

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4016

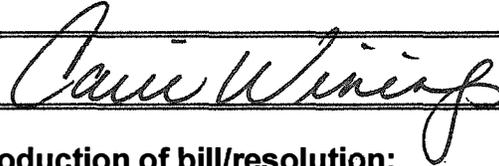
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SCR 4016
02/15/2013
Job Number 19058

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman Dever: Opened the hearing on SCR 4016.

Senator Sitte, District 35: Testified as sponsor and to explain the bill. See Attachment #1 for proposed amendment. We are all trying ways to force the federal government to balance the budget. See Attachment #2 for letter pertinent to testimony. (Had written notes not handed out)

(6:58) Senator Cook: I am curious if you are aware of how many of the original 55 delegates at the 1787 Constitutional Convention signed their names under Benjamin Franklin on the original Constitution?

Senator Sitte: I do not know.

Senator Cook: It was 32. The rest of them feared that there was a little something missing and eventually that something was created and the states ratified the Constitution and that little something was called The Bill of Rights.

Chairman Dever: Then we shouldn't understate the importance of the fact that states have to ratify the Constitution too or any changes that are made. It seems to me that parties on all sides of this issue would like to see a balanced budget amendment and the question is how do we get there? There could be a couple of different camps that the Constitutional Convention could become run away.

Representative K. Koppelman, District 13: Testified in opposition to the resolution.

I am not a proponent of a Constitutional Convention. I do believe that we have to re-empower the states. What has happened over the years since our founding is that the power vested in Washington DC, often extra constitutional power, if not unconstitutional power has been centered in that federal government. I think we see a diminishing of states' rights, of states authority, of states influence, and of states ability to stem that tide in our day and age. There is a movement that began a few years ago to re-empower the states. When I first saw the resolution, I went to the sponsor and I asked if she was sure she wanted to do this and she indicated that it was introduced to rescind a call that former Senator Olafson had championed last session. I think inadvertently it ended up being a resolution to recall what is called the Madison Amendment; which is a measure that I brought forward in the same session. It passed your body unanimously. There is confusion, the number is stated in the amendment before you is SCR 4007, and HCR 3048 was the Madison amendment. Let me back up and explain a few things and why I think this is important. The reason this is called the Madison Amendment is because I do not think that we have greater wisdom today and we need to get some that influence into our state capitols where citizen legislators can give greater direction to our state and the nation. James Madison believed that Article V of the US Constitution gave the states the same authority that the US Congress has; namely to call for a specific limited amendment to the constitution. In other words, it was to avoid a run-away convention. If you read Article V, that is not explicitly laid out. Probably it should be clarified. That is all the measure before you, 3048, from last session did. It was to amend Article V to make sure that it actually says what James Madison always thought it meant, the father of our Constitution, that the states have same authority as Congress to amend the Constitution. The problem comes in

the mechanics. How do states attempt to amend the Constitution? They call for a convention. That is the only means available to states. It doesn't mean states want a convention. In fact, it has been talked about why there has not been a convention since the first and the answer is that Congress doesn't want one. What happens is when these calls reach critical mass, whether you want to talk about prohibition or the repeal of prohibition or you want to talk in more recent times about things like the equal rights amendment, which was defeated and not ratified by the states, but was proposed by the Congress. What happens is that states begin to call for something that Congress may not even like and finally they say that the last thing we are going to do is let you have a convention. So, they propose the amendment and you decide if you can get it ratified in your states. That is how it works in the real world. So on the surface the only mechanism the states have right now is to call a convention. I would submit to you that many of the people that propose those kinds of resolutions really don't want a convention at all. They want to advance an idea and they want the congress to propose that amendment so that the states can ratify it. That is my hope as well with the Madison Amendment. (14:42) That brings us to a discussion of the convention itself. I share some of the concern about the possibility of a run-a-way convention. I think those fears are potentially real. I think we have a lot more safeguards today because we have the Constitution. When the first convention occurred they had the Articles of Confederation which were very loose. It was very interesting because they did go their own way and create something and the states did ratify it, but the process for ratification was not laid out at that point. That is a constitutional process. Because there is a fear, I think that there is something that we need to address. The only way we are going to re-empower the states is to restore the constitutional authority that the founders intended for our states to have. There are three pieces to that puzzle. This legislature passed one

of them last session and is going to be entertaining the other two this session. The first was the Madison Amendment which we passed; which your resolution before you would repeal. HB 1446 is the second piece of that puzzle. It is a delegate limitation law and what that means is that there are states around the country that are entertaining this and passing it. I believe New Hampshire was the first one to pass it and many other states are taking it up. What it says is that if there is a constitutional convention called in North Dakota, and that the delegates are sent from North Dakota with a purpose, and if the convention strays from that purpose at all, our delegates are forbidden from voting on anything that is outside of the purpose for which the convention is called. (Gives an example) The delegates would be recalled and new ones would be appointed and there would be sanctions for the ones violating their oath. That is the statute. The other piece is a constitutional amendment to our state constitution, and what that would say is that the legislative assembly of North Dakota, in the future, would be forbidden, in our constitution if this assembly approves it and puts it before the voters and the voters pass it, from ever entertaining the product of a run-a-way convention. All of these in tandem will do away with the fear of a run-a-way convention that seems so prevalent today. It takes only 13 states to make that happen for ratification. **(19:50)** (refers to attachment #2) asks the committee to consider the source. The Supreme Court in itself is almost a difacto constitutional convention every time it sits. That is a danger. So of course the Chief Justice of the Supreme Court would say not to call a Constitutional Convention. I agree that some of the concerns that are set forth are perhaps real. That is why the measures that I have spoken to you about are so important.

(20:55) Chairman Dever: returned to testimony in support of the resolution.

Glen Baltrusch, North Dakota Resident: See Attachment # 3 for testimony in support of the bill.

(26:30) Duane Stahl, North Dakota Resident: Testified in support of the bill. It is a convention to propose amendments. If we follow Article V then we can propose more than one amendment. If they try to limit to more than one, very likely as one of proponents of the constitutional convention has said, it would open it up possibly to court challenges. If we did get a balanced budget amendment out of the whole thing, would it do any good? We have a tremendous Constitution and if they won't follow the 9th and 10th amendments then why would they follow more words? They are just words. Most of the budget bills pass now with a 60% vote. A lot of these balance budget amendments that are proposed want 2/3 vote. Not very far off. What Thomas Jefferson said was to follow and get the people educated enough to elect the right people to represent them and follow the Constitution and then we would have a balanced budget. Amendments sometimes have unintended consequence. (Gives the example of citizenship and the 14th amendment and organized crime after the 18th amendment) Once 34 states petition congress to convene a convention the matter is completely out of the state's hands. There is no ability to control what the delegates do in the convention. Attempting to instruct delegates to discuss only a specific issue is absolutely impossible. **(35:07)** See Attachment # 4 and #5 for information to testimony.

(36:40) Virginia McClure, North Dakota Resident :(Responds to a couple of Representative Koppleman's comments.) I have the deepest respect for him. He had mentioned that HB 1446 would bind the delegates from voting on anything that was against the Constitution. We already have things that are going against the Constitution. The President already has executive orders that go against the Constitution and there is no ramification for that. I do not think that HB 1446 would absolutely bind them to adhere to

the Constitution. As far as the ratification from the states, you risk splitting the states again.

I know I am from one of the southern states, but it is not a good idea to have civil wars.

(37:30) Chairman Dever: We do things very differently here in North Dakota than in Washington DC and one of the things that I think about is the responsibility for each of the branches of the government to serve as a check and balance on others.

(38:01) Kirstin Cochran, Resident of North Dakota: I just wanted to address the balanced budget. I want to come back to the campaigns and how we were told North Dakota was leading the nation and that people are looking to us for leadership. Another leadership role is parenting. As a parent, I try to teach my children responsibility in whatever they do and that their actions have consequences. They have to learn from mistakes that they made. I fear that if we go along with balancing this budget that we are basically telling the nation that it is ok ... we can do a "do-over". What is more responsible of us is to reign in our spending. We have to learn from our mistakes or we are doomed to repeat them. We need to walk the walk. We need to be responsible.

Senator Cook: Have you ever testified before? Why now?

Kirstin Cochran: I think kids. I am taking a lot more interest in the government roles because I do fear for my children and for their generation.

Senator Cook: Thank you.

(40:30) John Ertelt, North Dakota Resident: Testified in support to resolution. If I were a legislator, I would propose an amendment that would force members of the Congress to adhere to the Constitution as it is and install within that amendment an enforcement provision to follow the Constitution. The problem is that they are not following the Constitution now. 80% of what they are spending their money on now is what is propelling us deeper and deeper in debt. Foreign wars have cost us greatly. We are \$16 Trillion in

debt and we are focusing on balancing a budget. We are virtually bankrupt already. I do not believe if they do not adhere to the Constitution as it is that a balanced budget will do any good at all. First of all without an enforcement provision, they will just ignore it and they will continue on with the spending that has been going on for the last several years. The danger is that the calling of a convention would be a risk to the Constitution. Just from a common sense prospective, it won't work. What we need to do is get people elected to Washington that will follow the Constitution and the budget will be balanced and we will start reducing the debt. Reducing the debt must be a priority or you will never balance a budget.

(43:42) Senator Cook: Enforcement lies with the people's right to vote these people out. If you have an idea that we can put in a piece of legislation that will help. I agree and I feel your pain. Years ago when they were discussing this there were a whole lot more people in the room. I commend you for coming here. What do we have to do to get people educated on this and to understand that this is serious stuff?

John Ertelt: Education is a slow process and re-education is even slower. That is what we are embarking on today. We have gone down the path of fiscal irresponsibility so far and now we are realizing it can't continue. We have to quit doing what we have been doing and that education process is a slow tedious job. I think there are big changes happening right now. There are a lot of people concerned about what is happening to our country. There is such a thing as total bankruptcy. The country will exist as long as we maintain it.

(47:17) Judy Stahl, North Dakota Resident: Testified in support of the bill. I know there is concern for the delegates straying from the purpose. (Goes over Article V and Representative Koppleman's opinions) Why bother to have a purposeless convention if

each state has already decided. (Talked about going to Republican convention recently and the fact that most of it was already decided and the fact that it was disappointing)

(51:50)Chairman Dever: if there was to be a constitutional convention, would you be interested in serving as a delegate?

Judy: I do not know.

(52:38) Sebastian Ertelt: Testified in support of the resolution. After hearing both sides I would like to bring up a couple points of clarity if I am able to do that. As providence would have it, Representative Koppelman, in giving his testimony earlier, it clarified my stance on the issue. He brings up this fear of a run-a-way convention. It is not a fear but a reality. We have evidence that this will occur. With the Madison Amendment that was supported last session and these other bills that he is proposing now, we have no evidence that these measures will work. On the one case we have evidence that supports and the other one is conjecture. Further, these bills mentioned, it seems to hamstring then any representatives that we might have at these conventions. We do not have control if they run-a-way or not but he is saying if they do run-a-way, then they don't get to participate at all. Any positive influence that we might have on these conventions would be stripped. The convention would still take place whether we wanted to have a decent representative there or not. Finally, as far as enforcement, at least with the President there is the ability to impeach them if they do not follow the Constitution. I do not know if that is available to members of Congress, but I do believe that we can recall them at least.

Chairman Dever: Closed hearing on SCR 4016.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SCR 4016
02/21/2013
Job Number 19325

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened SCR 4016 for committee discussion.

Senator Cook: No matter what we do with this, doesn't this resolution need to be amended. It makes reference to HCR 3048 and that was not the correct one I believe.

Chairman Dever: If that is the committee's desire. We have an amendment that was prepared by legislative council presented by Senator Sitte for that purpose. I am not sure what weight these resolutions carry. One of these was passed in one chamber on a roll call vote and the other by a voice vote. 4007 I believe was a recorded roll call vote.

Senator Cook: I think they carry a whole lot of weight. It makes North Dakota one of the 36 that are required. Maybe we need to get that question answered.

Vice Chairman Berry: I think you received an e-mail from the prime sponsor and I am curious if you have a good understanding of this whole process. What are your thoughts on this because quite frankly I am confused? I agree with Senator Cook that we are creeping up on that 2/3 needed by state legislators and obviously as I see it or as I understand it, we are at a point where we have two sides saying the complete opposite. One side says it will run away and the other says it won't, and I am personally confused as to what to believe. I am very much a state's rights individual and I would love for the states to be able to reign in our federal government, but I don't want to do something that would

be contrary to the stability of the nation as it relates to what we are hearing from one side could possible happen. I welcome any information and thoughts from others.

Senator Poolman: My personal opinion would be that it would not be a productive situation to have a constitutional convention at this time. I guess the premise of this resolution to me is good if we amend the pieces that Senator Cook had talked about. I don't think it would be productive. That is my personal opinion.

Vice Chairman Berry: From the proponents I understand that they want Article V limited to one thing and that basically being balance budget - trying to rein in spending. The feeling is that if the states don't put a collar on it then we will all go down. Why do you feel it would be unproductive?

Senator Poolman: I don't think it would stick to one topic.

Vice Chairman Berry: Is that the feeling of the committee? If I thought there were something out there that said, yes, this is one topic only and it were clean and simple to vote on it and be done. Then it is not a bad idea, but if there is substantial risk of it creating deadlock then that is not good in my opinion.

Chairman Dever: Probably the most important comment I heard was from Senator Hogue the other day when he said that anything that came out of a convention like that would have to be ratified by the states and I think that is where the control is on the whole process. I think federally we are in a situation where the future of our country is at stake and that is not a partisan statement; my sense is that in Congress there may different levels of guilt but there ain't nobody innocent. It is just dysfunctional and they manage by crisis. Let's set this aside and we will bring it up later. Closed discussion.

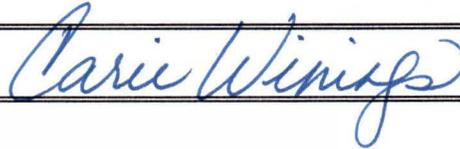
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SCR 4016
02/21/2013
Job Number 19366

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened SCR 4016 for committee discussion. My intention is to vote against this resolution because I expect that if there was a convention that it would still be left to the states to ratify whatever the results of that convention were. I think that is where the control is.

Senator Cook: I tend to agree with you, but to what the degree the states have rights, I think that there would be some very scary times in this country if there was another constitutional convention whether it is an Article V convention or what it is. It is scary times right now, but this is all over a balanced budget amendment and if you think about the time it would take for 36 states to pass this to require it, get it organized, choose the delegates, to have it, and hopefully require a balanced budget amendment in the Constitution and then to have all of the states ratify it - if we don't do something with a balanced budget by then, we are broke already. It is almost too late. I supported this last session but I wonder if a balanced budget amendment, with as important as it is to me, is worth taking the risk of what may happen with a constitutional convention. I don't know. The only other point I make is that we should amend it.

Chairman Dever: If it is not amended, it doesn't serve its purpose. The prime sponsor of the Senate Resolution last time asked me to have anyone who is inclined to support this call him. He also asked that if we amend it in there, to offer him the courtesy of driving

down here and testifying before us tomorrow morning because he said he did not come initially because his resolution was not part of this resolution.

Senator Nelson: I voted against his resolution, but I don't understand where he is coming from on this one.

Chairman Dever: So I feel my obligation to him is simply to inform you of what he said.

Vice Chairman Berry: Asks Senator Nelson to share the conversation she had with the two years ago sponsor.

Senator Nelson: He is very passionate about a balanced budget amendment. One of the things that concerns him is that there are organizations out there to get this or a similar resolution in every state.

Chairman Dever: There are two organizations that are working against each other on this whole thing. Both of them are saying they want a balanced budget amendment, but they are concerned about how it comes about. Curtis told me that he spent 60 nights last year around the country working on this issue. We should decide the issue on the merits of the issue.

Senator Nelson: What is the process for withdrawing/rescinding an application?

Chairman Dever: I think it is a matter of if that many states have it on the books. (Gave an example)

Senator Cook: Moved a Do Not Pass.

Senator Schaible: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Chairman Dever: Carrier.

Date: 2/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 4016

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Cook Seconded By Senator Schaible

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman		✓			

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4016: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4016 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SCR 4016

13.3057.01001
Title.

Prepared by the Legislative Council staff for
Senator Sitte

February 15, 2013

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4016

Page 1, line 1, replace "an application" with "applications"

Page 1, after line 12, insert:

"WHEREAS, the Sixty-second Legislative Assembly adopted 2011 Senate Concurrent Resolution No. 4007, which made application to the Congress of the United States for the calling of a convention for the purpose of proposing an amendment to the Constitution of the United States which provides that an increase in the federal debt requires approval from a majority of the legislatures of the separate states; and"

Page 1, line 23, replace "application" with "applications"

Page 1, line 24, after "3048" insert "and Senate Concurrent Resolution No. 4007"

Renumber accordingly

Supreme Court of the United States
Washington, D. C. 20543

June 22, 1988

CHAMBERS OF
CHIEF JUSTICE BURGER
RETIRED

Dear Phyllis:

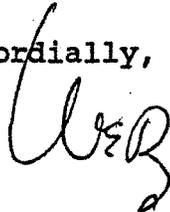
I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly replied that such a convention would be a grand waste of time.

I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Our 1787 Constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,



Mrs. Phyllis Schlafly
68 Fairmount
Alton, IL 62002

Rough Draft

SENATE CONCURRENT RESOLUTION 4016
Before the Government and Veterans Affairs Committee

February 15, 2013 at 9:45 A.M.

Submitted by Glen E. Baltrusch

*also 4007
HS 1486*

Good morning Chairman Dever and committee members,

My name is Glen Baltrusch. I was born and raised in the great state of North Dakota, and I reside in Harvey, North Dakota, which is in District 14. I stand before you today in support of **Senate Concurrent Resolution 4016** and respectfully request that this committee unanimously agree to a “**DO PASS**” recommendation to the floor of the Senate after this hearing is completed.

Mr. Chairman, committee members, I believe that the Sixty-third Legislative Assembly must adopt **Senate Concurrent Resolution 4016** to rescind an application made by the Sixty-second Legislative Assembly to the Congress of the United States to call for a Constitution Convention for proposing an amendment to the Constitution. Here are several reasons to do so.

First, a Constitutional Convention would be a tool to totally destroy our Constitution – not improve it.

Second, legislators don’t understand that there is no way to control what is discussed once Congress calls a Constitutional Convention.

Third, Article V of the Constitution does not provide any answers or directives to delegate qualifications, or powers, and no one knows until Congress decides how to proceed.

Fourth, once thirty-four states petition Congress to convene a Constitutional Convention, the matter is completely out of the States’ hands, and once Congress acts, the States’ have no more say in the matter.

Fifth, once chosen, the Delegates become super delegates, the most powerful force in the nation and the States, the Congress, or the President can ^{not tell them} ~~not tell them~~ **to do or how to act.**

In 1787 the States’ were operating under the Articles of Confederation but were having trouble with commerce. Ten of the eleven states specifically instructed their delegates to discuss nothing but more than the commerce issue. Congress sent a strongly worded resolution to the delegates stating the meeting was limited to ‘the sole and express purpose of revising the Articles of Confederation’. When finished, they had created a completely new form of government like no other seen in the world in history.

Then we were lucky as we had true patriots ~~dedicated~~ **dedicated** to liberty as laid out in The Declaration of Independence. Today we have hordes of leaders who believe the Constitution is an antiquated document that should no longer be applicable. A Constitutional

Convention would simply allow these people to shred the world's greatest governing document.

While proponents of a Constitutional Convention say we are safe as it requires two-thirds of the States' to ratify it, they are delusional. Did you know that the law of the land under the Articles of Confederation required 100 percent of the States' to ratify any change to be made to that document? Did you know that when the new constitution was presented it only needed three-fourths of the States' to ratify it? Article VII of the new Constitution was used as its guide to ratification, before it was even the law of the land.

That is now a historic precedent that can be used by a new Constitutional Convention. That means a new Constitutional Convention could write a completely new government that would no longer need to be ratified by anyone, therefore creating a new government, of which would allow for a complete dictatorship.

Still believe the Constitution will protect us?

Chairman Dever and committee members, I respectfully request that this committee report a unanimous "**DO PASS**" recommendation on **Senate Concurrent Resolution 4016** to the full Senate for consent on the floor.

Thank you for your time and consideration in this pertinent matter. If you have any questions, I will try to answer them for you.

#4

When the states of New York and Virginia formally petitioned Congress in 1788 to call a constitutional convention to propose amendments to the Constitution, which had only been completed the year before, Madison wrote a letter in which he emphatically warned against convening such a convention:

If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress.... It would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides ... [and] would no doubt contain individuals of insidious views, who, under the mask of seeking alterations popular in some parts ... might have the dangerous opportunity of sapping the very foundations of the fabric.... Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a second, meeting in the present temper in America. [From a letter by James Madison to G.L. Turberville, November 2, 1788.]

In 1820, Thomas Jefferson gave us a safer and more effective prescription for correcting abuses of constitutional power:

I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power.

Article V of the Constitution:

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.