2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HCR 3014

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HCR 3014
2/5/2015
23305

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donna Whetham

Explanation or reason for introduction of bill/resolution:

A concurrent resolution applying for a convention of the states under Article V of the Constitution of the United States for the purpose of amending the Constitution of the United States.

Minutes: Attachment # 1-4.

Chairman Kasper: opened the hearing on HCR 3014. He is also a sponsor of this resolution. The government may someday go beyond the scope of the Constitution. In my opinion if we do not do something different in this Nation we are headed in a direction we may never recover from. Article V Amendment to the Constitution allows the states may call a convention of the states to propose amendments to the Constitution. The presenter of HCR 3014 is Michael Farris he is a scholar and an attorney.

Michael Farris: appeared in support of this resolution. (See Attachment #1). (3:38-32:48) He is a lawyer doing constitutional law.

Rep. Amerman: What I am doing today is listen to HB 1138 that is a compact just for balanced budget. According to what I read the compact is limited to a balanced budget. So I will have to vote on that and I will have to vote on this resolution, and I am unsure of the process of how this gets to the Constitutional Convention. This talks about imposed fiscal restraints on the federal government, limit the power and jurisdiction of federal government and term limits and I am not sure what this means? My concern is if we vote to pass this will it will affect another area?

Michael Farris: There are four applications you will hear from today. 38 states have to agree for one approach and for the other three approaches 34 states have to agree. When 34 states agree then you have a convention for that purpose. Those are **s**ingle amendment conventions. Ours are a single subject amendment, it is clearly broader. This is to write amendments. Amendments will come back to you and you have to ratify them. You get to decide if you ratify them. Term limits mean term limits on judges and term limits on congress. (37:27) (See Attachment #2).

Rep. Wallman: North Dakotans don't really like outside people coming in and telling us what to do so when you say our bill referring to the bill? Whose bill are you referring too?

Michael Farris: In the nature of this 34 states have to agree with each other in on an exact thing. If ND writes a bill by itself it has no effect. Each state has to do this. I am the personal drafter of this language. There was a whole lot of constitutional lawyers who looked at and fine - tuned it. The states will be the one who write the actual language. States can cooperate together.

Rep. Wallman: Just so I understand, a bunch of lawyers came up with the agenda and came up with the language for this?

Michael Farris: Sure. If you share that agenda you should vote for it.

Rep. Wallman: Are you suggesting if I don't vote for this I am in favor of the government running rampant with abuse of power, because that is kind of what you said.

Michael Farris: It is one of the reason you could vote against it, but it is not the only reason.

Chairman Kasper: The 4 bills we have before us have to be almost identical and passed by the legislatures of the 34 states to be able to call the convention. If the wording is different from state to state it does not match the ability that 34 states are calling a convention. When people support these resolutions you have drafters that draft the document. This is not uncommon. We have legislation before us every session that is model legislation particularly in the insurance industry. In order for it to be a call for the convention they must be identical. There is not ulterior motive. We need to do something to reign in the federal government.

Rep. Mooney: The principal for moving forward with something like this. This resolution would have a Convention of the United States under Article 5 for a number of reasons that are outlined there. Yet what I am finding is earlier you were also against the UN Convention for the United States Ratification for the Person's with Disabilities. I am curious why we are ok with one and not the other.

Michael Farris: Person's with Disabilities Act is an international treaty and I believe Americans should make the laws up on people with disabilities not the United Nations. United Nations should not make laws for America.

Craig Johnson, Maxbass farmer and rancher, appeared in support of HCR 3014. (See Attachment # 3**).** (46:22-48:20)

Karen Dosch, Grand Forks, appeared in support of HCR 3014. When my oldest daughter turned 12 she got a letter from Blue Cross Blue Shield which said if she signed it and mailed it in we as parents would not be allowed to go to the doctor with our daughter. When I questioned BCBS about it they said it was a federal mandate if was from HHS. I have no power what are we supposed to do about this. If we don't care for our children we

would be in trouble with the law and yet this letter appears at age 12. I support this resolution.
Chairman Kasper: Any other support of HCR 3014? Seeing none. Any opposition?

Andrew Bornemann: resident of Kintyre, appeared in opposition to HCR 3014. (5:47-56:45). (See Attachment #4).

Rep. B. Koppelman: I had some of the same concerns at one time but don't have them today. I wonder what progress had been made. How do you think by using traditional methods we could restore power to the people. How do you put the shredding of the Constitution back together without the states doing something intentional to make that happen.

Andrew Bornemann: You do bring up a good point and those in our government today has very much neglected their constitutional duties. Why do we continuously vote for people who ignore the constitution. The power is still in the people to vote for those candidates. The people have put them there and if they are not doing the will of the people we have to vote them out.

Rep. B. Koppelman: How do we overcome or how we compete with basically Santa Claus at the ballot box? Where there is enough education out there to say think about your grandkids when vote for someone that will give you something for free.

Andrew Bornemann: Education is a difficult thing, most people would like to put their hand out for a check rather than to be aware of the true and personal responsibilities of freedom. How we overcome that I am not sure.

Chairman Kasper: We are talking about education but Mr. Farris is having a seminar at the Heritage Center.

Rep. Wallman: Could you get us copies of your testimony?

Andrew Bornemann: Yes I would. (See attachment #4).

Chairman Kasper: Is there any other opposition to HCR 3014?

Virginia McClure, appeared in opposition to HCR 3014. Mr. Farris says we should listen to history and history says we have never had a convention of the states. We have changed the constitution but we have done it through ratification of amendments. The states have pressured legislators to put forth amendments. I don't know that having a Constitutional convention of the states is really going to change anything. We have other methods.

Chairman Kasper: The hearing was closed on HB 3014.

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HCR 3014
2/5/2015
23366

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donna Whetham

Explanation or reason for introduction of bill/resolution:

A concurrent resolution applying for a convention of the states under Article V of the Constitution of the United States for the purpose of amending the Constitution of the United States.

Minutes:

Chairman Kasper: reopened hearing on HCR 3014 This is a resolution for a convention of the states to propose amendments this has three sections that look at proposed amendments that impact fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials.

Rep. B. Koppelman: **Moved Do Pass on HCR 3014.**

Rep. M. Johnson: seconded.

Chairman Kasper: Any discussion?

Rep. Schneider: My general objection is the way it was handled and the one sided speakers and no time to analyze the information we were given. I am concerned about the undemocratic nature that people are being bound to a predetermined nature of these bills. I think this is very undemocratic. There is some very serious issues here.

Chairman Kasper: We had open discussion pro and con and I did not cut off anyone. There was opportunity to be heard and I did give everyone the chance. I do object to your observation.

Rep. B. Koppleman: I appreciate Representative Schneider and her observations although I may not agree. The constitution did not set up a system for going forward to be done in the same way it had been done before it was set up. When we send someone to a Constitutional Convention, this is a republic, we are sending an ambassador not a free willed delegate. That is the purpose of this. They are sent there for a mission. If you understand that it does not violate our process.

Chairman Kasper: The clerk will take the roll for a do pass on HCR 3014.

A Roll Call Vote was taken. Yes: 9 No: 5 Absent: 0. Motion carried.

Rep. Koppleman: will carry the bill.

Date: 2-5-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3014

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. B. Koppelman Seconded By Rep. M. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson	X		Rep. Kris Wallman		X
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner		X			

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. B. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3014: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HCR 3014 was placed on the Eleventh order on the calendar.

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

HCR 3014

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HCR 3014
3/19/2015
Job # 25111

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Marie Winings

Explanation or reason for introduction of bill/resolution:

A concurrent resolution applying for a convention of the states under Article V of the Constitution of the United States for the purpose of amending the Constitution of the United States.

Minutes: Attachments 1 - 3

Chairman Dever: Opened the hearing on HCR 3014.

Representative Kasper, District 46: Testified as sponsor and in support of the bill. The US Congress is broke. The concurrent resolutions that you have before you deal with Article V of the United States Constitution. I am sure you are aware that Congress, in its infinite wisdom, provided an opportunity for the states to propose amendments to the United States Constitution. The reason that I wished to be a sponsor of this legislation is that it is my firm belief that the United States congress is broke. They do not have the political will on either side of the aisle to get their spending habits in control and to keep their claws out of the rights of the various states in the United States. They have overreached their constitutional constraints for years. Regardless of who is in leadership, I am deeply disappointed in the Republican representative in Congress and their performance to date. We have another alternative. The founding fathers of our nation gave the states the opportunity to call this convention of the state in order to consider and propose if that convention so chose amendments to the Constitution. Those amendments then would have to be ratified by 38 state legislatures in order to amend the United States Constitution. When we heard these bills in the House GVA Committee we heard them back to back as you are today. Introduced the following speaker.

(5:30)Michael Farris, JD, LLM: See Attachment #1 for testimony in support of the resolution as well as all of the ones that you will hear today. (Referenced the Founders Constitution on the University of Chicago Law School website in regards to George Mason and also sighted prior court cases.) (27:45 - Answering a couple of questions asked by the committee.) You asked if Congress can call a convention and until authority is given by 2/3 of the states an amendment cannot be acted on. You also asked what the vote required in Congress on the calling of the convention when the states apply. It is not as clear of a

record on this point as the prior, but I believe it is a simple majority vote based on precedent.

(29:28)Senator Flakoll: We have a letter that has been provided this morning in Don Fotheringham's testimony from a Supreme Court Justice Warren Burger that I would like you to reply to. (Reads from that letter.)

Michael Farris: On the issue of holding a convention, I think that both sides agree that the arguments are generally the same on all four of these measures. Certainly the opponents think they are the same on all four measures. Chief Justice Warren Burger was the chief justice who Roe vs. Wade was decided under. At the time he wrote that letter there were 19 or 20 Article V convention of the state's applications from the states to reverse Roe vs. Wade on the books and it was gaining momentum. When he wrote that letter it was without the benefit of any citation or evidence of research on his part was. Supreme Court justices are not infallible and they do not know the answer to every question just off the cuff. Just because they have been on the supreme court of the United States does not mean that they do not know the history. I actually had to correct the supreme on one occasion. They were using the wrong term for when the United States joins a treaty. They get stuff wrong. Chief Justice Burger had a political motive to bolster his opinion on Roe vs. Wade and 6 states that have subsequently repealed their Roe vs. Wade applications cited that letter. I find it curious that the chief justice of Roe vs. Wade made this opinion in the midst of a fight over getting rid of Roe vs. Wade. It was a convenient political thing for him to do. He has no scholarship behind his assertion. His assertion is based on the same one that people normally give and that is that the original constitutional convention was a runaway convention therefore this one would be. They are wrong about that.

Senator Poolman: Our last resolution was specifically for the Balanced Budget and they could tell us that 24 states have this. This is very broad so how many states have passed resolutions with this broad language?

Michael Farris: Every state that has passed ours has passed this exact language. The DBA is on the same subject matter but they have not used the exact language. Ours has been passed by 3 states. The DBA has been at this for a long time. This is our second legislative year. Florida, Georgia, and Alaska have passed this entirely. It has passed the House in Arizona, the House in Arkansas, and the House here in North Dakota. It is moving in about 20 states right now. We have lost in a few states this year. We have lost in a couple of states but we have kept trying.

(35:58)Craig Johnson, Farmer/Rancher, Maxbass North Dakota: See Attachment #2 for testimony in favor of the bill.

(40:20) John Boustead, Bismarck Resident, Business Owner, and Minister: See Attachment #3 for testimony in support of the bill.

(50:25) Don Fotheringham: Testified in opposition to the bill. I have been to the Chicago Law School website and I searched diligently for this statement. (Reads a statement that he believed that was being perpetrated - Our founding fathers gave the states a method of proposing amendments to the Constitution to reign in the power and jurisdiction of the

federal government. Proud Virginian George Mason insisted that one day the federal government would outgrow its bounds and when that day came the states would need to have the ability to amend the Constitution to limit the power of the federal government.) Mason never made that statement. I stand by that. If Mr. Farris could produce that statement then I would concede. Everything he quoted I agree with and I also learned a few things. With the respect to the last two testimonies, that was worth my whole trip. That is why I am here. Everything they complained about, every injustice they mentioned is a result of violating the constitution that our founding fathers gave us. Nowhere in the Constitution do we have those powers with the exception of some of the amendments. You do not need a convention to repeal the amendments. There is enough popular support to repeal the 16th and 17th amendments. It will happen and without any danger whatsoever. I do not believe that several of the people that you have documentation from in my testimony from HCR 3015 were speaking asperously. Everything that we dream for today is in the Constitution and we need to call our Congress to get back under it.

Chairman Dever: It occurs to me that we all agree that we have problems but the difference is in the approach of dealing with those. Closed the hearing on HCR 3014.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HCR 3014
3/19/2015
Job # 25142

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Carrie Wiener

Minutes: No Attachments

Chairman Dever: Opened HCR 3014 for committee discussion and reads the resolution.

Senator Poolman: This one makes me a little more nervous because it is far more broad than the other one. **Moved a Do Not Pass.**

Senator Nelson: Seconded.

Senator Flakoll: The part that concerns me is on page 1, lines 23-24, about the terms of office and the length of office. I think that is at times one of two advantages that we have in Congress. One, we have the same number of US Senators as everyone else has. If we have people that can serve a long time we can gain seniority. We cannot hold a candle to California or New York in terms of putting our people forward. I think that is where my big problem comes forth in that issue - the ability to chair a committee and some of those things are more likely in a scenario where they can gain seniority whichever party they happen to come from.

Chairman Dever: With term limits wouldn't they all be equal in terms of seniority?

Senator Flakoll: To some extent. It depends on what the term limits are. We do not know that. It could be 8 to 20 years. What I am saying is that given the choice, the larger states would dominate those scenarios I believe.

Chairman Dever: Does anyone recall when we had term limits on the ballot for congressional members? Was that by initiated measure or was that a constitutional measure? I think it was a constitutional measure and it was in several states but somewhere else it was declared unconstitutional by the United States Constitution. That applies to North Dakota. I thought it passed.

Senator Cook: People of North Dakota said no to term limits for members of Congress and us too. Then they went and gave members of the House four year terms so they don't have to campaign so often. It was just the opposite of what everyone else in the country was doing with term limits.

Senator Nelson: When you read the resolves, it talks about proposing amendments, with an s. When I look at fiscal restraints on the federal government there could be all sorts of amendments. When you are looking at limiting power and jurisdiction that could be all sorts of different items and the concern about a runaway convention I would think would be right there when you start looking at what these broad categories actually include. I am not so worried about the term limits, but I am more worried about the fiscal constraints or the limiting of powers. It is a little bit scary.

Chairman Dever: Mike are we understanding this correctly?

Michael Farris: First, you are writing a rule of germaneness for the convention. You will get a second chance in looking at the exact language. This is the way, unless people write their language all in advance and all approve it, or states get together and they write their own language and then they approve it. The concerns of the details of language should be done both at the convention and when you get a second chance to look at it upon ratification. This is not final. I received a text that the Iowa House of Representative voted to approve our language today without the term limits provision. There is a way to do that in a way that takes the term limits off of the measure if that is the concern and preserve the rules of aggregation. I can give you that language if you like. The question is whether or not you deal with the federalism issue and this is the only methodology of dealing with that. It is really the general welfare clause and the commerce clause that are going to be fixed and it is going to be something essentially like this. If the states can regulate it the federal government can't. That will be what will come out but the only way that you can get it done is to agree on the subject matter and then agree to study it again when it comes out on the other side.

Chairman Dever: Does that change anything for anyone? We could amend it if that would relieve your concerns.

A Roll Call Vote Was Taken: 4 yeas, 2 nays, 1 absent.

Motion Carried.

Senator Poolman will carry the bill.

Date: 3/19
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3014

Senate Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Poolman Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Dever		✓	Senator Marcellais	AB	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison		✓			
Senator Flakoll	✓				

Total (Yes) 4 No 2

Absent ✓ 1

Floor Assignment Poolman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3014: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HCR 3014 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HCR 3014

#1
HCR 3014
2-5-15

TESTIMONY
OF
MICHAEL FARRIS, JD, LLM
64TH LEGISLATIVE ASSEMBLY
STATE OF NORTH DAKOTA

There are two fundamental reasons that our federal government has far exceeded its legitimate authority granted by the terms of the Constitution. First, it is the nature of man to want to expand his own power. Second, the several states have never employed their constitutional authority to limit the size of the federal government.

We should not be surprised that the federal government has continually expanded its power. When there are no checks on its power, not even the need to spend only the money that it has on hand, abuse of power is inevitable.

George Mason was the delegate at the Constitutional Convention who understood this propensity of government—all government—and he insisted that we create an effective check on this abuse of power. He said that when the national government goes beyond its power, as it surely will, we will need to place structural limitations on that exercise of power to stop the abuse. But, no such limitations would ever be proposed by Congress. History has proven him correct on both counts.

But Mason gave the states the ultimate constitutional power—the power to unilaterally amend the Constitution of the United States, without the consent of Congress.

The very purpose of the ability of the states to propose amendments to the Constitution was so that there would be a source of power to stop the abuse of power by the federal government.

It should seem self-evident that the federal abuse of power is pandemic. But let's note a handful of more of the obvious violations.

We start with Article I Section 1 of the Constitution which requires that all legislative authority be vested in the Congress of the United States. This means that only Congress can make law.

Yet the people of this state and the government of this state—just like the people and government in every other state—are being told daily that they must obey regulations enacted by administrative agencies not by Congress. The EPA is the best known but not the only agency that imposes its will on the people of North Dakota in blatant violation of the rule that only our legislators can enact law.

But some may argue that Congress may delegate its power to the agencies. I disagree. Congress cannot give away the right of the people. And it is the right of the people to elect the people that make the law so that we may throw the rascals out if we do not approve of their laws. Congress isn't giving away its power; it is giving away our rights.

Next, the General Welfare Clause is the gateway for two of the gravest abuses in our nation. All entitlement spending that is bankrupting this nation is coming through an improper interpretation of the General Welfare Clause. If that weren't enough, this same Clause is the source of claimed authority to send federal mandates to the states on education, welfare policy, and much more through the use of spending on issues that are concededly outside of the enumerated powers of Congress.

James Madison contended that the General Welfare Clause was not a grant of power at all but a limitation on power. Alexander Hamilton believed it was a grant of power but, as explained by Joseph Story, was limited by one major principle. The General Welfare Clause did not grant any spending authority on any issue

that was within the jurisdiction of the states. If the states can spend money on a topic, then the federal government cannot.

The Supreme Court is, of course, a co-conspirator in the improper growth of federal power. The Court has said, approximately 30 times, that there is no realistic check on its power other than its own internal sense of self-restraint.

I do not believe our liberties are safe when any branch of government holds unchecked power. And this is especially true of an unelected branch like the Supreme Court.

Finally, the Supremacy Clause of the Constitution makes treaties a part of the Supreme Law of the Land. This was to ensure that the states did not interfere in foreign policy. But no one ever imagined treaties like the United Nations Convention on the Rights of the Child. This treaty invades our national sovereignty, the sovereignty of the states, and the sovereignty of the family in every area concerning children. Our Supreme Court has already used this treaty on two occasions for authoritative interpretations despite the fact that we have never ratified this treaty. And if the internationalist left blame any single American for the failure of our nation to ratify the treaty, they usually name me.

We cannot allow international law to control the domestic law of the United States. Americans should make the law for America.

We can fix all of these problems and many more, with four separate constitutional amendments. Each amendment would contain two or three sentences.

For example:

No treaty may be adopted which purports to control the domestic policy of the United States unless ratified by two-thirds of both houses of Congress and by a two-thirds majority of each house of the legislatures of three-fourths of the several states.

limited

I think at this point, every person who believes in government would agree with me that we should have such constitutional rules in clear language.

The executive branch may not make laws.

The Commerce Clause is limited to the regulation of shipping.

If the states have jurisdiction over an issue, Congress may not spend money on that same issue.

I think that every sensible American would like a few rules like that to carry out the real meaning of limited government and federalism that was the core meaning of this constitutional republic.

Why haven't we done this?

The reason we haven't done this is because we have questions and fears.

If we read actual history and not internet bloggers and Wikipedia, if we rely on original documents of the founding era, and if we know the law, we have answers to those questions and we can assuage any reasonable fear.

Let me spend a few minutes on the three most common questions.

1. *Even if we call a convention for a limited and noble purpose, won't we subject ourselves to a runaway convention just like the original Constitutional Convention which was supposed to only amend the Articles of Confederation but instead wrote a whole new Constitution?*

First of all, it must be noted that this argument trashes the legitimacy of the Constitution. One cannot claim to be a constitutionalist if he believes that the Constitution was illegally adopted.

I have a two page paper that gives you the history you never learned in most schools or on the internet.

The idea that the Constitutional Convention was only supposed to amend the Articles of Confederation came from language from a resolution passed by Congress in February of 1787. Congress had no power under the Articles of Confederation to call any such convention. Nor does anyone think that the Articles of Confederation Congress possessed any implied powers. Congress wasn't calling the Convention—they were merely endorsing the Convention because a couple states had asked their opinion on the matter. This enactment by Congress had no more authority than a Congressional Resolution today declaring National Pickle Week.

There is no precedent for a runaway convention.

Moreover, there is no possibility of a runaway convention. We have had several hundred applications for Article V amendments convention since the founding of the Constitution. Yet we have never had a convention because two-thirds of the states have never agreed on the topic. We have an absolutely iron clad rule, agreement on the topic is an absolute requirement to call the convention.

But, can't the rules be changed in the middle of the Convention?

I litigated a case which establishes the relevant rule in the ratification phase of Article V, but it is fully applicable here. Congress tried to change the rules for ratification of the ERA. I filed the first lawsuit in the nation challenging that action. My case was consolidated with a later case and we worked together representing state legislatures from Washington, Arizona, and Idaho. We won. The rule of the federal district court was that you can't change the rules in the middle of the Article V process.

Even though that decision is not formally binding, it is a persuasive precedent and it was based on many other historical facts and prior rulings—we just didn't pull the rule out of thin air. That is the rule.

Finally, it is politically impossible to ratify any amendment that goes outside the scope of the applications from the states. Thirty-four states have to apply for a convention for a particular purpose. Let's suppose that all sixteen of the remaining states wanted a convention for a very different purpose.

Those sixteen states would have to win over ten of the other states at the Article V convention and then would have to win over a total of twenty-two states who were among the group that first proposed the original topic.

People who make such assertions have no idea how hard it is to get a governmental body to reverse itself.

And this is compounded by the fact that if a single body in each of these states votes "no"—that state is a "no" vote.

There are 99 legislative chambers in this nation. If just 13 chambers from different states vote "no" an amendment is killed.

Political reality is clear. A runaway convention is a myth that is causing the states to unilaterally disarm themselves and is letting the federal government continue to run away with its abuse of power. The only winners of the runaway argument are the EPA, Congress, the White House, and especially the Supreme Court.

2. *Why will the federal government obey these amendments if it is not obeying the Constitution today?*

While I understand and appreciate the frustration expressed by this question, it is not the most precise way to explain the current situation. Our country has two constitutions. There is the Constitution as written and then there is the Constitution as interpreted by the Supreme Court. There is very rare overlap in

these two constitutions. But the federal government is in fact obeying the Constitution—just the wrong one.

So the challenge is gaining control over the Supreme Court.

This can be done and has been done with several amendments.

The Supreme Court ruled black slaves could never be citizens or even fully human in the infamous *Dred Scott* decision. The 13th and 14th Amendments reversed that case and *Dred Scott* is still reversed.

The Supreme Court ruled that despite the 14th Amendment's Equal Protection Clause women did not have the right to vote. The 19th Amendment reversed that decision and all levels of government obey the 19th Amendment.

A more modern example, involving legislation which reversed the Supreme Court, in 1990 the Supreme Court threw the right of the free exercise of religion into the constitutional trash can in a case called *Employment Division v. Smith.* Congress reversed that decision with a law called the Religious Freedom Restoration Act. I am the person who named the law. And I was the co-chairman of the subcommittee that drafted the law.

And this past summer, the Supreme Court followed our law in the Hobby Lobby case. If the Supreme Court had followed their prior bad decision, Hobby Lobby would have lost. But the Court had its hands tied with the Religious Freedom Restoration Act and even the justice who wrote *Employment Division v. Smith* voted in favor of Hobby Lobby which required him to take opposite position he had taken earlier.

If you know how to write law the Supreme Court can be reversed and stay reversed.

The Court doesn't want to give up the pretense that it is obeying the Constitution. If they have vague phrases like "general welfare" and "commerce clause" they can abuse their power. But if they have

specific rules like "if the states can spend money on a topic or regulate a topic, then Congress may not spend money or regulate the same topic" they will have their hands tied just like we did in the Hobby Lobby case.

3. *Won't Congress take charge of the Convention? Nothing in the text of Article V says that the states are in charge, it says Congress calls the Convention. Won't they use the Necessary and Proper Clause to grant themselves effective control over the Convention?*

Some people like to cite a recent report by the Congressional Research Service for the proposition that Congress believes that it has plenary power over an Article V Convention of States.

Anyone who has any experience on Capitol Hill laughs at the suggestion that the Congressional Research Service speaks for Congress. It is a booklet written by some young lawyer who speaks for a research agency at most and not for Congress itself.

Let me tell you the supposed evidence for this claim. There have been 40 some bills introduced in Congress purporting to exercise control over an Article V convention. What all of these bills have in common is this—they all failed.

Congress does not set precedent by a bunch of failed bills. No matter if it was 200 failed bills, it still sets no legislative precedent of any kind.

The young lawyer who wrote would have flunked my Constitutional Law class if he or she wrote such a silly thing on a test. I have my students read *Youngstown Sheet & Tube v. Sawyer.* This case involved President Truman's seizure of steel mills during the Korean War. The Supreme Court noted that Congress had considered a bill which would have given the president the exact power he had employed but the bill failed. The Supreme Court said that this was evidence that Congress did not want the president to have such a power.

This case stands for the proposition that a failed bill provides evidence that Congress does not embrace the ideas contained in the bills. Thus, over 40 times the Congress of the United States has rejected the idea that it has plenary control over an Article V Convention.

I am not suggesting that this evidence is decisive on our side, but I am suggesting that whatever weight is attached to these 40-some failed bills all of that weight goes against the idea that Congress has control over this process.

As to the Necessary and Proper Clause argument, I would point out that this Clause is contained in Article I of the Constitution. Congress purported to use Article I power in my ERA case. They didn't have the necessary two-thirds vote to extend the time period for ratification, so they passed an ordinary law under the Necessary and Proper Clause. The federal court ruled, relying on other precedent, that Congress possesses no Article I power in the Article V context.

My final comment today is that I want to make sure that you realize the hypocritical nature of one of the organizations that is most responsible for conservative opposition to the Convention of States process under Article V.

From 1974 until 1980, 19 states passed applications for a Convention of States for the express purpose of reversing Roe v. Wade.

In 1983, Chief Justice Warren Burger, a co-author of Roe v. Wade wrote a letter to Phyllis Schlafly contending (without the citation of authority or any evidence of research) that an Article V convention could not be limited in scope.

Not a single state has passed an application for a Convention for that purpose since that time because of the vehement opposition against Article V from the John Birch Society and Phyllis Schlafly's Eagle Forum. These organizations made routine use of the Warren Burger letter to buttress their arguments.

What's more, 6 of the 19 states have actually rescinded their applications for a Convention to reverse Roe. In these state rescission documents the opinion of Burger on this issue is routinely cited. See, e.g., Idaho's repeal of its Right to Life Application, 146 Cong. Rec. S739 (2000). JBS has aided and saluted all of these rescission efforts.

The hypocrisy of the John Birch Society is glaring. This is the group that has contended that we should enforce the Constitution rather than amend it. However, the John Birch Society previously was promoting its own constitutional amendment called the Liberty Amendment.

There was a concerted effort to use the Article V Convention of States process to obtain the Liberty Amendment. Congressman Larry McDonald said the following in the Congressional Record (October 9, 1975):

> **"Why are you going to State legislatures to amend the Federal Constitution?"**

"The fifth article of the Constitution provides this method of causing the amendments to be proposed. Then, too, the States must eventually ratify to make it a part of the Constitution. This country consists of a union of sovereign States which hold the only power to ratify amendments and State legislatures hold concurrent power under the Constitution to initiate such amendments as they, the States and the people within them, require."

McDonald is not some random Congressman. He was a long-time leader of the John Birch Society and was the second President of the JBS.

Here are the clear facts:

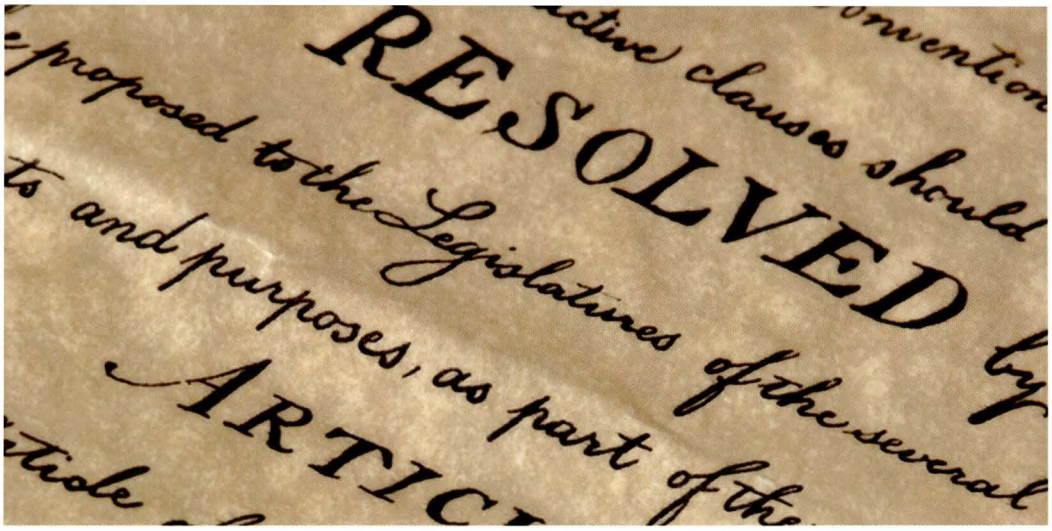
Burger's letter to Schlafly has been cited by state legislatures when repealing their efforts to reverse Roe v. Wade. The JBS has supported the repeal of pro-life Convention of States applications. The JBS took the opposite position when it was their own amendment that was under consideration.

You are likely to hear an outcry at some point, perhaps today, perhaps another day from people who use the John Birch Society and Warren Burger to support their arguments.

Why would Warren Burger not want Article V used to reverse *Roe v. Wade?* Would the fact that he was a co-author of that decision have anything to do with it? Why would the John Birch Society approve of the Convention of States process for their amendment and yet vehemently oppose it when others want to use the same process? Why would the John Birch Society should joyfully when Burger's letter is used to rescind pro-life Article V applications?

They will have to explain their own hypocrisy. I suggest that any arguments coming from that source need to be evaluated accordingly.

Article V of the Constitution gives you the power to rein in abuses by the federal government. There is no other solution. With your authority comes responsibility. I urge you to exercise your authority to save the liberty of this nation by voting to approve this Convention of States application today. History will show that this is the most important vote you ever will make.



We can't walk boldly into our future, without first understanding our history.

#2 HCR3014 2/5/15

Can We Trust the Constitution? Answering The "Runaway Convention" Myth

By Michael Farris, JD, LLM

Some people contend that our Constitution was illegally adopted as the result of a "runaway convention." They make two claims:

1. The convention delegates were instructed to merely amend the Articles of Confederation, but they wrote a whole new document.
2. The ratification process was improperly changed from 13 state legislatures to 9 state ratification conventions.

The Delegates Obeyed Their Instructions from the States

The claim that the delegates disobeyed their instructions is based on the idea that Congress called the Constitutional Convention. Proponents of this view assert that Congress limited the delegates to amending the Articles of Confederation. A review of legislative history clearly reveals the error of this claim. The Annapolis Convention, not Congress, provided the political impetus for calling the Constitutional Convention. The delegates from the 5 states participating at Annapolis concluded that a broader convention was needed to address the nation's concerns. They named the time and date (Philadelphia; second Monday in May).

The Annapolis delegates said they were going to work to "procure the concurrence of the other *States* in the appointment of Commissioners." The goal of the upcoming convention was "to render the constitution of the Federal Government adequate for the exigencies of the Union."

What role was Congress to play in calling the Convention? None. The Annapolis delegates sent copies of their resolution to Congress solely "from motives of respect."

What authority did the Articles of Confederation give to Congress to call such a Convention? None. The power of Congress under the Articles was strictly limited, and there was no theory of implied powers. The states possessed residual sovereignty which included the power to call this convention.

Seven state legislatures agreed to send delegates to the Constitutional Convention *prior to the time that Congress acted to endorse it.* The states told their delegates that the purpose of the Convention was the one stated in the Annapolis Convention resolution: "to render the constitution of the Federal Government adequate for the exigencies of the Union."

Congress voted to endorse this Convention on February 21, 1787. It did not purport to "call" the Convention or give instructions to the delegates. It merely proclaimed that "in the opinion of Congress, it is expedient" for the Convention to be held in Philadelphia on the date informally set by the Annapolis Convention and formally approved by 7 state legislatures.

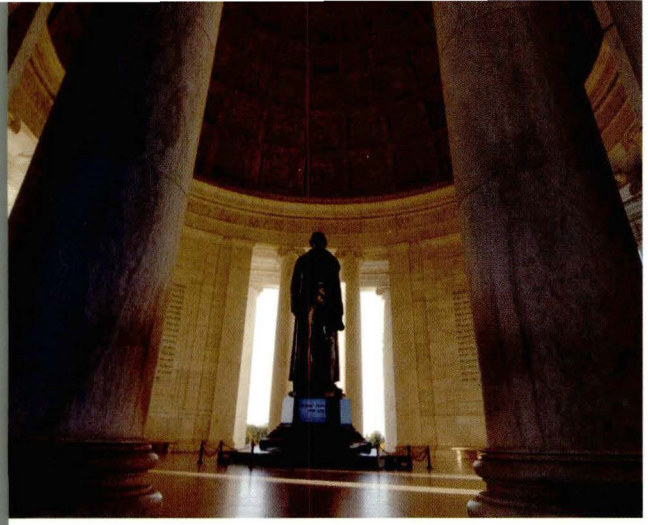
Ultimately, 12 states appointed delegates. Ten of these states followed the phrasing of the Annapolis Convention with only minor variations in wording ("render the Federal Constitution adequate"). Two states, New York and Massachusetts, followed the formula stated by Congress ("solely amend the Articles" as well as "render the Federal Constitution adequate").

Every student of history should know that the instructions for delegates came from

Continued to back page

CONVENTION OF STATES

CONVENTIONOFSTATES.COM



History tells the story.

The Constitution was legally adopted.

Now, let's move on to getting our nation back to the greatness the Founders originally envisioned.

Continued from front page

the states. In *Federalist 40*, James Madison answered the question of "who gave the binding instructions to the delegates." He said: "The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents [i.e. the states]." He then spends the balance of *Federalist 40* proving that the delegates from all 12 states properly followed the directions they were given by each of their states. According to Madison, the February 21st resolution from Congress was merely "a recommendatory act."

The States, not Congress, called the Constitutional Convention. They told their delegates to render the Federal Constitution adequate for the exigencies of the Union. And that is exactly what they did.

The Ratification Process Was Properly Changed

The Articles of Confederation required any amendments to be approved by Congress and ratified by all 13 state legislatures. Moreover, the Annapolis Convention and a clear majority of the states insisted that any amendments coming from the Constitutional Convention would have to be approved in this same manner—by Congress and all 13 state legislatures.

The reason for this rule can be found in the principles of international law. At the time, the states were sovereigns. The Articles of Confederation were, in essence, a treaty between 13 sovereign nations. Normally, the only way changes in a treaty can be ratified is by the approval of all parties to the treaty.

However, a treaty can provide for something less than unanimous approval if all the parties agree to a new approval process before it goes into effect. This is exactly what the Founders did.

When the Convention sent its draft of the Constitution to Congress, it also recommended a new ratification process. Congress approved both the Constitution itself and the new process.

Along with changing the number of required states from 13 to 9, the new ratification process required that state conventions ratify the Constitution rather than state legislatures. This was done in accord with the preamble of the Constitution—the Supreme Law of the Land would be ratified in the name of "We the People" rather than "We the States."

But before this change in ratification could be valid, *all 13 state legislatures would also have to consent to the new method.* All 13 state legislatures did just this by calling conventions of the people to vote on the merits of the Constitution.

Twelve states held popular elections to vote for delegates. Rhode Island made every voter a delegate and held a series of town meetings to vote on the Constitution. Thus, every state legislature consented to the new ratification process thereby validating the Constitution's requirements for ratification.

Those who claim to be constitutionalists while contending that the Constitution was illegally adopted are undermining themselves. It is like saying George Washington was a great American hero, but he was also a British spy. I stand with the integrity of our Founders who properly drafted and properly ratified the Constitution.

Convention of States is a project of

CITIZENS FOR SELF-GOVERNANCE

(540) 441-7227 | CONVENTIONOFSTATES.COM | Facebook.com/ConventionOfStates | Twitter.com/COSproject

#3
2-5-15
HCR. 3014

HCR 3014 Testimony

My name is Craig Johnson and I am a farmer and rancher from Maxbass North Dakota located 35 miles North East of Minot.

I am testifying in favor of HCR 3014. The Federal Government is currently operating as a Government of career politicians by lobbyists for special interests. This is a far cry from the intentions of the Founding Fathers for a Government of the people by the people for the people.

Some of my grievances against the Federal Government are as follows:

The IRS has 73000 pages of regulations for taxation. This requires me to hire a Tax Professional to prepare my tax returns. I paid him $900 last year and I still received letters from the IRS threatening to seize my property and assess fines and interest for untimely and incorrect method of payments.

The North Dakota Department of Transportation requires me to file IRS form 2290 before it will give me licenses for Semi Trucks.

The EPA wants to control all surface waters on the land that I own and operate. The EPA also wants to regulate my fuel tanks and the emissions from motorized vehicles and machinery.

The National Agricultural Statistics Services sends me several surveys every year and requires me to respond to them under penalty of law.

The time and money that I spend complying with Federal regulations is unreasonable. There is no humanly possible way to read the thousands of pages of regulations let alone comprehend and comply with them.

The call for a Convention of the States is long overdue. The States must reign in the Federal government and return it to the original intention of the Constitution.

We need to have Life, Liberty and the pursuit of happiness restored to the people.

Thank you,

Craig A Johnson
8080 17th Ave NW
Maxbass ND 58760

#4 HCR 3014
2/5/14

Members of the committee,

My name is Andrew Bornemann, and I have been a lifetime resident of our great state of North Dakota, currently farming near Kintyre, ND.

I am standing before you today to state my opposition to HB 1138, and resolutions HCR 3014, HCR 3015, and HCR 3017, which are simple variations of the same bill, and to raise some questions for your consideration.

First though, let us take a moment and read Article V of the US Constitution to which this resolution appeals:

"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; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

I would like to point out that the wording of Article V leaves a lot of questions unanswered. Those in support of an Article V convention like to refer to it as a "Convention of the States", but that language is simply not in the constitution. Granted, that may have been the original intent of our founding fathers, but is that how a proposed convention would work out today? As the wording of Article V does not include specifics such as what is the scope of a convention, who forms the convention, are the delegates apportioned by states or by population, may the delegates be bound by the states sending them to certain topics, who will make those decisions? While I would like to believe that those powers would be reserved to the states, I find it hard to believe that the US congress would not take it upon themselves to make such rules, as they expressly have the responsibility to "Call" the convention, *and they have been told it is their responsibility and have tried to in the past!*

According to a briefing sent to congress April 11th, 2014, by the Congressional Research Service entitled "The article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress" (Extremely informative of the views of the National government on this topic, available at https://www.fas.org/sgp/crs/misc/R42589.pdf),

"Second, while the Constitution is silent on the mechanics of an Article V convention, Congress
has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a
convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures,

including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states."

Farther, it goes on to say regarding limiting the convention to a certain topic:

"One point on which most observers appear to agree is that an Article V Convention, either limited
or general, could not be restricted to consider a specific amendment. During the 1980s campaign
for a convention to consider a balanced budget amendment, a number of state legislatures proposed specific amendment language. Some would have accepted a "substantially similar"
amendment, while others attempted to limit the convention solely to consideration of their particular amendments. In its 1993 study, the House Judiciary Committee indicated the former
might be qualified, but:
'... an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid. Such an approach robs the Convention of its deliberative function which is inherent in article V language stating that the Convention's purpose is to "propose amendments." If the State legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become instead part of the ratification process.' "

As can be readily seen, there are grave concerns as to the likelihood of either the states being able to set the rules for a convention, or for the scope of a convention being limited to certain topics. Do we really want to open up the doors to a convention where ANY topic may be discussed, or potentially the delegates be apportioned by population or electoral votes? I do not think this is in the best interest of North Dakota.

And besides, is the constitution we have flawed, or just ignored?

I submit that though there is reason for concern at the blatant disregard for the constitution plainly visible in Washington, I believe that changing the constitution is not going to fix the problem, and that a constitutional convention is NOT the right way to address the problem. It would be ineffective at best, and downright dangerous to the very fabric of our society at worst. A much better option would be to start holding our national government accountable to their oaths to uphold the constitution, be it through voting them out, legal proceedings, or even impeachment for their crimes. The problem we face today is not one of an inadequate constitution, but one of an immoral and corrupt government.

In the words of John Adams:

"Gentleman,

While our country remains untainted with the principles and manners which are now producing desolation in so many parts of the world; while she continues sincere, and incapable of insidious and impious policy, we shall have the strongest reason to rejoice in the local destination assigned us by Providence. But should the people of America once become capable

of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practicing iniquity and extravagance, ... expressing in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. " (October 11th, 1798, letter to the officers of the First Brigade of Militia of Massachusetts)

These almost prophetic words, spoken over 200 years ago, are I believe coming true today. The problem is not the constitution, but the people responsible for the carrying out of it. Changing the constitution is not the answer, education of the people on the responsibilities of freedom, and the responsibilities and limits imposed on governments by our constitution is I believe the only answer to the problems we now face.

Thank you for your time, and if there are any questions I will do my best to answer them now.

3/19 #1
HCR 3014 pg 1

TESTIMONY
OF
MICHAEL FARRIS, JD, LLM
64TH LEGISLATIVE ASSEMBLY
STATE OF NORTH DAKOTA

There are two fundamental reasons that our federal government has far exceeded its legitimate authority granted by the terms of the Constitution. First, it is the nature of man to want to expand his own power. Second, the several states have never employed their constitutional authority to limit the size of the federal government.

We should not be surprised that the federal government has continually expanded its power. When there are no checks on its power, not even the need to spend only the money that it has on hand, abuse of power is inevitable.

George Mason was the delegate at the Constitutional Convention who understood this propensity of government—all government—and he insisted that we create an effective check on this abuse of power. He said that when the national government goes beyond its power, as it surely will, we will need to place structural limitations on that exercise of power to stop the abuse. But, no such limitations would ever be proposed by Congress. History has proven him correct on both counts.

But Mason gave the states the ultimate constitutional power—the power to unilaterally amend the Constitution of the United States, without the consent of Congress.

The very purpose of the ability of the states to propose amendments to the Constitution was so that there would be a source of power to stop the abuse of power by the federal government.

HCR 3014

It should seem self-evident that the federal abuse of power is pandemic. But let's note a handful of more of the obvious violations.

We start with Article I Section 1 of the Constitution which requires that all legislative authority be vested in the Congress of the United States. This means that only Congress can make law.

Yet the people of this state and the government of this state—just like the people and government in every other state—are being told daily that they must obey regulations enacted by administrative agencies not by Congress. The EPA is the best known but not the only agency that imposes its will on the people of North Dakota in blatant violation of the rule that only our legislators can enact law.

But some may argue that Congress may delegate its power to the agencies. I disagree. Congress cannot give away the right of the people. And it is the right of the people to elect the people that make the law so that we may throw the rascals out if we do not approve of their laws. Congress isn't giving away its power; it is giving away our rights.

Next, the General Welfare Clause is the gateway for two of the gravest abuses in our nation. All entitlement spending that is bankrupting this nation is coming through an improper interpretation of the General Welfare Clause. If that weren't enough, this same Clause is the source of claimed authority to send federal mandates to the states on education, welfare policy, and much more through the use of spending on issues that are concededly outside of the enumerated powers of Congress.

James Madison contended that the General Welfare Clause was not a grant of power at all but a limitation on power. Alexander Hamilton believed it was a grant of power but, as explained by Joseph Story, was limited by one major principle. The General Welfare Clause did not grant any spending authority on any issue

that was within the jurisdiction of the states. If the states can spend money on a topic, then the federal government cannot.

The Supreme Court is, of course, a co-conspirator in the improper growth of federal power. The Court has said, approximately 30 times, that there is no realistic check on its power other than its own internal sense of self-restraint.

I do not believe our liberties are safe when any branch of government holds unchecked power. And this is especially true of an unelected branch like the Supreme Court.

Finally, the Supremacy Clause of the Constitution makes treaties a part of the Supreme Law of the Land. This was to ensure that the states did not interfere in foreign policy. But no one ever imagined treaties like the United Nations Convention on the Rights of the Child. This treaty invades our national sovereignty, the sovereignty of the states, and the sovereignty of the family in every area concerning children. Our Supreme Court has already used this treaty on two occasions for authoritative interpretations despite the fact that we have never ratified this treaty. And if the internationalist left blame any single American for the failure of our nation to ratify the treaty, they usually name me.

We cannot allow international law to control the domestic law of the United States. Americans should make the law for America.

We can fix all of these problems and many more, with four separate constitutional amendments. Each amendment would contain two or three sentences.

For example:

No treaty may be adopted which purports to control the domestic policy of the United States unless ratified by two-thirds of both houses of Congress and by a two-thirds majority of each house of the legislatures of three-fourths of the several states.

#1

I think at this point, every person who believes in government would agree with me that we should have such constitutional rules in clear language.

The executive branch may not make laws.

The Commerce Clause is limited to the regulation of shipping.

If the states have jurisdiction over an issue, Congress may not spend money on that same issue.

I think that every sensible American would like a few rules like that to carry out the real meaning of limited government and federalism that was the core meaning of this constitutional republic.

Why haven't we done this?

The reason we haven't done this is because we have questions and fears.

If we read actual history and not internet bloggers and Wikipedia, if we rely on original documents of the founding era, and if we know the law, we have answers to those questions and we can assuage any reasonable fear.

Let me spend a few minutes on the three most common questions.

1. *Even if we call a convention for a limited and noble purpose, won't we subject ourselves to a runaway convention just like the original Constitutional Convention which was supposed to only amend the Articles of Confederation but instead wrote a whole new Constitution?*

First of all, it must be noted that this argument trashes the legitimacy of the Constitution. One cannot claim to be a constitutionalist if he believes that the Constitution was illegally adopted.

I have a two page paper that gives you the history you never learned in most schools or on the internet.

The idea that the Constitutional Convention was only supposed to amend the Articles of Confederation came from language from a resolution passed by Congress in February of 1787. Congress had no power under the Articles of Confederation to call any such convention. Nor does anyone think that the Articles of Confederation Congress possessed any implied powers. Congress wasn't calling the Convention—they were merely endorsing the Convention because a couple states had asked their opinion on the matter. This enactment by Congress had no more authority than a Congressional Resolution today declaring National Pickle Week.

There is no precedent for a runaway convention.

Moreover, there is no possibility of a runaway convention. We have had several hundred applications for Article V amendments convention since the founding of the Constitution. Yet we have never had a convention because two-thirds of the states have never agreed on the topic. We have an absolutely iron clad rule, agreement on the topic is an absolute requirement to call the convention.

But, can't the rules be changed in the middle of the Convention?

I litigated a case which establishes the relevant rule in the ratification phase of Article V, but it is fully applicable here. Congress tried to change the rules for ratification of the ERA. I filed the first lawsuit in the nation challenging that action. My case was consolidated with a later case and we worked together representing state legislatures from Washington, Arizona, and Idaho. We won. The rule of the federal district court was that you can't change the rules in the middle of the Article V process.

Even though that decision is not formally binding, it is a persuasive precedent and it was based on many other historical facts and prior rulings—we didn't just pull the rule out of thin air. That is the rule.

Finally, it is politically impossible to ratify any amendment that goes outside the scope of the applications from the states. Thirty-four states have to apply for a convention for a particular purpose. Let's suppose that all sixteen of the remaining states wanted a convention for a very different purpose.

Those sixteen states would have to win over ten of the other states at the Article V convention and then would have to win over a total of twenty-two states who were among the group that first proposed the original topic.

People who make such assertions have no idea how hard it is to get a governmental body to reverse itself.

And this is compounded by the fact that if a single body in each of these states votes "no"—that state is a "no" vote.

There are 99 legislative chambers in this nation. If just 13 chambers from different states vote "no" an amendment is killed.

Political reality is clear. A runaway convention is a myth that is causing the states to unilaterally disarm themselves and is letting the federal government continue to run away with its abuse of power. The only winners of the runaway argument are the EPA, Congress, the White House, and especially the Supreme Court.

2. *Why will the federal government obey these amendments if it is not obeying the Constitution today?*

While I understand and appreciate the frustration expressed by this question, it is not the most precise way to explain the current situation. Our country has two constitutions. There is the Constitution as written and then there is the Constitution as interpreted by the Supreme Court. There is very rare overlap in

these two constitutions. But the federal government is in fact obeying the Constitution—just the wrong one.

So the challenge is gaining control over the Supreme Court.

This can be done and has been done with several amendments.

The Supreme Court ruled black slaves could never be citizens or even fully human in the infamous *Dred Scott* decision. The 13th and 14th Amendments reversed that case and *Dred Scott* is still reversed.

The Supreme Court ruled that despite the 14th Amendment's Equal Protection Clause women did not have the right to vote. The 19th Amendment reversed that decision and all levels of government obey the 19th Amendment.

A more modern example, involving legislation which reversed the Supreme Court, in 1990 the Supreme Court threw the right of the free exercise of religion into the constitutional trash can in a case called *Employment Division v. Smith.* Congress reversed that decision with a law called the Religious Freedom Restoration Act. I am the person who named the law. And I was the co-chairman of the subcommittee that drafted the law.

And this past summer, the Supreme Court followed our law in the Hobby Lobby case. If the Supreme Court had followed their prior bad decision, Hobby Lobby would have lost. But the Court had its hands tied with the Religious Freedom Restoration Act and even the justice who wrote *Employment Division v. Smith* voted in favor of Hobby Lobby which required him to take the opposite position he had taken earlier.

If you know how to write law the Supreme Court can be reversed and stay reversed.

The Court doesn't want to give up the pretense that it is obeying the Constitution. If they have vague phrases like "general welfare" and "commerce clause" they can abuse their power. But if they have

specific rules like "if the states can spend money on a topic or regulate a topic, then Congress may not spend money or regulate the same topic" they will have their hands tied just like we did in the Hobby Lobby case.

3. *Won't Congress take charge of the Convention? Nothing in the text of Article V says that the states are in charge, it says Congress calls the Convention. Won't they use the Necessary and Proper Clause to grant themselves effective control over the Convention?*

Some people like to cite a recent report by the Congressional Research Service for the proposition that Congress believes that it has plenary power over an Article V Convention of States.

Anyone who has any experience on Capitol Hill laughs at the suggestion that the Congressional Research Service speaks for Congress. It is a booklet written by some young lawyer who speaks for a research agency at most and not for Congress itself.

Let me tell you the supposed evidence for this claim. There have been 40 some bills introduced in Congress purporting to exercise control over an Article V convention. What all of these bills have in common is this—they all failed.

Congress does not set precedent by a bunch of failed bills. No matter if it was 200 failed bills, it still sets no legislative precedent of any kind.

The young lawyer who wrote the report would have flunked my Constitutional Law class if he or she wrote such a silly thing on a test. I have my students read *Youngstown Sheet & Tube v. Sawyer.* This case involved President Truman's seizure of steel mills during the Korean War. The Supreme Court noted that Congress had considered a bill which would have given the president the exact power he had employed but the bill failed. The Supreme Court said that this was evidence that Congress did not want the president to have such a power.

This case stands for the proposition that a failed bill provides evidence that Congress does not embrace the ideas contained in the bills. Thus, over 40 times the Congress of the United States has rejected the idea that it has plenary control over an Article V Convention.

I am not suggesting that this evidence is decisive on our side, but I am suggesting that whatever weight is attached to these 40-some failed bills all of that weight goes against the idea that Congress has control over this process.

As to the Necessary and Proper Clause argument, I would point out that this Clause is contained in Article I of the Constitution. Congress purported to use Article I power in my ERA case. They didn't have the necessary two-thirds vote to extend the time period for ratification, so they passed an ordinary law under the Necessary and Proper Clause. The federal court ruled, relying on other precedent, that Congress possesses no Article I power in the Article V context.

My final comment today is that I want to make sure that you realize the hypocritical nature of one of the organizations that is most responsible for conservative opposition to the Convention of States process under Article V.

From 1974 until 1980, 19 states passed applications for a Convention of States for the express purpose of reversing *Roe v. Wade*.

In 1983, Chief Justice Warren Burger, a co-author of *Roe v. Wade* wrote a letter to Phyllis Schlafly contending (without the citation of authority or any evidence of research) that an Article V convention could not be limited in scope.

Not a single state has passed an application for a Convention for that purpose since that time because of the vehement opposition against Article V from the John Birch Society and Phyllis Schlafly's Eagle Forum. These organizations made routine use of the Warren Burger letter to buttress their arguments.

What's more, 6 of the 19 states have actually rescinded their applications for a Convention to reverse *Roe*. In these state rescission documents the opinion of Burger on this issue is routinely cited. See, e.g., Idaho's repeal of its Right to Life Application, 146 Cong. Rec. S739 (2000). JBS has aided and saluted all of these rescission efforts.

The hypocrisy of the John Birch Society is glaring. This is the group that has contended that we should enforce the Constitution rather than amend it. However, the John Birch Society previously was promoting its own constitutional amendment called the Liberty Amendment.

There was a concerted effort to use the Article V Convention of States process to obtain the Liberty Amendment. Congressman Larry McDonald said the following in the Congressional Record (October 9, 1975):

> **"Why are you going to State legislatures to amend the Federal Constitution?"**

"The fifth article of the Constitution provides this method of causing the amendments to be proposed. Then, too, the States must eventually ratify to make it a part of the Constitution. This country consists of a union of sovereign States which hold the only power to ratify amendments and State legislatures hold concurrent power under the Constitution to initiate such amendments as they, the States and the people within them, require."

McDonald is not some random Congressman. He was a long-time leader of the John Birch Society and was the second President of the JBS.

Here are the clear facts:

Burger's letter to Schlafly has been cited by state legislatures when repealing their efforts to reverse *Roe v. Wade*. The JBS has supported the repeal of pro-life Convention of States applications. The JBS took the opposite position when it was their own amendment that was under consideration.

You are likely to hear an outcry at some point, perhaps today, perhaps another day from people who use the John Birch Society and Warren Burger to support their arguments.

Why would Warren Burger not want Article V used to reverse *Roe v. Wade?* Would the fact that he was a co-author of that decision have anything to do with it? Why would the John Birch Society approve of the Convention of States process for their amendment and yet vehemently oppose it when others want to use the same process? Why would the John Birch Society shout joyfully when Burger's letter is used to rescind pro-life Article V applications?

They will have to explain their own hypocrisy. I suggest that any arguments coming from that source need to be evaluated accordingly.

Article V of the Constitution gives you the power to rein in abuses by the federal government. There is no other solution. With your authority comes responsibility. I urge you to exercise your authority to save the liberty of this nation by voting to approve this Convention of States application today. History will show that this is the most important vote you ever will make.

CONVENTION OF STATES ACTION

THE JEFFERSON STATEMENT

On September 11, 2014, some of our nation's finest legal minds convened to consider arguments for and against the use of Article V to restrain federal power. These experts specifically rejected the argument that a Convention of States is likely to be misused or improperly controlled by Congress, concluding instead that the mechanism provided by the Founders is safe. Moreover, they shared the conviction that Article V provides the only constitutionally effective means to restore our federal system. The conclusions of these prestigious experts are memorialized in The Jefferson Statement, which is reproduced here. The names and biographical information of the endorsers, who have formed a "Legal Board of Reference" for the Convention of States Project, are listed below the Statement.

The Constitution's Framers foresaw a day when the federal government would exceed and abuse its enumerated powers, thus placing our liberty at risk. George Mason was instrumental in fashioning a mechanism by which "we the people" could defend our freedom—the ultimate check on federal power contained in Article V of the Constitution.

[redacted]icle V provides the states with the opportunity to propose constitutional amendments through a process called a Convention of States. This process is controlled by the states from beginning to end on all substantive matters.

A Convention of States is convened when 34 state legislatures pass resolutions (applications) on an agreed topic or set of topics. The Convention is limited to considering amendments on these specified topics.

While some have expressed fears that a Convention of States might be misused or improperly controlled by Congress, it is our considered judgment that the checks and balances in the Constitution are more than sufficient to ensure the integrity of the process.

The Convention of States mechanism is safe, and it is the only constitutionally effective means available to do what is so essential for our nation—restoring robust federalism with genuine checks on the power of the federal government.

We share the Founders' conviction that proper decision-making structures are essential to preserve liberty. We believe that the problems facing our nation require several structural limitations on the exercise of federal power. While fiscal restraints are essential, we believe the most effective course is to pursue reasonable limitations, fully in line with the vision of our Founders, on the federal government.

Accordingly, I endorse the Convention of States Project, which calls for an Article V Convention for "the sole purpose of proposing amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress." I hereby agree to serve on the Legal Board of Reference for the Convention of States Project.

Signed,

[redacted]

*Randy E. Barnett**	*Charles J. Cooper**	*John C. Eastman**	*Michael P. Farris**
*Robert P. George**	*C. Boyden Gray**	*Mark Levin**	*Nelson Lund*
*Andrew McCarthy**	*Mark Meckler**	*Mat Staver*	

*Original signers of The Jefferson Statement

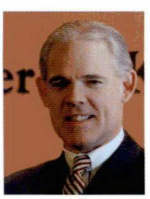
#1 pg 12

Continued to back page

LEGAL BOARD OF REFERENCE

Each of the following individuals has signed onto The Jefferson Statement, endorsing the Convention of States Project and serves as a legal advisor to the Project:

Randy E. Barnett is the Carmack Waterhouse Professor of Legal Theory at the Georgetown University Law Center, where he directs the Georgetown Center for the Constitution. A graduate of Harvard Law School, he represented the National Federation of Independent Business in its constitutional challenge to the Affordable Care Act. Professor Barnett has been a visiting professor at Harvard Law School, the University of Pennsylvania, and Northwestern.

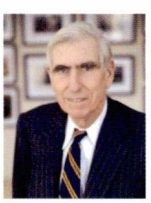


Charles J. Cooper is a founding member and chairman of Cooper & Kirk, PLLC. He has over 35 years of legal experience in government and private practice, with several appearances before the United States Supreme Court. Shortly after serving as law clerk to Justice William H. Rehnquist, Mr. Cooper joined the Civil Rights Division of the U.S. Department of Justice in 1981. In 1985 President Reagan appointed Mr. Cooper to the position of Assistant Attorney General for the Office of Legal Counsel.

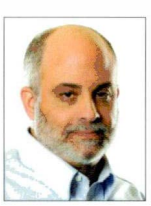
John C. Eastman is the Henry Salvatori Professor of Law & Community Service at Chapman University Fowler School of Law. He is the Founding Director of the Center for Constitutional Jurisprudence, a public interest law firm affiliated with the Claremont Institute. Prior to joining the Fowler School of Law faculty in August 1999, he served as a law clerk with Justice Clarence Thomas at the Supreme Court of the United States. Mr. Eastman served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration.

Michael P. Farris, head of the Convention of States Project, is the Chancellor of Patrick Henry College and Chairman of the Home School Legal Defense Association. He was the founding president of both organizations. During his career as a constitutional appellate litigator, he has served as lead counsel in the United States Supreme Court, eight federal circuit courts, and the appellate courts of thirteen states. Mr. Farris has been a leader on Capitol Hill for over thirty years and is widely respected for his leadership in the defense of homeschooling, religious freedom, and the preservation of American sovereignty.

Robert P. George holds Princeton's celebrated McCormick Chair in Jurisprudence and is the founding director of the James Madison Program in American Ideals and Institutions. He is chairman of the United States Commission on International Religious Freedom (USCIRF) and has served as a presidential appointee to the United States Commission on Civil Rights. Professor George is a former Judicial Fellow at the Supreme Court of the United States, where he received the Justice Tom C. Clark Award.

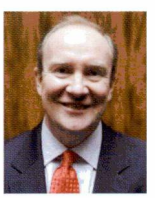


C. Boyden Gray is the founding partner of Boyden Gray & Associates, in Washington, D.C. Prior to founding his law firm, Ambassador Gray served as Legal Counsel to Vice President Bush (1981–1989) and as White House Counsel in the administration of President George H.W. Bush (1989–1993). Mr. Gray also served as counsel to the Presidential Task Force on Regulatory Relief during the Reagan Administration. Following his service in the White House, he was appointed U.S. Ambassador to the European Union and U.S. Special Envoy for Eurasian Energy.



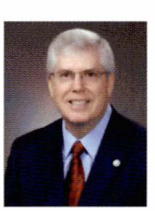
Mark Levin is one of America's preeminent constitutional lawyers and the author of several *New York Times* bestselling books including *Men in Black* (2007), *Liberty and Tyranny* (2010), *Ameritopia* (2012) and *The Liberty Amendments* (2013). Mr. Levin has served as a top advisor to several members of President Ronald Reagan's Cabinet—including as Chief of Staff to the Attorney General of the United States, Edwin Meese.

Nelson Lund is University Professor at George Mason University School of Law. He holds a doctorate in political science from Harvard and a law degree from the University of Chicago. After clerking for Justice Sandra Day O'Connor, he served in the White House as Associate Counsel to President George H.W. Bush. He also served on Virginia Governor George Allen's Advisory Council on Self-Determination and Federalism, and on the Commission on Federal Election Reform chaired by President Jimmy Carter and Secretary James A. Baker III.



Andrew McCarthy is a best-selling author, a Senior Fellow at National Review Institute, and a contributing editor at National Review. Mr. McCarthy is a former Chief Assistant U.S. Attorney in New York, best known for leading the prosecution against the various terrorists in New York City. He has also served as an advisor to the Deputy Secretary of Defense.

Mark Meckler is President of Citizens for Self-Governance, the parent organization of Convention of States Project. Meckler is one of the nation's most effective grassroots activists. After he co-founded and served as the National Coordinator of the Tea Party Patriots, he founded Citizens for Self-Governance in 2012 to bring the concept of "self-governance" back to American government. This grassroots initiative expands and supports the ever-growing, bipartisan self-governance movement.

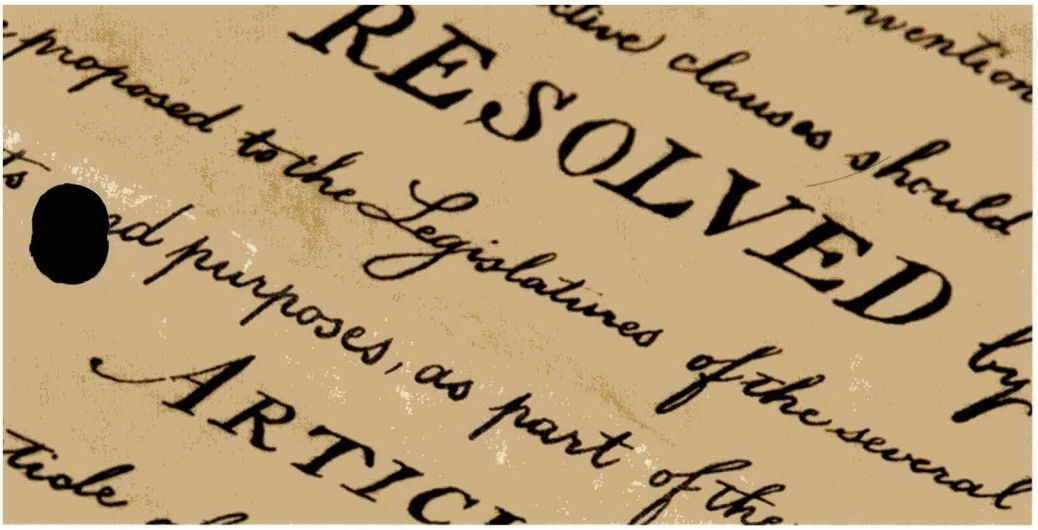


Mat Staver is the Founder and Chairman of Liberty Counsel and also serves as Vice President of Liberty University, Professor of Law at Liberty University School of Law, and Chairman of Liberty Counsel Action.

USA
PENNSYLVANIA NEBRASKA IDAHO
OKLAHOMA MISSISSIPPI INDIANA
FLORIDA NEW MEXICO DELAWARE
WASHINGTON ILLINOIS WYOMING
VIRGINIA NORTH DAKOTA KANSAS
SOUTH CAROLINA OREGON TEXAS
ARIZONA NEW JERSEY VERMONT
CONNECTICUT ARKANSAS NEW HAMPSHIRE KENTUCKY
NORTH CAROLINA NEVADA WEST VIRGINIA UTAH HAWAII
MICHIGAN ALASKA MASSACHUSETTS CALIFORNIA IOWA
LOUISIANA MONTANA RHODE ISLAND WISCONSIN MAINE
MINNESOTA MARYLAND SOUTH DAKOTA GEORGIA OHIO
MISSOURI TENNESSEE NEW YORK COLORADO ALABAMA

CONVENTION OF STATES
ACTION

(540) 441-7227
COSAction.com



We can't walk boldly into our future, without first understanding our history.

Can We Trust the Constitution? Answering The "Runaway Convention" Myth

By Michael Farris, JD, LLM

Some people contend that our Constitution was illegally adopted as the result of a "runaway convention." They make two claims:

1. The convention delegates were instructed to merely amend the Articles of Confederation, but they wrote a whole new document.
2. The ratification process was improperly changed from 13 state legislatures to 9 state ratification conventions.

The Delegates Obeyed Their Instructions from the States

The claim that the delegates disobeyed their instructions is based on the idea that Congress called the Constitutional Convention. Proponents of this view assert that Congress limited the delegates to amending the Articles of Confederation. A review of legislative history clearly reveals the error of this claim. The Annapolis Convention, not Congress, provided the political impetus for calling the Constitutional Convention. The delegates from the 5 states participating at Annapolis concluded that a broader convention was needed to address the nation's concerns. They named the time and date (Philadelphia; second Monday in May).

The Annapolis delegates said they were going to work to "procure the concurrence of the other *States* in the appointment of Commissioners." The goal of the upcoming convention was "to render the constitution of the Federal Government adequate for the exigencies of the Union."

What role was Congress to play in calling the Convention? None. The Annapolis delegates sent copies of their resolution to Congress solely "from motives of respect."

What authority did the Articles of Confederation give to Congress to call such a Convention? None. The power of Congress under the Articles was strictly limited, and there was no theory of implied powers. The states possessed residual sovereignty which included the power to call this convention.

Seven state legislatures agreed to send delegates to the Constitutional Convention *prior to the time that Congress acted to endorse it.* The states told their delegates that the purpose of the Convention was the one stated in the Annapolis Convention resolution: "to render the constitution of the Federal Government adequate for the exigencies of the Union."

Congress voted to endorse this Convention on February 21, 1787. It did not purport to "call" the Convention or give instructions to the delegates. It merely proclaimed that "in the opinion of Congress, it is expedient" for the Convention to be held in Philadelphia on the date informally set by the Annapolis Convention and formally approved by 7 state legislatures.

Ultimately, 12 states appointed delegates. Ten of these states followed the phrasing of the Annapolis Convention with only minor variations in wording ("render the Federal Constitution adequate"). Two states, New York and Massachusetts, followed the formula stated by Congress ("solely amend the Articles" as well as "render the Federal Constitution adequate").

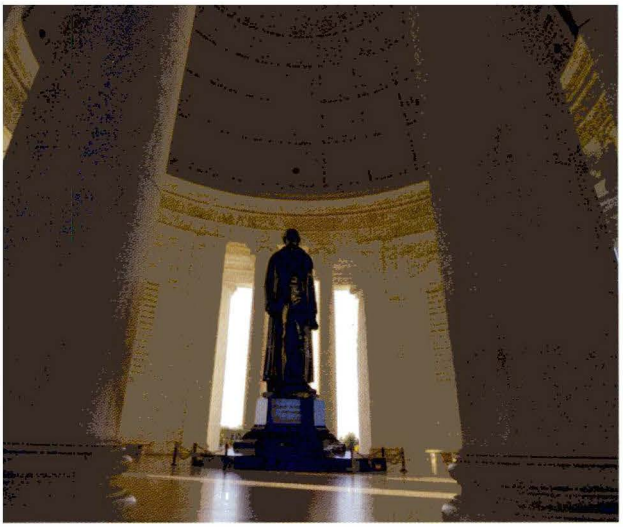
Every student of history should know that the instructions for delegates came from

Continued to back page

CONVENTION OF STATES

CONVENTIONOFSTATES.COM

#1 pg 13



History tells the story.

The Constitution was legally adopted.

Now, let's move on to getting our nation back to the greatness the Founders originally envisioned.

Continued from front page

the states. In *Federalist 40*, James Madison answered the question of "who gave the binding instructions to the delegates." He said: "The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents [i.e. the states]." He then spends the balance of *Federalist 40* proving that the delegates from all 12 states properly followed the directions they were given by each of their states. According to Madison, the February 21st resolution from Congress was merely "a recommendatory act."

The States, not Congress, called the Constitutional Convention. They told their delegates to render the Federal Constitution adequate for the exigencies of the Union. And that is exactly what they did.

The Ratification Process Was Properly Changed

The Articles of Confederation required any amendments to be approved by Congress and ratified by all 13 state legislatures. Moreover, the Annapolis Convention and a clear majority of the states insisted that any amendments coming from the Constitutional Convention would have to be approved in this same manner—by Congress and all 13 state legislatures.

The reason for this rule can be found in the principles of international law. At the time, the states were sovereigns. The Articles of Confederation were, in essence, a treaty between 13 sovereign nations. Normally, the only way changes in a treaty can be ratified is by the approval of all parties to the treaty.

However, a treaty can provide for something less than unanimous approval if all the parties agree to a new approval process before it goes into effect. This is exactly what the Founders did.

When the Convention sent its draft of the Constitution to Congress, it also recommended a new ratification process. Congress approved both the Constitution itself and the new process.

Along with changing the number of required states from 13 to 9, the new ratification process required that state conventions ratify the Constitution rather than state legislatures. This was done in accord with the preamble of the Constitution—the Supreme Law of the Land would be ratified in the name of "We the People" rather than "We the States."

But before this change in ratification could be valid, *all 13 state legislatures would also have to consent to the new method.* All 13 state legislatures did just this by calling conventions of the people to vote on the merits of the Constitution.

Twelve states held popular elections to [redacted] for delegates. Rhode Island made every voter a delegate and held a series of town meetings to vote on the Constitution. Thus, every state legislature consented to the new ratification process thereby validating the Constitution's requirements for ratification.

Those who claim to be constitutionalists while contending that the Constitution was illegally adopted are undermining themselves. It is like saying George Washington was a great American hero, but he was also a British spy. I stand with the integrity of our Founders who properly drafted and properly ratified the Constitution.

Convention of States is a project of

CITIZENS FOR SELF-GOVERNANCE

(540) 441-7227 | CONVENTIONOFSTATES.COM | Facebook.com/ConventionOfStates | Twitter.com/COSproject

3/19 #2

HCR 3014 Testimony

My name is Craig Johnson and I am a farmer and rancher from Maxbass North Dakota located 35 miles North East of Minot.

I am testifying in favor of HCR 3014. The Federal Government is currently operating as a Government of career politicians by lobbyists for special interests. This is a far cry from the intentions of the Founding Fathers for a Government of the people by the people for the people.

Some of my grievances against the Federal Government are as follows:

The IRS has 73000 pages of regulations for taxation. This requires me to hire a Tax Professional to prepare my tax returns. I paid him $900 last year and I still received letters from the IRS threatening to seize my property and assess fines and interest for untimely and incorrect method of payments.

The North Dakota Department of Transportation requires me to file IRS form 2290 before it will give me licenses for Semi Trucks.

The EPA wants to control all surface waters on the land that I own and operate. The EPA also wants to regulate my fuel tanks and the emissions from motorized vehicles and machinery.

The National Agricultural Statistics Services sends me several surveys every year and requires me to respond to them under penalty of law.

The time and money that I spend complying with Federal regulations is unreasonable. There is no humanly possible way to read the thousands of pages of regulations let alone comprehend and comply with them.

The call for a Convention of the States is long overdue. The States must reign in the Federal government and return it to the original intention of the Constitution.

We need to have Life, Liberty and the pursuit of happiness restored to the people.

Thank you,

Craig A Johnson
8080 17th Ave NW
Maxbass ND 58760

The destiny of our nation and our statehood is not a matter of chance but choice. With the present state of our economy: the challenges our state and nation are facing: the dramatic shift away from our founding moral principles: the horrific adulteration happening against our Constitution, I see America standing now at the end of the road. The kicking the can down the road has come to its end.

I just returned from an intensive three day meeting with some brilliant common sense well informed people. One of which was Ret. General Jerry Boykin.

America is at its final crossroad. If we pick wrong every American will be financially affected before this year is over. And I am stating this with very soft gloves. To say it the way it is, if we do not take control through an aggressive decision for HCR 3014 we will lose everything.

Our Bretton woods agreement is all but finished. We no longer live and prosper on the coat talls of those who went before us. A new order has already begun in global finance and America's dollar will no longer be the reserve currency. The Imf is preparing what is called a basket of currencies from many nations to replace our dollar.

The value of your farm or your business will soon be the value of the paper dollars printed on.

Also, we are not passing laws that restrain us. The government today is doing it through regulations.

The day is quickly coming where all you will have left is the right to own your property without the right to use it as you see fit.

I believe a convention of states is our last hope to restore America. Congress will never do it.

If its apathy that holds us from taking action, apathy will ruin our last chance.

I cry out to our ND Legislature to boldly take your stand and support HCR 3014.

#3 pg 2

John Boustead

1203 e. Highland Acres Rd

Bismarck, ND 58501