Antonin Scalia, discussing the Article V Convention in depth


On the chances of a runaway convention: 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... 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 reasonable one... I think that risk is worth taking. It is not much of a risk. Three-quarters of the states would have to ratify whatever came out of the convention; 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.

On the need for a convention: I am the one here who is least terrified of a convention... 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,... The people do not feel that their wishes are observed. They are heard but they are not heeded, particularly at the federal level... 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... 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...
There is no reason not to interpret it to allow a limited call, if that is what the states desire. But it is difficult to say absolutely that the convention will behave that way. But what is the alternative? The alternative is continuing with a system that provides no means of obtaining a constitutional amendment, except through the kindness of the Congress, which has demonstrated that it will not propose amendments no matter how generally desired--of certain types. Congress could have resolved many of these questions pertaining to a convention long ago. It could have provided an amendment by the normal amending process saying that "limited" calls for conventions are proper. That would have eliminated all doubt. But the Congress is not about to do that. It likes the existing confusion, because that deters resort to the convention process. It does not want amending power to be anywhere but in its own hands.

**Out of Context Sources Claimed to Show Scalia Changed his Mind**

2014 Q&A after Justice Scalia and Justice Ginsberg speak about The First Amendment and Freedom:

**Question:** Justice Stevens recently suggested a constitutional amendment to modify the 2nd amendment. If you could amend the Constitution in one way, what would it be and why?

**Answer:** 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 one-time what percentage of the population 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 2% of the people can prevent a constitutional amendment. It ought to be hard, but it shouldn’t be that hard.

Opponents of the Convention process, often quote that first sentence from Justice Scalia out of context. But in context, the meaning is clear. He is not opposing an Article V Convention, but a Constitutional Convention and he clearly knew the difference. He seems to mean here only that his changes to the Constitution would not be so major as to require a rewrite of the document. This has absolutely no bearing on his views expressed in great detail earlier in his career. If anything, this quote shows his belief that an Article V Convention ought not be feared because it would be so easy to stop any unwanted amendments proposed there.

2015 Notes from Unrecorded Closed Door Talk to New Jersey Federalist Society:

Scalia called it a "horrible idea" to hold a constitutional convention in the age of special interests.

"Once you get those people together, you never know what they're going to do," he said, citing other nations where such issues as minimum wage have been included in the text. "You'll get everything but the kitchen sink written into the Constitution."

Opponents of the Convention process often use this to indicate Scalia’s opposition to the Article V Convention process. Once again, he does not appear to be talking about an Article V Convention, but of a true Constitutional Convention. He is certainly not under the allusion that other nations have Article V in their Constitutions, but they do have Conventions to write new Constitutions, which he has repeatedly opposed including in his 1979 remarks. This has no bearing on his views on the Article V Convention. Furthermore, with no recording of the event and rather sparse notes, it is difficult to really discern what he was talking about here. Basing the idea that he reversed his carefully considered and in-depth remarks from earlier in his career on a source like this is irresponsible.