Trying to Abolish the Convention's One-State/One-Vote Rule Not Only Would Be Unconstitutional—It Wouldn't Be Worth Trying

February 6, 2015 by Rob Natelson
(Source)

One of the far-fetched arguments used to persuade conservatives to oppose an amendments convention is that if 34 states apply, a left-wing Congress might try to dictate that commissioners (delegates) be allocated by population rather than by one state/one vote.

For reasons explained in earlier posts, such a move would be unconstitutional: A "convention for proposing amendments" is a meeting of equal semi-sovereigns, not a popular assembly (although the 38-state ratification requirement assures that any proposal has majority popular support before it is ratified). Because a central purpose of the convention is to bypass Congress, it is highly unlikely that either the courts or the states would acquiesce in such a maneuver.

Moreover, a successful effort along those lines is highly improbable politically: It would require a major change in the political composition of both houses of Congress. Indeed, it would require much more than that—because even when Congress was firmly Democratic, it repeatedly refused to pass legislation along those lines.

And it wouldn't even be worthwhile to try, because converting the convention to a population basis wouldn't make much political difference anyway. In the real world, over-representation from large "blue" states like California, New York, and Illinois would be offset by over-representation from large "red" states like Texas, Florida, and Georgia.

David Guldenschuh, a Georgia lawyer active in Article V issues, ran the numbers, and here is what he found:

* There are currently 30 states in which Republicans control both legislative chambers. There are 11 in which Democrats control both houses, eight are divided, and one (Nebraska) is non-partisan. So on a one-state, one vote basis, the "red" states would be comfortably in control of a convention. Divided chambers are likely to produce divided committees (delegations). By traditional rules, if a committee is evenly divided on an issue, it effectively abstains.

* The most liberal of the rejected congressional proposals was for a convention of 435 commissioners, one from each U.S. House district. (Another proposal, for allocation based on the electoral college, was slightly more conservative.)

* Consider the most liberal proposal: Based on the make-up of the current House, it still leaves “red states” (i.e., Republicans) comfortably in control: 246 to 188, with one vacancy.

* Or assume that the 435 are allocated according to the composition of each state legislature. The result then is 252 Republicans, 116 Democrats and 67 from split states—yet another a clear margin of “red state” control.

So how you allocate the commissioners does not really make that much political difference. That fact sharply reduces the motivation to try to reverse the “one state/one vote” rule.

Of course, future elections will result in voting shifts one way or the other. Although it is unlikely in the next few years, Democrats eventually will re-capture both Houses of Congress. But such changes do not happen in a vacuum—they are likely to be paralleled by corresponding changes in the state legislatures as well.

Let me be clear: It would not be constitutionally acceptable to depart from the historic rule. On the contrary, the courts tell us that the historic rules are effectively part of the Constitution’s Article V.

What these numbers do tell us is that neither party will have much motivation to try to change convention voting rules, even if they could.

http://constitution.i2i.org/2015/02/06/trying-to-abolishing-the-convention%E2%80%99s-one-stateone-vote-rule-not-only-would-be-unconstitutional%E2%80%94it-wouldn%E2%80%99t-be-worth-trying/