

# The Law and The Article V Convention

By Bill Walker

One of the major concerns shared by many people in regards to an Article V convention is that it be “safe.” By “safe”, these people mean that the convention will operate within the confines of a particular prescribed outline of law. In other words, the convention operates within the law.

To have a convention do this first means defeating one of the propositions set forth by convention opponents, that there is no law which exists that controls or would control a convention. No law, no control, no convention. A convenient line of thinking for convention opponents desiring the government vetoes the Constitution. However, a false line as there is quite a sufficient amount of law already established to regulation a convention.

If nothing else, the fact some 700 state conventions have been held in this country means that if no other law existed, state law is adequate to the job. After all, there is no record whatsoever that shows any convention at the state level has overthrown the state government or removed all the rights of state citizens or thrown them into some kind of state slavery. Hence, the laws regulating such state conventions must be equal to the task to prevent such events. There is nothing to suggest they would not be as equal to an Article V Convention.

However, in one of several rulings the Supreme Court of the United States logically held that since the convention is only described in the *federal* constitution and since the actions of a convention can only effect the *federal* constitution, that whenever the states act in regards to amending the *federal* constitution, they operate, not under authority of their own constitutions, but that of the *federal* constitution and therefore *under the laws created by the authority of the federal constitution insofar as it relates to amendment*. In all of this, remember; the Supreme Court deals with *law*. Even the Constitution is supreme *law* of the land. Black’s Law Dictionary describes law as “a body of rules of action or conduct prescribed by controlling authority, and having biding legal force.”

Given there are numerous federal criminal laws which penalize those who do not obey or attempt to overthrow the Constitution and its *prescribed* form of government as established in the Constitution, it is not much of a leap to state the Constitution, beyond all else, is itself a law meaning that with all law, it must be obeyed, *as is*. To disobey this law is not only to expose oneself as a constitutional hypocrite but also to open oneself to potential criminal prosecution. It is, for example, illegal to state you have knowledge of a criminal act, such as suggesting certain government officials intend to act contrary to the Constitution, and then fail to report such knowledge to the legal authorities. For those unfamiliar with this illegal act, it is conspiracy and obstruction of justice. Both crimes carry severe criminal sanctions.

Hence, when you read or hear from someone like the John Birch Society who states government officials who share a particular political point of view will use an Article V Convention, not to further that view by constitutional means of amendment proposal, but by other unconstitutional means, you must ask yourself this. If what John Birch says is true why have they not turned the information over to the police. Why is it that while members of other extremist groups are being hunted down, burned out of buildings, involved in mass shootings and so forth, why is it the John Birch Society and its members remain completely untouched by the government?

After all, clearly the John Birch Society in its views is an extremist as any other right wing organization so it cannot be because the Society lacks the political qualifications to be on the federal government's radar for radical wing nuts. Indeed, common knowledge suggests the Society has been on such radar for generations. Yet, the Society and its membership are left strictly alone by the government.

There are only two possible answers for this fact. One, the Society is in league with the very people it says are attempting to overthrow our form of government. They are part of an elaborate conspiracy by members of the government and the Society to accomplish this aim. Or, two, there is no truth to anything the Society says regarding plans by the people it names to do what they allege these people want to do. In short, the Society is lying.

Which seems more logical given the Society's history of lies that have been exposed not only by myself but others when it comes to an Article V Convention---that they are part of a government conspiracy or they are simply lying. Ask yourself this---if members of the John Birch Society were *really* loyal, patriotic Americans as they claim wouldn't it make sense they would make every effort to support the Constitution, which includes at the least, reporting information of a government conspiracy to the authorities? Given there is no record of them ever having done so, and the fact that to report such a conspiracy when you know such reporting to be false is itself a crime, the fact the Society has never reported their "findings" to authorities suggests all they state is fabricated lies.

One of those lies is there is insufficient law to regulate a convention. This falsehood has claimed many victims including much of the legal establishment. Beyond the obvious fact, clearly ignored by these legal scholars, that a convention, created by a law and therefore is a creature of that law, must mean that law regulates it as law created it, is the fact these legal scholars base their opinion on the myth of the runaway convention. On this false myth, scholars base their assumption there is no law that can affect or effect a convention. The problem is history does not bear them out. The convention was not a runaway. Second, *even in 1787 there were both national and state laws prohibiting anyone from attempting to overthrow the form of government in question except by legal means*. In short, it was a crime then and it is a crime now to do what the myth suggests the convention did. In addition, there is no record whatsoever that shows any member of the convention was arrested for his participation at the convention. Given the controversial nature of the Constitution when placed before the states for their consideration, if the laws of the states or national government were violated, does anyone

truly believe that if such laws had not been violated, opponents of the Constitution would not have taken advantage of them?

Can anyone seriously suggest that if someone like Patrick Henry who was not exactly known for his quiet, inoffensive manner, and who opposed ratification of the Constitution, would not have at least mentioned the fact the members of the convention had violated state law by their actions in his numerous speeches on the issue? Does anyone believe the Anti-Federalists would not have also made the point during ratification debate either in the state legislatures, the ratification conventions or among the people in their numerous pamphlets on the matter?

However, we must remember that we are no longer in 1787. We no longer operate under the authority of the Articles of Confederation. We are in 2010 and our nation operates under the authority of the Constitution of the United States. Therefore, when some legal scholar proposes the states have such authority to control convention agenda because they did so under authority of a no longer in effect form of government, that scholar should be gently reminded they need to cite current law or rulings from the federal courts of today, not from 1787 to be taken seriously. While it may be historically significant that state legislatures considered delegates they appointed and sent to conventions as ambassadors subject to their instructions meaning that delegate could not act except as instructed by the legislature, the fact is such authority no longer exists.

If no other reason than the principle on which this assumption is based, that is, representation in the Senate of the United States by appointment of state legislature, no longer exists. Simply put, the authority of the state legislatures to dictate or regulate the actions of any national officer by either instruction or appointment no longer exists as it was formally removed from our form of government by the 17<sup>th</sup> Amendment. Whether this is the way things should be is not the point here. The fact is the 17<sup>th</sup> Amendment eliminated the concept of state “ambassadors” controlled by the state legislatures from our form of government and replaced it with representatives chosen by the people. Hence, all representatives who have anything to do with the amendment process of Article V, and here I speak of the entire process, not just the convention, are all elected by the people. To suggest that because in 1787 the states did otherwise in a convention now grants the state legislatures the right to control the agenda of a convention by appointment of delegates and dictation of agenda is simply incorrect as well as being unconstitutional and illegal.

If any further proof is required, let it be remembered that these same 1787 era legislatures also prohibited voting except by property ownership, disenfranchisements for women as well as blacks and others. Certainly therefore, if one follows the logic presented by scholars advocating state legislatures control the agenda of a convention based on 1787 law rather than the current Constitution, it follows the legislatures have the authority, if not the duty as they prescribe authority to that law, to preclude such groups as women, blacks, non-property owners and so forth from convention proceedings. For if one is going to base authority to act on 1787 law rather than current law, then all law applicable

in 1787 must apply with the consequent admission that any law now currently contrary to that 1787 law can and is overthrown. In short, in for a penny, in for a pound.

Besides an unlimited convention, that is a convention whose agenda is set by the delegates, *without* preset agenda or preset political outcome is the best and safest form of convention for this nation to have. If the convention has a preset amendment agenda and obviously, a preset outcome then it follows that convention is controlled by a single political interest group meaning that group alone controls the amendment process. There is nothing to suggest that which that group favors will be the best solution for the problems of this nation or that, which has already been proposed, by any number of groups is the best solution. Only when a free exchange of ideas and proposals advanced by various groups is permitted will the best ideas prevail. Simply put, that which makes the most sense and therefore convinces the most people will be, given the circumstances of passage required to reach amendment, that which will succeed. The proposal, if not exposed to the heat of debate, simply will not scour, as its blade is untested.

For those who suggest a convention will get out of hand because there will be debate and differences of opinion, I suggest they are not truly American. The most fundamental principle of our nation is the right of debate, to sound out various proposals and to allow the people to make up their own minds about such proposals rather than having it decided for them at a convention by a special interest group. Robust debate never hurt anyone in this nation and it will not hurt anyone at a convention.

Between the constitutional limits set forth in Article V together with current existing law there is no question a convention can be held such that there will be no issue of a “runaway” convention. However, if a convention is “limited” to a single issue, to a single interest group, then it will be a “runaway” convention. It will have runaway from our heritage which it is the right of the people to alter or abolish our form of government, not a special interest looking for political advantage by rigging the agenda of the convention. If those who advance such a proposition truly are loyal Americans as they profess, they should not fear an open convention but welcome it. Who knows? They might even find out someone has a better idea to solve our problems than they do.