

LWVUS STUDY : THE CONSTITUTIONAL AMENDMENT PROCESS

LWV Oakland Consensus meeting November 7 2015

Results of member consensus

Part I - Considerations for Evaluating Constitutional Amendment Proposals

Which of these should or should not be a consideration in identifying an appropriate and well-crafted amendment?

a) Whether the public policy objective addresses matters of such acute and abiding importance that the fundamental charter of our nation must be changed.

PRO: Amendments are changes to a document that provides stability to our system and should be undertaken to address extreme problems or long-term needs.

CON: When public sentiment is overwhelmingly in favor of change, restraint based on veneration of the document is misplaced.

LWVO response : SHOULD

b) Whether the amendment as written would be effective in achieving its policy objective.

PRO: Amendments that may be unenforceable, miss the objective or have unintended consequences will not work to achieve the policy objective.

CON: It's all right to deliberately put something in the Constitution that will need to be interpreted by courts and legislatures over time.

LWVO response : SHOULD

c) Whether the amendment would either make our political system more democratic or protect individual rights.

PRO: Most amendments have sought to make our system more democratic by extending voting rights, for example, or to protect the rights of minorities from powerful interests.

CON: What has been typical in the past is not a good measure of what's appropriate or necessary today or in the future, especially since there have been relatively few amendments.

LWVO response : SHOULD

(d) Whether the policy objective can be achieved by a legislative or political approach that is less difficult than a constitutional amendment.

PRO: Due to the difficulty of amending the Constitution, it is important to consider whether legislation or political action is more likely to succeed than an amendment, in order to achieve the objective and to expend resources wisely.

CON: Important policy objectives should sometimes be pursued through a constitutional amendment even though it may be difficult for it to be enacted and even when other options are available.

LWVO response : SHOULD

e) Whether the public policy objective is more suited to a constitutional and general approach than to a statutory and detailed approach.

PRO: It is important to consider whether the goal can best be achieved by an overall value statement, which will be interpreted by the courts, or with specific statutory detail to resolve important issues and reduce ambiguity.

CON: Getting action on an issue is more important than how a policy objective can best be achieved.

LWVO response : SHOULD

5. Part II - Aspects of an Article V Constitutional Convention

What conditions should or should not be in place for an Article V Constitutional Convention initiated by the states? a) The Convention must be transparent and not conducted in secret.

PRO: The public has a right to know what is being debated and voted on.

CON: The lack of public scrutiny and the ability to negotiate in private may enable delegates to more easily reach agreement.

LWVO RESPONSE ; DISAGREE

b) Representation at the Convention must be based on population rather than one state, one vote.

PRO: The delegates represent citizens and should be distributed by U.S. population.

CON: The U.S. is really a federation of states that must agree by state to any change in the Constitution.

LWVO RESPONSE : AGREE

c) State delegates must be elected rather than appointed.

PRO: Delegates represent citizens and therefore need to be elected by them.

CON: Appointment allows for experts who wouldn't run in an election.

LWVO RESPONSE : DISAGREE

d) Voting at the Convention must be by delegate, not by state.

PRO: As at the Articles of Confederation Convention, delegates from one state can have varying views and should be able to express them by individual votes.

CON: Because any amendment proposal will go to the states for ratification, voting by state blocs—however the delegates are originally chosen—reflects the probability of eventual ratification.

LWVO RESPONSE : AGREE

e) The Convention must be limited to a specific topic. **PRO:** It is important to guard against a “runaway convention”.

CON: The convention alternative was provided for a time when Congress was not listening, so the delegates should not be constrained.

LWVO RESPONSE : AGREE

f) Only state resolutions on a single topic count when determining if a Convention must be called.

PRO: Counting state requests by topic ensures that there is sufficient interest in a particular subject to call a convention, and enhances citizen interest and participation in the process.

CON: There is no requirement for Congress to count state requests by topic and when enough states are unhappy enough to ask for a convention, it should happen.

LWVO RESPONSE : AGREE

g) The validity of state “calls” for an Article V Constitutional Convention must be determined by the most recent action of the state. If a state has enacted a rescission of its call, that rescission should be respected by Congress.

PRO: A state legislature should be free to determine its position in regard to an Article V Constitutional Convention. A rescission should be equally acceptable to Congress as a state's call for a convention.

CON: A state legislature's call for a Convention can not be overturned because the process may never end.

LWVO RESPONSE : AGREE

Should the League oppose an Article V Constitutional Convention to propose amendments to the U.S. Constitution because of unresolved questions about the powers and processes of such a convention?

PRO: The Constitution is too important to trust an unknown or uncontrollable process. It is unclear whether conditions or safeguards regarding powers and processes for a convention can be successfully put in place.

CON: A convention is intended to be an unrestrained process to propose amendments to the Constitution.

LWVO RESPONSE ; SHOULD

6. Part III – Balancing Questions

Should the League consider supporting a Constitutional amendment that will advance a League position even if:

a) There are significant problems with the actual amendment as proposed?

PRO: Our positions have been studied and agreed to. If other organizations are supporting an amendment in a policy area we also support, we might participate even though it is inconsistent with the evaluation guidelines we support under Part I.a) There are significant problems with the actual amendment as proposed?

CON: If the League has a consensus on the evaluation guidelines outlined in Part I, then the League should not campaign on an amendment when it is inconsistent with those standards, even though the League supports the policy outcome.

LWVO RESPONSE ; NO CONSENSUS

b. It is being put forward by a procedural process the League would otherwise oppose?

PRO: Our positions have been studied and agreed to. If other organizations are supporting an amendment in a policy area we also support, we might participate even though it is inconsistent with the process criteria we support under Part II.

CON: If the League has a consensus on the process criteria outlined in Part II, then the League should not campaign for an amendment when the process being proposed is inconsistent with those standards, even though the League supports the policy outcome.

LWVO RESPONSE ; SHOULD CONSIDER

7. Comments

Q1c For us, “more democratic” means for the common good. We are concerned that these criteria would be used to the exclusion of other criteria; we think they should be used in combination with other criteria.

Q2a The Convention could allow for a mix of secrecy and transparency. 2b Allow for a blended formula like the Electoral College. Include representatives for the District of Columbia.

Q2c States should be able to choose how to select delegates.

Q2e There could be more than one specific topic, but always limited to the one or more topics.

QQ3 Resolve the process first.

Q4a and b Constitutional convention is to be avoided if at all possible. Board should be allowed to consider and balance positions as in other advocacy.

Q4 is too mushy/wishy-washy.