

Convention promoters have two major problems.

#1. Historical Precedent:

The Founders said the 1787 convention exceeded its state delegate commissions

There were two sides to this debate. The first were those who said the Convention did not have the authority to completely replace the Articles of Confederation, such as **William Patterson (New Jersey)**

“ . . . We ought to keep within its limits, or we should be charged by our constituents with usurpation . . . let us return to our States, and obtain larger powers, not assume them of ourselves”¹

The opposing side did not deny the lack of authority. They simply responded:

Alexander Hamilton (New York)

*“The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was **not clearly within our powers**, would be to sacrifice the means to the end.”²*

In other words they are saying, while the states may not have given us the power, we need to do it anyway. The **precedent** this set was very concerning to **Luther Martin (Maryland delegate)**, who said:

*“...we apprehended but one reason to prevent the states meeting again in convention; that, when they discovered the part this Convention had acted, and how much **its members were abusing the trust** reposed in them, **the states would never trust another convention.**”³*

Is it any wonder, after 230 years, we **still have never had another convention?**

Judge Caleb Wallace, a supporter of the new constitution, was so concerned about the precedent the “runaway” convention had set, he advocated redoing the entire convention, with full authority granted first! Said he:

*“I think the calling another continental Convention should not be delayed . . . for [the] single reason, if no other, that **it was done by men who exceeded their Commission**, and whatever may be pleaded in excuse from the necessity of the case, something certainly can be done to disclaim **the dangerous president [i.e., precedent]** which will otherwise be established.”⁴*

¹ Madison's notes of the 1787 convention, 9 & 16 June 1787

² Madison's notes of the 1787 convention, 18 June 1787

³ Letter by Luther Martin, opposing ratification of the 1787 Constitution, http://oll.libertyfund.org/titles/1905#Elliot_1314-01_3767

⁴ Judge Caleb Wallace to William Fleming, 3 May 1788

The Founders themselves said they exceeded their state-granted authority. So how did they calm the concerns of the 1787 delegates who insisted they didn't have the authority?

As Madison explained in the following two citations:

*"The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. **They could alter constitutions as they pleased.**"⁵*

*"The plan to be framed and proposed was to be submitted **to the people themselves**, the disapprobation of this supreme authority would destroy it forever. . . ."⁶*

So, they ignored the limitations imposed by the states, by appealing to **the higher power of the people!** By changing the ratification process to conventions held in each state, representing the people, they could legitimately **ignore** the limits imposed by the states and "alter constitutions as they pleased."

If it was legitimate for the convention of 1787 to call upon the "supreme authority" of the people, and thus ignore limits imposed by the states, it would be legitimate for a convention to do so today.

#2. Legal Precedent:

Conventions represent the ultimate sovereign power of the people

Notably, numerous court decisions have upheld the 1787 precedent, declaring conventions represent the **people**, not the states, and cannot have their power limited by the state legislators.

Corpus Juris Secundum (a legal summary of 5 court decisions)

"The members of a Constitutional Convention are **the direct representatives of the people** and, as such, they may exercise all sovereign powers that are vested in the people of the state. They derive their powers, not from the legislature, but from the people: and, hence, **their power may not in any respect be limited or restrained by the legislature.** Under this view, it is a Legislative Body of the Highest Order and may not only frame, but may also enact and promulgate, [a] Constitution."⁷

Based upon this history and legal precedent, state legislatures have no reason to expect they can control the convention.

⁵ Madison's notes of the 1787 convention, 31 Aug 1787

⁶ Madison, Federalist 40

⁷ Corpus Juris Secundum 16 C.J.S 9, Cases cited: Mississippi (1892) Sproule v. Fredericks; 11 So. 472, Iowa (1883) Koehler v. Hill; 14 N.W. 738, West Virginia (1873) Loomis v. Jackson; 6 W. Va. 613, Oklahoma (1907) Frantz v. Autry; 91 p. 193, Texas (1912) Cox v. Robison; 150 S.W. 1149