

## Liberty Amendments Miss the “Mark”

Inaccurate, obsolete book part of plot to cut people out of amendment process

By Bill Walker

In his newly released book, “The Liberty Amendments—Restoring The American Republic” national conservative radio talk show host Mark R. Levin discusses an Article V Convention and offers twelve amendments he believes a convention should propose. To its credit his book has caused a stir of public interest in an Article V Convention. This is no surprise given the fact Americans are totally fed up with the national government and are desperate for a solution—any reasonable solution—so long as it works. Whatever other issues surround Article V, it is irrefutable—amendments work.

Unfortunately, Levin’s book is a perfect example of a golden opportunity deliberately perverted to advance a dangerous political agenda having nothing to do with “his” proposed amendments. Combined with the fact the book is woefully inaccurate, misleading and was obsolete before publication Levin’s book is presently worthless—except for the fact, as already noted, it has greatly raised public awareness about an Article V Convention.

Levin, a former convention opponent, admits he came upon this constitutional epiphany after witnessing the success of Obamacare. Obviously then, if Obamacare had failed, Levin would still oppose an Article V Convention; his transformation is therefore for immediate political reasons rather than any real concern for the Constitution. At its base opposing an Article V Convention means supporting the government disobeying the Constitution i.e., even if the states do satisfy the Constitution, we should not have an Article V Convention. Fundamentally those who state they support the Constitution but oppose obeying Article V as Levin did before his “reformation” present a flawed logic. This logic can only exist *if* the advocate ignores the true facts about a convention. Levin is as guilty of this as any opponent, previous or otherwise. This common characteristic of convention opponents ignoring the facts about a convention or twisting those facts to fit a pre-determined scheme about a convention is still true for Levin. His transformation for shallow political reasons has not altered his overall approach honed from years of experience in opposing a convention: present only certain information, ignore important facts, and distort the truth if need be in order to fit a pre-determined, politically motivated template.

If not for his political motivation Levin would have persisted in his convention opposition. He would still ignore the true facts about a convention meaning he would not heed them. Not surprisingly, Levin is clearly out of touch about the real facts of a convention and demonstrates this in his book. Why—either he didn’t do proper research or is blinded in his desire to pervert the convention process for selfish political reasons. Most likely it is for both reasons. Levin is so out of touch it is pathetic. He speaks of “beginning” a convention movement; the real facts prove the movement is nearing an “ending.”

For a month prior to its publication, Levin incessantly discussed his book and details about an Article V Convention on his national radio program in order to drum up public interest. Despite this drum beating Levin did not present vital information about an Article V Convention and so distorted the full truth about a convention. I am not discussing technical details here. I am discussing fundamental information or facts which if withheld from the public entirely alter the

perception about a convention. I believe this is a deliberate act starting with the supposed purpose of his book—presentation of proposed amendments. “His” proposed amendments are mere window dressing intended to divert attention away from his true purpose. I put quotation marks around the word “his” when describing the amendments in Levin’s book because of his intellectual dishonesty. Levin fails to give proper credit for the origin of most of “his” proposed amendments or ignores a better solution to achieve the goal he states. In some instances he conceals crucial information about “his” proposals which, if revealed, can only help his cause. Why then conceal these facts—because Levin has no real interest in these proposals. Moreover the avoidance of these facts lend support to the supposition that what at first appears to be extensive research on each amendment subject, failure to include these facts indicates otherwise.

Levin’s book is obsolete because recent events in Washington DC have already moved the issue of an Article V Convention call past his premise of a “beginning” an Article V Convention movement. In fact, Congress is already dealing with an “ending.” Thus the book has no relevance to the current status of an Article V Convention call. Levin may be excused for not updating the public in his book prior to release. Press deadlines and contractual obligations make such revisions impossible. However there is no excuse for his ignoring these events on his radio program.

For several months ([Link 1](#) , [Link 2](#) , [Link 3](#) , [Link 4](#)) I have reported on the progress of a letter (which I helped edit) sent by Dan Marks of Article V.org to the House and Senate requesting verification and tabulation of Article V Convention applications currently recognized by Congress.

Wisely, for the basis of his position about the terms under which Congress must call a convention Mr. Marks did not use the key reference source Levin cites in his book, [Robert Natelson](#). Instead, Dan Marks submitted his letter based information exclusively from FOAVC (Friends of the Article V Convention) which I helped gather. This information, based on public record, describes the circumstance under which Congress is required to call a convention. It does not agree with Robert Natelson but does agree with Supreme Court rulings, public record of the 1787 Convention and current federal law. Marks included 42 of the [746 applications from 49 states](#) on file at the site in his letter. The government has recognized FOAVC as a legitimate reference source in two recently released Congressional Research Service reports ([Link 1](#) , [Link 2](#)) discussing an Article V Convention.

Dan Marks was recently notified by Senate Parliamentarian Elizabeth MacDonough that on August 1, 2013 his letter of request was designated in the Congressional Record as an [official petition](#) to the Senate Judiciary Committee. No doubt the House will follow suit in Dan Marks request to that body and formalize the letter into an official public record. This is not a small deal. The action of Parliamentarian MacDonough transforms the letter from a private communication into an official public record. It is a serious offense ([Link 1](#) , [Link 2](#)) to present false material in a public record. To avoid this charge, Elizabeth MacDonough (or a member of the Senate clerical staff) was required to verify the letter (and its attached 42 applications) contained no false information of any description.

Therefore, whether intended or not, the parliamentarian’s action completes the first portion of Mr. Marks’ request—verification. Verification of the fact the 42 applications from 42 states submitted in the petition are authentic, that is actual copies of applications submitted by the states to Congress which *are currently valid as applications for a convention call*. The

Constitution does not demand *all* applications for a convention call submitted by the states be counted by Congress to cause a call. It only mandates a call must be occur if two-thirds (currently 34) of the states submit applications. Despite the assertion Levin's book to the contrary that applications only "count" if they are for the same amendment subject, (page 225, fn. 29), the fact is the United States has *never in its entire history* acknowledged the proper method of "counting" applications is anything but a simple numeric count and has *never asserted or accepted* a convention call is based on same amendment subject contained within an application. Indeed, the Supreme Court has *directly* ruled against this interpretation.

Moreover, as the letter is now official public record that condition mandates an official response by the two congressional committees. It has passed the level of an informal response, private letter or returned phone call. Under these circumstances *any* response by the committees (including ignoring the request entirely) *must* be viewed as an official response by the Congress of the United States. Congress returns from recess on September 9, 2013. The official petition will be officially submitted to the committees at that time. Given the usual procedure in Washington the committee chairmen will likely decide the matter unilaterally. The question is absolute: count or no count; it should come within a day or so after Congress convenes. While there is some doubt what the democratically controlled Senate Committee will do, there is little doubt how the House committee will respond. The House committee is controlled by Republicans. The Republican Party is on [official record](#) as opposing obeying the Constitution and calling a convention. As getting elected trumps everything in the capitol it is reasonable to assume House Republicans will resolve not to count the applications in any fashion whatsoever meaning a quick decision without any regard to the constitutional consequences.

The decision will probably be made no later than September 11, 2013. Congress will reach an official decision as to whether or not to obey the Constitution and count (or refuse to count) the applications in a matter of days, not the "decade" Levin asserts. Thus, his timeline and his book predicated on that timeline are both obsolete. None of this, of course, has been or is likely to be, discussed on his radio program. The fact is, by the end of the "decade" Levin proposes to "begin" a convention movement, several Article V Conventions will have been held or Congress will have officially buried that part of the Constitution permanently. Levin has never discussed any of these facts either on his radio program or in his book.

If the real purpose of Levin's book is not about suggesting proposed amendments to the Constitution, then what is it? I believe Mark Levin is part of an ultra-right extremist group attempting to totally disenfranchise the American people from the amendment process of their own Constitution (despite federal court rulings, federal law to the contrary). This disenfranchisement will then allow this cabal of right wing extremist politicians to ram their political agenda into the Constitution by totally bypassing the amendment process and its built-in safeguards *intended to prevent the very thing this groups seeks*. Levin would label these people "Statists" which the dictionary defines as a people favoring a "concentration of all economic controls and planning in the hands of a highly centralized government" i.e., liberals). In this instance however the "Statists" are the ultra-right, who publicly desire complete control of the amendment process. Levin has either referred to these extremists in his book or has publicly supported them, either on his radio program or in public statements by him.

As part of this campaign, Levin fails to provide to the American public the true and complete information about a convention either in his book or on his radio program. This information changes the entire dynamic of an Article V Convention. Some of this information, such as the

number of applying states and total number of applications, I have already mentioned. There is still more. Levin misstates or ignores the terms of a convention call, that is, when Congress is obligated to call a convention, under what circumstances, what entity has sovereign control of the convention and so forth. These questions are *critical* to the calling of any convention and deserve *chapters* of discussion. Instead Levin brushes these key issues aside with two footnotes (fn. 28, 29 p. 225) of no more than two or three sentences on page 16 of his book. To substantiate his statement applications must be for the same amendment subject Levin relies entirely on a single reference source (who he refers to as an “expert”): Robert Natelson, chief architect of the plan to disenfranchise the American people from the amendment process.

In sum Natelson’s plan asserts convention delegates are “agents” of the state legislatures to be *exclusively* controlled by the state legislatures to the *total* exclusion of the American people. While Natelson did not directly advocate felony arrest for delegates who do not follow state instructions in his [ALEC Report](#), his work has been embellished by such groups as [Compact for America](#) which does advocate felony arrest of delegates. The theory of Robert Natelson has gone far beyond the theoretical. His theory, combined with the embellishments of Compact for America, is now law in the state of Indiana. This year that state enacted two statutes ([Senate Bill 224](#) and [Senate Bill 225](#)) transforming theory into actual law meaning if enforced during a convention real people will go to jail for expressing their First Amendment rights. The reason for this right-wing effort of control is obvious: Natelson’s bogus theory (with embellishments) provides them the political shortcut to control the amendment process and thus the Constitution with the added bonus of excluding all political opposition (and associated amendment proposals) from the process.

There is just one problem with all of this. Natelson’s theory depends entirely on his proposition that state legislatures choose who will be delegates to a convention. [Natelson admits](#) as per court decisions (Leser v Garnett, 258 U.S 130 (1922), page 217-18, “... [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 limitation sought to be imposed by the people of a state.”), an Article V Convention is a *federal* function just like Congress. As I discussed in my address to [Cooley Law School](#) and at [Harvard Law School](#), the 14<sup>th</sup> Amendment makes a convention and Congress part of the same legal class and thus subject to the same rules of law. Congress agrees with me, not Natelson. Federal law mandates [delegates to a convention for proposing amendments](#) are elected just like members of Congress. Federal law refutes Levin’s “expert” entirely. Levin has never discussed this law on his program nor does he discuss it in his book.

What has Levin said about all this? In his August 26, 2013 radio broadcast Levin referred to convention delegates as “agents” of the state legislatures (a clear reference Natelson’s fiduciary theory) and, for the first time, mislabeled the convention (which up to then he had correctly referred to as a “convention for proposing amendments” a term taken directly from the text of the Constitution but less favored than “Article V Convention”) as a “convention of the states.” Clearly, Levin supports state legislatures having full control of the convention with the people cut out of the process entirely. His reference, Robert Natelson, after all, *is* the author who originally advocated this “authority” for the states. [Groups](#) as well as [individuals](#) that [advocate this disenfranchisement](#) have publicly supported Levin thus associating themselves with him. Levin has done nothing to distance himself from these groups or individuals.

To clarify: the former term, “convention of the states,” as stated by Levin, is a convention exclusively controlled by the state legislatures *without* any citizen participation whatsoever. The latter, “a convention for proposing amendments,” the only type of convention permitted in the Constitution, is adjudged a power of the people who, according to the Declaration of Independence, possess the sole and exclusive power to “alter or abolish” our form of government.

As noted by the [state of Delaware](#) in 1832 in responding to an application for such a convention by the [state of South Carolina](#) a “convention of the states” is not only an incorrect term but unconstitutional as well. Moreover the Supreme Court disagrees with Levin and Natelson. In [McCulloch v Maryland](#), 17 U.S. 316 402-405 (1819) the court, in general terms, rejected the proposition the states control the powers of “the Constitution [which]... are delegated by the States, who alone are truly sovereign.” Later in [United States v Sprague](#), 282 U.S. 716, 731-732 (1931) the court emphatically declared that no “rules of construction, interpolation or addition” were permitted in Article V. Thus any attempt to insert the term “convention of the states” or assert states control a convention must be actually *expressed* in the language of Article V or it is unconstitutional. Thus, the term “convention of the states” and its implied meanings are unconstitutional as opposed to a “convention for proposing amendments.” The two terms are neither synonymous in meaning nor intent nor may one term be substituted for the other. This equally applies to attempts to insert language such as “same subject application”, “contemporaneous application”, “fiduciary control” and so forth—in short any of the countless theories of Article based on interpretation of what is *not* in Article V rather than what *is* in Article V.

As far as I can determine Levin has never mentioned once on his program that his Indiana listeners have been cut out of the amendment process entirely while the rest of us in the remaining 49 states still enjoy the privilege of electing our delegates to a convention. We can vet delegate/candidates during the election process as to their position on various proposed amendments. With our vote we will basically decide if a proposed amendment will succeed or fail based on who we elect to represent us at the convention. The people of Indiana will have no such choice as ALEC, Levin and Compact for America has already won its battle for disenfranchisement in that state.

What is Levin’s position on all of this? He [supports Compact for America](#) (which originally proposed felony arrest for convention delegates who exercise their First Amendment right of free speech). Levin calls Compact for America his “vision” of an Article V Convention. Doubtless if asked whether his free speech rights (meaning radio show) should be censored or removed, Levin would loudly say “no!” Apparently he has no problem however censoring others for the sake of his “vision.” Obviously all of this falls under the term “addition” to Article V which, as noted, the Supreme Court has unanimously stated is unconstitutional. These court rulings are well known in the convention movement. Levin is an attorney. He would research the law (meaning researching all court rulings about an Article V Convention). He does not discuss any of this law in his book. For him to do means his research was either next to zero or he deliberately ignored these facts.

The supposed reason for all of this control is the mistaken belief the 1787 Federal Convention was a “rogue” or “runaway” convention meaning that it somehow exceeded its authority in drafting the Constitution. It should be noted, of course, this convention was authorized, convened and all subsequent actions resulting from it, conducted under the Articles of Confederation, *an*

*entirely different form of law from our present system.* Hence, what is illegal today may have been permissible in that time and under that law. Convention opponents are always quick to ignore this central fact when asserting the 1787 convention was a “runaway.”

This bogus theory has been around only as long as opposition to a convention from the John Birch Society has existed. Most importantly there is no record of it being discussed during colonial times. Much of the population at that time was against the Constitution. Presumably if that portion of the American public believed the convention lacked or exceeded its authority to propose the Constitution, it would have been stated—loudly by these constitution opponents. There is no record of this: otherwise the JBS would quote it endlessly. Based on this myth it is asserted by those backing such proposals as the ALEC Report, Compact for American and so forth that in order to prevent a “runaway” convention the states must regulate all aspects of the convention—not the people—the states.

Correctly, Levin has stated a “runaway” convention is myth. Until his “conversion” he believed otherwise. He has stated he has heard this myth “since I was 13.” He does not state if he ever refuted it before his transformation. However if Levin is correct then his support for Compact for America and so forth is illogical. A myth is something does not exist or did not happen. Thus, if the “runaway” convention is a myth then it never really “ran away.” The circumstance these groups and Levin assert the regulations must prevent never happened in the first place. Therefore there is no need for them. As Levin does support these groups and regulation of the convention, yet holds there is no basis for such regulation, obviously it is for some other nefarious purpose Levin is not revealing. The fact is all of this “regulation” is to obtain political control of a convention *before* the convention is even held. There is a much simpler and much more American solution. As noted, in my [Harvard speech](#) a simple application of the 14<sup>th</sup> Amendment resolves all the questions surrounding an Article V Convention.

Hence Levin’s book misses the mark Americans need to be told—the *whole* truth about an Article V Convention—not just those parts which advance a political agenda. Levin hides the fact a convention is required *now* not when a political faction he favors can use it for its own purposes. The significance is this: the information Levin *doesn’t* tell you about in his book *solve* the problems—now, not ten years in the future.

As I’ve said Levin’s most glaring omission is the fact that nowhere in his book does he inform his reader how many states have applied for an Article V Convention call, the total number of applications submitted nor correctly stated under what terms Congress must call an Article V Convention.

Levin brushes off these 746 applications from 49 states with no more than a single sentence on page 17, “After all, all past efforts have fallen short.” His sentence is naïve at best as it defeats the entire premise of his book—a convention a decade from now. If Levin *were correct* that all past efforts (that is, all 746 submitted applications from 49 states) are failures, then if his premise is to be believed *he needs to explain why “his” proposed amendments will not suffer the same fate as all 746 applications before him.* He does not provide an answer to this question. The obvious conclusion is “his” proposed amendments will also fail. Levin fails to tell his audience the real reason WHY such efforts have “fallen short.” This is a major inadequacy of the book.

As noted in discussing the Dan Marks letter the reason is elementary—the reason such efforts have “fallen short” is *because Congress has never agreed to be bound by the terms of Article V and count the applications!* As noted by [Frank Packard](#) in discussing the various aspects of an

Article V Convention, this refusal to count is unsupported and could be addressed with a writ of mandamus. (The author attempted such a writ in his federal lawsuits without success but this is not to say others would not be successful as they would have the advantage of more concrete evidence of applications (from the FOAVC files) than were available to the author at the time of his lawsuits). Moreover as repeatedly demonstrated ([Link 1](#), [Link 2](#), [Link 3](#), [Link 4](#) [Link 5](#)) Congress has been informed of the number of submitted applications and each time ignored them. Clearly, with the vast audience Levin commands, the fact an Article V Convention will never be held because Congress refuses to count the applications meaning “his” proposed amendments will suffer the same fate deserve more than the single, kiss-off sentence in his book.

Levin’s avoidance of this issue of an Article V Convention is irresponsible. This information defines the problem of why the people have been denied their right to an Article V Convention. It is not because previous attempts have “failed.” There has been no “failure” whatsoever on the part of the states or the people As noted in the Packard article, until Congress actually *calls* a convention *all* applications remain viable and in full force. The only failure is Levin’s—failure to inform the American people that any “failure” is the fault of Congress *for failing to count the applications!*

Instead Levin attempts to make the public believe either the states have never submitted sufficient applications or failed to satisfy the bogus condition of “same subject” he cites from Natelson (p. 225, fn. 29). This sole reliance on Natelson as his source for “same subject” and implication the states have failed to satisfy this bogus standard demonstrates how poorly Levin researched his book. If Levin believes “same subject” is the basis of a convention call, then instead of Natelson, who prior to 2010 wasn’t even involved in the convention movement, why not cite the [1973 ABA Report](#)? This report does advocate “same subject” as the basis of a convention call albeit with a presentation froth with problem as I discuss in my rebuttal to the report. For example, the report’s research of state applications shows the states have satisfied the two-thirds same subject standard the report advocates. The report then repudiates its own research saying no conclusion can be drawn from its research. Hence, the report repudiates the value of its own research thus raising questions about the validity of the entire report.

Obviously in order to list the states according to subject of application a researcher had to identify which amendment subject was identical to another subject *by reading the text of the application*. If, as the report asserts, a conclusion cannot be reliably drawn from this procedure, the same procedure Congress must employ to determine same subject application, then admission by the report its conclusions cannot be relied upon also mean conclusions drawn by Congress cannot be relied upon. (Of course today it would much harder for Congress to err as the applications are now readable on the FOAVC website meaning anyone can match up state and subject if they wish). Because this method of “count” is unreliable, as demonstrated by the report, the Founders did not chose it as the method to cause a convention call—it gives too much flexibility to Congress to prevent a convention call if they wish. This problem is only more highlighted by the fact *three* amendment subjects have reached the two thirds or greater threshold—Repeal of Federal Income Tax (39 states); Apportionment (38 states); and Balanced Budget Amendment (36 states). *In short, no matter which method of count is employed, numeric or same subject, a convention is mandated NOW.*

Levin ignores many facts to present his single subject reference and previous failure conclusion. For example, he ignores the fact in the [federal lawsuit](#) I filed, the Solicitor General of the United States (representing all members of Congress as defendants) acknowledged my assertion of

numeric count was correct as to fact and law. Levin states he studied Madison, who drafted Article V at the 1787 Convention. Obviously he did not do a very good job of research. Levin advocates “same subject” as the basis of a convention call. Madison *directly* refutes him. On May 5, 1789 ([Link 1](#), [Link 2](#), [Link 3](#)) Congressman James Madison stated Congress was not to have the right of “vote, debate or committee” in calling a convention. Query: how can Congress determine the applications are for the same amendment subject if it can’t have a committee examine them, can neither discuss or debate them or (most importantly) cannot vote on whether the applications are of the same amendment subject? Answer: it cannot.

Obviously, the Founders intended the call to be a simple numeric count of states because it is the only standard which meets the criteria of Madison (not to mention the word “number” (referring to submitted applications) is used twice in the passage) as a numeric count is universally understood. It is absolute. Either it exists or does not exist. It requires no use of committee, debate or vote to determine but only requires the most elemental, basic mathematical skills taught in grade school to arrive at the conclusion of whether two thirds of the states have submitted applications for a convention call. It also satisfies the terms of the Gerry motion at the 1787 Convention, see pp. [629](#) , [630](#) , Farrand, “The Records of the Federal Convention of 1787” motion by Gerry “so as to require a convention on application of two thirds of the states.”

The Founders stated a convention call is “[peremptory](#)” meaning Congress is allowed no option regarding a call. A decision on whether applications are for the same amendment subject gives Congress an option. Therefore it cannot be the method of choice by the Founders. Hence, Natelson is incorrect. Levin’s use of Natelson as his single reference source on the interpretation of congressional action vis-à-vis state application makes this reference valueless.

A central question Natelson, the ABA Report, Levin (and anyone else) advocating same subject never explains is—how can the convention call be limited to a single subject (that is limiting the convention to proposing this singular amendment subject, i.e., amendment) when the Constitution clearly specifies it is a convention for proposing amendments (plural or more than one amendment subject). People like Natelson, Levin et al. obviously don’t understand the purpose of “alternative method” as they label it. The convention system of proposal of amendments is like a sealed vessel in water. Allowing Congress to decide which amendments will be discussed at a convention by controlling whether applications match the same subject, or giving states the authority to control convention agenda is the constitutional equivalent of opening a hatch in a submerged submarine. Congress has its own method of proposal; the states can deal with any convention proposal through ratification as they do with Congress. Allowing either body to exceed their designated constitutional boundary ultimately sinks the vessel.

The problem for Levin is he makes a totally erroneous statement, fundamental to the entire issue of Article V—the basis of a convention call, that is under what terms and conditions Congress must call a convention—in a single footnote from a single source without any supporting reference material whatsoever to back his position despite *massive* evidence to the contrary consisting of statements by the Founders, statements in Congress and numerous Supreme Court rulings. Levin presents *nothing else* except this single reference from a single person who happens to advocate cutting the American public out of the amendment process all together. Thus, from the point of view of Levin, the word of Natelson is the final word in all of this. As shown, that word is wrong.

When I first listened to Levin's program I realized he was omitting vital information or stating errors of fact. I assumed as he had been a dyed in the wool convention opponent he might not know all the facts. Hoping to set the record straight I contacted Levin's producer Richard Sementa [by email](#) and by phone asking to come on the program as a guest. I was not even given the courtesy of a response. My request was not based on ego. It does not bother me one bit Levin didn't want me on his program. What bothers me is Levin didn't want me on his program because the information I would have provided to his listeners entirely refutes some of his basic statements and obviously would upset his carefully planned political applectart.

If I had been brought on the program I also would have corrected the record regarding Levin's proposed amendments. Levin fails to give proper credit for eight of "his" twelve amendments or misses the mark in some other way such as proposing a solution that can be done in a better way. Because of this lack of accreditation Levin makes it appear he originated these proposals. This is not true. Let me be clear—I am not suggesting Levin plagiarized material from another source. I only assert he has not given credit where credit is due in "his" proposals. This demonstrates either poor research or deliberate misinformation. In some instances his failure to credit denies the reader vital information which can only help "his" amendments.

Levin does not state eight of "his" twelve proposed amendment subjects have already been submitted by the states in applications for an Article V Convention. He also fails to credit the fact in one instance the states have advanced a better proposal regarding the issue he raises than he does. True, the language of "his" proposal differs from the language of submitted applications—but the subject matter of the application is basically the same as in his book. At the least Levin is intellectually dishonest with his reader in not revealing the full history of "his" proposal—i.e., the idea has already been submitted by the states in an application to Congress. The next few paragraphs list Levin's proposals by chapter and title. Next is a link to the earliest (but not the only) application on record with the year of its submission. Addition comments about the application are included as needed.

Chapter 2: An Amendment to Establish Term Limits for Members of Congress; [South Dakota, 1989](#). Chapter 3: An Amendment to Restore the Senate (Repeal of the 17<sup>th</sup> Amendment). No state applications on file. Chapter 4: An Amendment to Establish Term Limits for Supreme Court Justices and Super-Majority Legislative Override; [Alabama, 1957](#) (judicial term limits); [Florida, 1957](#), (Senate review of court rulings).

Chapter 5: An amendment to limit federal spending (aka balanced budget amendment); [Oklahoma, 1955](#). Thirty-six states have filed applications for a balanced budget amendment (or allow for this subject in general applications). An amendment to limit federal income tax; Repeal of 16<sup>th</sup> Amendment; [Wyoming, 1939](#). The states do not agree with Levin's proposal of limited federal income tax. Instead, by an overwhelming number of 39 states, they support repeal of federal income tax entirely. The significant point is this: either of these two proposed amendments, regardless of the method of count employed, demonstrates the states have submitted sufficient applications on each subject alone to cause a convention call. Obviously, this fact aids Levin in achieving "his" amendments but is not even mentioned in his book. Why would an author not tell his readers a goal he advocates in his book and hopes to generate support for from these readers in order to achieve the goal has already been accomplished unless the author has no real interest in achieving the goal?

Chapter 6: An Amendment to Limit the Federal Bureaucracy: [Iowa, 1951](#). Chapter 7: An Amendment to Promote Free Enterprise; [Nevada 1975](#) . Chapter 8: An Amendment to Protect Private Property: No state applications. Chapter 9: An amendment to Grant the States Authority to Directly Amend the Constitution; [South Dakota, 1953](#). Chapter 10: An Amendment to Grant the States Authority to Check Congress (Usually called nullification); [Georgia 1832](#). Levin has managed to craft language which responds to Supreme Court rulings which have repeatedly struck down nullification. He does not mention this is the oldest amendment issue on record. Chapter 11: An Amendment to Protect the Vote: [Wisconsin 1929](#). Levin's approach is a common mistake among those new to the amendment process. They attempt to use an amendment to legislate. In 1929 the state of Wisconsin proposed a better approach: an IRR (Initiative, Referendum, and Recall) for the Constitution. With this tool in the Constitution, the goals Levin seeks with an amendment can be achieved by much easier means while clearly protecting the vote of the people far better than his limited proposal by providing them an obvious power they lack today. An obvious example of this power concerns programs like Obamacare. Such a massive government program would certainly face referendum review meaning the people, not the courts, would decide if such a program were implemented.

Probably Levin's worst proposal is found in Chapter 9, pages 147 to 167 (hardcover edition) dealing with allowing state legislatures to amend the Constitution directly *without any input whatsoever from any other political body including the people as is allowed for in Article V*. In sum, the proposed amendment (which as I've noted has already been applied for by the states albeit in different form) allows the state legislatures six years to ratify the identical language of a proposed amendment.

In the introduction to his book Levin states he studied the Founders so that his amendments would reflect their original intent. These Founders, Levin states, played a great part in convincing him to change his mind about a convention. If this amendment is an example of the level of his research, he didn't study very much.

Levin's amendment does nothing about eliminating any possible conflicts between his proposal and the already existing language of Article V. As demonstrated by the language of the 21<sup>st</sup> Amendment which repealed the 18<sup>th</sup> Amendment, an amendment, if it is to repeal another section of the Constitution, must expressly state this fact. His proposal does not. Therefore it must be assumed Levin intends the original language of Article V to remain in force. The confusion is obvious. Suppose Congress, in anticipation of a state legislature amendment, writes its own proposed amendment countering the state proposal then calls for state conventions to ratify this proposal. It is ratified *before* the state legislatures pass their amendment and of course stipulates no amendment may counter its provisions. The states then adopt their proposal. Which amendment is then in force?

Another *major* problem with Levin's proposal is his proposal does not describe what political body is authorized to *propose* an amendment to the state legislatures. Thus, strictly speaking (and the courts have repeatedly ruled when it comes to amendment procedure strictly speaking is *exactly* how the process is interpreted) according to Levin's language the legislatures may ratify an amendment in a different manner than called for in Article V *but still lack the authority to propose an amendment in the first place* thus rendering his entire amendment proposal meaningless.

Is Congress now cut out of the proposal business entirely? Levin's amendment does not say. As Levin does not remove Article V, we are left with either a convention (called on application of the state legislatures) proposing an amendment for consideration by the legislatures as described *or more likely by Congress proposing an amendment*. Basically, the exact same system we have in place now. In the final analysis, the only real difference between Levin's proposal and Article V is Levin proposes dropping the ratio of ratifying legislatures from three-fourths to two-thirds. Further Levin weakens the constitutional structure by not addressing the non-amendable portion of Article V dealing with equal state representation in the Senate leaving it unexplained whether it remains in the Constitution or somehow is removed by his proposal.

Levin says he studied the Founders and presumably the amendment process created at the 1787 Convention. Yet his most glaring problem *is the fact the Founders rejected this very proposal at the 1787 Convention*. (See Farrand, "The Records of the Federal Convention of 1787, Vol. II, pp. [557](#), [558](#), [559](#)). Levin's inadequate discussion of Article V in his book (p.13-15) overlooks this fact and the reason why the Founders rejected the crux of his amendment proposal. The Founders feared if the same group of states that proposed an amendment also had the power to ratify *without review by any other political body* that group of states might "subvert" the other states. Therefore they determined that in order to ratify a proposal, a larger group of states be required in order to ensure the proposing body and ratification body were not one in the same.

Levin's book may discuss many issues but as noted often fails to explain the "why" behind his one or two sentence summary (i.e., same amendment subject, past efforts failed and so forth). Perhaps Levin thought he was writing a thirty second spot for radio rather than a comprehensive discussion of the convention process. Thirty second radio spots often ignore the "why" of something in favor of a quick sale of a single point. This may be alright for radio; it is not alright when attempting to answer questions people have about a process which is rapidly becoming their last chance to save this nation short of war. The people deserve better than Levin gives them in his book.

It is obvious Levin does not understand the most basic principle of the Constitution: check and balance. In simplest terms this means the acts of one political body (the state legislatures, the people, the Congress, the courts, the president) can be checked by the action of another political body *but not the same body that initiated the original action in question*. This principle is eloquently demonstrated in the convention process of Article V.

Political groups, movements and so forth (i.e., some of the people) demand an amendment to effect a change they desire for the Constitution—an act. The state legislatures determine whether they support such demand by applying for a convention and placing in the application language for the requested change by these people a convention will review when it convenes—a check. (Assuming Congress obeys the Constitution) Congress calls a convention—an act. The people (a group of people different from the people who initiated the process) then vote on delegate selection meaning the issue(s) before a convention suffer electoral review by the voters choosing which delegates favoring or opposing the issue(s) are selected to attend the convention—a check. The convention, operating *independently*, considers the applications (along with other requests by citizens, groups and so forth)—just like Congress. The applications, having accomplished the first of their two tier purpose, causing a convention call, now become a petition to the convention—an act. The convention deliberates, constructs and votes on proposed amendments with a specific mandate of numeric ratio (two-thirds approval of state delegations i.e., 34 votes) imposed on it by the mandate of the 14<sup>th</sup> Amendment rule of equal protection (citizens cannot

suffer inequity of representation with one proposal group limited to two-thirds proposal while an identical group in purpose can propose at a lower threshold)—a check. The convention proposes an amendment—an act. Congress receives the amendment proposal and *independent of any input either from the legislatures, people or the convention* chooses a mode of ratification for the proposed amendment—an act *and* a check. Ratification takes place at the state level in all cases requiring at least 25 percent more support than was received in proposal—a check *and* an act. The amendment becomes part of the Constitution upon ratification—an act. Amendments are not self-actuating meaning they require legislation to enforce them, court action to interpret them and so forth—several acts and checks.

Levin's proposal eliminates nearly all this system of check and balance and replaces it with something rejected nearly 250 years ago. Had Levin researched more diligently clearly he would not have proposed this. If, as he states, the Founders experience guided his proposals then reasonably he would not advocate something they already rejected. Either he didn't research very well or really doesn't care what the Founders did or did not do.

Levin's book is a best-seller. However, just because a book is popular does not make it correct. If Levin is truly committed to bringing about change by means of a convention, he needs to do several things. First, he needs to tell the whole truth about a convention. This means adding several chapters to his book to correct his errors of fact, lack of accreditation and omissions. Fortunately this is the electronic age. Levin can simply write these chapters and "print" them as a supplement to his book in a downloadable pdf file on his website. Of course people should be allowed to download this update for free. Naturally Levin informs the people about this update on his radio program. The result is an updated version of his book, this time complete and accurate telling people about an Article V Convention.

Next, Levin needs to publicly repudiate all connection with ALEC, Robert Natelson, Compact for America and any other group or person who favors pre-determination, disenfranchisement or any other similar act regarding a convention. He needs to publicly favor an open, public, freely elected convention with the American public fully involved in the process, from vetting the delegate/candidates to submitting suggestions for amendments to convention delegates.

He needs to lead the forefront of the battle to ensure a level playing field for all political persuasions exists at the convention. This level playing field allows the delegates the freedom to discuss, deliberate, consider, consolidate and otherwise dispose of all amendment proposals—not just those of one political faction. Levin needs to state a fact of history: because the 1787 convention operated in this manner, that is to say, was a level playing field where all proposals, idea, suggestions could be discussed, the convention was a success. The earlier Annapolis Convention, for example, held for the same purpose only a year or so earlier, but which was restricted by pre-determinations, was a failure. As the delegates to that convention [observed](#) they couldn't address the real issues of the problems of the nation because of the restrictions of the pre-determinations.

Any proposal therefore which manages to become an amendment in this open environment will do so on the basis of merit rather than political graft. An open, public convention is the only convention the American people will trust and therefore politically support. To corrupt the amendment process, a process *designed* to allow for peaceful, needed change in our country invites disaster. Deprived of the amendment process, the American people, to effect change, will be forced to use the only option left them—violence. In the end an open, public, elected

convention that proposes an amendment that is adopted as part of the Constitution means that proposal will have *earned* the right to be part of the Constitution and thus the respect of the American people meaning they will support it. The amendment having suffered public debate will be the best the convention and the American people can produce because history has shown anything less simply doesn't survive the amendment process. Thus the Constitution will be strengthened, not weakened by the process as some assert.

Some oppose a convention because they say there are no people like Jefferson, Washington, Madison and so on around today to be delegates. Therefore the convention will be a failure, Levin should point out (loudly) this nation has hundreds of thousands of talented people from all walks of life. They are intelligent, responsible, concerned people. To suggest all of these talented Americans lack the capacity to resolve the problems of our nation is not only ludicrous but proves those stating this have no faith in America or Americans.

Finally, Levin must urge his audience and all America to *demand* Congress do its required duty *and count the applications!* He can start by asking audience call members of the Senate and House Judiciary Committees and demand the committee make quick work of designating an officer (such as the clerk of the House) to perform the simple task of officially counting the 42 applications attached to Mr. Marks letter, determine that 42 is greater than 34 and therefore a convention call is mandated by Congress—NOW, not a decade from now. Congress, of course, needs to be pressured to issue a call—a simple call designating a time and place—for a convention to be held with a minimal operational structure taken directly from the 1787 Convention allowing for preliminary operation until delegates can establish their own procedures and rules for the convention when it is convened.

Levin has criticized others for being “RINOs” (Republicans in name only). Now he needs to prove that he is not a CSINO (Convention Supporter in Name Only). If he is merely out to sell a book, the mission is accomplished and shortly no one will hear any more from Levin about “Liberty Amendments” or a convention in general. He will cash his royalty check and go on to write his next book. However if he is not a CSINO then Levin will act as outlined *because these actions will cause a convention to be called and this, above all else, is the goal of real convention supporters.* Real supporters are not interested in selling a book, only about getting a convention so Americans can get about the business of solving the problems the federal government has either created or refuses to redress.

Americans can solve our nation's problem—a federal government that has grown too large, too intrusive, too arrogant and too bloated to repair itself. To do this peacefully mandates Americans use a tool which up to now Congress has withheld from them—an Article V Convention. With this tool a new set of tools can be created giving Americans the means to solve the problem. However the convention, like the successful convention of 1787 *must have the ability to consider all options and suggestions* free of any pre-conditions imposed on them for short-sighted political reasons. Above all else Levin, if he truly believes as I do, that the *people's* right of alter or abolish matters above all petty political agendas, must support the people in their pursuit of a convention. Right now Levin says he supports a convention for the people but has also stated he supports the legislatures controlling it. Between these two points, there is no middle ground. Either he supports control by the legislatures or control by the people. He must choose.

I support the people. I recognize the American people are more than capable of using the Article V Convention as intended by the Founders. I do not believe those supporting state legislatures

controlling a convention agenda for a political agenda either appreciate the capabilities of the American people, or the true strengths of a convention unfettered by selfish political motives. Nor do I believe they have any real faith in the American constitutional system. If this belief makes me unpopular or ignored by those forces who would pervert the right of people to alter or abolish their form of government for their own selfish political purposes then so be it. I will stand alone if required. It is not the first time an American has fought for what is right rather than what is popular. I'm not ashamed of being an American and I refuse to be brow-beaten by those who appear to be otherwise content to sacrifice what makes us American for very un-American selfish political gains. I ask Mark Levin to change his course and join me in this fight.