

The Truth

By Bill Walker

Introduction

I'd like to tell you the truth about the Article V Convention option.

Many have expressed concerns about the convention being a runaway convention that might create a new Constitution, remove our rights and so forth. Others have expressed many other concerns, some valid, many not. Many of these concerns stem from misinformation that an examination of the public record clearly refutes. This paper presents corrections to this misinformation and at times intentional disinformation. The analysis is based on public information gathered by Friends of the Article V Convention, FOAVC, including Supreme Court rulings, public statements made in Congress, statements made at the 1789 Federal Convention and other public records. Rather than unproven or unsupported allegations, FOAVC bases its positions on verifiable facts.

FOAVC is the only national organization dedicated exclusively to causing Congress to call an Article V Convention. We are non-partisan and do not favor or advance specific amendments or issues. We present objective public information. We have gathered for the first time in United States history photographic copies of the actual texts of the applications submitted by the states for a convention call. We have also gathered texts of several Supreme Court rulings that define an Article V Convention. We have published numerous articles which have corrected misinformation by others regarding all aspects of the convention from the historic to the operational. In this paper we make statements which are all verifiable by reference to public record, something that opponents of the convention cannot do. As this public record primarily is based on government public records it is likely that the government will use these records in reaching any conclusion regarding a convention and ignore subjective statements used for political or ideological reasons.

One frequent misstatement is an Article V Convention is a constitutional convention with the authority to write a new constitution and remove our rights. There is no support for removing our rights. The truth is that states have never requested removal of a single right in any application submitted to Congress in over 200 years. The public record proves the exact opposite. The states have requested *increased* rights for all citizens. The Constitution expressly prohibits a new constitution and expressly limits Congress *and* a convention to proposing amendments to our present Constitution. As expressed by Chief Justice Warren Burger in his public support of an Article V Convention, there is little danger in holding an Article V Convention. He further publicly stated a constitutional convention is not part of the amendatory process and therefore is unconstitutional. Anyone who purports Justice Burger expressed otherwise is lying. That is the truth.

We face a terrible crisis economically and politically because of political gridlock in the national government that provides wider public support for using the convention option. Many glorify the Constitution for lasting as long as it has. But they are wrong. It is the Constitution, *as amended*, that has survived all these years. That is the glory of the Constitution. Its ability to change to meet our changing needs. A nation unable to alter by peaceful evolution is eventually bound to change by revolution. Our founders knew this. They gave us the amendment process *including* the convention so people can alter their government in spite of a recalcitrant government. The truth is the original proposed Constitution didn't even make it out of the starting gates without amendments. The states refused to ratify it without the guarantee of immediate amendment. Without amendments the Constitution cannot remain viable. The truth is those who have spread misinformation about a convention have frozen the Constitution, made us fear and disrespect our government and created this gridlock. Many assert that if we use this convention option Armageddon will strike. These opponents have convinced too many with baseless lies, unsupported by public records, court rulings and so forth.

The Operational Questions of a Convention

Nearly everyone says a convention has many unanswerable questions which justify not holding it. Not surprisingly these questions primarily stem from those who oppose a convention. The truth is a convention has not been held because of operational questions but because Congress has criminally violated the Constitution as well as federal law and refused to call a convention as required by the Constitution.

In that regard, a criminal complaint was filed in July with the U.S. Attorney in Florida in regards to the refusal of Congress to call the convention. The criminal charge alleges several criminal acts by members of Congress in connection with refusing to call a convention. Among these is violation of oath of office. Currently the complaint is under review in Washington D.C. having passed the preliminary review of the FBI and local U.S. attorney as to frivolousness and substantiation. Therefore, within weeks, or less, this issue will be resolved. Either the government will officially and formally charge members of Congress or they won't. If they do, the ultimate result will be a convention, if not then the supremacy clause, the oath of office clause and Article V will officially be violated and without these the Constitution officially attacked.

For reasons of political convenience we have allowed Congress to commit this crime. Now we face a major crisis. The Founders gave us the solution. Do we use it or remain afraid of our own form of government to solve the crisis? People want answers to this crisis and the usual political means are not providing them. Many have suggested amendments as solutions. However amendments are not a panacea. A proper amendment does not solve the actual problem in question. Instead it provides the people a new set of tools and allows them to in turn solve the problem. We need a new set of tools and only the convention can provide them because the government can't or won't do so. That is the truth.

Answering the Unsolvable Questions

Is it true the operational aspects of a convention are problems beyond our ability to resolve? The way to solve a problem is first determine what we know about it then remove that from the problem, reducing it until only that which is unknown remains. Only when that is done can we truly determine if a problem is unsolvable.

So what do we know about the convention? First, we know the convention is contained within the Constitution. We know, as expressed by the Constitution, the convention is part of the supreme law of the land. Therefore we know the problem is a matter of law rather than some other question. We know therefore well settled principles of law can be applied to the problem.

One of the premises of law is that it must be obeyed. This means all the law is obeyed not just part of it. This principle obviously applies to the Constitution. As expressed in *Marbury v Madison* (1803), something either is constitutional or it is not constitutional. Between these two points there is no middle ground. Thus, we know any issue must satisfy all the Constitution to be lawful or constitutional. You cannot be constitutional in Article One and unconstitutional in Article Four. It follows therefore if any issue must satisfy all the Constitution, then the entire Constitution applies to any issue. Thus, not only can we use all the Constitution to solve the problem but are required to do so.

One of the parts of the Constitution which applies to the problem is the Fourteenth Amendment and its provision of equal protection under the law for all citizens. In sum, the courts have ruled citizens forming a legal class must be treated equally under the law. You cannot discriminate against one portion of a legal class over another part of that class. Examples of such classes are citizens of the various states, citizens within various congressional districts or citizens who by designation of the Constitution enjoy special immunities or privileges while performing a constitutional duty. Into the final example fall the members of Congress and delegates to an Article V Convention who are given the expressed and unique privilege of proposing amendments to the Constitution.

The function of both convention and Congress is constitutionally identical, i.e., the proposal of amendments to the Constitution. The effect of the proposal, if ratified, is identical. The Constitution authorizes no other political bodies to make amendment proposal. Article V strictly and equally limits the power of amendment proposal upon both convention and Congress. Given these facts, there is no possible way to classify the two bodies differently, i.e., two legal classes, as they are identical as to authority, effect, limit, and exclusiveness. As the Constitution excludes all others from amendment proposal, there is no constitutional basis for any body to create a classification. There is no authority in the Constitution allowing any political or judicial body to do so.

Therefore we know delegates and members of Congress must be treated equally under the law. Moreover we know the citizens these people represent must be treated equally. What else do we know?

We know a convention call is peremptory upon Congress if two thirds of the state legislatures apply for a convention call. As stated by Hamilton in Federalist 85, “[T]he national rulers, ... will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged ‘on the application of the legislatures of two thirds of the States ... to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof.’ The words of this article are peremptory. The Congress ‘shall call a convention.’ Nothing in this particular is left to the discretion of that body.”

Peremptory, for those who may not know, is a legal term, identical in meaning in 1789 as today that there is no choice, no alternative, no option; the task must occur. We know public record proves 49 states have submitted over 700 applications for an Article V Convention call. We know therefore the states have submitted sufficient applications for a convention call. The government has admitted this as a matter of public record as it has admitted the convention call is peremptory.

We know the courts have defined Article V as to the powers of the courts, Congress and the states. In *Hawke v Smith* (1920) the court ruled that neither state or federal courts or legislatures can alter the terms of Article V. We know in that same ruling that states operate under the federal Constitution, rather than state constitutions, when engaged in the amendatory process. We know in *United States v Sprague* (1931) the court expressly stated there are no rules of construction, interpolation or addition permitted in Article V. In short, we know we are limited to only what is *textually expressed* in Article V and no more. Therefore we know there is no hidden meanings, implications, intents or powers within it. We know the states may only act as authorized by the *federal* constitution rather than their state constitutions or laws. We know the court ruled in *Hollingsworth v Virginia* (1790) the president has no part in the amendatory process. Therefore we know Congress is forbidden not only by this fact but the necessary and proper clause’s provision of “foregoing powers” of Article I, from assuming legislative control of an Article V Convention thus rendering it no more than a subcommittee of Congress.

Application of these facts means we know several other things. We know the terms and conditions of an Article V application. We know from the language of Article V, the purpose of the application is to cause Congress to call a convention. We know from *Sprague* and *Hawke* no other meaning or intent can be attached. Therefore the exclusive and expressed purpose of an Article V Convention application is to cause Congress to issue a convention call. As the duty to call is peremptory we know something else. If a convention call is peremptory on Congress it is also equally binding on the states as these two groups form a legal class regarding the privilege of causing a convention to occur. We know from the Congressional Record that Congress has no power of committee, debate or even vote regarding a convention call. As Congress is denied its customary means of resolution in this instance, we therefore know the states are constitutionally precluded from submitting content in their applications which

mandate resolution by Congress by such means. You cannot deny Congress the right to resolve issues and then demand by acts of submission, that they do so. This means only the portion of the application which requires no debate or vote by Congress in order to cause a convention call, is constitutionally viable. Thus only that portion of an application which is so universally understood that it *requires* no vote or debate can cause Congress to call a convention.

What does this tell us? First, we know state rescissions of applications are unconstitutional. Not only do rescissions violate the principle of equal protection in that one state, by its act of withdrawal, violates the right of another state to hold a convention, but violate the Tenth Amendment. That amendment provides that powers reserved to the federal government are theirs, powers reserved to the states and people are theirs. Once sent applications become a federal record kept in the Congressional Record that record is expressly mandated by the Constitution to be kept solely by Congress. The states therefore have no authority to alter this record. This explains why Congress has never acted on any state rescission request as it would establish states have the right to control federal records, not to mention the fact that long before any rescission was submitted, the states reached the two-thirds mark required for a convention call. In sum, the states have no authority to rescind applications and, even if they did, acted too late to have constitutional effect as the peremptory requirement on Congress had already taken effect. If the states don't want a convention, don't apply in the first place.

Rescissions provide a means whereby Congress can act other than in a peremptory manner to call a convention. The act of rescission requires not only a vote but implies debate as the Constitution mandates a vote as such acts in order to remove material from the Congressional Record. Thus, they are clearly unconstitutional.

What of same subject? Many say all applications must be on the same amendatory subject before Congress must call. We know from the records of the 1787 Convention the founders rejected this amendatory approach twice. We know therefore states cannot propose amendments only Congress or a convention can do that. Therefore the states can use no theory of law such as fiduciary principles to regulate amendments as they have no constitutional authority to so. They can however, by other constitutional means, politically regulate the convention agenda in real time. We know a decision as to whether or not the subject in one application is the same subject as in another application is clearly cause for congressional debate and vote. Therefore we know this condition is unconstitutional.

What remains for the basis of a convention call for Congress to act? The Constitution mandates a call when two thirds of the state legislatures apply. The subject of the application therefore is known to us. It is universal to all applications. The subject is the act of application itself by the states. The act itself serves as the basis of the call. Either the applying number of states submitting applications is equal to two thirds of the entire states or is not. There is no possible debate regarding a mathematical ratio. It exists or it does not. There is no vote required as the matter is peremptory. If the states have so

applied, Congress must call. If not, there is no call. We know the public records proves the states have so applied. Therefore we know Congress must call the convention.

Thus we know the convention call is based on a simple numeric count of applying states with no terms or conditions. Thus, with knowledge already available we have removed any question as to the circumstances of when a convention must be called. Thus we can remove this portion from the problem.

What of the convention itself? What do we know regarding it? As stated we know the Fourteenth Amendment applies to the problem of a convention. What does this tell us?

First, we know as stated in Hawke that all conventions must be “deliberative bodies representative of the people” meaning delegates must be elected. Even if the court had not so expressed, the Fourteenth Amendment dictates that as one portion of the class is elected, the remainder must be. As Congress is elected, therefore so must convention delegates and thus we know the means of selection of delegates. Therefore we can remove this portion from the problem.

We know the terms and conditions for election of delegates. That is, we know that all laws affecting election of members of Congress must equally apply to convention delegates. Thus we know the federal and state bureaucracies charged with election and other related matters have all the information necessary for election as it identical to that of election of members of Congress. As members of Congress, specifically the House, must satisfy certain constitutional requirements of age, citizenship and habitation we know delegates must meet the same requirement. We know these terms are not that of the Senate as equality of law demands the least level of equality to achieve. We know the number of delegates in a convention. As House members of Congress are elected in specified districts each of equal population representation, we know a delegate must be elected on the same basis of equal population and thus the same districts used to elect members of Congress are used for delegate election. Thus we know how delegates will be elected and who they will represent. We can therefore remove this portion from the problem.

But what of the problem of unequal state populations at the convention? Why should California delegates, more numerous than that of Rhode Island have more say at the convention? Article V and the Fourteenth Amendment resolves this. First, the Constitution mandates “a” convention, not conventions. Therefore there cannot be an upper and lower convention with two distinct representations. The text of the Constitution commands a single convention with multiple representation. Citizens not only live in districts but states as well and these states must be equal under the law. Thus we know that as with the 1787 Federal Convention the delegates will comprise state delegations with each delegation having one vote. The delegations will vote within themselves to decide the vote on all questions. We also know that as Congress is ruled by quorum and two-thirds standard regarding an amendment vote, so is the convention. Thus, assuming a quorum of states (26) and quorums within those state delegations, and

two thirds of those state delegations voting in favor, an amendment may be proposed. Obviously however all states will be represented at the convention and their delegations will be present at all proceedings. Thus, the actual voting will require 34 states passing an amendment proposal. Therefore we know the standards of amendment proposal at the convention and thus can remove this portion from the problem.

How will the convention operate? We know the Constitution allows Congress to set its own rules and establish its own procedures. Therefore under the terms of the Fourteenth Amendment the convention will enjoy the same privileges. We know members of Congress are protected by the Speech and Debate clause and the same will equally apply to delegates. We know members of Congress are subject to oaths of loyalty to the Constitution and prohibited from engaging in certain illegal acts in office by federal law. The same will apply to delegates. Where will the convention be held? We know Congress has one discretion in a convention call. A convention call requires establishment of a reasonable time and place for the convention to meet. Congress must decide this but obviously cannot use it to obstruct a convention call. Therefore we know the time and place will be fixed by Congress. Therefore we can remove this portion from the problem.

As to expenses, while a physical convention appears most obvious and could cost millions, a virtual convention will cost much less. The virtual convention would allow all to witness all proceedings. It permits delegates to remain at home with their family and employment. It permits many who otherwise would be economically denied the office to seek it. It permits the electors to monitor actions of the delegates directly. The nature of the Internet quells emotional outbursts and attempts at publicity that a physical convention might foster. Technical means are clearly in our grasp for all this. Therefore we can remove this portion from the problem.

We know the convention is granted one power, amendment proposal. It cannot tax or legislate. We know the term of office for the delegates will be the length of the convention. Once the convention ends, the term of office ends. We know as the legislatures must first reapply for a convention there is no reuse of delegates. We know as the convention cannot tax, it cannot pay its delegates. Therefore they will be volunteers. We know as proposed amendments are written and therefore are issues, the convention will be entirely issue oriented as there is no other business before it. Therefore we know during election of delegate/candidates will discuss only amendment issues as there is nothing else to discuss. Thus we know the manner of election, term of office, specific nature of the office and what the election campaign will entail. Therefore we can remove this portion from the problem.

Finally, as expressed in *Coleman v Miller* (1939) we know the states, if so motivated, may regulate the convention agenda in real time either through state conventions or state legislative votes by expressing their ratification sentiments but withholding them from Congress, that is, not sending them out of the state. We know if 13 states withhold approval of a proposed amendment, the proposal will fail. Thus, we know the political reality of this fact prevents a proposing body from further action as it

is hopeless to begin with. We know practical, pragmatic politics will apply in a convention as with any other political process. Therefore there will be no runaway convention as the legal limits of a convention must prevail. We know as the Constitution mandates extremely high standards of passage dangerous or frivolous amendments are unlikely to waste convention time. Therefore we can remove this portion from the problem.

Some further details regarding a convention are appropriate. For while the applications of the states, save for that portion which expresses the state's desire for a convention thus triggering a numeric count of the application, is constitutional dicta it is nevertheless a petition under the First Amendment directed at the convention. It must be heard and the convention must act upon it under the terms of the First Amendment. After all, the states are petitioning *the convention*, not Congress to propose an amendment. A simple reading of the applications then provides the answer as to agenda. We know therefore that all issues of current political interest have already been requested by the states and no further action on their part is required. Moreover, we know citizens retain the right of petition meaning during the convention they are free to approach the convention with requests of proposal all of which will be public record. We know the convention will be open to the public at all times. There is no reason for the contrary. Amendment proposals require massive support for success. It is impossible to achieve this by any other means except massive public campaigns. To veil a proposal in secrecy therefore invites defeat as any proposal so contrived may escape the convention but certainly will wilt in the harsh ratification environment. Therefore we can remove this portion from the problem.

We know that even if the convention proposes an amendment which even if ratified results in dangerous or unintended consequences detrimental to our nation that it can be repealed. Thus we know that regardless of whatever decision the convention makes that achieves ratification, it can be repaired. Therefore we can remove this portion from the problem.

It is clear the answer to all questions regarding convention operation is summed by simply stating "just like Congress." We know all that is necessary to hold a convention. We know the answers are based on sound constitutional principles of law.

Remaining Issues

First, as Congress has refused to obey the Constitution what is to be done about it? As we know further applications by the states are counterproductive as they only serve to reinforce the premise that Congress has the right to refuse their constitutional force, it is clear efforts at organization of the states for further applications are meaningless and unnecessary. The problem is Congress. How shall they be forced to do their required constitutional task? Obviously as they are political creatures, massive public attention must be brought to bear and at the minimum members made to publicly explain why they feel they have the right to veto and disobey the Constitution. Therefore the purpose of all concerned should be focused on Congress not the states.

Second, who will be elected as delegates? This answer is beyond resolution as it is entirely political and must be left to those patriotic individuals so motivated to serve their nation who are willing to stand for election and the intense review by their fellow citizens that choice entails.

Third, exactly what amendments will be proposed by the convention? Again the answer is beyond resolution as it is dependant upon political answers that only will occur when the convention actually convenes. No doubt public support and debate will fashion its course in due time and these natural political forces must be allowed to function. Any effort to regulate a convention as to pre-determined issue and outcome will have the gravest consequences as most certainly the public at large will have no confidence in a result in which they and their elected representatives had no part of. A pre-determined outcome, having no reason for debate or even vote, will attract only the least worthy as delegates as those of higher ideals will see no purpose in participation in the matter. The danger of this is obvious. Moreover a pre-determined outcome implies a political position of a single mind in which political opposition does not exist. Such a mind certainly will be tempted to exceed its limits and propose its entire political agenda. This is the very definition of a runaway convention.

Finally, there is the question of results. If the pre-determined issue is incorrect as to needed solution, its ultimate result may be even worse problems whereas if the convention functions as intended, as a deliberative body free to act on its own accord but limited in authority, the correct answer or more likely answers will emerge. Therefore pre-determination of issue poses more danger than promise and must be rejected. Therefore we can remove this portion from the problem.

The last two problems mentioned have nothing to do with knowing the truth about a convention. They only come into existence after a convention is actually called. Thus, a review of the supposed questions surrounding a convention proves what at first appears to be a massive problem irresolvable by mortal means is in fact reduced to a single issue: the refusal of Congress to call a convention. We know all we need to hold a convention. All that remains is what most accurately is described as the guts to do it.

Summation

We have a clear choice in the issue of an Article V Convention. On one hand we have those who, based on misinformation, urge a convention not be held despite the fact the Constitution demands otherwise. On the other hand we have the Founders who gave us a convention to solve the problems we now face. A means needed when the national government cannot or will not act to solve urgent problems and regain public trust. We either use the convention option or don't.

Which course do you follow? And make no mistake YOU will be the ones to suffer if the wrong choice is made. If this nation fails, it will not be the United States that suffers. It will be we the people.

It is a matter of trust. Those who oppose a convention base this on misinformation or fear. Many say “obey the Constitution as is” then say we should not obey it by not holding a convention when we are required to. This is a clear example of constitutional hypocrisy. What good is a form of government expressed in written form if we are unwilling to obey it? Are you willing, at the gut level, to place your fate, your future and that of your family, your friends, in the hands of people who misinform you regarding this issue?

The Founders and the plan they gave us has lasted and served us for over 200 years. It demands unquestioned obedience. This does not mean we do not inquire into how we accomplish a constitutional command or debate over such issues and resolve them by constitutional means. It does however mean we obey the Constitution as written which means when it states a convention must be called, it is called. Thus the answer, the true answer is we use every available political means to bring pressure on Congress to call a convention *as they are required to do* immediately. We then use it to give us better tools to solve our nation’s problems before it is too late.