TOOLS with TEETH
for State Legislatures
Article V Bi-Partisan
"SINGLE ISSUE AMENDMENT CONVENTIONS"

January 22, 2014 –

The following Article is the official public policy statement of *Convention of States and Citizens for Self Governance, author* Michael Farris. It can be downloaded at http://action.conventionofstates.com/. The formatting of *Convention of States*' statement has been altered, but the text has not.

Comments by Charles Kacprowicz, National Director of Citizen Initiatives are inserted in red with the preface "CK's Comment:". Citizen Initiatives is advancing the Article V *Sovereignty and States Rights Amendment Convention* and component *Single Issue Amendment Conventions* separate from *Convention of States, et al*.

Comments also include unrelated topics such as *Interstate Agreements (Compacts)* between the States, Congressional approval for Article V *Applications*, and the need for Delegate Resolutions. See section 40 below.

The purpose of this edited Article is to identify points of agreement between *Convention of States, et al* and Citizen Initiatives and to clarify differences.

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1) Convention of States Policy Statement . . .

Why the States Need To Use Their Constitutional Power to Rein in Abuses of Power by Washington DC The Problem

Washington DC loves its own power and will never relinquish its power. In fact, all branches of the government in Washington DC are committed to the escalating growth of a centralized national government. This truth does not fundamentally change regardless of who is elected to the Congress or the White House.

The addiction to power is fueled by a fundamental reliance on growth in spending, increasing regulation of a broadening swath of American life, and a deadly reliance on debt.

If the national debt was calculated by the normal rules of accounting, where accrued debt was included (e.g., vested social security benefits), the national debt would be well over $100 trillion and may be as high as $200 trillion.

CK's Comment: Agree.

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2) Convention of States Policy Statement . . .

Washington DC buys votes and power with money. It uses its power to extract money from both today and tomorrow. This nation will deny any semblance of freedom to our children and grandchildren. There will be taxes imposed on them for spending they never approved or from which they received any direct benefit. This is taxation without representation in a multi-generational form that can only be described as tyrannical.

CK's Comment: Agree.

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3) Convention of States Policy Statement . . .

The Need for a Structural Solution

The most important rule in any organization is the rule about who makes the rules.

We have allowed Washington DC to be the sole possessor of the power of ultimate rulemaking. As a consequence, the states are becoming, on an increasing basis, the mere implementers of federal policy decisions. Any thought that we are following true federalism is a cruel mockery of the values of those who created our Constitutional federal republic.

We must change the structure of power. No one seriously believes that electing the right member to the House or Senate, or the right occupant of the White House, will fix the structural problems or result in the decentralization of the processes of power.

While changes in personnel through elections can serve good and useful purposes, the only path for a meaningful solution is a structural change which reassigns the authority to make policy decisions for this nation.

In the wake of the 2012 elections, there was a good deal of buzz around the ideas of state nullification and even some hinting at secession. While we can appreciate the frustration with Washington DC that prompts such thoughts, we need to recognize them for what they are. These are extra-constitutional solutions that are revolutionary in character. And while we have come to overuse the term "revolutionary" to describe major innovations, these revolutions are of the same sort as the original American Revolution. Ultimate this path leads to war. And no sensible person wants war when there are viable constitutional and peaceable alternatives available.

CK's comment: "Who makes the rules" is the key question. Citizen Initiatives is working to prevent State Legislatures from abdicating their sovereign authority under Article V.

Delegate Resolutions that define the duties of delegates at a Convention and which include a pre-approved text for the Amendment assures that State Legislatures remain defenders of the Constitution and the last arbiters in all Constitutional matters. Under Article V it they could be said that they are the fourth Branch of federal government.

We agree with the warning that "nullification" and "secession" can lead to violence and even Civil War. For a State Legislature to declare its displeasure with Congress regarding a specific Statute and then "request" Congress to change the law in favor of its interest is not nullification. Nullification is by the very term defiance by a State in opposition to the federal government's mandate.

Nullification can be accomplished, however, without violence through the *Sovereignty and States Rights Amendment* and its *Countermand* provision. When 60% of State Legislatures *Countermand* a law or regulatory ruling decreed by the Federal Government, then it is automatically disallowed and rescinded. It won't matter what branch of government issued the mandate. State Legislatures will be seen as partners in governance, not subjects to federal power. The Amendment also confirms 10th Amendment authority for the States guaranteed in the Constitution. The States will also be able to prosecute intentional violators of the provisions of the Amendment in the absence of federal prosecution.

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4) Convention of States Policy Statement . . .

There is a constitutional process that gives the states the unilateral power to change the structure of American government. It is a process given to us by the Founding Fathers for the very situation we face today. When the national government becomes drunk with abuses of power, the states were given the authority to reorganize the government in a manner that preserves the Republic and preserves liberty.

CK's comment: The phrase "change the structure of American government" has an ominous tone. Article V does not allow State Legislatures (nor Congress) to usurp the sovereignty of the Constitution. It simply provides a safe method for the Constitution to be preserved while the Legislatures address egregious wrongs suffered by the people at a Convention. When the federal government refuses to respond to petitions by the people, then State Legislatures can remedy these wrongs though Single Amendment Conventions.

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5) Convention of States Policy Statement . . .

We respectfully suggest that not only do the states have this authority; they also have the responsibility to save this nation by using their constitutional prerogatives to stop the federal abuses of power.

Article V & State Power

Article V provides:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress….

CK's Comment: Agree with the following qualifier: the Legislatures do not have the authority to rewrite the Constitution, only to amend it under Article V one grievance at a time. See comment above.

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6) Convention of States Policy Statement . . .

There are two groups of elected bodies that have the power to propose constitutional amendments: Congress and the State legislatures. Either group may propose a single amendment, groups of amendments, or an entirely new Constitution. Congress has used its power to propose a group of amendments—these are called the Bill of Rights. Twelve were proposed. Ten were initially ratified. The eleventh was ratified in 1992 and became the 27th Amendment to the Constitution. All other amendments were proposed by Congress as single amendments. While Congress has the power to propose an entirely new Constitution at any time, it has never done so.

CK's comment: Agree up to "proposing an entirely new Constitution".

Under Article V Congress cannot propose a new Constitution. Article V only allows for the proposal of Amendments to the present Constitution. Congress is powerless to create a new Constitution. If the State Legislatures wanted to create a new Constitution, they would have to secede from the Union and Call for a Convention for the purpose of creating a new government. Neither Congress nor State Legislatures, under Article V, have the power to abolish the United States Constitution or our present Constitutional Republic. Both members of Congress and State Legislators have taken an oath to defend the United States Constitution from foreign and domestic enemies. To suggest that Article V empowers them to usurp the Constitution's authority by proposing a new Constitution is a very dangerous idea and if unchecked will lead to flawed assumptions that undermine the stability of our Constitution. If we lose our Constitution we will have nothing with which to peacefully defend our inalienable rights and limited government.

There is indeed a strong precedent for Single Issue Amendments to be proposed by Congress in the future. This historical practice suggests that Legislatures have the same ability. However, under Article V, State Legislatures are sovereign States and how they use this authority for proposing and ratifying Amendments is entirely in their prerogative. The Legislatures do not need historical or legal precedent, nor the permission of Congress, nor the Courts, nor regulatory agencies, nor Article V groups to define their sovereign authority, nor how they should Call for and conduct themselves at a Convention. They alone decide how they will use Article V - providing of course it is limited to proposing Amendments to our present Constitution.

If State Legislatures had to first secure permission from Congress, the Courts, Executive Branch, or regulatory agencies before they Call for a Convention, then the Article V process would be utterly worthless to the States. They would just as well secede from the Union and ratify a new Constitution. The federal government would rule supreme.

See Section 40 below for a discussion of Article I, 10. The Article prohibits Interstate Agreements without Congressional approval. Delegates Resolutions are the only method that allows State Legislatures to safely, predictably and successfully amend the Constitution under Article V without possible violations of prohibitions in Article I, 10.

Conclusion, Article V simply allows the Constitution to be changd one Amendment at a time. Multiple Amendments can be proposed simultaneously through Congress and Conventions. The check on the possible abuse of the Amendment process lies in State Legislatures that must ratify all proposed Amendments.

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7) Convention of States Policy Statement . . .

State legislatures also have the power to propose constitutional amendments through the convention process. Whenever two-thirds of the states (i.e. 34/50) apply for a Convention for amendments, Congress has the ministerial (non-discretionary) duty to call such a Convention.

CK's Comment: Agree.

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8) Convention of States, et al . . .

There have been over 400 state legislative applications for an Article V convention for the purpose of amendments in the history of the Republic. Yet, a convention for this purpose has never been called. The reason is simple: there has never been a group of applications for the same purpose that reaches the required numerical threshold.

CK's Comment: Agree. In addition, there has never been an oversight group to facilitate the Applications to assure that Congress has Constitutionally fulfilled its mandate to convene a Convention when two thirds of the States complete their Applications on Congress. Citizen Initiatives intends to facilitate the Amendment process on behalf of State Legislatures to make certain that Congress does convene the bi-partisan *Sovereignty and States Rights Amendment Convention,* or other *Single Issue Amendment Conventions*, when 34 States complete Applications. The Amendment's provisions include:

1. Confirmation of Constitutional, National and State sovereignty.
2. Confirmation of Amendment IV privacy protections in an electronic age.
3. Countermand authority for the States that can disallow and rescind new and existing laws and regulations that are onerous to the States.
4. Enforcement by allowing the States to prosecute intentional violators of the Amendment in the absence of federal prosecution.

For the text of the Amendment go to:
http://citizeninitiatives.org/sovereignty_states_rights_amend.htm

For a copy of the Delegate Resolutions go to:
http://citizeninitiatives.org/Delegate_Resolution_Sovereignty_States_Rights.htm

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9) Convention of States, et al . . .

For over 200 years, Congress has followed a single subject rule. Conventions can only be called when 34 states apply for a Convention for the same purpose. This is a powerful legislative precedent that cannot be overstated as to its importance. The meaning of Article V in this regard has been established by the strongest possible precedent—over 200 years of unbroken practice.

CK's comment: The 200 year precedent is not controlling. However, a single subject Convention, as proposed by COS, carries the idea that delegates alone decide what subjects and content they will deliberate on at the Convention. COS' proposed Call includes the following four Subjects:

1. imposing fiscal restraints on the federal government
2. limiting its power
3. restricting its jurisdiction, and
4. mandating term limits for elected or appointed officials

Each one of these 4 subjects for delegates to debate at the Convention can have many undefined sub-Subjects. There could be dozens of sub-Subjects for each Subject. In addition, each of COS' proposed Subjects, in today's political climate, is partisan. Under each Subject there would be dozens of different definitions offered by the delegates to define what the issues are, how define specific problems, what the

solutions are and what the text should be for each Subject and sub-Subject. .

Congress could summon 534 delegates to the COS Convention and the Legislatures could appoint the same number. The first order of business would have to be how the Convention is to be organized. Will the delegates agree that each State Delegation is to have one vote as guaranteed in Article IV, 4. Or will they decide that each delegate has one vote? California would have 50+ delegates with Montana having no more than 4. Will Robert's Rules of Order apply or will they create a new Convention process? In the absence of pre-defined and pre-approved instructions to the delegates by the Legislatures, mayhem will be the result. There are forces in America today that are encouraging the convening of the COS Convention with intentions to disrupt its proceedings and eventually create Amendments that would suit their political and ideological interests. Only State Legislatures through Delegate Resolutions can prevent mayhem at the Convention.

A single Amendment Convention with Delegate Resolutions that include a pre-approved text of the proposed Amendment (*Sovereignty and States Rights Amendment* and component *Amendments such as the Countermand Amendment Convention*) will result in a safe, predictable and successful Convention. Article 1, 10's prohibitions against Interstate Agreements will not be violated because the Delegate Resolution is a contract between State Legislatures and their delegates to the Convention. It is not a compact between the States. 34 States are still required for the Calls and all States will decide if the Delegate Resolution will be approved by their Legislatures. Each Legislature that passes a Delegate Resolution with wording similar to the other States will be giving instructions to their delegates only. In the congregate the Legislatures will be defining the duties of their delegates only at the Convention without violating any prohibition against Interstate Agreements. Under Article V Delegate Resolutions are a State Legislature prerogative and do not require the Governor's signature.

With a pre-approved Delegate Resolution, which includes the text for the *Amendment*, State Legislatures are the sovereign deliberative body, not delegates sent by the Legislatures to a Convention.

The State Legislatures define their sovereign authority, no one else. Delegates sent to a Convention are Ambassadors of their Legislatures, they are not free agents. There are many examples in both private and government where delegates follow the instructions of the body that appointed them to the Convention. An example would be Baptist Conventions where the delegates summoned do not add to or change the agenda at the Convention. Their role is to decide through their vote whether or not a particular pre-approved amendment to their organization's Constitution should be approved or not. They are Ambassadors representing their local Churches. Delegates to an Article V Convention are similarly under the authority of their Legislatures and thereby required to vote on a pre-approved Amendment text with instructions on how to organize the Convention.

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10) Convention of States, et al . . .

We believe that it is the time for the state legislatures to use this Article V power to propose a group of specific amendments to rein in the abuses of power by the federal government.

CK's comment: Agree, but with pre-approved Single Amendment Conventions, not "Subject" Amendments to be defined by delegates at the Convention.

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11) Convention of States, et al . . .

Steps in the Process

Here is how it would work:

Thirty-four state legislatures would pass similarly worded resolutions which call for an "Article V convention to propose amendments which limit the authority and jurisdiction of the federal government."

Congress would have a non-discretionary duty to call the convention. The call could only name the time and place for the Convention.

CK's Comment: Agree, with the clarification that the Call should be for a Single Amendment Convention defined in a Delegate Resolution.

Why would State Legislatures want to surrender their sovereign authority to delegates in order to reach a political compromise? The ultimate question in Article V Conventions is will Legislatures abdicate their sovereignty? If they do they will have established a terrible precedent making it virtually impossible to reclaim for future generations.

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12) Convention of States, et al . . .

The convention is a convention of the states.

CK's comment: Citizen Initiatives believes the name "Convention of States" is misleading and carries a reliance on flawed applications of precedents, history and State Convention experiences. All Article V Conventions would be better described as *Amendment Conventions*. In fact, Article V was inserted into the Constitution to propose Amendments, not to usurp the authority of the Constitution.

In Citizen Initiatives' case the specific title in the Call on Congress for all States would be *Sovereignty and States*

Rights Amendment Convention and/or component Single Issue Amendments such as *Countermand Amendment Convention*.

Of course, it is possible for the Call for the *Amendment Convention* to go forward in parallel to COS.

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13) Convention of States, et al . . .

This necessarily means that each state has its own ability to prescribe whatever means it wishes to choose its own delegates.

CK's Comment: Agree.

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14) Convention of States, et al . . .

All voting would be on the one-state, one-vote rule, just as the original constitutional convention. (And which is the only possible rule when the members of the convention are the states and not the delegates).

CK's comment: Agreed that Article IV, 4 must govern the deliberations at the Convention, but with as many as 534 delegates summoned to the Convention this issue must be decided by the Legislatures before convening the Convention through a Delegate Resolution. Otherwise, there will be mayhem at the Convention with politically charged delegates deciding if one vote per State Delegation will rule or one vote per delegate. One vote per State delegation regardless of the States' population or number of delegates sent to the Convention must be decided by State Legislatures before the Convention is convened.

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15) Convention of States, et al . . .

Only amendments that are germane under the language of the applications (i.e., they call for limitations on the authority and jurisdiction of the federal government) may be approved.

CK's comment: Problem! How will the Convention decide: 1) which Subjects and sub-Subjects the delegates will address under COS' proposal, 2) what the problems are under each Subject and sub-Subject, 3) what solutions should be offered, 4) what the text of each proposed Amendment should be, and finally, 5) if the Amendment, as proposed, should it be sent to the States for Ratification. This scenario would have to be followed by the delegates for each COS Subject and sub-Subject in their Call for a Convention. It is doubtful that any Amendment in a politically charged Convention would be able to forthrightly address the countries troubles.

COS' "Subjects" are partisan by nature and as such will create divisions at the Convention. The *Sovereignty and States Rights Amendment* and component *Countermand Amendment Convention, et al,* on the other hand, is bi-partisan. It allows State Legislatues to address the nation's problems through *Countermands* and State *Enforcement*. Political motivations will be minimized. For example, State sovereignty can be defended by all political parties.

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16) Convention of States, et al . . .

A simple majority vote (of states) is required to propose amendments.

CK's comment: Agree, but only if the Convention is organized under Article V, 4. This will not be guaranteed with delegates at the Convention deciding the matter. Delegate Resolutions will assure that each State has one vote.

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17) Convention of States, et al . . .

Congress would then have the duty to name one of two methods for ratification of the proposed amendments. They could call for state-based ratification conventions, or for ratification by the state legislatures.

CK's Comment: Agree.

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18) Convention of States, et al . . .

When 38 state legislatures (or state conventions) ratify any or all of the proposed amendments, they become a part of the Constitution of the United States.

CK's Comment: Agree.

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19) Convention of States, et al . . .

Answering Common Questions

Can the Convention be limited to a specific subject?

Yes. We have a 200 year legislative precedent that says that the single subject (or purpose) rule has been followed by Congress. The Convention will only be called when 34 states make applications for a single subject or purpose.

CK's comment: Disagree. Precedent will not guarantee that the deliberations at the Convention will be safe, predictable and successful. 26 or more Delegate Resolutions will.

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20) Convention of States, et al . . .

Just like Congress, the Convention must also follow the single subject rule. We have a judicial precedent which is important also.

CK's comment: Disagree. There is no parallel between Congress and an Article V Convention. There is no "Single

Subject Rule" that delegates are required to follow. Article V Conventions have a new and different purpose. It is conceivable that under Article V State Legislatures become the 4th Branch of the federal government. In fact, they are the final arbiters in all Constitutional matters. With such authority precedent is not and must not be controlling. These truths reaffirm the importance of Delegate Resolutions.

An Article V Convention through State Legislature bypasses Congress, the Courts, Executive Branch and regulatory agencies. It decides how the federal government is to conduct itself. Delegates at such a powerful Convention must be bound by contract to their State Legislatures.

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21) Convention of States, et al . . .

In 1978, Congress passed a resolution which purported to extend the deadline for the ratification of the Equal Rights Amendment by approximately three-and-a-half years. This attempt to change the rules in the middle of the Article V process was challenged in court by state legislatures from Idaho, Washington, and Arizona. The federal district court in Freeman v. Idaho¸ CITE, held that it was unconstitutional for Congress to attempt to change the rules in the midst of the Article V process.

CK's Comment: Agree.

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22) Convention of States, et al . . .

It must be remembered that Congress and the Convention possess equivalent power regarding the basic components of the amending process. If Congress cannot change the rules of the process when it has initiated the Article V process, the States (through a convention) are equally prohibited from changing the process once it has been started. The Supreme Court vacated the decision on mootness grounds when 38 states failed to ratify even under the extended deadline. Thus, the precedent is not equivalent to a Supreme Court decision, but it is a reasonable view of the correct outcome in the process of litigation. The author of this paper was counsel for the Washington legislators in that litigation.

CK's comment: Agree.

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23) Convention of States, et al . . .

What are the safeguards if a Convention attempts to go beyond the applications from the States?

The ultimate safeguard is this: 34 states applied for the convention for a particular purpose. It would require 38 states to ratify any amendment that would be proposed out of a Convention. It would only take 13 states to vote "no" on any proposed amendment to defeat it. The chances of 38 state legislatures approving a rogue amendment are effectively zero.

Moreover, the Idaho v. Freeman, case demonstrates that the courts will review a constitutional challenge brought by state legislators to an abuse of the Article V process. There is every reason to believe that the rule of Freeman would be followed: any change in midst of the Article V process is unconstitutional.

CK's comment: Agree. See comments above regarding sovereign authority resting in State Legislatures when proposing and ratifying Amendments through Conventions.

The Supreme Court is the policing authority that can protect the Amendment process. State Legislatures, however, control Article V Conventions and ratifications of Amendments which means they decide what Constitutional mandates the Supreme Court is required to follow. Ultimately, State Legislatures have final authority in all Constitutional matters.

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24) Convention of States, et al . . .

Why should we trust this process, after all the original Constitutional Convention was a runaway convention that abused its mandate to amend the Articles of Confederation?

This attack on the integrity of the United States Constitution is based on utterly fallacious history. Here are the relevant facts:

The call for the Constitutional Convention specified that it was "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union."

CK's comment: Agree.

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25) Convention of States, et al . . .

Thus, the document contemplated was an adequate federal constitution.

CK's comment: Agree.

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26) Convention of States, et al . . .

There was no limit on the number of amendments to the Articles which could be proposed.

CK's comment: Agree. However, under Article V the rules have changed. The purpose and methods to amend the

Constitution today were created to protect our Constitutional Republic while addressing problems facing the nation. Article V no longer allows an Open Convention (Constitutional Convention) which the Confederation Congress convened.

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27) Convention of States, et al . . .

There was no requirement which prohibited the Convention from proposing amendments as a complete package rather than as a series of amendments. Political reality suggested that it was most likely that a package deal would be forthcoming so that the negotiations and balancing of interests between the states could be achieved.

CK's comment: Agree. However, the State Legislatures, with their ratification, required the new Congress to immediately send Amendments (today's Bill of Rights) back to the Legislatures for ratification that would protect personal liberties and further limit the power of federal government. The Convention did not initiate the Bill of Rights, the new Congress did. In fact, the ratifications of the new Constitution by the Legislatures were conditional upon Congress doing as directed by the States. If Congress refused then the States could have argued that the new Constitution was not properly ratified. They could have returned to governance under the Articles.

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28) Convention of States, et al . . .

Some provisions of the Articles of Confederation were carried forward into the Constitution. Thus, while there were substantial changes, it was in fact an amendment to the Articles.

CK's comment: Agree. This is an excellent observation.

We might want to take it one step further and conclude when Rhode Island refused to participate in the deliberations at the Convention they in fact abdicated their authority under the unanimous vote requirement in the Articles. When the other 12 States moved forward with the Amendment process, which included writing the Constitution we have now, they did so determined not to allow one State hold the others hostage. The problems that needed to be addressed by the Founders included inflation, taxes, commerce, supplying the Army and others, were so severe that to ignore them meant the Revolutionary War would have been fought in vain. The nation would have returned to being a Monarchy. This, of course, was exactly what George Washington refused to entertain by rejecting a proposal that he be the first king of the United States.

The most difficult problem for the delegates at the Constitution Convention was how the States would retain their sovereignty. Under the Articles of Confederation amendments required a unanimous vote. The delegates solved this problem by changing the unanimous vote requirement to three quarters. However, State Legislatures never abdicated their sovereignty with this change and Article V delegates were never given independent sovereign authority from their Legislatures.

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29) Convention of States, et al . . .

The Constitution Convention did not send the Constitution to the states to be ratified as is commonly (and falsely) believed.

The Constitution (together with a new proposal for ratification) was sent to Congress. Thus, the very group—Congress—which called the Convention into being is the one which received the work product. If Congress believed that the Convention had abused its authority, it has the complete authority to reject their work. Instead, Congress exercised its power under the amending process of the Articles of Confederation to approve both the new Constitution and the new methodology for ratification. The new methodology for ratification had two changes. First, the number of states required for ratification was changed from 13 to 9. Second, the group asked to do the ratifying was changed from the legislatures to specially-called ratification conventions in each state.

CK's comment: Agree.

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30) Convention of States, et al . . .

Congress still did not send the Constitution to the state conventions. It sent the Constitution and the new proposal for ratification to the state legislatures.

CK's comment: Agree.

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31) Convention of States, et al . . .

Congress asked the state legislatures to approve the change in the ratification process by calling ratification conventions.

CK's comment: Agree. However, this is not a parallel event to an Article V Convention. In fact, the delegates asked the Confederation Congress to send the proposed Constitution to State Conventions for ratification probably for political reasons.

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32) Convention of States, et al . . .

That is exactly what happened. All 13 state legislatures called ratification conventions thus approving the new process.

CK's comment: Agree.

The Constitution was then adopted by 11 state conventions (two more than required). Two states—North Carolina and Rhode Island—rejected the Constitution itself, but both of

these states had approved the new process and eventually ratified the new Constitution. In fact, our Constitution was eventually ratified unanimously by 13 States.

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33) Convention of States, et al . . .

Thus, we can see that the original process was not a runaway convention as is often contended by those who argue against the use of Article V power. This argument is based on false history and an inconsistent view of the Constitution.

CK's comment: Agree.

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34) Convention of States, et al . . .

Opponents of an Article V convention say that it is dangerous to place our dearly beloved Constitution (which was illegally adopted by a runaway convention) into any danger by calling such a convention. How can the Constitution be dearly loved and illegal at the same time?

CK's comment: Agree.

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35) Convention of States, et al . . .

The reality is that the modern originators of this runaway convention idea were liberals who wanted to thwart any limitation on federal power. One of the leading advocates of this theory is former Chief Justice Warren Burger who joined the majority opinion in Roe v. Wade. No one can be a constitutionalist and vote for Roe v. Wade. Constitutional conservatives should not listen to anti-constitutional liberals like Burger.

CK's comment: Agree.

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36) Convention of States, et al . . .

Even if there are safeguards, why should we take any risk by calling an Article V convention?

The reality is this: Congress and the federal government are in fact on a path to destroy this nation. There is no question about whether this will happen, there is only a question as to when our nation will collapse as a result of federal abuses—particularly the abuses of the use of the debt power.

The threat from Congress should be rated as a 100% certainty. The threat from a runaway convention cannot be said to be "zero" but it is very close to "zero" as a matter of both legislative and judicial practice.

CK's comment: Agree. Delegation Resolutions would, however, assure that the delegates at the Convention would be prohibited from entertaining any plans to overwhelm the Convention with devious ideologies.

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37) Convention of States, et al . . .

The threat posed by Congress is far more deadly than any threat posed by an Article V convention. The states must not listen to fear mongers who will destroy this nation by allowing Congress to continue to abuse its power unchecked.

CK's comment: Agree.

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38) Convention of States, et al . . .

What Amendments could be proposed to limit federal power?

Require a balanced federal budget with real teeth and enforcement power.

Repeal all tax laws in five years through a "sunsetting provision".

Require a super-majority vote for replacing these taxes and all new taxes.

Prohibit the federal government from spending money on items that are lawfully funded by states. (Example, if the states can spend money on education, then the federal government cannot do so.).

Prohibit the federal government from regulating businesses, individuals, or property for purposes that states can also regulate. (Example, if the states can regulate wages and hours, then the federal government cannot do so. If the states can regulate health care and health insurance, then the federal government cannot do so.)

Prohibit the use of executive orders or federal regulations as a source of federal law that binds private citizens or private property. All federal laws would be required to be passed by Congress.

Prohibit the treaty power from governing the domestic powers of this nation.

All of these proposals would be germane under this plan, but would require a majority vote of the states to be actually approved and sent out for ratification.

CK's comment: Citizen Initiatives concludes that by trying to address all or more of these "Subjects" at a COS convention will cause Congress to reject the application because it is not Amendment specific. Multiple Single Amendment Conventions such as the *Sovereignty and States Rights Amendment Convention* or other *Single Issue Amendment Conventions* will prevent contention between the Legislatures

and Congress. Specific Amendments can be addressed in pre-approved Delegate Resolutions that bind delegates at the Convention to the instructions by State Legislatures.

Each of these issues should be addressed by the States, but for a safe, predictable and successful Convention the delegates must be bound by Delegates Resolutions. There is no restriction in the Constitution preventing the State Legislatures from Calling (Applications) on Congress for multiple Single Amendment Conventions simultaneously.

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39) Convention of States, et al . . .

The states have the power to save the Republic by reining in the abuses by Washington DC. They must do so.

CK's comment: Agree.

CK's final comment: Comparing the Bill of Rights or any of the 27 Amendments to the Constitution is incongruous. Everyone of the Amendments proposed by the Confederation Congress and our present Congress was with pre-approved texts that the States either ratified or rejected. With Article V Conventions only the Legislatures have the authority to pre-approve the text of Amendments, not delegates. Remember, the Legislatures have the authority to amend our Constitution with proposed Amendments which mandates how the Supreme Court will rull, how Congress will legislate, how the Executive Branch will govern, and how Regulatory Agencies behave. That's a powerful amount of Constitutional authority and as long as Conventions are limited by pre-approved Amendments through Delegate Resolutions the deliberations at a Convention will be safe, predictable and successful.

Congressional prerogatives are a different animal. The rules under Article V must be defined by the State Legislatures alone independent of Congress, the Courts, Executive Branch and Regulatory Agencies.

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40) INTERSTATE AGREEMENTS (Compacts Between the States) - Prohibitions in Article I, Section 10

Compact for America and *Goldwater Institute* are advancing the idea that the best solution for addressing America's problems is with an Article V 2.0 Turn-Key Approach. Their strategy is to have the State's agree to an *Interstate Agreement (Compact)* that would define the Article V process from pre-Call events, to the Call, to the final ratification of Single Issue Amendment. There focus is on the Balanced Budget Amendment.

The following is Goldwater Institute's policy statement:

"Using an agreement among the states called an "interstate compact," the Compact for America invokes Article V of the United States Constitution to advance one or more specific constitutional amendments. An interstate compact provides the vehicle to advance constitutional amendments because it **transforms the otherwise cumbersome state-initiated amendment process under Article V into a "turn-key" operation**.

The Compact for America empowers the states to agree **in advance** to all elements of the amendment process that states control under Article V in a single enactment that can be passed in a single session. **The Compact does require congressional consent to work**, but such consent is achieved by simple majority passage of a congressional resolution, which consolidates everything Congress must do in the Article V process in a single enactment and in a single session. Specifically, the Compact and the counterpart congressional resolution include:

- The text of the proposed amendment (specified in the Compact);
- The Article V application to Congress (specified in the Compact);
- An interstate commission that organizes the convention (specified in the Compact);
- The convention call (specified in the congressional resolution); All delegate appointments and instructions (specified in the Compact);
- The convention location and rules (specified in the Compact);
- An agenda limited to the consideration of the proposed amendment (specified in the Compact);
- The ratification referral (specified in the congressional resolution);
- The ultimate ratification of the proposed amendment (specified in the Compact).

In short, the Compact for America consolidates everything Congress and the States do in the Article V process into just two overarching pieces of legislation—one congressional resolution and one interstate compact joined by thirty-eight states. It thereby dramatically **cuts the time and resources needed to achieve a state-originated constitutional amendment**. The Compact transforms the state-originated amendment process, which otherwise requires more than 100 state and congressional enactments across five or more legislative sessions, into something that can get done in a single legislative session for each member state and Congress. Rather than a legislative quest that will take ten to twenty years, the Compact can generate a constitutional amendment in as little as **one year**."

CK's Comment: There are a few serious oversights with this approach even though it does protect the text of the Balanced Budget Amendment which would be included in their Compact between the States.

1. The Compact process assumes that every element in the Article V process can be satisfactorily addressed

in one Compact by the States and that the triggers in the process to automatically start the next event will occur.

2. They want to secure 38 States to pass their Compact, not 34 to start the process with a Call. This makes the task of Compact agreement by the States more difficult. The initial Call requires 34 Legislatures.
3. The Goldwater Institute makes the following statement:

   "The Compact is **like a ballot measure directed to state legislators, governors and Congress**."

   Article V does not require the governors or Congress to have any say in the sovereign authority that rests in State Legislatures alone. The Compact causes the Legislatures to abdicate their sovereignty by attempting to define an amendment process to include branches of government that have no authority under Article V.
4. The Goldwater Institute makes the following statement that Citizen Initiatives is trying to prevent:

   "The Compact does require congressional consent to work, but such consent is achieved by simple majority passage of a congressional resolution, which consolidates everything Congress must do in the Article V process in a single enactment and in a single session."

   Article V provides State Legislatures with sovereign authority independent of Congress, the Courts, Executive Branch, Regulatory Agencies, Governors and all other State governing bodies. The Compact for America forces the Legislatures to secure permission from Congress before their Amendment process can succeed. It also opens the door to a myriad of law suits as to the legal and Constitutional process under Article V. Lastly, there is no assurance that the process will move forward as they are projecting. There will be many political, legal and Constitutional obstacles to overcome in the 50 States and Congress.
5. A very serious problem with the Compact for America approach is it is likely to violate the prohibitions is Article 1, 10 (paragraph 3) against Interstate Agreements (Compacts):

   "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, or with a foreign Power, . . . ":

   Even if this prohibition can be overcome under Article V legally and Constitutionally, the most difficult problem will be the political one. Adversaries in Congress will have a field day attacking the proposed Amendment due to its political ramifications starting with is the *Interstate Agreement* acceptable in the Article V process. Remember, when the Legislatures Call on Congress to convene a Single Amendment Convention for proposing an Amendment Congress has no discretion when 34 States complete the same Call. With Compact with America their entire process would be seen as inconsistent with Article V which will be very problematic for the States and Congress.
6. Finally, because in Goldwater's own words:

   "The Compact does require congressional consent to work,"

   the proposal must be rejected if State Legislatures are to retain their Sovereign Authority in Article V. State Legislatures must not abdicate their Article V sovereignty if America has any chance to reclaim its Constitutional heritage and values.

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LIST OF SUPPORTERS FOR "SINGLE ISSUE" AND SINGLE AMENDMENT CONVENTIONS

MADISON AMENDMENT STRATEGY

The following proposed text originated in the 80's under President Ronald Reagan's Presidency: *

''ARTICLE ___. The Congress, on Application of the Legislatures of two thirds of the several States, which all contain an identical Amendment, shall call a Convention solely to decide whether to propose that specific Amendment to the States, which, if proposed shall be valid to all intents and purposes as part of the Constitution when ratified pursuant to Article V."
http://madisonamendment.org

WHAT JAMES MADISON SAID:

James Madison writing in Federalist 43: "It (the Constitution) equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side or the other"

The Madison Amendment restores the original meaning of the Constitution, it gives States the ability to use the power that the authors of the Constitution intended them to have.

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*Based on an idea originally proposed by Ed Meese when he was Reagan's Attorney General, this strategy was created in consultation with a legal team led by David Rivkin, outside counsel to the 26 states suing to overturn Obamacare. It involves passage of state laws in as few as 26 states, or the passage of a state constitutional amendment in just 13 states to end the risk of a runaway convention and to give 34 states the power to force Congress to propose a specific Amendment states want without holding a convention at all.

The idea of giving the states the same power as Congress (a right the States inherently have in Article V, but not recognized by many *) to propose an individual Amendment has a broad range of conservative support including Americans for Tax Reform President Grover Norquist, American Conservative Union Chair Al Cardenas and Past Chair David Keene. Endorsers also include Parental Rights.Org President Michael Farris, McCain 2008 Chair Charlie Black, and National Taxpayers Union Board Member David Keating. It has been endorsed by ALEC, Goldwater Institute and NTU.

If state legislators in 34 states had the power to safely force Congress to propose an Amendment to the U.S. Constitution, the balance of state and federal power would shift significantly in the states' favor. It could be possible for states, for example, to force Congress to propose a balanced budget amendment to the U.S. Constitution.
http://madisonamendment.org/State_Leaders_Support.html

Supported by State Leaders In a unanimous vote on Thursday August 5, 2010 the ALEC International Affairs and Federalism Task Force recommended that ALEC (The American Legislative Exchange Council) endorse the proposed Madison Amendment to the U.S. Constitution.

Five former presidents of state legislators' organizations are now supporting the Madison Amendment to restore a balance of state and federal power.

KIm Koppelman, past Chairman of the Council of State Governments from North Dakota.
Dolores Mertz, former Chairman of ALEC and a Democratic State Representative from Iowa.
Bll Raggio, former Chairman of ALEC and State Senate Minority Floor Leader from Nevada.
Steve Rauschenberger, former President of NCSL and a former State Senator from Illinois who is running for re-election this year.
Jeff Wentworth, past Chairman of CSG South and a State Senator from Texas.

Abbreviations:
NCSL-National Conference of State Legislators
ALEC-American Legislative Exchange Council
CSG-Council of State Governments

MADISON AMENDMENT ENDORSEMENTS AND STRATEGY

The "Madison Amendment" would empower states to limit an Article V convention. Delegates would have authority to call an up or down vote on a single amendment. (For example a balanced budget amendment).

ENDORSEMENTS:

Conservative Leaders
Grover Norquist, President, Americans for Tax Reform
Al Cardenas, Chair, American Conservative Union
David Keene, Chair Emeritus, American Conservative Union
Ted Cruz, Former Solicitor General of Texas
David McIntosh. Co-Founder of the Federalist Society
Colin Hanna, President Let Freedom Ring
Lew Uhler President, National Tax Limitation Committee
Charlie Black, Chair of the McCain 2008 Campaign
Michael Farris, President Parental
David Keating Board Member, National Taxpayers Union
Bob Williams President, Evergreen Freedom Foundation
Paul Jacob, President, Citizens Back in Charge
Chuck Muth, President, Citizen Outreach, NV
Curt Levy, Executive Director, Committee for Justice)
Current and Former RNC Leaders
David Norcross, Past General Counsel of the RNC
Bruce Ash, Chair RNC Rules Committee
John Ryder, Chair, RNC Redistricting Committee
Florida GOP Ntl Committeeman Paul Senft
Ron Nehring. Past Chair, CA Republican Party
Saul Anuzis, Past Chair, Current National Committeeman Michigan
Republican Party Organizations
ALEC (The American Legislative Exchange Council)
The National Taxpayers Union
The Conservative Party of N.Y.

Congress:
Rep. John Culberson (R, TX)
Rep. Henry Cuellar (D, TX)
Rep. Rob Bishop (R, UT)

Rep. Cynthia Lummis (R, WY)
Rep. Tom McClintock (R, CA)
Rep. Louie Gohmert (R, TX)
Former Rep. Walt Minnick (D, ID)
Former Rep. Bob Livingston (R, LA)

Past Chairs/Presidents of Associations of State Leaders:
Steve Rauschenberger (R, IL) NCSL (National Conference of State Legislators)
KIm Koppelman (R, ND) CSG

(Council of State Governments)
Dolores Mertz (D, IA) ALEC
Steve Faris (D, AR) ALEC
Bill Raggio (R, NV) ALEC
Noble Ellington (R, LA) ALEC
Jeff Wentworth (R, TX) CSG-South
Trey Grayson (R, KY) NASS
(National Association of Secretaries of State)

Legal Experts:
David Rivkin, Outside Counsel to 26 States suing to overturn "The Affordable Health Care Law known as "Obamacare"
Chuck Bell, Past Chair Republican National Lawyers Assn
Don Ayer, Former Deputy Attorney General of the U.S.
Bruce Fein former DOJ Deputy Associate Attorney General
Mike Carvin, Constitutional Litigator
Ron Rotunda, Chapman University
Phil Kiko Former Chief Counsel,
House Judiciary Committee
Former Counsel to the U.S. House of Representatives Michael Stern
State Leaders
Jim Geringer Former Gov WY
Ed Schafer Governor Former Gov ND
Former Lt Gov Andre Bauer (SC)
House Speaker Jim Tucker (LA)
House Speaker Becky Lockhart (UT)
Senate President Michael Waddoups (UT)

Speaker
House Speaker Bobby Harrell (SC)

State Legislators:
Nh Sen Fenton Groen, Rep Roger Berube
Ct Rep John Piscopo
Md Rep Michael Hough
Pa Rep Gordon Denlinger, Rep. Garth Everett
Va Rep Jim LeMunyon, Brenda Pogge,
Nc Rep. Fred Steen, Sen David Rouzer
Sc Rep Liston Barfield, Rep. Richard Chalk
Al Rep Jack Williams
La Rep Noble Ellington
Ark Sen Bill Lamoureaux
Tn Sen Stacey Campfield, Rep. Matthew Hill5
Mi Sen. Tonya Schuitmaker
In Sen Jim Buck
Il Sen Chris Lauzen
Mn Reps Steve Drazkowski/Glenn Groenhagen
Nd Rep Kim Koppelman, Rep Blair Thorsen
Sd Rep. Lora Hubbell
Ks Sen Jean Schodorf
Tx Rep Jerry Madden, Sen Jeff Wentworth
Nm Rep David Chavez, Rep. Yvette Herrell,
Co Sen Kevin Lundberg, Sen Kent Lambert
Id Sen Curt McKenzie
Wy Rep Sue Wallis
Ut House Maj. Leader Brad Dee, Rep. Ken Ivory, Rep. Brad Daw, Rep. Paul Ray
Az Sen Frank Antenori
John Overington, Senior Delegate - State of West Virginia "Senior Delegate over 30 Yrs"
Glen Bradley, Representative - North Carolina "House of Representatives"
Josh McKoon, Senator – State of Georgia
Bruce Tutvedt, Senator – State of Montana "Senate President Pro Tem"
Peggy Mast, Representative – State of Kansas
Art Wittich, Senator – State of Montana
Alan Hale, Representative – State of Montana
Josh Brecheen, Senator – State of Oklahoma
Phil Frye, Representative - State of North Carolina
A great many other State Legislators in the following States Support Citizen Initiatives' "Single Amendments"

Alabama, Alaska, Arkansas, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Nevada, New, Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Montana, Wyoming

Other Leaders
David M. Walker, Former Comptroller General of the United States
Former Ark Rep. Dan Greenberg
Former Mo Rep. Ed Emory
Former Ohio Sen. Kevin Coughlin
Richard Vedder, University of Ohio
Barry Poulson, University of Colorado
Partial list. Titles for identification purposes only.

SURVEY RESULTS*
75 percent of American voters think "a check on Washington is what we need now in order to restore the balance of power between the federal government and state governments.".
80 percent believe the relationship between the federal and state governments should be more like a "partnership with equal footing and influence".
72 percent say that states and federal government are not sharing power today.
57 percent of Democrats, 82 percent of independents and 95 percent of Republicans agree with we need "a check on Washington"

*These are the results of a national poll done by Kellyanne Conway for the State Policy Network.