An Article V Convention;
What Else I Wanted To Tell Mike Church

By Bill Walker

Recently, I was a guest on the Mike Church radio program as lead in guest to his radio symposium on an Article V Convention on April 9, 2010. I enjoyed talking to Mike. Mike obviously has studied the Article V issue in detail. He knows his material. As a result, he supports using Article V to resolve the issues of this nation.

Due to time program constraints, I only had a few minutes on Mike's program to talk about an Article V Convention. I wish I had had more time for there were many things I wanted to discuss with him and his audience.

We began by talking about some of the myths surrounding the Article V Convention. It is no secret that all of these myths began with the anti-convention campaign of the 1980's by the John Birch Society. It's also no secret while the JBS and those who believe the lies told by them may complain a reason a convention should not be held is because "we can't control the agenda of a convention" the fact is the JBS has controlled the agenda of the convention, indeed the agenda of the entire Constitution, for the past 35 years. Indeed, it is because JBS has controlled the agenda that we find ourselves currently in this mess. They are solely to blame for this. Because of the completely unfounded fears the JBS has generated over using an Article V Convention to propose amendments to this Constitution as an alternative to expecting Congress to do so, this insignificant right wing extremist organization has totally shut down the amendatory process. As a result, when that process has been required and needed most it has been unavailable.

The result has been nothing less that complete constitutional chaos generated by an expansive federal government so consumed with itself, it no longer even attempts to justify its actions as specified by the Constitution. Instead of amending the Constitution as intended by the Founding Fathers, what has grown up instead is a jerry-rigged system of judicial rulings, executive actions and an out of control congressional laws cumulating in so obvious constitutional violations that it is hard to describe them with any other word but dictatorship.

So what about these myths? The top of the list was the runaway convention myth that is; a convention will simply rewrite or create a new constitution and impose it on the nation. This myth is based on what is said to have happened in 1787 at the constitutional convention. I refuted this myth in another column so I will not repeat myself here with all the details. In summary, the public record shows the convention obeyed the law of the land at that time. No such "runaway" convention ever existed.

One thing I did not mention in my column was the numerous votes necessary to allow the Constitution to replace the Articles of Confederation. The votes included: a vote by Congress to issue its resolution calling for the 1787 convention; 24 votes by the states to

send delegates (one vote by each house of the legislature); the some 200-500 votes in the convention itself to create the Constitution. Then followed a vote by Congress to agree to the proposed Constitution followed by a vote in each state legislature in both houses to allow the ratification conventions called for in the Constitution to occur. This vote included the following: a vote to hold the conventions; a vote to finance the conventions; a vote to hold elections for the convention delegates; the actual election of delegates by the people; a favorable vote in the ratification conventions and finally, a vote by the state legislatures to accept the vote of the ratification conventions. Summed up, at least 143 votes were required, not counting the 200-500 votes of the 1787 convention itself. One negative vote, and there would have been no constitution. If the convention were a runaway as the myth holds, then certainly not all of the votes would have been favorable. Clearly, the people at that time did not view the convention as a runaway.

I also mentioned to Mike the myth that a convention will write a new constitution and take away all our rights. Pure bogus. First, Article V limits a convention only to proposing amendments to our present Constitution. If a convention were to attempt to write a new constitution or impose it on the nation, their actions would violate several federal criminal laws such as violation of oath of office and insurrection. Delegates attempting this overthrow of our constitutional form of government will face arrest. Beyond these protections are the political ones. There is no way such an attempt would get support from 3/4ths of the states. If we are discussing repeal of rights, remember this is the amendment process. An amendment is written. Its purpose is clearly stated, i.e., "the Second Amendment of the Constitution is hereby repealed" just as was done with the 21st Amendment. No body would support that.

The Burger letter, allegedly written by former Chief Justice Warren Burger was mentioned in my interview with Mike. Again, I discussed this bogus letter in two columns where public record refuted the authenticity of the so-called "Burger Letter." Suffice to say here there are enough questions surrounding the letter to question whether Burger actually wrote it. Chief among these are the fact the letter was "discovered" by a known John Birch Society operative rather than it being released by its supposed addressee Phyllis Schlafly. The date of the letter is 1983 according to several anti-convention it states Burger was "retired" from the Supreme Court. Burger retired after 1983. The letter contains other factual errors. Burger is on public record supporting use of a convention to amend the Constitution. In Phyllis Schlafly's biography, discussing letter the footnote reference does not even refer to this letter, but two others sent to Burger. Perhaps most revealing is the fact Phyllis Schlafly has never come clean, that is released to the public, all the correspondence and other meetings between her and Burger, which are referred to in the three letters. In short, Schlafly has not told the full story and the letter does not stand up to scrutiny.

Although we did not discuss it on the program, I did want to mention to Mike about the fact that any complaints about the agenda of a convention are false. The terms of Article V are clear. A small number of states, 13 in all can prevent ratification of any proposed amendment. Of that number, only one house in each legislature needs to object to the proposed amendment. Further, for both convention and congressional proposals, states do

not have to wait until the amendment is proposed. Legislatures can simply declare at any time, whether or not they will support a proposed amendment. If enough states so vote, political reality sets in; why propose an amendment that will not be ratified? Thus, by this constitutional power alone, the sates clearly control the agenda of a convention.

Moreover, I would have told Mike that a convention is not only constitutional but also political in nature. Not all delegates are going to agree on everything. Hence, the two-thirds requirement necessary to propose an amendment in the first place puts a high obstacle in the way of any radical or unpopular amendment proposal. With the two barriers, political and constitutional, is the agenda of a convention is clearly controlled. What convention opponents mean when they say the convention agenda cannot be controlled is that *they* can't dictate and control it *for their own political purposes*.

I mentioned to Mike that many people do not understand what the purpose of an Article V Convention application is. Many people assume the application is for an amendment and thus assume 34 states must apply for a specific amendment issue before Congress has to call a convention, known as the "same subject" myth. In fact, this is wrong. A convention must be called when 34 states apply, in other words, a simple numeric count of applying states regardless of whatever amendment issue or issues may be contained in the application. Black's Law Dictionary defines an application as, "The act of making a request for something. A petition." It describes a petition as, "A written request for action on some matter therein laid before a board." Article V clearly states, "...on the application of two thirds of the several state legislatures [Congress] shall call a convention for proposing amendments..." Thus, an application is a request for Congress to call a convention, not for a specific amendment issue. Therefore, all of the over 700 applications from all 50 states are for the identical object or subject: to have Congress call a convention.

I would have mentioned to Mike if time has allowed that because Congress has refused to do its mandated constitutional duty in a timely manner this first convention will have to deal with over 20 different amendment issues contained in the applications. While it is true the applications cannot preset a convention agenda to a specific subject (as the convention is empowered by the Constitution to propose amendments) nevertheless as the state has presented the issue, the convention is duty bound to consider all matters the states have raised over the years. It is not required to propose all amendments the states have asked for but most certainly, it must at least discuss all that have been advanced. Old issues that no longer have political support will quickly be dispensed with but this will still leave several issues such as abortion, term limits, repeal of federal income tax, judicial term limits and other contemporaneous political issues on the convention floor to resolve. Obviously not all of these issues can be written into a single amendment proposal. Thus, if a convention does propose multiple amendments, it will be because Congress has not called a convention in a timely fashion. Moreover, the issues facing this nation mandate a series of amendments to resolve rather than a one size fits all problems amendment.

Had there been time I would have told Mike that future conventions would be single subject conventions for two reasons. First, once Congress is compelled to call a convention, it will be impossible for it to refuse to do so in the future. Clearly the people and the states will demand Congress maintain a public accounting of applications and thus when the numeric number of applying states is reached, Congress will have to call. Once people realize there is a viable alternative to expecting Congress to make changes, and that they can do the job themselves, it may be the convention method will become the preferred method of amendment proposal. As such, when the states submit the minimum number of applications required, a convention will occur. From a political point of view, this likely means one, or at most two issues, will be on a convention agenda rather than the numerous issues facing this first convention. Political movements begin slowly, rise to a peak and then fade away. If that movement concerns a proposed amendment Congress refuses to address then it is obvious the states will submit applications for a convention to propose the amendment. Such movements also tend to be isolated, and have a particular period where they are the center of national attention. Given these facts, applications for a specific political movement will be at a single time, meaning a single issue convention as there will simply be no political interest in any other issue.

Another issue I would have liked to discuss with Mike is the excuse that we should "obey the Constitution as is". Frankly, given the realities of the politics in Washington today, the people that advocate this as a solution to our problems are living in a fantasy world. The national government is no more going back to obeying the Constitution "as is" on their own than an alcoholic can be expected to stop drinking on his own. Neither even realizes they are sick. Only intervention, in both cases, can stop the abuse, of political power in the former and alcohol in the latter. Indeed, if one examines the problem, the two problems are identical in nature as both are dependence, one on political power, and the other on a readily available drug. Both require extreme intervention from an outside source to cure. Of course, the problem with this objection is that if the Constitution is obeyed as is, this means calling a convention that the proponents of this objection do not want. Hence, they really mean obey the Constitution---sometimes. The obvious constitutional hypocrisy of this position makes its defeat a done deal in a few quick, short sentences.

I did talk to Mike about the fact that concerns about one political movement taking a convention over are unfounded. Various groups of delegates representing different political points of view will compose the convention. As such, these groups will not work together on all proposed amendments; in most cases, they will oppose all but the most broadly supported amendment proposals. The major point I made to Mike was that unlike in earlier times, the general position of most people today is that there is a need for a convention without presetting a particular amendment relating to the calling of the convention. In the 1980's for example, a convention was desired but only for a balanced budget amendment. This time, it appears the general attitude is a convention with no plan such that the delegates come together to conceive a series of amendments aimed at correcting the government excesses. In short, the idea of a convention being called is standing on its own merits with dependence on a particular amendment issue so that

delegates will be free to address the problems of our government rather than coming in with a pre-planned agenda that may not be the solution after all.

What has changed from the 1980's to bring about this change in attitude? For one thing, FOAVC exists where it did not in the 1980's. In those days the John Birch Society was free to make whatever lies it wanted and no body bothered to check the facts to see if what they were saying was in fact true. No one knew how many applications the states submitted to Congress. Congress never bothered to keep a record of these applications. In fact, no one had even bothered going to court to establish by official government statement exactly under what circumstances Congress had to call a convention. Today all of these issues have been resolved thanks to the work of FOAVC. Thanks to FOAVC, the over 700 applications from all 50 states are now easily available to anyone wanting to read and study them. FOAVC has exposed the lies of JBS using nothing more than easily verifiable public record. Two federal lawsuits resulted in the government admitting what the terms of a convention call by Congress is. The terms by the way are that a convention call is peremptory upon Congress. A sufficient number of applications exist to cause Congress to call. The call is based on a simple numeric count of applying states with no other terms or conditions. For Congress to refuse to call constitutes a criminal violation of oath of office laws. In short, people now know the truth.

Mike and I briefly discussed Coleman v Miller, a Supreme Court decision made in 1939, which stated Congress controlled the entire amendatory process. Coleman allowed that Congress, under the political question doctrine, could usurp the president as commander in chief, use the military to remove a state legislature, put in people of its choosing to replace and then acquire a ratification vote it desired for a proposed amendment from that "new" state legislature. The court also said however that from henceforth any decision by the court was advisory only "given wholly without constitutional authority." Therefore, while I pointed out Nancy Pelosi may have such power, that "power" comes from an advisory court decision given without any constitutional authority whatsoever. Under these circumstances, advice Nancy might get at her local watering hole is as equally authorative. I told Mike Nancy Pelosi lacks the intestinal fortitude to use such power, as it would be a clear violation of numerous criminal laws. Moreover, I pointed out to Mike members of Congress are afraid of an Article V Convention. They know a convention will strip them of their political power and the last thing they want to see is a convention. I told him about one member of Congress running away from a public meeting when confronted by a member of FOAVC about Article V. There is no question in my mind that Congress, when confronted, will call a convention. The question is who will confront and when will they confront Congress.

What I would have also mentioned to Mike had there been time is that it is likely Nancy Pelosi may have outsmarted herself by her recent actions concerning health care. By using parliamentary tactics to "deem" healthcare passed rather than actually voting on the bill, she may have opened the door to a convention call regardless of whether or not Congress actually calls one. Article V clearly states Congress must call a convention if the states apply in proper number for a convention. It is therefore logical to assume a convention cannot happen unless Congress calls it *and this has been the sticking point;*

Congress refuses to call. However, as the call is peremptory, cannot the states now "deem" the call to have been made *regardless of whether or not Congress actually calls the convention*? Before Nancy Pelosi's antics regarding the legislative requirements of Article I, I firmly believed the states did not have this authority. Now, I am not so sure. Assuming the courts in any way justify her actions, I'd have say then the states do have such authority based on the fact that the legislative amendment system of Article I and the amendatory system of Article V are equivalent. Each describes a set method whereby change to law is made. In the case of Article I, the system allows for creation, revision or amendment of statutes. In the case of Article V, the purpose of the article is to amend the Constitution. *But both share the common trait of describing a precise process by which, and only by which, such changes are permitted to be brought about*. Hence, allowing the one process to be ignored by the body it is mean to regulate may mean the same applies in the other process. However, given the fact a sufficient number of applications exist and that the political powers in Washington have no stomach to risk criminal charges, it is likely the states, regardless of any decisions by the courts, will not have to resort to the same unconstitutional tactics as Nancy did with healthcare "reform."

Moreover such a tactic by the states runs counter to decisions made by the courts which state neither state or national legislatures or courts can changes what the Constitution has fixed as to the process of Article V. The courts has also stated there is no interpretation or construction, (i.e., reading into Article V anything that is not actually stated in it) of Article V. The Coleman decision does not alter these statements as the courts did not they were advisory but an actual binding ruling upon the parties involved and the Constitution by means of ex post facto prevents Coleman (which did not so state) from being applied to these decision retroactively. Thus, Article V does not describe same amendment issue, contemporaneous, rescission of applications, writing a new constitution and so on. Therefore, they do not exist as powers of a convention or of the states. Moreover the courts have long ruled the president shall have nothing to do with the amendatory process meaning Congress can propose no legislation regulating a convention as the president cannot sign it.

However, if the courts accept legislation approved by Congress *without obeying the specific procedure in the Constitution*, then all bets are off. Congress gets a carte blanche ticket to legislate anything by any means it wants. Most likely, it will then proceed to pass legislation without even bothering to present it to the president for his veto having "deemed" to be signed and approved. The dangers of this are so obvious no further comment is required.

Only amendments can prevents disasters like this. This is why a convention is so important. Congress is the cause of all this issue. There is no way it will ever correct itself. Only an outside body such as a convention can propose the needed changes in order to stop this. The intervention must come from the people and the states; nothing else exists to do the job.

I briefly mentioned my two federal lawsuits to Mike but time constraints prevented an in-depth discussion of them. I am sure Mike would have said many have suggested because

I was denied standing in my suits, they are not that important. However, the fact is standing does not change the public record referred in them, nor does it nullify the admissions of the government obtained at the Supreme Court. Beyond this, my suits did not require standing. First, I designated my legal petitions to the courts as a "suit." A reading of the Supreme Court's rulings on standing to sue shows a glaring omission by the court. In all of its rulings, the court has never mentioned the word "suits" in describing what type of legal actions must have standing. Instead it has limited its discussion to "cases and controversies" the language found in Article III. However, suits are mentioned twice in the Constitution, one in the Seventh Amendment and again the Eleventh Amendment. The Eleventh Amendment specifically amended Article III and thus it is clear that language is part of Article III. Hence, it is actually "case, controversies and suits." As the court has only mentioned cases and controversies, as requiring standing the logical conclusion must be suits do not require standing. Second, as I have mentioned, the Supreme Court in 1939 said that any lawsuit dealing with the amendatory process was advisory only. Advisory legal actions do not require standing to sue as no one is actually be sued. Finally, in that decision the court held Congress has "exclusive" control of the amendment *process*. That is, how an amendment actual becomes part of the Constitution. Thus, as my two lawsuits were advisory, the key of the matter lay not in a court ruling but in the admissions I received from the official attorney of record for all the members of Congress, the Solicitor General of the United States in his admission regarding the fact and law of the conditions of an Article V Convention call. As Congress controls the entire "process" this public admission constitutes official government policy rather than any advisory opinion any court may have issued or approved which in this circumstances does not.

Had there been time, I would have pointed out my lawsuits established for the first time in history, what the terms of a convention call are, that is, the suits established when Congress is required to call a convention. In sum, the lawsuit established that convention call is peremptory on Congress, that sufficient applications exist to cause Congress to call a convention, that a convention call is based on a simple numeric count of applying states with no terms or conditions and that for members of Congress to refuse to call is a criminal violation of oath of office. That law, by the way, states that any offender of violation of oath office "may not hold or accept federal office." Named defendants in that lawsuit included Obama, Bidden and Pelosi. The question should be for all, if the law says these people cannot hold or accept federal office by what authority are they still in office passing legislation that most people oppose.

No terms and conditions as to amendment applications clearly means that such pseudo issues as same amendment issue or the applications being contemporary in nature, that is, within a particular time frame, simply do not exist. The government was required under the terms of the court rule (which is not effected by its advisory ruling) to state whether I had stated the facts and law of the suits correctly. The government acknowledged there was no misstatement of facts or law.

If there had been time, I then would have explained to Mike about how a convention call would occur in Congress. As clearly stated following an application by the state of

Virginia in discussion in Congress Congressman James Madison who actually helped write Article V and was at the 1787 convention and thus would clearly understand the intent of the founders, stated convention calls are not debatable in Congress. Madison stated convention calls could not be committed as this implies debate and a decision not to call. Congress simply calls a convention.

The call will be accomplished by a single member of Congress simply rising on the floor of either house and notifying the chairman of that house that evidence exists to prove a sufficient number of states have applied for a convention call. The member will then request Congress immediately form itself into a committee of the whole to select a time and location for the convention. Refusal by that chairman or anyone in Congress to do so would be a violation of oath of office. Beyond this ministerial duty, Congress has no other authority regarding a convention. Article V does not give Congress the power to regulate a convention and as stated earlier the court has excluded Congress even more by removing the president from being involved in the process thus precluding Congress from writing such legislation. This also prevents Congress from in any manner funding a convention and thus using its purse string power to control a convention.

Finally, had there been time, I would have discussed with Mike how a convention will be structured and what we know about that structure from a simple reading of the Constitution. First, we know the courts have held states operate under the federal constitution when submitting applications. We also know that when electing members of Congress who have the authority to propose amendments, state election laws also apply. Therefore, we know that both state laws and federal laws will apply under certain circumstances to the convention.

An Article V Convention is created entirely by Article V of the United States Constitution. Therefore as a product of the Constitution, it is subject to all terms and conditions of the Constitution. We know that only members of Congress and convention delegates can propose amendments to the Constitution. Article V does not permit states to propose amendments, only ratify them. This fact forms a clearly defined legal class composed of citizens authorized to propose amendments to the Constitution, i.e., members of Congress and convention delegates. Under the terms of the 14th Amendment, all citizens in a legal class must be treated equally under the law. This means therefore whatever applies to Congress in the Constitution and in law as it relates to the amendment process equally applies to the convention and visa versa. Thus if Congress were to pass laws attempting to regulate the convention, the same restrictions would also apply to them. Thus, if they were establish, for example, the agenda of a convention can be regulated by Congress, it follows the states could then regulate the agenda of Congress in the same manner.

As the Constitution mandates certain terms of admission for who can be a member of Congress, these terms must equally apply to convention delegates. The Constitution mandates all members of Congress be elected; therefore, all delegates must be elected. As the least member of Congress, a member of the House of Representatives, has the lowest set of terms that must be satisfied in order to be a member of Congress, these terms must

equally apply to convention delegates. Therefore we know all delegates will have to be at least 25 years old, seven years a citizen of the United States and an inhabitant of the state they will represent. As state laws apply to electing members of Congress, we know that these state laws will equally apply to convention delegates. Hence, electing delegates will be just like electing members of Congress.

The 14th Amendment will also define the size and number of convention delegates435 delegates from the states under the principle of equal representation for congressional members and convention delegates. While the states may appoint non-voting delegates to their delegations, elected delegates must hold the voting power just as in Congress. Moreover, as the convention has a limited purpose, proposing amendments, it is clear the term of office of a delegate will terminate when the house the delegate belongs to adjourns, that is finishes proposing amendments and terminates permanently just as members of Congress have a limited term in office. However, while members of Congress may seek reelection to office, until the states reapply for a convention, there will be no office and hence no delegate in that office. The end of the convention means the delegate returns to private life.

Politically, the people will vet delegates during election on the actual proposed amendments that will be before a convention. As only proposing amendments is the sole business of the convention, the position of the delegate/candidate on those proposals will be all that the voter can examine. Hence, the election will be all issue oriented. As such, it will, in fact, be a referendum on the amendment proposals before the convention, as the voting will, in large part, determine the fate of proposed amendments by which delegates the electorate sends to the convention. Under the terms of the Constitution, if there are any vacancies after election of delegates, the state executive will issue writs of election for a new delegate.

Just like Congress, the convention will be required to keep a journal of its proceedings including a record of all votes and debates. Because of the Internet and television coverage, will gavel-to-gavel allowing people to follow the convention process much more closely that with Congress. The convention most likely will use the Internet to allow people to propose actual amendments for the delegates consider. In this way, the convention will be an interactive process between the people and the convention, something Congress strenuously avoids at all costs.

Unlike Congress however, a convention will not allow committee chairman to determine the fate of an amendment proposal. The committees will simply write the proposed amendment, which then goes to the convention floor for review, modification and final determination by that body. The convention most likely will use Robert's Rules of Order as most organizations do until it can construct whatever rules it needs to conduct its business. These rules will be extraordinarily simple as all that will be required will be rules on motions, amending motions, voting on proposed amendments and adjournment. There will not be the bags of bogus parliamentary tricks found in Congress, as there is no reason or need for them. Either the convention will support a proposed amendment or it will not.

Like members of Congress, delegates will be required to take an oath of office as a federal officer. This means delegates will be subject to criminal laws mandating they support our Constitution and its form of government. Other federal laws such as bribery prohibition or influence peddling will also be in effect.

Most importantly, the convention must operate such that all states equal and they form a defined legal class. After all this is a STATE Article V Convention. In sum, this means the delegates will vote by states rather than as individuals. Hence, there will be 50 state votes comprised of 50 state delegations voting each time within that delegation to decide what the vote of that state will be. For motions and seconds, just as was done in the 1787 convention, a motion will come from one delegate of one state but another delegate from another state delegation must second.

Last, because the Constitution mandates a two-thirds vote from Congress to propose amendments, the same will hold true for a convention. Any proposed amendment must receive a two-thirds vote from the state delegations assuming a quorum, just like Congress. No member of Congress or of any other political body such as a state legislature will be able to be a convention delegate and a member of that body. The Constitution prohibits any federal officer from holding more than one office at any one time. Thus, convention delegates will be completely outside the usual political operations that have caused this mess.