



A Real Step To Fix Democracy

By Lawrence Lessig

In January, [Gallup found](#) that Americans from across the political spectrum picked the failure of “government” as the top problem facing America today. The vast majority link that failure to the influence of money in politics. Yet more than 90 percent of us don’t see how that influence could be reduced. Washington won’t fix itself, so who else could fix it?

It turns out the framers of our Constitution thought about this problem precisely. Two days before the Constitution was complete, they noticed a bug. In the version they were considering, only Congress could propose amendments to the Constitution. That led Virginia’s George Mason to ask, what if Congress itself was the problem?

It was an obvious flaw, and it led the drafters to add a second path to amendment that Congress couldn’t control: If 34 states demand it, Congress must call “a convention for proposing Amendments.”

In the 225 years since the Constitution was drafted, we’ve never had a federal convention. But the idea is familiar within the states. There have been more than 230 state constitutional conventions. Across our history, conventions to revise a constitution are more common than presidential and congressional elections—combined.

Still, many fear a convention will “run away” and threaten fundamental aspects of our constitutional tradition. Critics say that the convention that gave us our own Constitution did just that, and indeed, changed the rules by which amendments to our first constitution, the Articles of Confederation, could be ratified.

But that fear is grounded in an embarrassingly sloppy misunderstanding of our history. The framing convention was not convened pursuant to any clause in the Articles of Confederation. It’s not even clear that the convention was convened in response to any act by Congress. The framing convention, properly understood, was a traditional “constitutional convention,” exercising an “unalienable right,” as affirmed by Jefferson in the Declaration of Independence, to “alter or abolish” their then-failing government.

Our Constitution does not give Congress the power to convene such a convention. The convention that Congress can convene is instead very different. Its only power is to “propose Amendments.” By the plain language of the Constitution, those amendments are not valid unless they are ratified by 38 states. No one is talking about a second constitutional convention. The only question is whether to convene a body that can propose amendments that Congress itself can control.

“But what if,” the skeptics ask, “the convention proposes a crazy or partisan amendment?”

What if? It takes 38 states to ratify an amendment—which means the vote of one house in 13 states could block it. There are 18 state legislatures controlled by the Democratic Party, and 27 state legislatures controlled by the Republicans. There is no serious chance that a partisan amendment would not find 13 states to veto it. It just can’t happen.

“But isn’t it possible?” the opponents insist.

Sure, there’s a chance. A tiny, tiny chance. Just like there’s a chance that an ambulance dispatched to save your 6-year-old might have an accident on the way and injure the driver. But no one would excuse the driver for refusing to drive because of that chance—we’d call it cowardice. Regardless of the tiny risk, there’s an almost certain harm to the 6-year-old if the driver stays home.

That’s the same choice facing legislatures across the country just now, in almost the same terms. Because the reality is, however bad things are, those of us over 50 (with jobs and some security) are going to do just fine. We, as a nation, are wrecking the climate. But it’s our kids who will suffer the consequences of that. We are driving up an endless debt—that they, not we, will pay. Social Security will be around for us. Healthcare may be expensive, but our nation will be able to afford it—for us. And any epidemic in childhood obesity is not a problem for grandpa or grandma. The inability of our government to act is a catastrophic problem for our kids, not for us. And the refusal to act to find a way out of this mess is yet another decision to spare us while taxing our kids.

This inability to act is tied fundamentally to the way we fund campaigns. Congress can’t act with any sense so long as its members are focused obsessively on campaign dollars. And neither will Congress change unless strong pressure from the outside is rallied against it.

A convention is the chance for such pressure. It is also the chance for America to focus on solutions. Though there is widespread acceptance of the problem we face, and its source in the way campaigns are funded, there is not yet broad-based support for a particular solution. But a convention is at least a chance to engender a consensus, as it works through the wide range of proposals, including [many from the right](#), that are pushing legislators to support a convention.

That is the convention’s role: to provide an alternative to Washington as the place where our nation’s constitutional problems can be addressed and possibly solved.

The framers of our Constitution picked state legislators as the backstop for the republic. They gave them the duty to step up if Congress loses its capacity to govern.

That loss has happened. The American government has failed. The only question now is whether state legislatures will cower behind the “what ifs” or do their job.