

## Article V Information Center Report

# How the *New York Times* and *Washington Post* Spread “Fake News” About An Amendments Convention

By Robert G. Natelson<sup>1</sup>

### Introduction

During the 1960s and 1970s, leading liberal opinion makers publicized widely the false claim that a convention for proposing amendments would be a “constitutional convention” that could exceed its authority and propose (or even impose) amendments unrelated to its charge. This claim is often called the “runaway scenario.” As additional support for their argument, some of these opinion-molders asserted that convention protocols were a “mystery” and that Congress could take steps to control the convention.

The origins of this disinformation campaign are explored in a [previous Article V Information Center report](#). The campaign’s immediate purpose was to defeat constitutional amendments that would have reversed controversial Supreme Court decisions and required Congress to balance its budget. Because some of the suggested amendments they opposed were quite popular, opponents attacked the process more than they attacked the amendments. This was because, as the *New York Times* noted (February 16, 1979), “the most effective argument the critics have is the fear of a runaway convention.”<sup>2</sup> The ultimate effect of the campaign was to eradicate for several decades a crucial constitutional “check” on federal power.

Because this campaign used disinformation to discourage access to an

---

<sup>1</sup>Robert G. Natelson is Director of the Article V Information Center in Denver. He served as a law professor for 25 years at three different universities, teaching, among other courses, constitutional law, advanced constitutional law, constitutional history, and First Amendment. He has published extensively on the Constitution’s amendment process, both in popular and scholarly literature.

<sup>2</sup>In the interest of brevity, the headlines, news reporters, and page numbers of articles itemized here are not included. However, all items were gleaned from the ProQuest Historical Newspapers data base for each paper, and can be retrieved by entering the date and part of the quotation provided herein.

important constitutional right, it somewhat resembled a voter suppression campaign.

This brief report provides examples of how the two leading newspapers of the liberal establishment—the *Washington Post* and the *New York Times*—facilitated the 1960s and 1970s disinformation campaign.

## Legal and Historical Background

[Article V of the U.S. Constitution](#) outlines the constitutional amendment process. In addition to allowing Congress to propose amendments, Article V permits two thirds of the state legislatures (now 34), to trigger what the Constitution calls a “Convention for proposing Amendments.” The idea is to allow the people to pressure their state lawmakers into proposing reforms Congress refuses to propose. Amendments proposed by convention, like those proposed by Congress, must be ratified by three fourths of the states (38).

By the 1960s, the nature of, and limits on, an amendments convention should have been well understood. A 1831 Supreme Court case, *Smith v. Union Bank*, had described an amendments convention as a “convention of the states”—a characterization [heavily supported by constitutional history](#). Protocols for such gatherings were well established: [The ground rules had been hammered out over three centuries](#). One of those ground rules was that the state legislatures control the convention subject matter by defining the boundaries in preliminary documents.

In addition, the Constitution’s text shows that an amendments convention receives its power only from the Constitution, operates subject to the Constitution, and is limited by the Constitution. By the 1960s, a plethora of court decisions had reaffirmed this basic point.<sup>3</sup> The history and the wording of the Constitution’s Necessary and Proper Clause showed that Congress had minimal power over the convention.

Of course, even if none of that background information had been available, a journalist’s duty is to eye critically claims made by self-interested politicians and activists. Instead of adhering to that duty, the *Times* and *Post* actively participated in the disinformation campaign.

---

<sup>3</sup> The law relevant to Article V conventions is fairly extensive and discussed at length in [ROBERT G. NATELSON, STATE INITIATION OF CONSTITUTIONAL AMENDMENTS: A GUIDE FOR LAWYERS AND LEGISLATIVE DRAFTERS \(4<sup>th</sup> 2016\)](#).

## How the Newspapers' General Editorial Policies Favored the Disinformation Campaign

Before examining in detail the *Times* and *Post* news coverage, we should say something about the general editorial policies that structured how those papers treated the convention issue.

First, both papers almost uniformly, but inaccurately,<sup>4</sup> labeled an amendments convention a “constitutional convention.” They almost entirely ignored the official name—the name prescribed by the Constitution itself: *convention for proposing amendments*. The papers also ignored the other label traditionally affixed to an amendments convention: *convention of the states*.

Second, both papers' editorials were hostile to a convention. In a February 4, 1969 editorial entitled “Back-Door Amending Process, the *Post* wrote of the “threat of a new constitutional convention called by the states” and opined that:

the fact that such a threat exists at all is cause for vigilance and effective counteraction. . . In our view this sleeper in the Constitution should never be used. . . But in general amendments to the basic law ought to have the approval of two-thirds of the Senate and House before being submitted to the states for ratification.

The *Times* added its editorial disapproval the following June 16. Six days later it published a letter from a Rutgers law professor urging Congress to find ways to avoid calling a convention. On July 26, 1969, a *Times* editorial expressed pleasure with the thought that “Congress still has ample resources to prevent itself from becoming a cat’s paw of potential disaster.”

Third, both papers, especially the *Times*, weighted their pages heavily with anti-convention arguments. They granted comparatively little space to convention defenders. On one occasion, the *Times* allowed defenders to make their case. That was in a May 15, 1971 news article on the pro-convention National Taxpayers Union. However, the *Times* treated opponents with palpable condescension—by, for example, gratuitously noting the relative youth of the group’s executive director.

---

<sup>4</sup> See Robert G. Natelson, [\*A Response to the Runaway Scenario\*](#) (explaining the differences between a constitutional convention and an amendments convention).

## ***Post and Times “News” Coverage***

### ***1. The Techniques the Papers Used to Slant News Coverage Against a Convention***

A strong editorial stance can be consistent with accurate and fair news coverage. In this case, however, the news coverage in both papers was neither accurate nor fair. Most of the papers’ news stories showed strong partiality against the convention procedure.

Besides using the erroneous “constitutional convention” tag, the news stories conveyed the anti-convention message in several different ways. Specifically:

- \* Claiming that procedures that are well established were unknown.
- \* Stating “runaway” claims as fact.
- \* Uncritically repeating the assertions of hostile federal politicians.
- \* Ascribing the runaway scenario to “experts” who either were unnamed or, if named, had produced no published research on the amendment process.

Here are a few examples of each technique. Note that some of the articles discussed exemplify more than one technique:

### ***2. The assertion that well-established procedures were unknown***

On February 16, 1979, the *Post* ran an article entitled “The Budget and the Constitution,” which dealt with the campaign for a balanced budget amendment. The *Post* asserted in a subheader that the convention was “A Morass of Unknowns,” and claimed in the text that “There are no examples to follow.” In fact, at that time there had already been over forty previous interstate conventions—that is, over forty “examples to follow.”

The article added that “the drive for a constitutional convention sends chills down the backs of most of those who have ever thought about the forces that could be unleashed. There are in that drive the seeds of conflicts that would make the other political crises since the Civil War look puny.”

### **3. *Stating “runaway” claims as fact***

In a December 13, 1964 news story, the *Times* treated runaway warnings as justified. “There is the danger,” the *Times* said, “of a ‘runaway convention’ that might draft any number of amendments.” Similarly, an October 20, 1971 *Post* news story alleged that a congressional committee was “Haunted by the specter of a runaway convention to amend the conitution [sic].” It added that “the Constitution sets no ground rules” for a convention—thereby omitting *three centuries* of precedent.

As support for the runaway scenario, the papers repeated the discredited story that the 1787 convention also had been a “runaway,” as the *Times* did in a February 16, 1979 news item.

### **4. *Uncritically repeating the assertions of hostile federal politicians and lobbyists***

On April 20, 1967, the *Times* reported on the efforts of Senator Robert Kennedy to induce Congress to ignore state convention applications. Without seeking rebuttal, it quoted Kennedy-ally Senator Jacob Javits, as “warn[ing] against a ‘runaway convention’ that might be dominated by reactionary forces.” Similarly, on February 14, 1979, the *Post* quoted Senator Edmund Muskie as “raising the specter for a runaway constitutional convention,” but offered no offsetting comments from convention advocates.

Some politicians’ runaway statements were quoted to justify Congress controlling the convention process—a process the framers put into the Constitution to bypass Congress. Thus, on July 10, 1973, the *Post* rationalized a congressional bill to control conventions on the grounds that its “sponsors have expressed fear of a runaway convention proposing wholesale amendments, in the absence of legislation restricting the subject matter.” Similarly, on February, 27, 1977, in a story about a possible convention for proposing an amendment overturning the Supreme Court’s abortion decision, the *Times* uncritically reported the fears of the American Civil Liberties Union and other liberal groups that “a ‘runaway’ convention that might try to rewrite other sections of the Federal Constitution, including the guarantees of freedom of speech and of the press.”

5. *Ascribing the runaway scenario to “experts” either were unnamed or had produced no published research on the amendment process*

Perhaps the most common technique relied on in news stories to discredit the convention movement was to disguise the newspapers’ own message as the conclusions of “experts.” Occasionally the “experts” were named, but when they were they generally turned out to be liberal law professors with no record of research into Article V. Thus, on November 1, 1967, the *Post* published an article headlined, “Experts differ on procedure for petitions.” Neither “expert” quoted had any Article V research credits,<sup>5</sup> and despite the word “differ” they both were skeptical of a convention. Both demonstrated their ignorance of the nature of amendments conventions as “conventions of the states” by calling for popular election of delegates.

In most cases, though, the newspapers’ putative experts were anonymous—if they really existed at all. A March 18, 1967 *Times* news story on efforts to reverse Supreme Court decisions on legislative apportionment stated:

Many constitutional experts basing their opinions on the performance of state constitutional conventions, believe that a Federal convention would not be limited to the subject matter mentioned in the state resolutions that called it . . . This has caused concern among many observers that a ‘runaway’ convention, although called to deal with reapportionment, could attempt to reverse recent Supreme Court decisions on criminal law, religious freedom and other subjects.

The *Times* did not mention a single name among the “many constitutional experts” or the “many observers” on whom it purportedly relied. As a matter of law and fact, moreover, there is no obvious connection between state conventions and the well-established protocols that govern interstate conventions.

Another example of the “fictional experts” technique is a passage in a April 13, 1979 *Times* article by Tom Wicker, a member of the paper’s editorial board:

Constitutional authorities mostly agree that such a convention could

---

<sup>5</sup>The two alleged “experts” were University of Texas government professor Wallace Mendelson and Yale law professor Alexander M. Bickel. A search of the Westlaw data base turned up ten articles on law by Mendelson and twelve by Bickel, but none pertained to the amendment process. *See also* ROBERT G. NATELSON, STATE INITIATION OF CONSTITUTIONAL AMENDMENTS: A GUIDE FOR LAWYERS AND LEGISLATIVE DRAFTERS 8-11 (4<sup>th</sup> 2016) (setting forth a bibliography of research on Article V, but listing nothing by either man).

be a ‘runaway,’ taking popular but shortsighted actions that could riddle the Constitution—especially the Bill of Rights—with loopholes.

Similarly, a December 7, 1968 Washington *Post* news story alleged that

The mere thought that a convention might become a reality makes most constitutional scholars shudder. They insist there is nothing to limit a convention to one subject, that it could become a runaway affair that might try to rewrite the entire Constitution.

In a story of May 1, 1969 the *Times* spread further disinformation relying on unnamed sources:

In addition, most constitutional experts feel that all of the necessary 34 legislative resolutions must be obtained within seven years, in order to call a convention.

To my knowledge there has never been a signed, published article by any constitutional expert purporting to demonstrate that applications can be ignored after seven years.

## **Conclusion**

Our earlier report on the origins of the “runaway” scenario revealed one component of the history: Certain opinion leaders in the liberal establishment sought to disable a constitutional check on the federal government. During the 1960s and ‘70s they did so by carefully injecting a disinformation virus into America’s political bloodstream.

This report relates another component: How two of America’s premier newspaper—pillars of that same liberal establishment—helped circulate the disinformation virus further.