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Excerpts from American Enterprise Institute's Panel Discussion on Article V with Panelist Antonin Scalia

May 23, 1979

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MR. DALY: All right. Professor Scalia, Richard Rovere in the New Yorker, suggested that the convention method of amendment might reinstate segregation and even slavery, throw out much or all of the Bill of Rights, eliminate the Fourteenth Amendment's due process clause, reverse any Supreme Court decision the members didn't like, and perhaps for good measure, eliminate the Supreme Court, itself. [Laughter.] Now, what would you anticipate from an unlimited convention?

ANTONIN SCALIA, professor of law, University of Chicago: I suppose it might even pass a bill of attainder to hang Richard Rovere. [Laughter.] All those things are possible, I suppose, just as it is possible that the Congress tomorrow might pass a law abolishing social security as of the next day, or eliminating Christmas. Such things are possible, remotely possible. I have no fear that such extreme proposals would come out of a constitutional convention. Surely, whether that risk is sufficient to cause anyone to be opposed to a constitutional convention depends on how high we think the risk is and how necessary we think the convention is. If we thought the Congress were not necessary for any other purpose, the risk that it might abolish social security would probably be enough to tell its members to go home. So, it really comes down to whether we think a constitutional convention is necessary. I think it is necessary for some purposes, and I am willing to accept what seems to me a minimal risk of intemperate action. **The founders inserted this alternative method of obtaining constitutional amendments because they knew the Congress would be unwilling to give attention to many issues the people are concerned with, particularly those involving restrictions on the federal government's own power. The founders foresaw that and they provided the convention as a remedy. If the only way to get that convention is to take this minimal risk, then it is a therefore, I don't worry about it too much.** I would also be willing to run that risk for issues primarily involving the structure of the federal government and a few other so-called single issues. I would favor a convention on abortion, which some consider a single issue. I suppose slavery could have been called a single issue, too. It all depends on how deeply one feels about the issue. **In any case, I do not have any great fear of an open convention, since three-quarters of the states do have to ratify what comes out of it. The clucking that Richard Rovere and others do about it is simply an intentional attempt to create panic and to make the whole idea sound unthinkable. It is not unthinkable at all; it is entirely thinkable.**

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PROFESSOR SCALIA: **I listed first among the things that I would like to have considered the structural issues at the federal level. I do not have a lack of trust in the American people. I am the one here who is least terrified of a convention. We have come a long way. We have gotten over many problems. But the fact remains that a widespread and deep feeling of powerlessness in the country is apparent with respect to many issues, not just the budget issue. The people do not feel that their wishes are observed. They are heard but they are not heeded, particularly at the federal level. The Congress has come up with a lot of palliatives--the legislative veto, for example--which do not solve the problem at all.** Part of the problem as I have noted is simply that the Congress has become professionalized; its members have a greater interest than ever before in remaining in office; and it is served by a bureaucracy and is much more subject to the power of individualized pressure groups than to the unorganized feelings of the majority of the citizens. This and other factors have created a real feeling of disenfranchisement that I think has a proper basis. The one remedy specifically provided for in the Constitution is the amendment process that bypasses the Congress. I would like to see that amendment process used just once. I do not much care what it is used for the first time, but using it once will exert an enormous influence on both the Congress and the Supreme Court. It will establish the parameters of what can be done and how, and after that the Congress and the Court will behave much better. ...

PROFESSOR SCALIA: May I rehabilitate myself? Maybe reach down a hand to pull Paul back up on the bandwagon? When I say I do not much care what it is about, I mean that among various respectable issues for a constitutional convention, I am relatively neutral as to which goes first. **The process should be used for some significant issue that concerns the American people, but which issue is chosen is relatively unimportant. I would not want a convention for some silly purpose, of course. But I think there are many serious purposes around, many matters that profoundly concern the American people and about which they do not now have a voice. I really want to see the process used responsibly on a serious issue so that the shibboleth--the Richard Rovere alarm about the end of the world--can be put to rest and we can learn how to use the process responsibly in the future.**

ABOUT US

Citizens concerned for the future of their country, under a federal government that's increasingly bloated, corrupt, reckless and invasive, have a constitutional option. We can **call a Convention of States** to return the country to its original vision of a limited federal government that is of, by and for the people.

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Important!

(This text box is not part of the screen capture.)

What the Convention of States (COS) Project does not tell you here is Antonin Scalia's most recent views on the subject of a modern-day convention, which are:

"I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?" April 17, 2014

"A constitutional convention is a horrible idea," Scalia replied. "This is not a good century to write a constitution." May 8, 2015

It's doubtful this omission was an oversight. Read the next page for Justice Scalia's more recent views with more accurate and detailed references ...including a video link to see his comments for yourself.

Excerpt...

The "limited convention" that Scalia favored and was referring to in 1979 was a constitutional convention. However, much to dissatisfaction of Senator Coburn and the Convention of States (COS) Project, this quote does not accurately reflect Scalia's recent views on the subject of a modern-day convention.

On April 17, 2014, Supreme Court Justices Antonin Scalia and Ruth Bader Ginsburg appeared on an episode of The Kalb Report, a one-on-one panel discussion television and radio program jointly produced by the National Press Club Journalism Institute, George Washington University, and the Philip Merrill College of Journalism at the University of Maryland. The subject of the program was "A Conversation About the First Amendment."

During the program, host Marvin Kalb asked a question of Seth Dawson from the office of Congressman Denny Heck (D-Wash.) regarding the recent suggestion by Justice John Paul Stevens of a constitutional amendment to modify the Second Amendment. The question was, "If you could amend the Constitution in one way, what would it be, and why?" The first to answer was Scalia, who replied:

I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?

But, if there were a targeted amendment that were adopted by the states, I think the only provision I would amend is the Amendment Provision. I figured out, at one time, what percentage of the populace could prevent an Amendment to the Constitution. And, if you take a bare majority in the smallest states by population, I think something less than two percent of the people can prevent a Constitutional Amendment. It ought to be hard, but it shouldn't be that hard. [Emphasis added.]

A video of Scalia's response can also be viewed here at time index 1:06:02 (one hour, six minutes, two seconds):

https://youtu.be/z0utJAu_iG4 (note: z0ut contains a zero, not the letter O)

Scalia acknowledged the difficulty of amending the Constitution, and speaking in the context of amendments, he clearly warned against the notion of a convention, which is the second, or alternative, method for amending the Constitution under Article V.

During the question-and-answer session following a speech Scalia gave to the Federalist Society in Morristown, New Jersey, on May 8, 2015, he was asked whether a constitutional convention would be in the nation's interest.

"A constitutional convention is a horrible idea," Scalia replied. "This is not a good century to write a constitution."

Although COS would have one believe that a constitutional convention is a "different creature entirely" from an Article V convention or "convention of the states," as they call it, this is simply not true.

Black's Law Dictionary, the definitive legal lexicon in American law, defines the term "constitutional convention" providing Article V of the Constitution as an example; the definition reads:

Constitutional convention. A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Art. V of U.S. Const. provides that a Constitutional Convention may be called on application of the Legislatures of two-thirds of the states. [Emphasis added.]

This definition of a constitutional convention originates from the second edition of A Law Dictionary: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient, and Modern published in 1910, by Henry Campbell Black (1860-1927), and remains unchanged in contemporary editions of Black's Law Dictionary.

Furthermore, during the height of the push for an Article V convention for a Balanced Budget Amendment (BBA) in the 1970s and '80s, both proponents of the BBA and the media referred to the Article V convention as a constitutional convention. Even Texas Governor Greg Abbott's 92-page "Texas Plan" calls his own proposal for an Article V convention a constitutional convention. For example, On page 67 of the plan it says:

To be sure, the Framers did not want to make it easy for the States to propose amendments. That is why Article V requires two-thirds of the state legislatures to apply for a constitutional convention. [Emphasis added.]

COS may attempt to explain away Scalia's use of the term constitutional convention, to say he did not mean an Article V convention, but it is undeniably clear that a constitutional convention is the same as an Article V convention, which from the context of his remarks in 2014 he clearly opposed.

Professor Scalia may have entertained the notion of an Article V convention back in 1979, but by 2014 he was firmly set against it, and rightly so, noting the uncertainty that could arise from such a modern convention. This is especially true given today's political climate and prevailing lack of education about the Constitution. The solution — as The John Birch Society advocates and Justice Scalia understood throughout his judicial career — is adhering to the Constitution, not changing it by way of amendments at an unpredictable convention.