

Article V And The Tenth Amendment Movement

A Prequel To An Article V Convention?

By Bill Walker

You would have to be living under a rock not to realize the unprecedented constitutional movements happening around this nation today. Pushed by the extreme liberalism and spending programs of the Obama administration, a recession that seems determined to become a depression, an out of control central government violating so many provisions of the Constitution seemingly at once and (finally!) the realization by many in the state legislatures that their sovereignty has been eroded by the avarice of Washington DC, many state legislatures have begun to react. Many states are considering state constitutional conventions; others are asserting state sovereignty under Tenth Amendment resolutions intended for presentation to Congress.

In many countries events such as I have just described would be sufficient to cause a civil war to erupt. Thus far, the states have been content to remind the federal government that (1) there is a thing called the Constitution in this country; (2) that Constitution says the states have sovereign rights and (3) the United States government is supposed to obey the Constitution and thus respect the sovereign rights of the states. Frankly, given the overall history of this nation and the actions of the federal government to date, this effort by the states reminds me of closing the barn door not just after the horse has got away but has had time to run into the next state.

What should concern everyone is not that the states are passing these resolutions or even the fact they are considering them. Many of these will not pass the state legislatures. New Hampshire, for example, failed to pass its version of assertion of Tenth Amendment sovereignty in a very close vote taken March 4. Only the most politically foolish or naive would assume that given such a close vote, this spells the end of this movement.

What should concern everyone is, given the Obama administration and Congress will not pay one bit of attention to these resolutions, what then? What do the states do then? There are several reasons why the federal government will not heed these resolutions. First, the resolutions take no actual action. They are resolutions, not law. They assert a right of a state *to* take an action. Until the states act as described by the resolution, nothing will happen. The federal government will not show its hand to something it *thinks* will happen. Second, the federal government knows that so far this movement has come almost exclusively from the political right, more specifically from the conservative side of the political right. Thus, the federal government can gamble politically that at least half of the states will not join in this movement. Third, the federal government realizes even if the all the states did assert sovereignty under the Tenth Amendment, it really means nothing.

The reason for this is neither the Tenth nor the Ninth Amendment, also discussed in recent weeks, actually forces or causes any action on the part of anyone to do anything. True, the amendments in question guarantee rights. However, there is no mechanism of the right, meaning no method exists whereby the right in question is enforceable under the terms of those two amendments. Traditionally, the government is responsible the mechanism of a right. For example, at least two amendments in the Constitution specify the right to vote for all citizens. The amendments assign enforcement of the right to Congress through “appropriate legislation.” Hence, the mechanism of the right of the right to vote is assigned to Congress to ensure all citizens enjoy their right to vote. Through this mechanism, the government creates laws to allow for voting, tabulation of voting, and penalties for those who abuse or thwart the vote and so forth. In short, the mechanism of the right is the process whereby the right expressed is actually *executed*.

But how do you enforce the Tenth Amendment? Where is that mechanism of the right that allows either for the federal government to enforce it, or the states to do likewise? Obviously, the matter cannot be left in the hands of the federal government for it they who are committing the offense, which requires redress. This then leaves the states to redress the imbalance.

How will this be done? For without enforcement, the Tenth Amendment will become another dead letter of our “living” Constitution. I often marvel at how much of our Constitution has become “dead letter” as the liberal concept of a “living” Constitution has developed. It reminds of an attack of black spot on my roses—by the time I’ve finished trimming all the leaves infested with black spot, I may still have a “living” rose but it’s certainly nothing worth looking at.

Make no mistake, whether or not a single state passes any of these Tenth Amendment resolutions, the states have committed themselves to an action from which there is no turning back. We should most concerned with that course of action by the states. If the states fail to back up their resolutions with real action, the federal government will know the states truly are nothing more than political sub-units of the federal government to be ordered about as servants. They will crush any future concept of state sovereignty as easily as one might pluck a rose from its branch and crush the flower in their hand.

But what action will the states take? Certainly not armed revolt. Not yet anyway. The last time the states asserted nullification of federal laws was 1832. The state of South Carolina led the way that time. President Jackson stopped the nullification movement in 1832. However, the problems that caused South Carolina to act in the first place continued and ultimately, 30 years later resulted in the Civil War. Hopefully history will have taught us something and the issues this nation now faces will be addressed peacefully before these forces become so extreme no other choice is possible but armed conflict.

There is a peaceful alternative in the Constitution. By its use, the nation will know how serious the states are about sovereignty and how serious the federal government is about not obeying the Constitution. That moment will come when one of the states realizes the

mechanism of the right expressed in the Tenth Amendment is an Article V Convention. That state will also realize many of the complaints raised in these various resolutions by the states have already been addressed as proposed amendments designed to limit the power of the federal government in applications submitted by the states for a convention. At that point, the states will shift from mere assertion of their sovereign rights to the implementation of these rights. Or, at that point, the nation will know for certain, we have a runaway central government bound by nothing but its own power-driven desires as the federal government in spite of direct constitutional language, vetoes the Constitution and refuses to call a convention.

All 50 states have submitted over 700 applications for an Article V Convention and we at FOAVC (www.foavc.org) have been telling the state legislatures about these facts and others about an Article V Convention for some time. Coincidentally, this Tenth Amendment movement seemed to begin just about the time we first contacted members of various state legislatures regarding the facts surrounding an Article V Convention. There is no question that through this constitutional method of amendment, the states can reassert their sovereignty. Indeed, it is quite clear the Founders intended a convention to be the limiting mechanism on a federal government that had or would grow out of control. Congress knows fully well that it is obligated to call an Article V Convention. At www.foavc.org we have copies of nearly all applications the states have submitted to Congress for a convention call. These include copies of the Congressional Record showing summaries of applications submitted by the states. Such things do not happen by accident. Someone in Congress had to request the Congressional Record do such a summary and obviously, it shows Congress is fully capable of tracking, recording and acknowledging the applications by the states for a convention.

In short, the reason we don't have or never have had a convention, is because Congress doesn't want to obey that portion of the Constitution either—yet another branch of the constitutional rose falls victim to the black spot of federal government avarice.

Of course, there are those shrill voices that keep screaming that an Article V Convention will end life on earth, as we know it. They scream a convention will write a new Constitution like the convention did in 1787. Of course, they ignore the fact that Congress instructed that convention to do just that by telling them to make whatever changes to were necessary to address the issues of the Articles of Confederation. And these critics ignore the fact that there was no way anyone could not know at the time the Constitution was intended to replace the Articles of Confederation. A simple read of Article I, Section 10, Clause 1 settles that point: “No State shall enter into any Treaty, Alliance or Confederation...” The same is true if a convention did as these fear mongers say. Any new constitution written would have to state in no uncertain terms it replaced our current Constitution, just as our present Constitution stated it replaced the Articles of Confederation by no longer permitting a confederation of states to exist. Even if a convention presented a new constitution, it would still require ratification under our present system of amendment, meaning ratification by three fourths of the states in public votes. We have nothing to fear however. Article V does not permit either Congress or a convention to write a new constitution in the first place. It states twice that only

amendments may be proposed or ratified “as part of this constitution.” Moreover, no state has ever offered even as much as one application asking a convention write a new constitution. Without massive state support in the form of ratification, any new constitution would be doomed from the start.

But what these shrill voices of fear want everyone to ignore and what the Tenth Amendment movement shows is that all of the fear they have about a convention taking over the Constitution and “writing” a new one, has already happened by the federal government being allowed to create a “living” Constitution. In short, what they fear a convention *might* do, the federal government already *has* done. Only an Article V Convention can reverse this process.

An Article V Convention is the only mechanism of the right of state sovereignty that exists in the Constitution. Through that mechanism, and only through that mechanism, can the states reassert their sovereignty expressed in the Tenth Amendment. The states can bring about changes in our Constitution, which specifically address the excesses the current federal government has created. They have already submitted amendment proposals intended to redress these problems. These proposals include amendments designed to regulate unfunded federal mandates, repeal of federal income tax, initiative, referendum and recall of federal officials, state review of federal court rulings, regulation of the federal budget and other similar amendment proposals.

Those in the state legislatures saw this problem coming years ago and did their duty to protect state sovereignty. They used their constitutional authority to compel Congress to call an Article V Convention and submitted the applications necessary to require Congress to do so. They proposed amendments in these applications intended and designed to curtail the excesses of government. Congress ignored that authority and continues to ignore the Constitution. As a result, we are where we are in this nation. The fact we are here is clearly not the fault of the states or a convention. It is clearly and exclusively the fault of Congress and the federal government.

It is up to us now to complete the work. It is time to bring the needed political pressure on Congress and force them to obey the Constitution. It is time to call an Article V Convention to propose amendments to deal with the issues raised in these Tenth Amendment resolutions. It is time to let the rose bloom again in full splendor.