

The Diabolical Plot Of “Compact For America”

A Blueprint for Disaster

By Bill Walker

In a recent email to me Nick Dranias, the major proponent of “[Compact for America](#)” (CFA), an organization advocating the states use the compact clause of the Constitution to compel Congress to call an Article V Convention, stated, “Let’s say, hypothetically, you were right [that a convention call is based on a simple numeric count of applying states with no terms or conditions]. What has your theory and hundreds of applications got you? The short answer is nothing. If for no other reason than the complete and utter failure of the “buck shot” approach, you should try our [Compact for America] approach. It certainly makes the case for bringing a preemptory writ in court to compel Congress to do its duty more plausible if you serve up to Congress a set of applications that from any point of view--yours or ours--renders its obligation merely preemptory.”

After examining CFA I find I cannot support Mr. Dranias suggestion that I try his “approach.” It must be immediately noted the most glaring problem with CFA is while it repeatedly refers to compliance with state constitutions, other than a passing reference to Article V of the Constitution and of course the compact clause, *not once in the entire document does the compact refer to, mandate or even apparently acknowledge compliance to any other provision of the federal Constitution.* Indeed it goes out of its way to evade them. The ignoring of constitutional provision after provision is no accident. It is done with diabolical purpose. Little wonder then the compact reads as if the Constitution did not exist. The basis of its “approach” appears to be a belief the states still operate under the Articles of Confederation. Given the intellectual roots of the document this is not a surprise.

Before addressing the specifics of Mr. Dranias’ email, therefore, an examination of “Compact for America” is necessary. As I’ve indicated, CFA calls for the states to use the compact clause of the Constitution (Article 1, §10, Clause 3) to force a convention call by Congress. Historically, the compact clause has been used by the states (with congressional permission) to establish working agreements among themselves for interstate projects such as road projects or interstate waterways. The clause, with relevant portions in italic reads as follows:

“No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

As the [Heritage Foundation](#) notes in its essay on the compact clause, this clause is hardly the best constitutional candidate for the herculean task CFA seeks. Indeed the intent of the Founders makes it clear the clause was never intended for such a purpose as the purpose of the clause was to *limit* the states, not empower them. As Heritage Foundation

notes, “The Framers of the Constitution had little difficulty seeing that combinations among the states, or any foreign-affairs activities undertaken by the states, were so fraught with danger to the union, that none should be allowed unless Congress consented.” The essay then continues, “The constitutional logic of the provisions reflects a profound insight. Fearing that “factions,” or interest groups, operating at the state level would endanger the Union and the legitimate interests of sister-states... [T]he convention subjected state laws to the operation of the Supremacy Clause: state laws become and remain in effect unless they are inconsistent with federal law or the Constitution.”

However as the essay notes, “[F]or classes of state activities that could be presumed to threaten the union or sister-states, the Convention supplemented federal supremacy with either an absolute prohibition on state action (*See* Article I, Section 10, Clause 1) or the [congressional] “negative” (*See* Article I, Section 10, Clauses 2 and 3). The congressional approval requirement ensures that each state will be informed of, and heard on, potentially threatening sister-state activities.” ... “Moreover, the requirement compels the *proponents* of presumptively problematic state activities to mobilize the requisite majorities at the federal level, thus affording an added measure of security.”

The essay concludes, “Among the provisions of the clause, only the Compact Clause has played a significant role in constitutional litigation. ... [T]he Supreme Court has determined that the domestic Compact Clause applies only to a narrow class of state agreements (*those that establish binding obligations* [such as is sought by CFA] and, typically, multistate administrative agencies). Moreover, in *United States Steel Corp. v. Multistate Tax Commission* (1978), the Supreme Court declared that state compacts require congressional approval only if they “encroach upon the supremacy of the United States.” Because states may not encroach upon federal supremacy in any event, a broad reading of *United States Steel* effectively deprives the Compact Clause of *any independent constitutional force.*”

CFA proposes using the compact clause for an entirely different purpose than envisioned by the Founders or previously by the states. CFA believes *its amendments compact, i.e., the compact clause does have independent constitutional force.* As the Heritage Foundation notes, this simply is not the case. Based on its misplaced interpretation of constitutional force CFA proposes to use legislation instead of the amendment process of Article V to pass an amendment to the Constitution.

[CFA](#) proposes a legislative amendments compact between 38 state legislatures (the number required to ratify a proposed amendment to the Constitution) containing the key provision any state joining the compact *automatically agrees to ratification of a balanced budget amendment (and nothing else) prior to the convention proposing it.* While the CFA contains language supposedly intended to prevent this event (Article IX, Section 2) the compact gets around its own language by a deceptively simple means: it prohibits the states from ratification by saying the article (Article IX) doesn’t take effect until “Congress effectively refers the Balanced Budget Amendment to the States for ratification...” The key word is “effectively” which the dictionary defines as “virtually” or “for all practical purposes.” Obviously this language runs counter to the protective

language of Article V which clearly states that a method of ratification is first left to Congress *after* an amendment is first proposed and thus *any official vote from the states commences after the amendment is first proposed*. However in CFA, by agreeing to the compact and its provisions, the Congress forfeits this procedure to a provision which binds the states to a pre-determined method of ratification as well as a pre-determined vote on ratification. Thus Congress by agreeing to CFA actually “submits” the matter to the states for ratification. Hence, *if Congress agrees to the compact as written which includes a provision (Article IX, Section 1) which states the states agree to “ratify” the Balanced Budget Amendment, it has “effectively” referred the “proposed” amendment for ratification*. Thus in reality with a meaningless provision masking its true purpose the compact binds the states to ratifying the proposed amendment.

CFA wants to ratify an amendment before it is even proposed; entirely emaciating the proposal convention. Any vote taken therefore by such a convention is superfluous and irrelevant. Not only does this method deprive any state not a member of the compact the ability to review the amendment proposal for ratification consideration, it also deprives Congress of its textually assigned constitutional duty of selecting which method of ratification, legislature or convention, a proposed amendment is ratified. The plan requires unquestioning congressional agreement to the amendments compact. This is worth repeating. The plan calls for 38 state legislatures to legislatively apply for an amendments compact to Congress which then agrees, without objection or question, to that amendments compact. That compact requires Congress to give up all options afforded it in the Constitution in favor of the binding, pre-determined text of the compact. In sum, Congress formally agrees it, as well as the states, can deviate from the Constitution. Under the terms of the compact, Congress then calls a convention for single purpose—proposal of a balanced budget amendment. Ratification of the amendment according to CFA will already have occurred. The compact mandates member states already declare *ratification of the proposed amendment prior* to convention proposal.

Besides its main attribute of pre-determination of convention outcome, “Compact for America” features pre-determination of all convention delegates by disallowing any electoral choice of the people. Instead each state governor is to be the sole state delegate. Ignored is the fact the people are the source of all sovereignty in the United States, that they alone possess the right to alter or abolish our form of government and politically, while they may have elected an individual governor this does not mean they would elect that person a convention delegate. The convention meeting place and time is also pre-determined: Dallas, Texas for a 24 hour period on July 4, 2013. Thus a pre-determined amendment is passed by a pre-determined vote by pre-determined delegates meeting a pre-determined location and time with the ratification of the amendment also pre-determined. *All of this is accomplished without any participation of the people whatsoever.*

Given all this CFA pre-determination eliminating every usual political obstacle in the American democratic system intended to ensure it *remain* democratic, an obvious question arises: why bother holding the convention at all—why not skip the whole amendment process altogether and simply announce by legislative fiat the amendment is

now part of the Constitution. This is not a minor point. CFA proposes to maneuver around the intentionally cumbersome amendment barriers of the Constitution by simply ignoring them. The question is: do we want a system of government whereby sections of the Constitution are negated for political convenience?

To ensure compliance at the convention, the compact requires the states to pass criminal laws mandating the arrest of any delegate (i.e. the governor) who attempts to discuss debate or even suggest any other amendment proposal other than the amendment pre-determined by CFA. The preposterous notion of arresting delegates if they exercise their right of free speech (not to mention their fulfilling their responsibility to represent the views of those who elected them) originally was proposed by Professor Rob Natelson in an [ALEC Report](#). The basic legal “theory” Natelson operates on is called fiduciary law, or employment law. I wrote a [rebuttal](#) to it after he published the first of three articles on it a few years ago. Basically, he believes delegates are not elected representatives of the people but agents of the state legislatures. As agents they do as instructed; if not, they are punished. Therefore the proposed laws mandating arrest are legal because the agent has no right of free speech and cannot violate any responsibility of representation as there is none. Anyone seriously considering supporting this idea is in serious need of professional help themselves. The notion of all states passing a gag law which arrests any delegate who speaks out of turn is totally bogus. It attacks the fundamental constitutional principles of this nation—debate and discussion of issues.

One important principle overlooked by Natelson (and CFA) in this “arrest” idea is sovereign jurisdiction. Basically, the term means the jurisdiction of a sovereign state ends its borders. Hence, passage of a criminal convention gag law by 49 of the 50 states is meaningless. The crime described will never occur in any of those states as the convention is held in *one* state. Thus the 49 states laws are not violated as the crime in question does not take place in their sovereign jurisdiction. Of course CFA ignores this basic principle of federalism saying the delegate will be tried under law *outside* the sovereign jurisdiction where it takes place. Under that principle as CFA says it has pre-determined the convention will take place in Dallas, Texas only a state law passed in the state of Texas or a smaller jurisdiction within Texas can possibly be violated.

The CFA says if a delegate speaks out of turn *during the convention* that delegate is arrested. By its own definition therefore the crime is based on convention location (i.e., Texas) not on extra jurisdictional grounds, (i.e., an act is committed in one sovereign location where it is not a crime but prosecuted in another sovereign location where it is.) Thus under CFA the state of Indiana prosecutes for a crime committed in the state of Nevada because the act violates Indiana law not Nevada law. The logic of this idea is so bizarre it is impossible to define, let alone defend. In any event CFA defines what single jurisdiction has authority to prosecute the crime—the state of Texas. Thus, in strict fact, the convention can be controlled by a single state with the use of this law. The state of Texas, for example, could pass the law required by the compact. Then it can pass another law attaching whatever terms and conditions it wishes to that law such as stating delegates will be arrested if they do not also pass other amendments the state instructs. *Because all other state laws affecting the convention have no jurisdiction regardless of*

any language contained within a compact as the Constitution itself prohibits the citizens of one state prosecuting citizens in another state (see Eleventh Amendment) there is nothing any other state can do to stop the state of Texas from taking complete control of the convention simply because the convention is held there. It is for this reason the Supreme Court long since determined (Hawke v Smith, 253 U.S. 221 (1920) whenever states operate in the amendment process, they operate under the authority of the federal Constitution not various state constitutions. The federal Constitution clearly prohibits this type of law from being enacted.

The CFA also says the states have the right to recall convention delegates. However this “authority” runs smack into a political and constitutional hornets’ nest. Beyond the obvious fact *no* governor (unless he is out of his mind) will sign off on having him/her arrested just because he speaks his mind there is the problem of sovereign immunity. CFA ignores the problem of dual office when it mandates the state’s governor represent it. The Constitution does not permit any individual to hold two civil offices simultaneously. This is why, for example, President Obama is still not a senator from Illinois. By virtue of the 14th Amendment this prohibition extends to all state offices. Thus the state governor cannot simultaneously be chief justice of the state supreme court. Ignoring this constitutional prohibition which appears to be how CFA plans to “resolve” all constitutional obstacles, this recall idea falls flat on its face. Assuming a governor *does speak out of turn and the state legislature does recall the delegate*. What happens when that state’s governor appoints, as his right under most state constitutions, a replacement which happens to be him? *Remember, according to the CFA the convention will only last 24 hours meaning the recall provision is a paper tiger. By the time any state legislature got together to even debate the matter the convention will be over.*

In addition as everything is pre-determined it is reasonable to assert *that should the governor even open his mouth to say anything whatsoever as he is not even voting on the proposal, he could face “recall.”* Further, the governor is not facing recall *only his office of delegate*. Therefore his gubernatorial office is unaffected. By what authority can he be recalled as he can easily assert he is on official business as governor and simply remain at the convention. The provision found in Article VI, Section 6 of CFA is clearly unconstitutional. This section mandates that no delegate “may...exercise any power or authority associated with any other public office held by the delegate while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio [from the instant of the act].” Without exception the various state constitutions assign the powers of their governors. To effectuate this clause of CFA means CFA must take preference over the state constitutions and nullify the authority of the state governor by determining when and under what circumstances he may exercise such power. *The only possible conclusion is CFA proposes to assume sovereign authority over the state constitutions. Thus CFA becomes the supreme state document, not the state constitution.* The compact attempts to get around this obstacle by saying the governor shall take a “leave of absence” from his duties during the convention and cannot exercise his powers as governor during such convention. The problem is the states do not provide for a “leave of absence” of their governors in their constitutions. The sovereign authority of the office vested by the state constitution remains with the governor his entire term. He cannot walk

away from it except by resignation. Thus to be delegate under the terms of CFA means the governor would have to resign his office and not be permitted to return to it.

Article VII, Section 2 of CFA allows for a “commission” to set the “date and a time” for the convention to be held. The article then continues, “...the Commission may subsequently relocate and reschedule the Convention to ensure it proceeds in an orderly manner in accordance with the terms and conditions of this Compact.” The question immediately arises why this provision would be necessary for a compact that according to Article VII, Section 11 “shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda [passage of a balanced budget amendment]. In effect the compact allows the commission, not Congress, not the states and certainly not the people to control not only the agenda of the convention but its location. Thus these CFA commissioners can move the convention to another location. By why is it felt by CFA supporters this power is required? The compact does not define any of the terms used for this power so its purpose remains elusive and mysterious. *The answer is this part of the diabolical purpose of the CFA I spoke of earlier.*

There is one very dangerous provision in the CFA. More importantly a vital provision which is missing that is even more dangerous. The first dangerous provision is the Article VII, Section 6 dealing with quorum. Article I, Section 5, Clause 1, of the United States Constitution refers a quorum in Congress, “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business...” A quorum is defined as “the number of the members of an organized body of persons (as a legislature, court, or board of directors) that when duly assembled is legally competent to transact business in the absence of the other members: a usually specified number of members (as an absolute majority) in the absence of which an organized body cannot act legally.” Thus the Constitution mandates a majority of *all members of a house of Congress must be present for a quorum to exist.*

While Article VII, Section 6 of CFA does mandate a quorum, the language provides a very interesting situation when coupled with the just discussed right of the commissioners to move the convention. Section 6 reads, “A majority of the several States of the United States, each present through their respective delegate in the case of States represented by one delegate, or through a majority of their respective delegates, in the case of any State that is not a Member State and that is represented by more than one delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.” The danger is obvious. The language allows a non-member state to appoint a large number of delegates and constitute a quorum for the convention.

For example, the state of Texas where the convention is pre-determined to be held could “elect” not to become a member state withholding membership until just before the convention is convened. Under the CFA rules allowing a commission to move the convention with only a written notice being sent (but leaving no time for anyone to react) the commission could vote to move the convention to another town in Texas, (Houston for example) where a delegation of Texans large enough to constitute a quorum could be

waiting. CFA mandates all notifications are by certified mail which when sent to public officials sometimes can take weeks to arrive. All the commissioners need is a few hours to pull this shenanigan. Meantime the states, having not been actually notified of the change of venue, send their delegates (the governors) to Dallas while the actual convention is held in Houston with one state delegation in control of it. Bottom line: the convention is controlled by a single state delegation and is then free to pass whatever it damn well pleases. *This scenario is precisely why the Founders feared allowing the states to propose amendments and why they removed such authority from the states in the 1787 Federal Convention.* Thus applications are for a convention call, not a pre-determined amendment. CFA is the best example possible of why, despite the urgings of Nick Dranias no portion of the Constitution should be short circuited and states should *never be able to propose amendments by means of compact or any other such scheme.* Under the Constitution even if such a shenanigan were contemplated by some, it would fail as Congress is required to call the convention *prior to its being held* and like state applications *has no authority under Article V to rescind the call once it has been issued.* Thus where and when Congress says the convention will be held is where and when it will be held.

This frightening scenario is only made more realistic by the most glaring omission of the entire CFA plan: there is no provision whatsoever in the compact specifying what *numeric* ratio is required for the convention to propose an amendment for ratification. True the Constitution's 14th Amendment requirement of equal protection mandates that delegates to a convention must be treated equally under the law. Thus when the law, in this case Article V, requires that one part of a legal class (members of Congress) must pass an amendment by two-thirds vote, then the rest of the class (delegates to a convention) are similarly bound. However, as demonstrated already, the CFA repeatedly ignores the Constitution. Hence it provides no ratio of vote for approval whatsoever *thus making it possible for a tiny group of delegates from a single state able to not only propose an amendment but because of deceptive language of the compact actually force it to become part of the Constitution their "proposal" will have already been ratified prior to them even meeting.* At each step of the amendment process CFA has methodically deviated from the Constitution in order to ram through an amendment. Given this fact it is impossible to believe ignoring the most important provision in the Constitution—supermajority approval in both ratification *and* proposal is an accident or oversight.

Obviously, the "interpretation" of the Constitution of this so-called amendment compact envisions encroaches on the supremacy of the United States. At the very least it does this by ignoring entirely Article V of the Constitution *as the single method whereby an amendment to the Constitution can be proposed.* It does this *despite the fact historic record clearly shows this method of "amendment" proposed by CFA was expressly refuted by the Founders as giving the states too much power and clearly nullifies several constitutional protections in the Constitution intended to maintain the supremacy of the United States.* This proposal removes the right of the people to alter or abolish their form of government. It seeks to arrest individuals who exercise their right as officeholders to express themselves without threat of arrest. It removes clearly expressed rights of

Congress regarding the amendment process. It ignores a clear structure of amendment process laid out in the Constitution. It allows for a single state to amend the Constitution. It establishes itself as supreme to state constitutions and redefines the authority of state officials thus amending these documents. It nullifies presidential power (as will show a few paragraphs down) in regards to a clearly defined *legislative* function. If that doesn't encroach on the supremacy of the United States, as well as the states, then I defy anyone to show what does.

Let the public record prove my point. Most people who are involved in the Article V Convention movement know, I am, to date, the only citizen ever to have filed federal lawsuits regarding the obligation of Congress to call a convention. If Mr. Dranias had bothered to read that public record he would have discovered such a writ as he describes was already attempted in those lawsuits. The court rejected the writ based on the 1939 *Coleman v Miller* Supreme Court decision. That decision under the "political question" doctrine gave Congress "exclusive" control of the amendatory process to the exclusion of the states, the people and even the courts as the court relegated itself to "advisory" opinions "having no constitutional authority" whatsoever. Hence, an amendment compact as envisioned by CFA, according to the Supreme Court, will be *entirely controlled by Congress not the states*, the exact *opposite* of what CFA says it wants to occur. My point is Nick Dranias doesn't do his homework regarding public record—he ignores it.

If there is a "theory" regarding an Article V convention call, it is "Compact for America." In sum CFA is an unproven, never-before-tried political plot designed to circumvent every protection inserted by the Founders against radical overthrow of the Constitution. Throughout American history the courts have repeatedly ruled against this type of runaway political thinking. This is why no case law for "Compact for America" exists. Nevertheless Nick Dranias attempts a [legal argument](#) justifying CFA. His first sentence is a dead giveaway of the substance of his argument. "A legal analysis of the Compact for America ("CFA") first requires a "50,000 foot" view of its structure and the constitutional amendment process it sets in motion." The need for the extreme distance is obvious. Any closer and the Grand Canyon size cracks in his argument come into clear view. For example, Mr. Dranias begins his argument by misstating the amendment process which he refers to as the "ordinary plain vanilla" process. He states an application for a convention requires passage by 34 states. This is correct but he implies the application must be for the same subject, which the Constitution does not require.

He then states Congress must pass the required convention call based on the applications. Totally incorrect; Congress is preemptorily required to call the convention and has, quoting James Madison, "no vote, no debate or committee" in the matter. He then asserts delegates are appointed (incorrect; the courts have ruled they must be elected) and the states give instructions to the delegates how to vote (again incorrect as this would be the same as state proposing amendments which they do not have the right to do). Finally he asserts Congress has the right to decide not to refer a proposed amendment from a convention for ratification (incorrect as ruled by the courts) but does get the part right about the states needing to ratify a proposed amendment by three-fourths vote. Thus in his first paragraph Nick Dranias makes no less than five different errors about the entire

amendment process. Given this level of accuracy, one need not bother to read his argument any further.

A point by point examination of this so-called legal argument is senseless. It is entirely defeated by quoting *Marbury v Madison*, 5 U.S. 137(1803), "*It cannot be presumed that any clause in the Constitution is intended to be without effect, and therefore such construction is inadmissible unless the words require it. ... The question whether an act repugnant to the Constitution can become the law of the land is a question deeply interesting to the United States, but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it. ... That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority from which they proceed, is supreme, and can seldom act, they are designed to be permanent. ... The Government of the United States is of the latter description. The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act. Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void."*

To cite a few of numerous example where Supreme Court rulings have found CFA proposals unconstitutional consider *Hollingsworth v Virginia* 3 U.S. 378 (1798). The Supreme Court held the president can have no part of the amendatory process as such participation allows presidential veto of that process. As an ordinary legislative act any compact must suffer presidential review (meaning possible veto) in order to become law. This includes the CPA. However as the compact in question relates to the amendment process therefore under *Hollingsworth*, this means Congress cannot approve such legislation or even create it because the president can have no part of the amendment process and therefore cannot review it, a required step before the legislation can become law. Mr. Dranias admits compacts must be submitted to the president saying, "Although

statutes giving consent to interstate compacts have been presented to the President for signature, this fact should not alter the foregoing conclusion.” His “forgoing conclusion is that *because of Hollingsworth* the constitutional requirement that all legislation must be presented to the president *prior* to it becoming law can simply be *skipped*. *In short Mr. Dranias proposes rewriting the Constitution to allow Congress to pass legislation by means other than described in the Constitution*. Mr. Dranias simply ignores *any constitutional barrier in his way* and assumes his is the correct method that is trash the whole Constitution. He fails to realize (or more likely ignores) the fact the problem is CFA *clearly* encroaches on the sovereignty of the United States. Its purpose is to propose an amendment which indisputably redefines the sovereign power of the United States as it relates to its tax and spending authority. Under these circumstances the courts have ruled Congress *must* grant approval by legislative action which means such approval must be presented to the president for his review *as textually prescribed by the Constitution*. It is the question of sovereign encroachment by a compact not whether the compact creates an amendments convention that *is the determining factor in whether or not Congress must first approve and then submit the proposed compact to the president*.

However because the president cannot participate in the amendment process, the subject of an amendment compact is constitutionally off limits to congressional legislation or as the CFA phrases it, void ab initio. The logic is simple: if the Founders intended for Congress to legislatively control the amendment process they would have inserted such language in Article V. Instead they did the very opposite and very carefully wrote the Constitution so that no legislative authority to do this was granted Congress. In short for the compact to take effect Congress must legislatively approve it. However the president *cannot be involved* and as president cannot be involved, the Congress cannot pass legislation as such legislation must pass presidential review which the president cannot exercise. Hence, no such compact can be constitutionally passed. It is a Gordian knot that cannot be cut.

The court also stated in *Hawke v Smith*, 253 U.S. 221 (1920) that it is not the function of courts or legislative bodies, national or state, to alter the method [regarding the processes of Article V] which the Constitution has fixed. *United States v Sprague*, 282 U.S. 716 (1931) held “article 5 is clear in statement and in meaning, contains no ambiguity and calls for no resort to rules of construction [and]... where the intention is clear there is no room for construction and no excuse for interpolation or addition. Obviously the use of the compact clause to amend the Constitution constitutes an “addition” to Article V. Therefore it is unconstitutional.

As to the general idea of the states exercising all the power the compact seeks; the courts have answered that also. *Leser v Garnett*, 258 U.S. 130 (1922), “[T]he function of a state Legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the federal Constitution; *and it transcends any limitations sought to be imposed by the PEOPLE of a state*.” The court, in this instance, was referring to the people of a state acting through their *state* constitution to amend the *federal* Constitution in a manner *other* than that prescribed in Article V. The italic emphasis in the citation is to point out

the major point of Nick Dranias' thinking is just plain wrong—that the people have no say whatsoever in the amendment process. The courts have recognized the people have a vital, if indirect, part to play in the amendment process, one that Nick Dranias dismisses. Mr. Dranias writes, “The text of Article V articulates no role for the People in advancing constitutional amendments whatsoever.” I'd like to see how the Constitution is amended *without* the participation of the people as Nick Dranias states. Mr. Dranias cites *Dodge v Woolsey*, 59 U.S. 331 (1855) saying, “that the people of the United States, aggregately and in their separate sovereignties “have excluded themselves from any direct or immediate agency in making amendments.” Thus he concludes the people have no part in the amendment process.

A simple response to this bogus idea is the best. In this case all that is required to quote Dodge fully. The full quote reads, “The departments of the government are legislative, executive and judicial. They are coordinate in degree to the extent of the powers delegated to each of them. Each, in the exercise of its powers, is independent of the other, but all, rightfully done by either, is binding upon the others. The constitution is supreme over all of them, because the people who ratified it have made it so; consequently, any thing which may be done unauthorized by it is unlawful. But it is not only over the departments of the government that the constitution is supreme. It is so, to the extent of its delegated powers, over all who made themselves parties to it; States as well as persons, within whose concessions of sovereign powers yielded by the people of the States, when they accepted the constitution in their conventions. Nor does its supremacy end there. It is supreme over the people of the United States, aggregately and in their separate sovereignties, because they have excluded themselves from any direct or immediate agency in making amendments to it *and have directed that amendments should be made representatively for them*, by the congress of the United States, when two thirds of both houses shall propose them; or where the legislatures of two thirds of the several States shall call a convention for proposing amendments...” In sum: the people elect the representatives who then act on their behalf to propose and ratify an amendment. Without the people participating *no amendment to the Constitution is possible as it they and they alone who possess the right to alter or abolish our form of government*. Hence their participation, in this instance, by choice of who shall perform the acts required, is obligatory. Obviously, if the people elect a different group of representatives, a different amendment result occurs. Thus the people have a central part to play in the amendment process and are *not* excluded from the process.

This list of court citations is by no means exhausted. The courts have also spoken against arresting public officials while on public business as well as allowing a public official to hold two civil offices simultaneously. In short, the courts have found just about every aspect of CFA's proposal unconstitutional. What is “Compact for America” response to these rulings? In spite of the overwhelming evidence of public record against their proposal, the backers of “Compact for America” employ the obvious political tactic when confronted with reality of public record—they simply ignore it.

This abomination must be defeated. Hopefully, the states will do this and the matter will never go further than the state legislatures. Already events indicate this is happening. The

state of Vermont last year rejected a key piece of the “Compact for America” agenda—arrest of convention delegates. So did the state of Idaho.

The response this year by state legislatures to “Compact for America” when it has come before them for their consideration has been the same. To date, the states of [Arizona](#) and [South Dakota](#) have rejected it outright. The basis for this rejection by two fundamentally conservative legislatures is clearly concerns over the unconstitutional aspects of this amendments compact. Given the fundamental unconstitutional, anti-American nature of the plan I would be surprised if even one house of one state legislature passed this piece of junk. Certainly it will not stand any court test. Maybe it’s not occurred to the supporters of CFA but I’m sure it has to state legislators. If they sign on to this scheme it may be today’s convention delegates can be arrested for speaking out of turn, but under the terms of the 14th Amendment, it will mean they also can be arrested for the same offense. The equality under the law provision comes into play: if one part of a legal class (in this case all those involved in the amendment process i.e., members of Congress, convention delegates and state legislators) can be arrested for an act, the law must apply to all in that legal class. Hence what you sow so shall you reap. News flash for CFA! Legislators aren’t that dumb and there is such a thing as the speech and debate clause in the Constitution. It’s there for a reason and this so-called compact is a perfect example of why the Founders put it in our Constitution.

Have I mentioned yet the people behind CFA are the same ultra conservative senseless jackals who scream fears of a “runaway” convention. They are simply presenting their opposition in a different way. Most people who oppose a convention simply oppose it—outright—like JBS or Eagle Forum. While they may be misdirected, at least they are honest in their opposition that is, you know where they are coming from. Then there are people like those behind CFA. They smoothly assure us a “runaway” convention is a myth. Therefore we need not fear such a convention. Then these people propose the CFA which of course they say “guarantees” a runaway convention cannot happen. *Well if it’s a myth then why does it have to be addressed at all?* The problem is the advocates of CFA accept the premise of a “runaway” convention by their actions despite what they may say. The result—what they are proposing is about as “runaway” as it gets.

A “runaway” convention, for those who may not know the term is where an Article V Convention is high jacked by a special interest group, who then proposes an amendment[s] then forces ratification of the amendment[s] through the states while simultaneously excluding all other political groups as well as the people from any participation in the alteration of their Constitution. Naturally, all terms and conditions in the Constitution designed to prevent this are nullified or ignored. Of course, any resemblance to this classic description of a runaway convention and the CFA proposal is purely coincidental. For those who say they fear a runaway convention I say look no further than Compact for America. Examine how many convolutions, how many deviations Nick Dranias has to create to defeat *all* the constitutional guarantees against the so-called runaway convention in his effort to create one. Then remember all these constitutional protections are always present to stop any such attempt. Those who assume

the only protection against a convention getting out of hand is the three fourths ratification standard of Article V simply hasn't examined the Constitution.

The only analogous historic reference I can compare this obviously draconian proposal with is the [Enabling Act of 1933](#) whereby Adolf Hitler seized absolute dictatorial power in Germany. By use of legislation, a glaring weakness in the German Constitution (which still exists to this day) and outright bullying, Hitler was able to coerce the two legislative votes necessary in the German parliament to bring the Enabling Act into being.

Unlike our Constitution, the 1933 German Constitution ([Article 76](#)) allowed for amendment "by legislation." This is exactly what "Compact for America" proposes, the use legislation to create an amendment in the United States Constitution. Further, CFA proposal, just like the 1933 Act, only requires two actual votes to cause its effect—a vote in the House of Representatives and a vote in the Senate. In fact our current amendment process has a built in safety feature. Instead of just two votes, a total of 40 votes are required to pass a proposed amendment (if Congress chooses state ratification conventions) and 38 of them must be in 38 distinct political boundaries *all outside the control of the political body making the original amendment proposal*. If Congress chooses the usual legislative ratification method, then a minimum of 77 votes are mandated.

As I have noted, the courts have expressly stated this use of legislative authority in this manner is unconstitutional. Whenever I pointed out this fact of public record to Nick Dranias he has ignored my comment. Finally, he wrote in an email, "[T]o be blunt I am tired of a non attorney non historian lecturing me." Well, Mr. Dranias to be equally blunt I'm tired of seeing people like you pretending to support the Constitution while proposing plans obviously intended to destroy it.

We all are aware of the effect of the Enabling Act of 1933: how it put a monster into power. How that monster killed millions of people and caused a world war. How does the language of the Enabling Act of 1933 compare with the "Compact for America?" The basic premise of "Compact for America" is a compact between the states, a legislative act, can cause an amendment to be placed in the Constitution by means *other than those* specified in Article V. The introductory clause of the Enabling Act of 1933 reads: "The Reichstag [the lower legislative house of German government] has enacted the following law, which is hereby proclaimed with the assent of the Reichsrat,[the upper legislative house of German government] it having been established that the requirements for a constitutional amendment have been fulfilled. Combine that with Article II of the act "Laws enacted by the government of the Reich may deviate from the constitution as long as they do not affect the institutions of the Reichstag and the Reichsrat. The rights of the President remain undisturbed." This one phrase, allowing for "laws enacted by the government... [To]...deviate from the constitution..." created the most infamous dictatorship in world history.

Does the CFA have language in it that could allow the same thing to happen here in America that Hitler was able to do in 1933 Germany? Does the CFA allow for laws

enacted by the government to deviate from the Constitution? The answer is an emphatic yes. This is the problem: *CFA in its totality deviates from the Constitution and it is this very action, deviation from the Constitution that sets the precedent for a future American Enabling Act.* Some examples make the point if other examples already discussed have done so already. Article III, Section 1, [CFA](#) reads, “This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.” The compact does not define what “conflicting or contrary” state law is and it ignores the *Leser* ruling regarding prohibition of the states to assume powers not granted them. As with the Enabling Act of 1933, the compact leaves itself wide open to such an interpretation as I have presented.

This is not the only example of questionable or outright dangerous language. Page 4, Section 3 reads, “...once at least three-fourths of the States are Members States, then no Member State may withdraw from the Compact absent unanimous consent of all Member States.” The obvious point of this language is to remove the sovereign power of choice from a state. Not even the Constitution demands that all states must vote in ratification, send delegates to a convention or even vote on a propose amendment in Congress but the compact proposes to so regulate.

Article IV, Section 7, purports to remove the power of choice of ratification from Congress assigning it expressly to state legislatures and to prohibit Congress from transmitting “any proposed amendment other than the Balanced Budget Amendment to the states for ratification consideration.” Read literally this could mean Congress can *never propose any other amendment at any time in the future.* The point of all of this is this: Adolf Hitler needed only part of one sentence to do what he did; “Compact for America” provides a plethora of possibilities.

This is why the Founders structured our Constitution as they did placing endless barriers and protections so such deviations as were allowed in Germany could not happen here. *It is these numerous barriers that people refer to when they say, “It can’t happen here when referencing what happened in Germany.”* Well it can if they are all removed or deviated from as CFA proposes. The Founders wrote Article V such that no single political body [such as Congress] could pass an amendment to the Constitution without the participation of a completely politically separate group (the state legislatures or state ratification conventions both elected by the people). They made the process *entirely separate* from the legislative process and powers of Congress *and* the states. This is also why the Founders *removed the power of the states to propose amendments which existed in earlier drafts of the Constitution.* But if the legislation proposed by “Compact for America” somehow does gain the ground it seeks, not only can what happened in 1933 happen here, it already will have.

There is no danger in holding a convention for proposing amendments *provided the numerous controls in Article V and the rest of the Constitution are obeyed.* Between the constitutional protections integrated in Article V *plus* the political opposition any amendment proposal generates there is more than enough protection in our political system to allow for an Article V Convention. The political opposition to “Compact for

America” demonstrates this fact. *Crazy proposals such as this simply do not get the political support necessary to overcome the structural barriers placed in our Constitution for the very purpose of seeing such stupid ideas never become our national law.*

Now as to Mr. Dranias’ question. To repeat it, “Let’s say, hypothetically, you were right. What has your theory and hundreds of applications got you? The short answer is nothing. If for no other reason than the complete and utter failure of the “buck shot” approach, you should try our approach. It certainly makes the case for bringing a preemptory writ in court to compel Congress to do its duty more plausible if you serve up to Congress a set of applications that from any point of view—yours or ours—renders its obligation merely preemptory.”

As to what Mr. Dranias refers to as my being right is the fact that a convention call is based on a simple numeric count of applying states with no terms or conditions meaning the states do not have the constitutional authority to propose amendments in their applications for a convention call. The public record of the 1787 Federal Convention is crystal clear as I will demonstrate later in this article: the convention proposed this power for the states *then voted by a vast majority of state delegations not to allow the states the authority to propose amendments to the Constitution.* Thus, amendment proposal authority is assigned either to Congress, by two-thirds votes in both houses or to an Article V Convention by a similar vote of state delegations in convention. For the purposes of this article I will only mention the most central point of public record, one which entirely defeats Mr. Dranias’ proposition that same subject amendment applications will cause Congress to call a convention and that a court will issue a writ to force the issue. **FACT: THE STATES HAVE ALREADY SUBMITTED AT LEAST THREE DIFFERENT SETS OF APPLICATIONS WITH THE SAME AMENDMENT SUBJECT (ONE OF WHICH IS A BALANCED BUDGET AMENDMENT) EACH OF WHICH HAS EXCEEDED THE TWO THIRDS (34 STATES) THRESHOLD SET BY THE CONSTITUTION. MOREOVER A PEREMPTORY WRIT STATING THIS FACT WAS ALREADY ATTEMPTED IN COURT TO WHICH THE COURT REFUSED TO ACT. TO DATE DESPITE THE FACT *THREE SEPARATE ISSUES HAVE BEEN SUBMITTED BY THE STATES EACH OF WHICH SATISFIES THE “SAME SUBJECT” AMENDMENT ISSUE EVERYONE IS SO HOPPED UP ON, CONGRESS HAS REFUSED TO ACT.*** A simple reading of [my last article](#) proves this. So if Nick Dranias is really committed to a convention and not the BBA, he’ll accept the premise that as the states have already asked for two other subjects they too must be discussed a convention. Of course this completely torpedoes his compact idea so I wouldn’t suggest anyone hold their breath.

As one of the three subjects is a balanced budget amendment there is no reason to believe a second set of balanced budget amendment applications via an unconstitutional compact will have any more effect on Congress than the first set has. Indeed it will have the opposite effect by establishing Congress can ignore one set of applications—so why not two? The reason is *not* because Congress does not know its duty or the terms of Article V or the fact the applications exist. It is because people like Nick Dranias and his cohorts who could bring the necessary political pressure to bear on Congress if they were *truly*

concerned about this nation instead run about proposing useless, stupid ideas like the “Compact for America.” This political brick accomplishes nothing except letting Congress off the constitutional hook.

What Nick Dranias and his obviously well financed group should be doing is publicly calling Congress out. He should demand on every radio program, public dais and so on where he is invited to speak *by what authority Congress claims the right not to call a convention.* He should call for a public response on the part of Congress and he should name names (liberal or conservative members, it makes no difference—they all hold the same position) of those he feels are responsible for Congress refusing to respond. To date other than myself and a [few others](#) , no one has actually gone to Congress and demanded their response which is always the same: silence. Nick Dranias has the money, the political connections, and the time to make Congress’ latches a real public issue and he does himself and this nation a disservice by backing “Compact for America” instead being a true American and using this opportunity to *really* make a difference. He’ll never do this with “Compact for America” because, frankly, it is un-American.

Despite Mr. Dranias’ email assertion the fact is I’ve never advanced any “theory” regarding the terms and conditions of an Article V Convention call. Instead I have reported official public record. Without exception the official record repeatedly states a convention call is based on a numeric ratio (or count) of applying states with no other terms or conditions. This public record consists of statements made in Congress, official Supreme Court rulings, historic records and statements made in state applications. It is not advancing a “theory” to report this relevant public record of Article V applications and associated public records any more than it is a “theory” to report material found in the census or quote material on file in the county seat. The material is fact, pure and simple.

Naturally, because that response does not give Mr. Dranias what he wants—a free political ride to ram an amendment into the Constitution, he ignores it. And the strict fact is, opponents of a convention share one common trait: they all ignore the public record most especially actions taken in the 1787 Federal Convention, statements made in Congress by convention delegates later elected to Congress and of course, all relevant Supreme Court rulings which, without exception, entirely discredit them.

When the 1787 Federal Convention Founders decide in official transcript what the power of the states is to be vis-à-vis a convention call then take an official recorded vote to implement that decision in the proposed Constitution, a public document, that act becomes a matter of public record and therefore fact. When that public document is latter ratified by the people and thus becomes the public law of the nation, it is not “theory” to quote from it. It is not “theory” to quote authoritative statements of public officials assigned by that public law with the task of interpretation or execution of that Constitution as to its meaning and intent. To repudiate the public record by whatever term repudiates the Constitution itself. Such action is one step short of treason.

Quoting the public record does not advance a theory or “claim” anything. It states fact. The dictionary defines a “claim” as “an assertion, statement, or implication (as of value,

effectiveness, qualification, eligibility) often made or likely to be suspected of being made without adequate justification.” Not to put too fine point on this *but the use and quoting of public record provides adequate justification and immediately disqualifies the statement as a “claim.”* Therefore I “claim” nothing.

Public record is therefore its own authority. It is irrefutable fact. The only way such fact can be refuted is with another part of the public record. It is not a theory when you quote the Congressional Record in which James Madison the author of Article V states the basis of a convention call that is what terms and conditions are applicable in the issuance of a convention call. He stated Congress has no power of decision and cannot debate, vote or even refer the matter to a committee of Congress. As all other “theories” advanced from various persons regarding “counting of applications” demand in one form or another a committee, debate or vote by Congress. The public record *directly* discredits these theories as they have no basis in fact.

This fact of no debate, vote or committee leaves only one possible logical determination that satisfies Madison’s terms—a simple numeric count of applying states. Anyone, including members of Congress possesses the basic capacity of understanding first grade arithmetic which includes counting to 34 and understanding the meaning of basic numeric ratios such as two thirds. Madison realized, as did the 1787 convention which inserted the term into the Constitution, not even Congress requires a committee, debate or vote to accomplish this utterly simple task. Both 34 and two thirds are absolute mathematical statements. Either something totals 34 or it does not. If it totals 34 there is a convention call, if it does not there is no convention call. It is remarkable that several other numeric ratios exist peacefully within the Constitution and suffer none of the indignity, embarrassment nor ignorance to which the two-thirds convention call suffers from the almost unending parade of individuals who apparently never attended grade school thus not to have been educated in fundamental numeric counting or basic arithmetic.

Further, it is not a “claim” or “theory” to report the public record of relevant Supreme Court decisions involving Article V which nearly all who purport other theories ignore entirely despite the fact such rulings *bind the government to a course of action it cannot escape meaning unless these rulings support their theories which they do not, they are incorrect.* The judicial record presents a rare consistency of ruling. Through several decades and numerous justices, the court, with no dissent whatsoever had repeatedly determined neither the states nor federal government can alter, add to or imply anything but that which the text of Article V expressly states. *The text of Article V in conjunction with the public record in its entirety simply does not support these other theories.* It is not theory to report the concession the legal representative of Congress in open public court made when he acknowledged formally that what I have quoted in public record is true as to fact and law. None of this advances a “theory”; it reports fact.

Mr. Dranias asks I “change my mind” on this matter. What, if I may be so bold to ask, does he expect that my changing my mind will accomplish? Is Nick Dranias so arrogant he presumes upon hearing I have changed my mind as to accurate reporting of public record the Supreme Court which has *never in its history even mentioned same subject application in any ruling let alone using the compact clause as he proposes* will suddenly exclaim, “My God! Nick Dranias made Bill Walker change his mind! Well, if Nick says

so...okay, we gotta change all our rulings.” Has his ego reached such deity proportions he expects by his expressing displeasure at my reporting facts one of the Founders will rise from his grave and cry out, “Nick Dranias made Bill Walker change his mind! Well, if Nick says so...wake up guys! We gotta rewrite the Constitution!” To this ignoramus request sir, I respond emphatically: I will not sway. I will not alter. I will not yield. I will not ignore what I know to be absolute truth. I will not be silenced. I will not be a blind servant to moronic idiocy.

Nick Dranias wants me to ignore public record and become as he—dead wrong. Public record is public record. Changing my mind does not alter that irrefutable fact one bit. Hypocrisy has no place in accurate reporting. It is the ultimate height of hypocrisy to ignore facts as Nick Dranias does apparently believing this will make them disappear. John Adams observed a truth never disproven, “Facts are very stubborn things.” *The bottom line fact is this: these facts make things the way are, not the way Mr. Dranias wants them to be. No amount of huffing or puffing by him is going to blow this house of facts down.*

He asks what my reporting has accomplished. Well in no particular order, my 800 page brief has been read by at least one president of the United States, several members of the Supreme Court, and many members of Congress. None have ever refuted even as much as a single word.

The Attorney of General of the United States officially acted to begin a criminal investigation regarding violation of law based on my “theory” as Mr. Dranias phrases it. By law the AG is required to determine *before* referring the matter for investigation that the complaint has merit, is legitimate, reasonable and most important, legally valid. Would the Attorney General of the United States refer a matter that he believed was illegitimate or invalid when he is required by law to first determine otherwise?

Then there is the matter of the FBI which, in violation of federal law, refuses on its own authority, to investigate the complaint referred to them as instructed by the Attorney General. To refuse to do this violates an entire cadre of criminal laws. Does it make sense members of the FBI would undertake an action that can land them in jail if they believed the “theory” using Mr. Dranias’ phrase, was invalid? For them to end the investigation only requires they prove the basis of the complaint is wrong. Why risk imprisonment if you don’t have to—*unless the basis of complaint is absolutely valid, legitimate and irrefutable?* As the “theory” as Mr. Dranias terms it is no more than a compilation of the federal public record created entirely by the federal government it is not surprising the federal government cannot refute itself.

While Mr. Dranias may be the P.T. Barnum the “Compact for America” circus, the “Bailey” behind CFA is Professor Rob Natelson, author of several Article V Convention “legal theories,” on which “Compact for America” rests. As none of these “theories” have ever been tested in court it is entirely proper to label them legal theories. As noted earlier Mr. Natelson, [came up with this "legal theory"](#) in an ALEC report he authored that convention delegates face arrest. Also, as noted earlier, in the same report he advocated excluding the people from the amendment process *despite Supreme Court rulings directly contradicting his “theory.”*

How does come by his theories? Mr. Natelson has a propensity for using *colonial* citations as the sole basis for his proposals. This is to say he asserts in colonial times, the states did such and such an action. Often he cites events that occurred even before the Articles of Confederation existed. Rarely does he cite *official colonial record e.g., records of the Confederation Congress or the 1787 Federal Convention*. Rarer still are citations regarding official *decisions of these official government bodies*. Rarest still are citations from official government sources circa 1787 on. Mr. Natelson is a political lotus eater—content to live only in the past ignoring anything that past contains which makes him uncomfortable.

Recently, for example, the professor wrote an email to a convention supporter stating [in part]: “I agree with the sentiments...expressed in several quotations, one of which was “A constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed.” [This by the way is a quote from a Supreme Court ruling] “I do not agree that “to question the validity of a state's application attempts to construe and defeat the obvious ends of the convention clause.”

[He continued]: “The Founders told us explicitly, on multiple occasions, that the state application and convention procedure of Article V was designed to give the states essentially co-equal power with Congress to propose amendments, and to serve as an effective congressional bypass.

To adopt the rule that every application must be for an open convention, or a rule that applications cannot be rescinded, would practically disadvantage the states in the process and defeat those central purposes---so therefore those rules cannot be correct. The states are on an equal level with Congress only if (1) like Congress, they can specify subject matter, (2) they control the convention by appointing and supervising delegates, and (3) they can rescind up to the time their applications reach the critical level of 34.

As matters would have it, all of the last three rules were followed for interstate conventions during the Founding Era. There is little or no evidence that the convention for proposing amendments was to operate any differently and plenty of evidence to the contrary.”

Actually there is plenty of “evidence” to prove an Article V Convention was intended to quite different than colonial interstate conventions. For one thing those interstate conventions existed *prior* to the Constitution. This means those conventions operated under the authority of the various state constitutions of the time. Today, however, we operate under the Constitution which contains the amendment procedure for that Constitution in Article V. *There is no such corresponding procedure in any state constitution in the union including the original 14 states that ratified the Constitution regarding amending the federal constitution*. (For those who smugly think I made a typo with 14 states I remind you Vermont joined the union during the ratification phase of the original Constitution). Thus, when the Supreme Court in *Hawke v Smith* ruled the states operate under the federal Constitution when involved in the amendment process, they were simply stating an obvious fact. The amendment procedure of the *federal* Constitution lies in the *federal* Constitution, not the *state* constitutions. Therefore as the

states have no constitutional authority within their own sovereign jurisdictions to effect or amend the federal constitution, any action they undertake must be done under the authority of the *federal* Constitution. Even if such authority were written in a state constitution, the supremacy clause of the federal constitution transcends it. The federal Constitution has within it, restrictions which limit the scope, power and so forth of interstate conventions as discussed earlier. *These restrictions even apply to an Article V Convention which is limited to proposing amendments to “this” Constitution.* By this language such a convention *can do nothing except propose amendment to our present Constitution.*

This *federal* Constitution has within it certain rules which limit the states as well as the national government. One crucial limit, which directly applies to Natelson’s rules, is the Tenth Amendment which states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Another critical limit effects Congress—the “necessary and proper clause” which states, “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” Congress maintains all state applications for a convention call in a federal record *mandated* by the Constitution (“Each House shall keep a Journal of its Proceedings, and from time to time publish the same...”). Thus this record is *expressly delegated to Congress by the Constitution.* Therefore, by the terms of the Tenth Amendment, authority over the application is *removed* from state control *once the states transmit them to Congress.* Let me be clear on this point. Until an application is actually sent by the state to Congress to actually count as an application for an Article V Convention it is under state control, meaning the state can rescind it if it chooses. However once the state transmits it to Congress then it falls under *federal* control. The state no longer controls the application and therefore cannot rescind it as it no longer possesses constitutional control of it.

Second, the “necessary and proper” clause allows Congress to “make laws” regarding the “*foregoing*” powers and those delegated to the Government of the United States. The convention clause is not listed in Article 1 but Article V. Therefore the prohibition of “*foregoing* powers” applies. *This is why those amendments that have been added to the Constitution requiring federal legislation to implement the amendment have a clause so specifying such authority to Congress.* Thus the “necessary and proper” clause further enforces Congress is not authorized to legislate regarding the amendment process *as there is no clause in Article V granting Congress the authority to do so.* As an added prohibition as already noted, the Supreme Court has long since ruled the president shall have no part of the amendatory process. This *doubly ensures Congress cannot regulate the amendment process i.e., the convention with legislation.* Thus *direct texts of the Constitution nullify completely* Natelson’s three rules.

His first rule “[T]he states are on an equal level with Congress only if (1) like Congress, they can specify subject matter...” is refuted by the text of Article V. The *convention* proposes amendments, not the states. Thus the “subject matter” of an amendment is proposed by the convention *not* the states. As I will demonstrate later in this article, this was no accident but a deliberate decision on the part of the Founders. However, it must be noted immediately in order for a subject matter to be accepted as part of the

Constitution, the states must agree to it by supermajority. In this manner therefore the states are equal with Congress. Only the subject matters the states agree to in *ratification* will be in the Constitution. Congress or a convention proposes; the states dispose.

His second rule, “they [the states] control the convention by appointing and supervising delegates...” is equally defeated by the fact the states operate under authority of the *federal* Constitution not their own state constitutions when involved in the amendment process. Because the state constitutions have no jurisdiction, any state law intended to affect the goals of control Natelson seeks are unconstitutional.

I will repeat myself here because it is important people understand how important they are to the amendment process. The Constitution contains expressed text (the 14th Amendment) mandating “equal protection under the law.” The Supreme Court interprets this as meaning groups or legal classes of people *must* be treated equally under the law. Thus there can be no discrimination against one portion of a group vis-à-vis the entire group. One such group is the members of Congress. The people, exercising their right of sovereign decision, elect members of Congress to represent them. By the authority of this election the members are granted certain powers. One of these powers is the right to propose amendments to the Constitution. In the same fashion delegates elected to state ratification conventions or state legislatures determine the fate of proposed amendments in the ratification process. In sum *all members of political entities involved in the amendment process must first be elected to that position of authority by sovereign decision of the citizens they represent. Without such sovereign decision no person can assume any power of amendment of the federal Constitution.* Hence, while the people do not *directly participate in the amendment process without their participation the amendment process cannot occur.* It is by this choice of *who shall participate in the process and hence what shall be determined* (the assumption being the people shall vet all candidates to determine what actions they shall take in the process) that the people exercise their *exclusive* right to alter or abolish our form of government. To deny the people the right of sovereign decision by appointment and supervision of delegates by the state legislatures (or as I’ve shown by one state legislature) is a violation of the equal protection clause of the Constitution. The Supreme Court has already stated that convention delegates must be elected. These facts therefore defeat Natelson’s second rule as the states do not have authority “to control the convention by appointing and supervising delegates.”

His third rule that states “can rescind up to the time their applications reach the critical level of 34” is invalid for several reasons. First of all, the states have long since met the “[critical level of 34](#)” mentioned by Natelson. Therefore by his own admission, his rule is defeated. However the Constitution *entirely* defeats the theory of rescission. The theory of application rescission is that a state may, at its discretion, rescind any previous application or applications it has submitted to Congress intended to cause Congress to call a convention. The theory, originated by the John Birch Society in the 1980’s as part of its anti-convention/balanced budget amendment campaign, has never been tested in court. Its political intent is obvious: reduce the number applications enough and you defeat a convention call as the number of applying states is below the two thirds mark. For the purposes of political expediency all those supporting state rescission *always*

ignore the fact more than two thirds of the states had already applied for a convention call long before the first so-called rescission was submitted by any state.

The fundamental reason Article V does not grant the power of application rescission to the states is rescission is a form of estoppel. Estopped (to quote Black's Law Dictionary) is a legal term meaning "a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly." Congress is, by the terms of Article V, "entitled to rely on the conduct" of the states when they apply for a convention call. The Constitution gives Congress no choice in the matter and thus when a state submits an application; Congress has only one alternative—to presume the state desires a convention call. To presume otherwise places Congress in violation of their oath of office as well as in violation of the Constitution both of which are obviously detrimental to Congress. The issue is not whether Congress has called the convention, but whether rescission by the state is detrimental to the right of Congress *not to violate the Constitution*. Federalist 85 referred this congressional obligation as "peremptory" a legal term meaning, "putting an end to or precluding a right of action, debate, or delay; admitting no contradiction." In short, you gotta do it.

Rescission is simply another word for [nullification](#). Nullification is a political theory dating back to the 1830's now currently popular with numerous right wing groups. Basically the theory asserts a state or group of states has the right to nullify or negate any federal law, or in this case federal record, the states believe violates *their* interpretation of the Constitution. Thus according to the theory of nullification *each state* has the right *to determine whether a federal record shall have constitutional effect thus placing state authority above that of the federal Constitution*. The courts have repeatedly rejected this so-called state right stating in no uncertain terms that no state action can nullify any portion of the federal Constitution. This includes the peremptory call requirement of Article V. There is no question that Congress has long recognized the call is peremptory and thus beyond any control of that body.

Beginning [in 1789](#) with applications from New York and Virginia, Congress established state convention calls would be recorded in the Congressional Record. The convention call was always to be based on a simple numeric count of applying states. As plainly stated by Congressman Elias Boudinout on [May 5, 1789](#), "According to the terms of the Constitution, the business [of calling an Article V Convention] cannot be taken up *until a certain number of States* have concurred in similar applications [referring to the just submitted Virginia application]; certainly the House is disposed to pay a proper attention to the application of so respectable a State as Virginia, *but if it is a business which we cannot interfere with in a constitutional manner*, we had better let it remain on the files of the House until *the proper number of applications* come forward." Congressman James Madison concurred stating, "[Congress could not deliberate on a convention call] until two-thirds of the State Legislatures concurred in such application, and then it is out of the power of Congress to decline complying...." The fact the federal Constitution imposes the peremptory standard (as no state constitution has any authority regarding federal amendment procedure) is the issue here. The federal Constitution does not give states the right of recession and no state constitution can have authority over that federal Constitution. The removal of federal records provides a means whereby Congress can act *contrary* to the Constitution. Thus a state rescission of a previous application is to *nullify*

not only that federal record (the application) but the Constitution as well. Again, the Supreme Court has repeatedly held *states cannot nullify federal law or the federal Constitution*.

By the same token, as noted in 1789, Congress has no option regarding the keeping of federal application records. It cannot vote, deliberate or even refer the matter to a committee for consideration. What the Constitution prohibits to the states also equally applies to Congress. If rescissions were constitutional, as the matter is the federal record, it would be *Congress* empowered to rescind the federal record *not the states*. The obvious reason for Congress not being granted that power, as shown below, is such power would permit Congress to ignore state applications and thus *never call a convention no matter how many applications the states submitted*. Thus, the peremptory requirement stated in Article V applies both to Congress and states alike. Congress cannot deny the application. Therefore states are denied any application content or act regarding an application which permits Congress the ability to deny it. Thus, Natelson's third rule is defeated as it violates numerous constitutional principles all designed to compel Congress to call a convention, not thwart it.

The fact is Congress, despite the urgings of Natelson and the constant efforts of the John Birch Society to "rescind" applications, has never recognized a single rescission or removed a single application from its record. Beyond all considerations is the fact that were Congress to do so, it would recognition of the right of states to control federal records, something Congress can never allow. Such power in the hands of either Congress or the states would mean the end of federalism as the empowered body would use its power to emaciate its opposite number. Neither the states nor JBS has ever brought any legal action against Congress to actually compel Congress to obey any so-called recession and remove it from the Congressional Record. This fact leads to the obvious conclusion the purpose of rescissions is political, not constitutional and therefore has no bearing vis-à-vis a convention call.

Of course Natelson gets around these massive constitutional roadblocks to his theory (and rules) by simply ignoring the roadblocks. As far as I can determine whenever Rob Natelson is confronted with the above constitutional facts, his response is always same: First he asserts only *colonial* records is valid proof in regards to an Article V Convention. For example in a recent email he wrote, "I don't blame you for not knowing this right off, since few have gone into the Founding Era record for the answers. But now we have, so you need to either come up with disproving Founding Era evidence or change your mind." If you provide such "Founding Era records" he says he will get back to you and you never hear from him again. Thus, according to Rob Natelson if I cannot provide *colonial* records supporting my positions, then I have no evidence. Hence my position must be wrong despite the fact present day court rulings, for example, support me. These, Natelson says, don't count—only what the states did sometimes before the United States even existed, that is to say before the first Continental Congress.

Natelson simply refuses to accept the world as it is with his obsessive fixation on *colonial* actions being the only valid means to interpret an Article V Convention. In fact, he is dead wrong in his assumption that any actions by the states prior to 1787 have any bearing on the issue whatsoever. What the states did before the convention of 1787 is irrelevant. That convention created *a new form of government* part of which was new

relationships vis-à-vis the states to the federal government and each other *that prior to 1787 did not exist*. The only form of government that is relevant today is the one created by that convention and subsequently ratified by the people. Hence, while the states may have had powers or took such action in conventions held in pre-constitution time, this means absolutely nothing except as a historical footnote. It has no force of law or effect unless agreed or referenced to under the new form of government. All that matters is what the states consented and bound themselves to in the *last* convention held in colonial times which created the new form of government and automatically, unless otherwise specified, precluded all actions, decisions, procedures or agreements of the states in any convention held prior to 1787.

Putting aside the irrefutable fact just cited, for the purposes of exposing Natelson's sophism, I will limit my rebuttal of him (except for one example) by use of *colonial* records only. For example, I have stated applications can neither be limited nor rescinded. By limited I mean that Congress is only obligated to call a convention if two thirds of the states apply for the same amendment subject. By rescinded I mean the states may not rescind (or withdraw) applications from the federal record (and thus deprive Congress of a true numeric count of applying states by altering that number) at their choosing. I've already addressed rescinding portion using the *colonial* record of Federalist 85 as well as the *colonial* record of the 1789 Congress.

Just so Robert Natelson gets this; I'm going to repeat myself in the same article. As stated in the [COLONIAL](#) record, Congress has no vote, debate or right of committee regarding applications. If Congress cannot debate, vote or refer the matter to committee how can it debate, vote or have a committee recommend action on a state rescission when Congress has no authority to debate, vote or refer to committee *anything in regards to a convention application by any state*? Obviously as described by record Congress has *no* authority to rescind applications whether asked for by the states or not.

The statement made in the record regarding no right of vote, debate or committee was made by James Madison who is about as *COLONIAL as you can get*. When the author of Article V gives an interpretation from the [COLONIAL](#) record, it can be taken as irrefutable and clearly provides "disproving Founding Era" evidence Robert Natelson demands. Further Congressman Elias Boudinot's statement *clearly show a convention call is based on a numeric count of applying states as Boudinot refers to "number of states" not once but twice in his statement*. More importantly, Madison *does not* correct Boudinot in his statement which is what you would expect from the author of Article V if Boudinot had gotten it wrong. Instead Madison creates an even higher standard (no debate, vote or committee) than Boudinot states. The standard is so high in fact *only* a numeric count of applying states *ignoring all other terms or conditions* can pass it. *All of this is "disproving Founding Era" evidence that directly refutes Natelson*.

Natelson has repeated stated the states have the right to apply for amendments in their applications. Before going to the *colonial* record to establish whether there is any "disproving Founding Era" evidence, an examination of a modern record is in order.

Specifically, Attorney General Robert Kennedy made it clear states cannot propose amendments. [Quoting Kennedy](#), "[same subject is]...an attempt by the various State legislatures to force Congress to call a convention which can only act mechanically to

approve or disapprove a specific amendment. The attempt is to make the convention merely an initial step in the ratifying process instead of a deliberative meeting to seek out solutions to a problem [In 1920 the Supreme Court in 1920 ruled conventions must be “deliberative” and elected by the people]. The word ‘propose’ cannot be stretched to mean ‘ratify.’ The Congress cannot properly accept and become part of any prepackaged effort to short cut the amendment process.” The “modern era” record provides disproving evidence to Robert Natelson.

Does the *colonial* record provide similar “disproving Founding Era” evidence to disprove Robert Natelson’s theory? The first question needing an answer is: is this theory an original of Rob Natelson’s? No. The theory is at least as old as the 1973 ABA Report as I noted in [a recent article](#). However the ABA Report does not cite *colonial* record. So, where is the source of Natelson’s theory that uses *colonial* records found? Most likely Natelson copied the idea from “[The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process](#)” published in 2007 in the [Harvard Journal of Law & Public Policy](#) by James Kenneth Rogers, a 2nd year Harvard law student. I wrote on this mistakes contained in this work in an [earlier article](#) from which I am providing an [excerpt](#). Rogers key “mistake” is a clear misquote of public record. On page 1007 which Rogers says, “Gouverneur Morris and Elbridge Gerry made a motion to amend the article [Article 5] to reintroduce language requiring that a convention be called when two thirds of the States applied for an amendment.” Rogers cites Volume 2 Records of the Federal Convention at page 629 as his source for this quote.

Thus the material Natelson takes his “theory” comes from the *colonial* record vis-à-vis the Rogers article. It appears to support Natelson entirely—states can propose amendments. Indeed *colonial* record goes even further. [Page 467 of Volume II of Farrand](#) states, “Article XIX. On the application of the Legislatures of two thirds of the states in the Union, for an amendment to this Constitution, the Legislature of the United States shall call a convention for that purpose.”

The problem is subsequent colonial record entirely refutes both Rogers and Natelson thus providing “disproving Founding Era” evidence. First *colonial* record shows that on the proposal on [page 467](#) was first amended, [postponed](#) and ultimately abandoned to a new version proposed by James Madison. This later version ultimately became the language of Article V. Thus the *colonial* record irrefutably shows the language that supporting Natelson was abandoned by the convention and never returned to by that body. “Disproving Founding Era” evidence therefore disproves Natelson’s theory.

As to Rogers *colonial* record directly refutes his statement by proving Rogers most likely deliberately misquoted that record in order to advance the agenda of his article. Pages [629](#) and [630](#) show the original proposal from [page 555](#) had been modified so that *Congress proposed all amendments to the Constitution*. The article contained two methods; the first by Congress directly, the second on two thirds applications by the states. *In both methods however Congress proposed an amendment*. The delegates discussed their concerns regarding the states having the authority to propose amendments as well as Congress being the sole proposing amendment body. As expressed by Col. George Mason, both forms of amendments depended on Congress to propose amendments. As expressed by Mason: “By this article Congress only have the power of

proposing amendments at any future time to this constitution and should it prove ever so oppressive, the whole people of American can't make, or even propose alterations to it..."

The language giving the states the power to propose amendments was changed. *The actual quote of the record reads as follows*: "Mr. Gov. Morris & Mr. Gerry moved to amend the article so *as to require a Convention on application of 2/3 of the Sts.*" [Italics added to highlight difference between what Rogers wrote and the actual quote]. This language did not allow the states to propose amendments, rather only allowed the states to apply for a convention call. *As clearly can be read the "quote" Rogers cited in his article and the actual quote from Farrand are not the same. Rogers' quote simply is not true.* Therefore as this "quote" is the centerpiece of his entire article, the article must be dismissed.

If there is any further doubt the Founders did not intent states to propose amendments it is resolved by the following on pages 629-30: "Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a call a convention [sic] on the like application." In short, the change in language meant two different things. Madison clearly differentiates between these in his quote. The prior language allowed for states to apply for amendments; the latter language allows the states only to apply for a convention. Thus the purpose of the application is to call for a convention, not to apply for an amendment.

This *colonial* record also reinforces my earlier position regarding limiting applications. As the purpose of an application is absolute, i.e., calling for a convention, it cannot be limited because of its single purpose—to cause a convention call. Anything with a single purpose cannot be limited beyond this point and as its constitutional purpose *is* singular multiple purposes cannot be added—least of all by "adding" purposes *the Founders clearly eliminated by affirmative votes such as states proposing amendments.*

The conclusion is obvious. Just like modern evidence, the *colonial* record provides "*disproving Founding Era*" evidence disproving Robert Natelson. Nothing more need be said than this.

"Compact for America" is the most dangerous political proposal of our time. It must be defeated at all costs. It is a stupid idea. Its creators have cobbled together false ideas about history, public record and JBS fears to "answer" these falsehoods and created a political monster, one that if allowed, will destroy the entire Constitution by the creation of what can only described as a dictatorship. The real danger of "Compact for America" is people may come to associate it with an Article V Convention. *A properly run convention, one where the people actively participate in all aspects of the convention, where elected delegates are free to debate and discuss proposals limited only by the terms of the Constitution, is no threat to the nation or the Constitution.* Only when people like Natelson, Dranias and others like him try to subvert the Constitution does a convention become a danger and as evidenced by the state legislatures rejecting this plan outright, subversions like this simply are not going to work. When idiot proposals like this are properly rejected then the air will be clear to listen to the public record and the *real colonial record* and use it to force Congress to obey the Constitution demanding they call the convention as required. Time is running out. We have problems that cannot wait. We can't afford gridlock anymore. We can't afford to keep listening to people with

stupid ideas who want to create a dictatorship, or even the possibility of one, in America. The only thing we can afford is to take matters into our own hands, force Congress to act, hold the convention and solve these problems before they overcome us.