

# Steer clear of constitutional convention

By ARTHUR J. GOLDBERG

**A**s we look forward to celebrating the bicentennial of the Constitution, a few people have asked, "Why not another constitutional convention?"

I would respond by saying that one of the most serious problems Article V poses is a runaway convention. There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights. Moreover, the absence of any mechanism to ensure representative selection of delegates could put a runaway convention in the hands of single-issue groups whose self-interest may be contrary to our national well-being.

A constitutional convention could lead to sharp confrontations between Congress and the states. For example, Congress may frustrate the states by treating some state convention applications as invalid, or by insisting on particular parliamentary rules for a convention, or by mandating a restricted convention agenda. If a convention did run away, Congress might decline to forward to the states for ratification

## In Response

those proposed amendments not within the convention's original mandate.

Ultimately, the courts would be called upon to decide these matters. This raises unprecedented problems: If every disgruntled convention delegate, member of Congress, state legislator or concerned citizen could sue at any time, a convention could mire the federal and state governments in a debilitating web of lawsuits. Could government thus preoccupied with a convention meet the needs of their citizens and the country as a whole?

If the issues are not reviewable by the courts, then the convention would take place outside our system of checks and balances and the dangers of a runaway convention increase. If the convention issues are reviewable, then serious enforcement problems arise.

Proponents for a convention offer assurances that it can be limited to a single issue by saying the state legislatures have called for a convention for the "sole and express purpose" of drafting a specific amendment, particularly the balanced budget amendment.

In response, they should be reminded that the convention of 1787 was called "for the sole and express purpose of revising the Articles of Confederation." As we know, that convention, in these special and unique circumstances, discarded the Articles and drafted the U.S. Constitution,

despite its limited mandate.

History has established that the Philadelphia Convention was a success, but it cannot be denied that it broke every restraint intended to limit its power and agenda. Logic therefore compels one conclusion: Any claim that the Congress could, by statute, limit a convention's agenda is pure speculation, and any attempt at limiting the agenda would almost certainly be unenforceable. It would create a sense of security where none exists, and it would project a false image of unity.

Opposition to a constitutional convention at this point in our history does not indicate a distrust of the American public, but in fact recognizes the potential for mischief. We have all read about the various plans being considered for constitutional change. Could this nation tolerate the simultaneous consideration of a parliamentary system, returning to the gold standard, gun control, ERA, school prayer, abortion vs. right to life and anti-public interest laws?

As individuals, we may well disagree on the merits of particular issues that would likely be proposed as amendments to the Constitution; however, it is my firm belief that no single issue or combination of issues is so important as to warrant jeopardizing our entire constitutional system of governance at this point of our history, particularly since Congress and the Supreme Court are empowered to deal with these matters.

James Madison, the father of our Constitution, recognized the perils inherent in a second constitutional

convention when he said an Article V national convention would "give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already heated too much men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first convention which assembled under every propitious circumstance, I would tremble for the result of the second."

Let's turn away from this risky business of a convention, and focus on the enduring inspiration of our Constitution.

The bicentennial should be an occasion of celebrating that magnificent document. It is our basic law; our inspiration and hope, the opinion of our minds and spirit; it is our defense and protection, our teacher and our continuous example in the quest for equality, dignity and opportunity for all people in this nation. It is an instrument of practical and viable government and a declaration of faith — faith in the spirit of liberty and freedom.

*Former U.S. Supreme Court Justice Arthur J. Goldberg, a member of the advisory board of Citizens to Protect the Constitution, wrote this article for The Herald in response to an article by Arthur S. Miller, "Why not another constitutional convention?" (Viewpoint, July 6).*