve any other appropriation or appropriations in the same bill." Periodically, Congress has voluntarily consented to a Presidential line item veto. In 1996, Congress passed a bill to permit line item veto, but the [Supreme Court ruled it unconstitutional in 1998](#). Since then, Congress has discussed but has not proposed a constitutional amendment for the line item veto. In March 2006, Rep. Paul Ryan introduced [H.R. 4890](#), a legislative line-item veto act, which died in [January 2007](#).

Though some "pork" meets valid needs, much of it is inefficient and wasteful. Currently, **federal pork barrel spending costs about \$30 billion per year.** Use of nationwide Ballot Initiatives could address this issue.

8. **State's Rights Protected**

The Plan protects state rights in several ways.

- i. **Voting on U.S. Initiative mirrors the protection that the U.S. Senate provides to the States.** A majority of the electorate in a majority of the States must [pass a U.S. legislative Initiative](#). A majority of the electorate in a two-thirds supermajority of the States must [pass a U.S. Initiative containing a U.S. constitutional amendment](#).
- ii. From all U.S. Citizens eligible to vote, random selection determines the membership of the Citizens' Initiative Assembly. On average, each state's membership in the Assembly will exactly reflect the state's proportion of the U.S. population. In this regard, the **Assembly resembles the apportionment of the House of Representatives.**

A majority of the Assembly can advance a proposed U.S. legislative Initiative onto the ballot. A two-thirds supermajority of the Assembly can advance a U.S. Initiative containing a U.S. constitutional amendment onto the ballot.

- iii. **State legislatures qualify as organizations that can propose nationwide Initiatives.** Moreover, since governments are a potential source of well-formed proposed Initiatives, the Assembly can [expedite](#) their proposed Initiatives. The planned Amendment will thereby provide the States with an additional means to protect state rights.
- iv. All States use direct democracy in the form of state referendums and/or initiatives. The U.S. Constitution does not mention referendums or initiatives and the Supreme Court has found disputes on the issue beyond its jurisdiction. Though governments may infer the *de facto* acceptance of direct democracy, many theoreticians still proclaim direct democracy as **incompatible with a republican form of government—as guaranteed in Article IV Section 4.** **The planned Amendment conclusively resolves this "guarantee" debate.**

9. **People's Reserved Rights**

Many state constitutions specify that the people reserve the power of initiative. [Amendment X](#) of the U.S. Constitution specifies, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Since the U.S. Constitution is silent about nationwide initiatives and amendments, these are available to the States or the People. However, since initiatives are a power of the People not of government, the right of U.S. Initiatives is available to the People. Consequently, state legislatures have another compelling obligation to support this planned Amendment. In the 24 initiative states, Legislators' have an even more compelling obligations to extend their people's state rights to the People of the U.S.

10. **Single Comprehensive Solution**

The States have the power to amend the Constitution by the second method. Theoretically, the States could process a series of single-issue Constitutional Amendments. These might solve some aspects of the Problems. However, every step is slow and exhausting and each Amendment would

take many years, whereas Congress is swift to find and create loopholes and end-runs. By the time each Amendment becomes effective, it would almost certainly be out of date. Moreover, addressing fundamentally legislative issues by constitutional amendment is clumsy and inappropriate. Thus, multiple state-initiated U.S. Constitutional amendments cannot qualify as a comprehensive solution.

Conceivably, the States could amend the Constitution to grant themselves federal legislative authority. However, this runs contrary to the fundamental constitutional philosophy of the separation of governmental powers. On the other hand, for the People there is no separation of power issue to consider.

Consequently, the States cannot provide a comprehensive solution on their own—leaving the [planned Amendment](#) (or its equal) as the only comprehensive solution.

11. **Long Term Solution to Loopholes and End-runs**

The U.S. Congress is a law unto itself. The Congress enacts all federal legislation. Congress can override even a Presidential veto with a two-thirds majority vote.

Congresspersons write and manage their rules and ethics. Moreover, Congress cannot change joint rules if confronted by a Senate minority of 40 percent due to its [filibuster](#) rules.

About 45 percent of congresspersons are lawyers. Moreover, special interests and their 35,000 lobbyists include an overabundance of lawyers who help write much congressional legislation. Congress and special interests have legislative strangleholds on the nation that are thorough and deep. Even when the public outcry forces an occasional congressional concession, there are usually enough legal loopholes that the concession is ineffective. Alternatively, Congress can enact other legislation to end-run or bypass the concession.

The only current method to limit Congressional excesses and deficiencies is via the Supreme Court, which has the power to overturn congressional legislation. However, the Court can only act when the legislation transgresses the Constitution and after someone instigates legal action through the federal courts. This method is effective in the instances that Congress makes the error of constitutional violation, though it takes many years to produce a result.

Evidently, there is no present method capable of plugging congressional loopholes and end-runs. However, this Plan offers a capability to provide checks and balances for the most important ones. Though the Plan relies on the second method, a single Amendment establishes it as a permanent Solution. Thereafter, the People can propose and pass Initiatives that can limit the damage of special interest influence, and can propose Amendments for State ratification when a constitutional approach is required. Initiatives, enacting general policies affecting categories of loopholes and end-runs, can have a powerful cumulative benefit over time.

At first sight, the People may not appear capable compared to the enormous legal talent of Congress, lobbyists and special interests. However, this is incorrect because the planned Amendment includes [U.S. organizations](#) that employ the People. These organizations range from state governments to non-profit public interest corporations to think tanks and Universities. They have the legal skills and deep understanding of the ways that checks and balances can be effective.

Thus, the [planned Amendment can be effective permanently to limit, prevent and close the most damaging loopholes and end-runs.](#)

12. **Public Interest Group Support**

Almost every U.S. citizen is a member of several nonprofit organizations, sometimes without realizing it. Potentially, there is great support for this Plan from public interest groups, but evaluating its magnitude is a challenge. There are over [1.9 million nonprofit organizations](#) in the U.S. employing 9.4 million people with annual expenditures of about one trillion dollars or over seven percent of the U.S. economy. Tax exemption under IRS 501(c) (3) limits their political lobbying activities. However, about 140,000 organizations qualify under IRS 501(c) (4), which is not tax exempt, and have more latitude to participate in legislative lobbying, advocacy, and political campaign activities.

So far, this Plan has not directly sought the support of other organizations in order to keep options open and avoid misinterpretation by association. However, there is nothing to stop them taking up

the issues. Selective support will become very important at some time in the future. Many of these organizations have huge memberships that legislators will probably see as important to their election.

13. **State Leadership**

The States have well earned the people's faith in their leadership, especially on constitutional issues—e.g., women's suffrage and election of Senators by popular vote. Now that Congress is losing the People's confidence due to increasing special interests' excessive influence, the states have once again the challenge to set the right course for the nation. The legislators and states taking first action will gain respect and gratitude for their foresight.

The planned Solution has the capability to address other major problems that Congress should have resolved. In the future, new circumstances will create new issues that the Amendment can address. For example, due in large to the excessive influence of special interests, Congress sets poor examples of moral and ethical standards. Following Congress's example, these standards trickle down throughout government, industry and ultimately the nation. State leadership has the power to reverse this trend.

A benefit to states who first adopt the Amendment is that they will have the greatest impact and control over the Amendment's final content and wording. If the States do not take the lead, the people may pass state direct initiatives that define the wording. In this case, the state initiative wording may not be changeable until the Convention, at which the delegates perform a federal function wherein the initiative can no longer bind them. Nevertheless, it will be simpler for the state to use a referendum acceptable to the people but of the legislature's choosing rather than to precipitate an initiative written by advocates of unknown affiliation.

14. **Promote U.S. Leadership in Democracy**

By its actions, especially over the last few years, the U.S. has taken upon itself the worldwide responsibility as a democratic role model. This responsibility escalated when we adopted a proactive stand on terrorism that includes armed intervention to cause regime change. Whatever your opinion on these matters, we have assumed this responsibility in full. Once assumed, we cannot discard it without enormous loss of respect and influence throughout the world.

A tenet of the U.S. approach is that the people must be empowered to alter their government. Setting one's own house in order is always the most convincing leadership possible. If the States are able to make this planned Amendment or its equal part of the Constitution, it will be a striking demonstration of U.S. leadership-by-example at a critical historic time.

15. **Political and Financial Risk**

The simplest and best way for State Legislators to fulfill their U.S. and state constitutional obligations and help their state benefit is to propose a State Referendum to confirm or refute that their voters endorse a Solution by a U.S. Citizens' Initiatives Amendment. States can process a referendum with less political risk than straightforward legislation. To avoid getting out on a limb, the referendum's wording can be non-binding on the state unless other states indicate similar intent.

Moreover, if enough states use referendums demonstrating that a majority of the People explicitly want the application for the Amendment, the application to Congress is then by the States and the People. This has important constitutional implications that should greatly influence the Supreme Court in deciding any constitutional challenges that opponents may present. Its overwhelming constitutional authority may even forestall challenges.

The form of the referendum varies by state. All States except Delaware can use a legislative amendment form of referendum. Twenty-three States (AZ, AR, CA, DE, ID, IL, KY, ME, MD, MA, MI, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, UT and WA) ^(I&RI) can use a legislative statute form of referendum. The statute referendums generally will allow greater specificity, whereas the amendment referendums will probably focus on policy.

Financial costs and risks of the referendum process are nominal considering the importance of the issue. A positive vote will justify a State applying to Congress for a Limited Article V Convention on

the [single issue of a U.S. Citizens' Initiatives Amendment](#).

The Amendment creates many [operational safeguards](#) to take care of numerous potential issues. Significantly, these include several powerful safeguards that make it essentially impossible for special interests to influence the choice of Initiatives on the ballot.

However, the future is unforeseeable. Therefore, prudence dictates that the Amendment should have a graceful exit. The planned Amendment includes an [easy repeal](#) clause that People can activate if they are dissatisfied with nationwide Initiatives. Moreover, the Plan [recommends](#) that, well before the Article V Convention, [at least one state should adopt a state Citizens' Initiatives Assembly to replace their signature petition process](#).

In effect, a state offering its citizens the opportunity to vote on an Initiatives Amendment Referendum is launching a trial balloon to get a sense of support. Whatever the outcome, it sets up [a win-win situation for the States' People, the State, State Legislators and the United States](#).

Opposing Powers, Constituencies and Factors

The preceding constitutional and beneficial reasons are powerful and compelling. However, there are also powerful forces that may prevent state legislators from endorsing this Plan (or equal).

1. Federal Power Structure

The federal power structure is ubiquitous and excessively powerful. Consequently, many will believe that this Plan is naive dreaming. However, this power of federal government and special interests' excessive influence upon it are the fundamental causes for the Amendment. [Excessive federal power actually reinforces the need for the Amendment](#). Consequently, we reach some blunt logic:

- a. If the [Problems](#) generally are valid, and
- b. If this type of [Solution](#) (or its equal) is the only effective plan available, and
- c. If a second method Constitutional Amendment is the only way to [implement](#) this Solution, and
- d. If the States permit federal power to prevent them from using the second method to propose the Amendment or from ratifying it,

Then, it follows that:

- e. The transformation of our Republic into a permanent [surrogate plutocracy](#) is irreversible and our Constitution has failed the Founding Fathers' intention to control federal excesses.

[The People must trust their state legislators and their legislatures, in whom the Founding Fathers constitutionally entrusted the power and responsibility to prevent this disaster, to act decisively and courageously](#).

2. Special Interest Groups

Opposition is inevitable from [special interest groups](#) whose influence this Amendment may threaten. In some cases, they may be able to influence state legislators as they influence congresspersons. If their influence is sufficient to prevent responsible state action, then the same blunt logic shown for the [federal power structure](#) will apply with the same conclusions and results.

3. Political Party Leadership

Political parties have many facets. At the level seen by the rank-and-file voters, they represent a collection of political theories and policies that their members can espouse. To party candidates, they represent the means to obtain the support needed to achieve high elected office. At party leadership levels, the party is the financial beneficiary and influence beneficiary from many special interests. The *quid pro quo* is that the candidate must comply unquestioningly with a call to vote the party line. In effect, a political party is also a special interest organization.

Since political parties have the ability to freeze their support of state candidates, they could have a major effect on legislators' support of this Plan.

However, party leadership has to consider their base of support in the rank-and-file voters. [Polls show](#) that voters approve of nationwide initiatives by a three-to-one ratio. The parties may show

restraint because they cannot function without the ability to produce the vote for their candidates. On the other hand, if their lack of restraint prevents responsible state action, then the same blunt logic shown for the [federal power structure](#) will apply with the same conclusions and results.

4. **Negative Experiences with State Initiatives Process**

Some state legislatures have had negative experiences with state signature-petition initiatives. A study for the [National Conference of State Legislatures](#) details these experiences and attendant opinions. They echo the voters concern about the increasing influence of special interests on the state initiative process.

However, whereas signature petitions are vulnerable to special interests' influence, the [planned Citizens' Initiatives Assembly is virtually immune](#) to such problems. Thus, provided the state legislator understands the nationwide Ballot Initiatives plan, this issue should be a favorable rather than an opposing factor.

5. **Pressure of Work, Procrastination and Apathy**

State legislators are often under considerable pressure from constituents to take care of local matters. The imposition of an important constitutional matter will be an unwelcome addition to their load. The natural inclination will be procrastination even apathy. Most problems go away if one does nothing.

The problem of congressional excesses, however, will not go away. It just gets worse. Simple fixes have never worked and will not work now. The voters are frustrated and want a solution. Fortunately, this plan provides legislators with an available solution for approval by referendum. After the referendum passes, states can annex the plan and their project team can work out the final details.

Avoiding Second Method Pitfalls

The States, on behalf of the people of the state, will process this Amendment. Therefore, the concern must be to get it through as easily as possible rather than break new constitutional ground and risk the attendant [pitfalls](#). The States should make the Amendment and its ratification process as defensible as possible. A significant degree of cooperation between the States will be required to avoid pitfalls.

Though it is a Congressional responsibility, Congress has been remiss in not clarifying the procedures for using the Second Method. There have been many attempts to establish the procedures for the Second Method by congressional legislation or [constitutional amendment](#), but to no avail. Fortunately, it is possible to use the Second Method without Congressional procedures by avoiding the undefined or ambiguous areas.

The Congressional Research Service (CRS) reviewed the Second Method procedures in 1995 ([Durbin](#)). Their report found [five areas](#) on which the Constitution is silent that might cause confusion and uncertainty, and a [sixth area](#) of procedural ambiguities. This Plan adds a [seventh area](#) to avoid excessive congressional delay and an [eighth area](#) to prevent Congress from undermining the application. In all cases the confusion, uncertainty and ambiguities should be avoidable by the States following the CRS report recommendations under the headings [Procedural Issues](#) and [Federal Function Doctrine](#) on the [Constitutional Issues](#) page of this web site. In particular, following these recommendations will avoid Congressional fear of a "runaway" convention.

In addition, the risk of a newly elected State legislature deciding to try to rescind a petition (despite prior commitments not to rescind) is always present. Preferably, there should be support from more than the minimum of 34 States. Moreover, the States should all try to complete submittals within a short period to minimize opportunity for rescissions.