

Amending the U.S. Constitution By State-Led Convention



Indiana's Model Legislation

Presented by Indiana Senate President Pro Tempore David Long

U.S. Constitution, Article V:

“The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, 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...”

Two Paths for Amending the U.S. Constitution

Path 1: The Congress-Led Option

- Two-thirds of both houses of Congress pass a proposed constitutional amendment. This sends the proposed amendment to the states for ratification.
- Three-fourths of the states (38 states) ratify the proposed amendment, either by their legislatures or special ratifying conventions.

Two Paths for Amending the U.S. Constitution

Path 2: The State-Led Option

- Two-thirds of state legislatures (34 states) ask for Congress to call “a convention for proposing amendments.”
- States send delegates to this convention, where they can propose amendments to the Constitution.
- Three-fourths of the states (38 states) ratify an amendment approved by the “convention for proposing amendments,” either by their legislatures or special ratifying conventions.

Historical Perspective

- The state-led path for amending the Constitution has never been used.
- Reluctance has largely centered on the fear of a state-led convention for proposing amendments becoming a “runaway convention.”
- Indiana’s model legislation alleviates such fears by establishing firm safeguards against a runaway convention.

**INDIANA'S MODEL
LEGISLATION:**

SENATE ENROLLED ACT 224

SENATE ENROLLED ACT 225

Senate Enrolled Act 225: Delegate Selection

- Delegates **MUST**:
 - Be an Indiana resident
 - Be a registered voter in Indiana
 - Be at least 18 years old
- Delegates **CANNOT**:
 - Be a registered state or federal lobbyist
 - Be a federal officeholder

Senate Enrolled Act 225: Delegate Selection

- The power to appoint delegates to an Article V convention is vested in the General Assembly.
 - Establishes the intention for states to send two delegates and two alternates to an Article V convention.
 - Delegates must receive a majority vote in both chambers of the General Assembly to be appointed.
 - The General Assembly may recall a delegate at any time by joint resolution.

Senate Enrolled Act 225: Delegate Selection

- Appointed delegates and alternates must execute an oath, in writing, to:
 - Support the U.S. and Indiana Constitutions.
 - Faithfully abide by and execute the instructions given to delegates by the General Assembly.
 - Otherwise faithfully discharge their duties as delegates or alternates.

Senate Enrolled Act 224: Delegate Limitation

- **Sanctions to prevent runaway delegates:**
 - Voids any vote cast outside the subject matter limits established by the resolution calling for the convention.
 - Any delegate who attempts to vote outside of the subject matter limitations automatically forfeits his/her appointment.
 - Any delegate or alternate who votes outside of their instructions or subject matter limitations commits a Class D felony (punishable in Indiana by up to 3 years in prison).

Senate Enrolled Act 224: Delegate Limitation

- Procedural safeguards against a so-called “runaway convention”:
 - Requires the General Assembly to adopt a binding resolution governing the rules of procedure for Indiana’s delegates.
 - Establishes that the General Assembly’s application calling for the Article V convention ceases to be active and is rendered ineffective if all of the delegates and alternates vote or attempt to vote outside of their instructions or subject matter limitations.

Senate Enrolled Act 224: Delegate Limitation

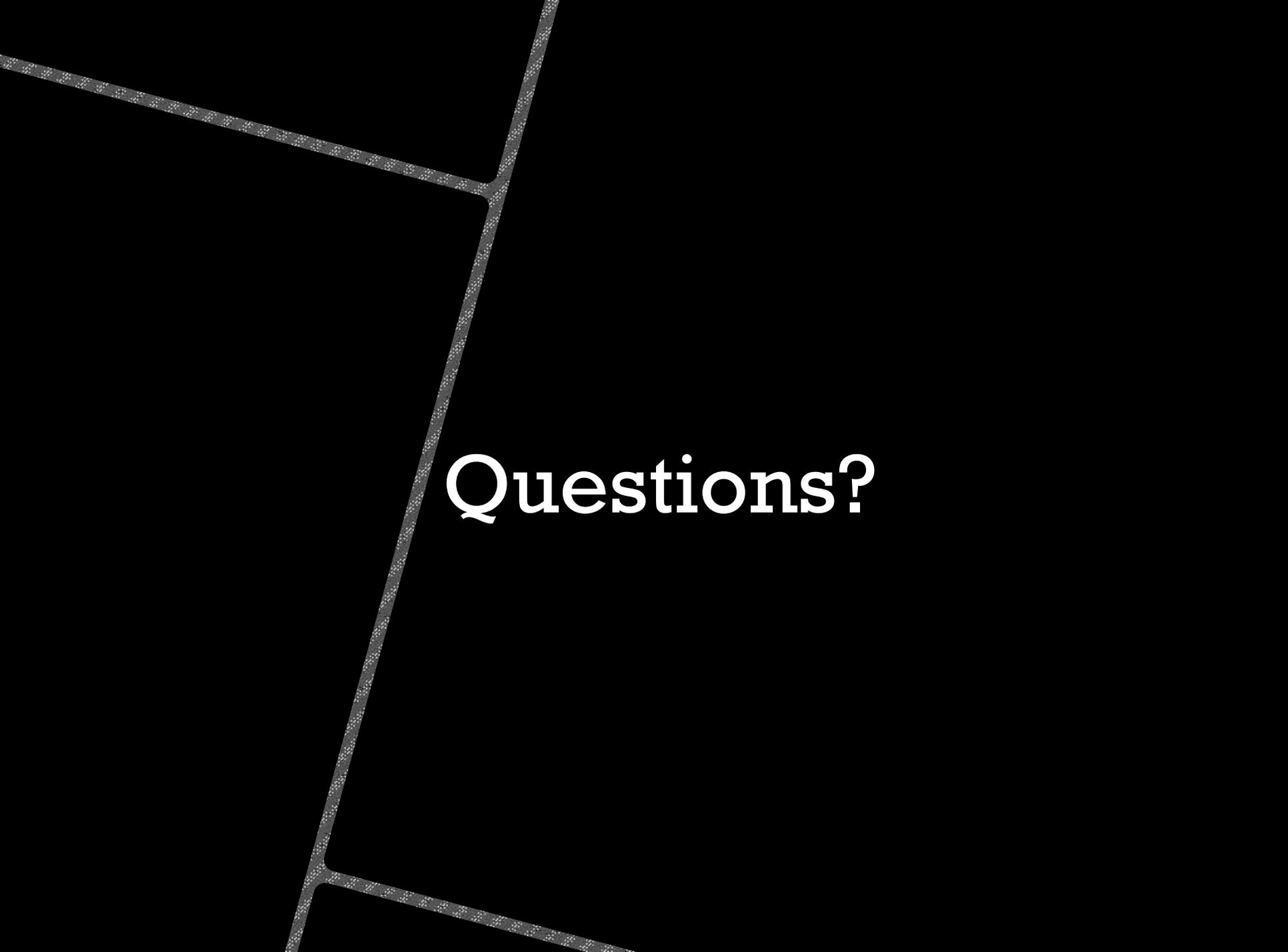
- Delegate Advisory Group:
 - Established to provide delegates with guidance on whether a vote falls within the established instructions and subject matter limits.
 - The group is comprised of:
 - The Chief Justice of the Indiana Supreme Court
 - The Chief Judge of the Indiana Court of Appeals
 - The Judge of the Indiana Tax Court

Senate Enrolled Act 224: Delegate Limitation

- Delegate Advisory Group (continued):
 - Must deliver an advisory determination requested by a delegate within 24 hours of the request.
 - Must inform state legislative leaders and attorney general if a determination finds a delegate to be acting outside his/her authority.
 - Directs the attorney general to inform an offending delegate that his/her credentials are revoked.

Conclusion:

- If other states enact similar Article V delegate limitation laws, Congress will be put on notice that states are serious about restoring a proper balance of power with Washington, D.C.
- The provisions contained in Indiana's model legislation, combined with the requirement that 38 states must ratify any amendment approved by an Article V convention, provide a sufficient safeguard against a runaway convention.

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Questions?