

Why Romney Lost

By Bill Walker

In the coming days, many on both sides of the political aisle will devote endless hours dissecting why Mitt Romney lost his bid for the presidency. Most soul searching will be from the GOP/Tea Party. Perhaps this defeat will end the Tea Party, as a national political movement as it failed the only standard politics understands: winning. Perhaps not. Time will resolve that question.

However, it does not require much analysis to understand why Mitt Romney lost. Candidates don't win election to the nation's highest office by favoring veto of the Constitution. In an election as close as the polls showed this one to be, even a small pebble in the election road can derail a candidate's campaign. Urging constitutional disobedience when you're seeking the office charged with ensuring constitutional obedience can hardly be described as a small pebble.

The [decision](#) of the GOP/Tea Party to include as part of its party platform [a plank](#) advocating its party members, which includes Mitt Romney, not obey the Constitution and call an Article V Convention when mandated to do so by the Constitution is a historic first. For the first time in United States history, a major political party publicly advocated not obeying our national document. Then this party sought election of one of its members to the nation's highest office based on that advocacy.

This issue goes to the heart of the entire election process: job description. The election of the president is an employment interview by 100 million bosses. The Constitution specifies the job description of the president: to "preserve, protect and defend" the Constitution of the United States and to "take care that the laws be faithfully executed."

Not to drive thumb tacks with a sledge hammer, but if the president is to "preserve" the Constitution he is therefore required to ensure all actions of government comply with the Constitution. Further, as prescribed by the Constitution, if any member or members of the government do not obey the Constitution, the president is responsible to take whatever action necessary to redress the transgression. When a presidential candidate or the party supporting him publicly advocates constitutional disobedience it cannot escape notice the candidate is effectively saying, I will not do the job description you, the American public, are considering electing me to do. This presents the 100 million bosses an obvious question: why would anyone consider hiring a employment candidate who during his job interview states he does not intend to perform the job he is being considered for?

For whatever political reasons the Republican Party was co-opted by extreme members of the Tea Party movement in this election. Thus, the GOP became the GOP/Tea Party. This Tea Party movement includes the right wing extremist groups such as the John Birch Society. Given the fanatical desire for political power of some these extremists have, the GOP may find it impossible to return to being just the GOP. These extremist elements will cling to the GOP like superglue thus labeling the GOP/Tea Party as an extreme right wing political party.

Not all members of the Tea Party are political extremists. Most are well meaning, loyal patriotic Americans who believe in this nation and the Constitution. However, when you lie down with dogs, you come up with fleas. The few extremists in the Tea Party taint all. Facts are facts. It is a well-known fact much of the opposition to obeying the Constitution and calling a convention as required by that documents stems from the Tea Party. This same Tea Party loudly screams the Constitution be obeyed then simultaneously urges the Constitution not be obeyed when it comes to calling an Article V Convention. The reasons for such opposition are irrelevant; these people simply do not want to obey the Constitution. Constitutional hypocrisy at the least attaches to this position.

Opposition to an Article V Convention stems primarily from known political extremist groups with connections to the Tea Party movement. The GOP/Tea Party in its party platform expressed this opposition. The only possible conclusion of these facts is these political extremists now control the GOP/Tea Party. The problem the GOP/Tea Party faces today is American politics has repeatedly shown extreme political movements or positions do not win elections. Obviously advocating disobeying our national document is an extreme political position. The bottom line: as the only purpose of a political party is to win elections, the message is obvious for the GOP/Tea Party: change or politically die. This means either accept political oblivion or come to realize the only sensible position on an Article V Convention is to resolve the questions/objections and hold the convention rather than oppose obeying the Constitution.

The “reasons” the Republican Party gave for opposing constitutional obedience vis-à-vis an Article V Convention comes directly from the JBS playbook. The public record has exposed these "reasons" as outright lies. Despite this fact, Mitt Romney never publicly repudiated this part of his party platform any time during his campaign. Thus, he associated himself with its anti-constitutionalist stance and the right wing extremists behind it. The American people were justified in concluding Romney was a right wing extremist and opposed obeying the Constitution, as he never bothered to prove otherwise.

Most Americans, but clearly not the GOP/Tea Party, realize the real issue and danger when the GOP/Tea Party opposes an Article V Convention. It is not opposition to a convention that is the threat; it is the principle behind it that is so dangerous. Those opposing a convention see no problem with their opposition. They assume constitutional provisions are optional and ignorable whenever it is convenient. However, they fail to recognize they are expounding a perilous principle of government and broad constitutional policy. The text of the Constitution absolutely mandates the government call a convention. Therefore the only possible position the opposition can take is they support giving the government authority, defacto or otherwise, to directly veto the expressed text of the Constitution. What they fail to recognize is by doing this they open the door to the government disobeying *all* expressed text of the Constitution. Yes, today the government vetoes an Article V Convention. “Hooray!” they shout.

But what about tomorrow? The principle having been established, what will be the next part of the Constitution vetoed by the government? Will it be the right of trial or perhaps free speech? Will it be the right of peaceful assembly or voting? Convention opponents foolishly assume there is such a thing as selective constitutional government veto. They hold a convention can be vetoed but believe this power is limited strictly to Article V of the Constitution. They ignore lessons history has taught us: in for a penny, in for a pound.

Once you grant a government the power of veto over the barriers intended to check its misuse, that government will expand that power unlimitedly.

The average American may not understand an Article V Convention but there is no question they understand the danger of vetoing the Constitution. It is little wonder then Americans always reject all who so advocate such a position regardless of what part of the Constitution they wish to destroy. If those of the GOP/Tea Party hope to have any chance in the future to win elections, they are going to have to resolve their hypocrisy. Either they will have oppose *all* the Constitution, or support *all* the Constitution. Clearly, the people saw through their current position: obey the Constitution as is, except for the parts we oppose.

The GOP/Tea Party is either going to have to accept the only road to political success is constitutional acceptance of convention and use both election and convention to achieve their political goals, or they will continue to suffer ever growing defeat until they achieve political oblivion. As their conservative agenda is the agenda of an Article V Convention as nearly every political position they advocate is reflected in state applications before the convention and virtually none of the liberal positions are so represented, for these so-called conservatives to oppose holding a convention means they oppose advancing their own political agenda. This not only serves to demonstrate their hypocrisy but their lack of commitment to their own agenda as well. Why would anyone vote for someone who represents a party and political movement that doesn't even believe in what it states and does everything it can to defeat its own political goals. Given this party presentation of political support the American people, as they say, spoke. Let us hope the GOP/Tea Party listened.

The issue is one of trust. By this single act of opposition the Republican Party publicly set itself up as a party that cannot be trusted to obey the Constitution and by extension, neither could its candidate for president. If the American people do not trust those seeking election to protect, defend and preserve our American way of life as represented by the Constitution election defeat is inevitable. The GOP/Tea Party may not have much sense but the American people do: you do not vote for people that intend to do you harm. This is why extremist groups such as the John Birch Society remain on the periphery of the political sphere: their extremism means they cannot be trusted. Those aligning with this extremism do so at their political peril as the Romney defeat proves.

The American people clearly recognized this threat to the Constitution in Mitt Romney. If asked would he obey and support all the Constitution based on his party's platform Romney would have no choice but to answer "no" leaving the question then open what else in the Constitution he would then not obey or support. For all his faults and accusations of constitutional disobedience, the fact is Barack Obama was unencumbered by a similar position of the Democrat Party. Indeed [the public record shows](#) Obama's attorney general acted properly within federal law regarding a criminal complaint against Congress for not calling a convention as required. He did not refuse to obey the law nor did he violate his oath of office.

The same cannot be said for Obama's FBI however. They did violate their oaths of office. But why did they do this? Obviously, for huge political advantage. The question of whether or not the FBI from now on will decide constitutional and political policy of

this nation given they have a clear hold over all of Congress can be discussed another day. Clearly when you have the power to arrest any member of Congress any time you politically disagree with them because you hold the fact they have violated federal criminal law over their heads, this gives you tremendous political advantage.

To demonstrate this politically suicide belief of the GOP/Tea Party is not confined just to Romney, I present the following. During the election campaign, I met briefly with losing Republican gubernatorial candidate Rob McKenna of Washington State. Rob McKenna at the time was the attorney general for Washington State. I asked him about the decision by the National Republican Party to urge its party candidates not to obey the Constitution. I reminded him the Constitution mandates Congress must call a convention. I pointed out the Republican Party in its official party platform urged its members not to obey the Constitution even if the term the Constitution set, 34 applying states, is satisfied. Thus, I asked Mr. McKenna as attorney general as to his official position regarding outright disobedience to the Constitution by members of the GOP/Tea Party.

I asked Mr. McKenna if such action by the Republican Party and elected officials was a criminal act as federal law mandates through oath of office laws that federal officials must obey the Constitution and prescribed criminal penalties for not doing so. He said no. It might be unconstitutional but not a criminal act, as he believed if members of the government violate the Constitution, there is no criminal penalty for doing this unless, by prior specific consent by the legislature through passage of a specific law making such specific act a criminal offense, the legislature had made such a violation a criminal act. Otherwise, such violations of the Constitution were simply civil violations. In other words unless the Congress specifically made it a crime for members of Congress not to obey their oath of office and call a convention when mandated, it was not a crime even though other criminal law made it crime not to obey their oaths of office which demand members “faithfully execute their duties” and “support the Constitution.” Mr. McKenna did not address the fact that oath of office laws do not contain asterisks which provide members of Congress only support *some* of the Constitution but not all. They simply state such members must support the Constitution “without mental reservation whatsoever.”

In sum, Mr. McKenna asserted the discredited theory of selective sovereign consent by the state vis-a-vis the Constitution. The Supreme Court discredited this theory in *McCulloch v Maryland* 17 U.S. 316 (1819).

As noted by the court, “In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union...” The court went on to note, “In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the Constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the General Government, it has been said, are delegated by the States, who alone are truly sovereign, and must be exercised in subordination to the States, who alone possess supreme dominion.

It would be difficult to sustain this proposition. The convention which framed the Constitution was indeed elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation or pretensions to it. It

was reported to the then existing Congress of the United States with a request that it might be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification.

This mode of proceeding was adopted, and by the convention, by Congress, and by the State legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively and wisely, on such a subject -- by assembling in convention. It is true, they assembled in their several States -- and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.

From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in the name of the people, and is declared to be ordained, in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity.

The assent of the States in their sovereign capacity is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their act was final. It required not the affirmance, and could not be negatived, by the State Governments. The Constitution, when thus adopted, was of complete obligation, and bound the State sovereignties.

It has been said that the people had already surrendered all their powers to the State sovereignties, and had nothing more to give. But surely the question whether they may resume and modify the powers granted to Government does not remain to be settled in this country. Much more might the legitimacy of the General Government be doubted had it been created by the States. The powers delegated to the State sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty created by themselves. To the formation of a league such as was the Confederation, the State sovereignties were certainly competent. But when, "in order to form a more perfect union," it was deemed necessary to change this alliance into an effective Government, possessing great and sovereign powers and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all. The Government of the Union then (whatever may be the influence of this fact on the case) is, emphatically and truly, a Government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise so long as our system shall exist. In discussing these questions, the conflicting powers of the General and State

Governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this -- that the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, "this Constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the State legislatures and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land, "anything in the Constitution or laws of any State to the contrary notwithstanding."

In sum, the court said the Constitution's authority stems from the people not the states and binds both people and states to its parameters. This includes the all-inclusive provision of Article VI, which demands all members of government, state and federal, take an oath of office to support the Constitution—all the Constitution. The Constitution does not provide the states have to reaffirm support in the form of legislation for every possible constitutional violation in order for there to be violation of oath of office. The fact Congress has made any such violation a criminal violation ends the matter. It is as much a violation of oath office to refuse to obey Article V, as it would be to attempt to remain in office after a term has expired without reelection.

The theory Mr. McKenna expounded holds the state legislature must give its consent to each part of the Constitution in order for that part to be binding on the state. Otherwise, the theory goes that term of the Constitution is not valid and has no authority on the state. In this case, Mr. McKenna's position was each part of the Constitution has to be "recognized" by the legislature in the form of a law making disobedience a crime. Otherwise, there is no crime. Therefore, Mr. McKenna rejected, or urged veto of the expressed text Article VI of the Constitution mandating a general oath of office covering *all* the Constitution, which demands all state, and federal officials support *all* the Constitution. Here then we have proof of my previously stated "unlimited" assumption of veto power by the government in that Mr. McKenna asserted veto power *outside* Article V.

I had to wonder if Mr. McKenna were elected governor of the state of Washington would he say the same thing for the Washington State Constitution. Suppose instead of Article V it was Section 3 of the Washington State Constitution, which states, "No person shall be deprived of life, liberty, or property, without due process of law." Would Governor McKenna hold if someone were deprived of life, liberty or property by state officials without due process of law that no criminal act occurred because no specific state law existed making such constitutional violations a criminal act? By the way, there is no specific law in Washington State making violation of Section 3 a criminal act so the question is a valid one. Moreover, even if such law existed what is to stop this candidate

and the party he represents from simply ignoring it? In short, I had to wonder: could I really trust Mr. McKenna or his party as they believed in vetoing the inalienable rights guaranteed by the Constitution and didn't even consider such violations a criminal act?

Convention opponents have long asserted a convention would be a "runaway" and will take away all the rights in our current Constitution. This is speculation and not supported by any facts including the events of the 1787 Convention, which they usually cite as their "proof" of a runaway convention. However, here are two examples of the GOP/Tea Party today advocating the very thing they say they oppose—overthrow of the constitutional form of government, not by convention, but by veto. No doubt, many American voters questioned the wisdom of this party platform plank in this past election and the candidate who represented it. They questioned it and their response was better not take the chance and find out how dangerous this plank really is. So they voted against Romney. This is why Romney lost.