

People v Natelson: The FEC Showdown

Regulation Vote Signals Fed Decision on Rogue AVC Fiduciary Theory

By Bill Walker

A decision by the Federal Elections Commission (FEC) on a petition to change the regulatory definition of elected federal office to include delegates to an Article V Convention has become the battleground to determine whether an Article V Convention will be an open, freely elected convention or is hijacked by well financed special interests bent on making a convention nothing more than an orchestrated showpiece for their own political agenda. The crux of this argument is the Robert Natelson fiduciary (master/slave) fiduciary theory.

In [September, 2010](#) Robert Natelson published his fiduciary (master/slave) “theory” regarding control of an Article V Convention. In sum, this theory, which has never received any support from other academics, hypothesizes the state legislatures (or in reality the special interests manipulating the state legislatures) control all aspects of an Article V Convention. The theory advocates the people be disenfranchised entirely from the entire amendment process meaning they have no vote as to representation or agenda. A few right wing groups such as [ALEC](#) and individuals such as [Mark Levin](#) and more recently Convention of the States (COS) have supported Natelson’s untested theory because it fits right in to their political ambitions: getting amendments into the Constitution favoring their political agenda while simultaneously excluding anyone else from that process—including the American people. These groups have referred to Natelson as “the nation’s foremost scholar on Article V.” If “foremost scholar” means standing academically alone advocating a dangerous political theory based on false evidence no one but they support they are correct.

Like [Compact for America](#) (CFA) by use of a well-financed political campaign whose source remains unclear Natelson and his COS cohorts have managed to build public support for an Article V Convention while simultaneously masking from these supporters the ultimate goal of COS and CFA—to expunge them once they have served their purpose. If you read any of the material these rank and file supporters produce (usually in the letters section of a few select on-line newspapers) they always state the Convention of States is for ["We the people"](#). But if you look behind the scenes and actually *read* the product of COS and CFA, that is actual state *laws* passed by the state legislatures thanks to the lobbying efforts of COS or CFA, the only conclusion possible is all these groups want is the political power to exert dictatorial control of the amendment process and through that, tyrannical control of the Constitution.

One of the ways that is accomplished is total exclusion of the American process from the selection process for delegates clearly spelled out in the state laws. Given COS has nothing to do with “We the people” those supporters who express this can only be described as delusional. The reason for this is these supporters are so desperate to “do something” they are willing to sacrifice their most fundamental rights to do it. I have no objection to them sacrificing their rights if they want—when they want to sacrifice mine that’s a different matter. I like having the right to vote; these people don’t want me to have that right.

There are, however, major roadblocks to the COS juggernaut. The most formidable is the truth. The truth is Robert Natelson's fiduciary theory is, to be polite, baloney. For example, Natelson denies he is the source for the one of the obscene political propositions in recent time, felony arrest of convention delegates who fail to follow so-called "instructions" by the state legislatures (again read that the special interests who manipulate the state legislatures) as well as disenfranchising the American people from their own Constitution. The facts speak differently.

Natelson bases his "theory" on events which transpired during the American colonial era. He assumes because the colonies did these actions then the power to do the exact same thing still applies today. During that time the sovereign King of England was a tyrant.

Thus if the King (or one of his appointed underlings) instructed two colonies to send representatives to a conference and discuss only one subject, that is what they did—*not* because the colonies told the representatives to do something (meaning they these colonies possessed sovereign authority), but *because the King commanded it*. The King was source of all sovereign power—not the people and certainly not the colonies. In classic political terms, the King was *the state*. Under British law the colonies were viewed as property of the King (or the state)—together with everything (including the people) within them. All the colonies (there were three types—[charter](#), [proprietary](#) and [royal or crown](#)) existed under charters authorized by the King. Rights, as we understand them, in large part did not exist. True, Englishmen had some rights—but these existed at the pleasure of the King. If you don't believe that statement re-read the Declaration of Independence. One particular part of that document bears quoting: "He has refused to pass other Laws for the accommodation of large districts of people, unless those people would *relinquish the right of Representation in the Legislature*, a right inestimable to them and formidable to tyrants only."

The "right of representation" means having the right to vote on who sits in a legislature (or other governmental body) and through that election have a say on what is going to be discussed—in other words the right to vote on these people *before* they have any power over us. An Article V Convention is a form of legislature—a specialized form for a specific, limited purpose but nevertheless a legislature. Instead of passing laws (which must be ratified by signature of the governor or president) it proposes amendments (which must be ratified by massive votes of elected officials in the states). Natelson's theory mandates the people "relinquish the right of representation in the legislature, a right inestimable to them." News flash—the right of representation *is still* "inestimable" today.

Not unexpectedly the King made it a crime to disobey his commands. Thus he backed all his tyranny listed in the Declaration (and many not listed) with felony laws intended to cause obedience. These laws included arrest of members of the legislatures if they disobeyed an edict from the King. Many were arrested. Thus "concept" of felony arrest for "representatives" or delegates who fail to obey "instructions" came from the colonial period on which Robert Natelson bases his theory. The fact he did not explicitly discuss this part of colonial law in his theory is irrelevant. He advocated the use of a principle of law in effect from a certain period of time in our history where such practice existed and failed to *exclude* that portion of felony law from his "theory" such that he explained why it is not applicable today. That others, seeing the advantage of Natelson's theory to advance their political agenda, picked up on this historic fact

of law once Natelson drew their attention to that time period by publishing his “theory” means the fault lies with Natelson, not them. He’s the one suggesting colonial law which even the British no longer enforce still has legal effect today and that America move away from its current form of law *back to its colonial roots where rights were bestowed or removed by the state*. Even the British don’t support this form of law today. Instead they are considering whether to hold their own [freely elected convention for the purpose of writing their own constitution](#).

In America, an event Natelson entirely ignores—the American Revolution—changed the colonial law. The sovereign King was deposed. The people replaced the King (*the state*) as the source of sovereignty. Under the Natelson theory this fact is unrecognized. Sovereignty, according to Natelson, resides not with the people but *the state* which has always been the basis of justification of all tyrants to impose their brand of tyranny—that sovereignty resides with *the state*, not the people. While Natelson may refer to the elected state legislatures in his “theory” he is, in fact, advocating *control by the state* as the term “state” is classically understood meaning political control of the populace by a group of individuals or individual (usually referred to as the state) *other* than the people at large.

As a result of the Revolution a document called the Constitution, described as “supreme law” was created and ratified by the people formalizing them as the source of sovereignty in America rather than *the state*. This means under this law, without the consent of the people any changes to the form of government the people created—the United States Constitution—are illegal and unconstitutional. This fact is what the Revolution was about. Natelson ignores this fact in his theory by insisting the states rather than the people control the amendment process even though we fought a revolution to prove him wrong.

Indeed the fundamental flaw in Natelson’s theory is the “sovereignty” of the states he cites as the basis for the authority of the state to control the amendment process never existed in this nation. Sovereignty either resided with the King or with the people—never with the states. Instead the governments of the colonies which later became states always have been designated sovereign units of authority, just as the federal government itself is a designated sovereign unit of authority. Designated sovereign units of authority means the states (or federal government) received certain sovereign powers but not all powers from the consent of the sovereign authority. The sovereign authority, whether the King or the people, always retained and continues to retain the right of alter or abolish meaning those units can be altered by the will of the sovereign, *never the reverse*. The states have never possessed the right of alter or abolish. And it is this right which must be employed in order to “alter” the constitutional form of government.

In short Natelson believes just because he has come up with some screwy application of fiduciary (master/slave—also known as employment law) and cobbled together some so-called evidence (while ignoring anything which contradicts his pre-conceived notion) that no one has ever thought of before this means he is correct.

True, many will assert both the states and federal government (particularly the federal government) have committed “tyrannical” acts. The problem has always been proof. Except for the Natelson laws which are indeed tyrannical and not authorized either by state or federal constitutions, the fact is while individuals within the government may have acted improperly when examined in the light of cold hard facts the government has never violated the terms of the

Constitution—except for its criminal refusal to obey Article V and call the convention. When examined, citations within the Constitution have allowed for the actions by the government however politically repulsive those may be. I have made this statement several times publicly. I have yet been forced to retract it despite the efforts of several people to present “evidence” ranging from Vietnam to phone tapping to Obamacare. This is not to say I support the government in these actions. It merely means the government has authority to take such actions under some term of the Constitution. Whether they should or not is a political question and given the *political* abuses of the authorizations within the Constitution this justifies review of the Constitution which authorizes them in the first place. This is why we need an Article V Convention to peacefully resolve these issues before they get “solved” by a Civil War.

The fallacy of sovereign state authority as well many other fallacies were made [in a rebuttal](#) to Natelson’s theory published in 2011. Here is another truth. Neither Natelson COS nor CFA has ever refuted a single charge, correction or statement made in my rebuttal with documented proof. Instead they attack the fact I am not an attorney. In the United States, the professional doctorate in law may be conferred in Latin or in English, as *Juris Doctor*, and at some law schools "Doctor of Law" (JD or J.D.), or *Doctor of Jurisprudence* (DJur or D.Jur.), respectively. “Juris Doctor” literally means “Teacher of Law”, while the Latin for “Doctor of Jurisprudence”—*Jurisprudentiae Doctor*—literally means “Teacher of Legal Knowledge”. Judging by their obviously personal attacks I assume they believe unless I have a “J.D.” after my name, I and millions of others in similar position have no business reading the law or figuring things out for ourselves but instead must allow elites having a degree to “teach” us the law. Sorry but like my right to vote I choose to keep my right to think for myself and make up my own mind about things.

The fact is, despite Natelson’s effort to remove the people from the amendment process because he obviously believes such process to be beyond our comprehension, the people are not stupid. We *can* read and think things out. We don’t need a law degree to do that. What Natelson and his cohorts ignore is I am trained journalist. A journalist deals in facts and documented proof. This is why I always use documented evidence to prove my statements. I don’t state COS and CFA want to disenfranchise the American people and leave it at that—I produce the state laws which state the people are disenfranchised. I present the facts—I leave it to the reader to make up his mind.

The fact is Natelson and his major cohorts are all lawyers. At one time during the colonial period this nation had the sensible policy of tar and feathering lawyers then running them out of town on a rail. Perhaps his theory is not all bad; maybe we should return to those days under certain circumstances. Lawyers are taught to win cases in a court (or anywhere else when needed). To that end they do not present the truth or facts. They present what wins their case. Lawyers are notorious for twisting facts. So true, I am not an attorney. I’m a journalist and when it comes to presentation of fact there is the fundamental difference between the two professions—one twists facts to win a case. The other, if true to his profession, presents all the facts and lets the reader make up their own mind. To accomplish that means as a journalist, I have to understand my subject thoroughly so I can intelligently present it to the reader so they in turn can understand it. So while I may not have a “J.D.” behind my name, I have studied this issue for 23 years—a generation longer than Natelson who didn’t appear on the scene until 2010. I have fought two federal court battles, one to the Supreme Court—something Natelson or any of his cohorts have

yet to do. So, in fact, I've done the primary work of an attorney, bringing a case to court (twice), "J.D." or not. So who here really is the "attorney" when it comes to discussing Article V?

Speaking of facts; Natelson likes to twist them whenever possible. Take his latest example in a book he just released which, as he admits in an email was funded by COS. Natelson states in his email, "Many of you are aware that early this year I wrote a legal treatise on the law of amendments conventions. It was sponsored by "Convention of States." Over my career, I've written or contributed to several other legal treatises for national legal publishers such as Little, Brown and Co. and Matthew Bender. Like other treatises, this relies on case law, general legal principles, usages, etc. The treatise has just been expanded and updated to provide better treatment of the law of application-aggregation and the convention "call." Access to the treatise is free, and can be obtained at <http://constitution.i2i.org/2014/11/06/treatise-on-amendments-conventions-updated-to-include-rules-for-congress-call/> Warning: This book is designed for lawyers and legislative drafters. Judge Brennan may like it, but some other readers may find it heavy going! But it will provide guidance on the law as the courts apply it or, in undetermined cases, are likely to apply it."

Not surprisingly Natelson's prodigious work *backs up COS entirely*. A political group pays someone to write something favoring their position *and it does*. What a shock! (By the way when you read his piece count the number of times Natelson cites himself as reference for his statements versus how many times other sources are cited). But just how accurate is this "work?" Let us take one example (of many) *easily verified* by us poor dumb non-lawyers who aren't even supposed to have *the right to vote* on how all this comes down and affects *our lives*. On page 40-41 Natelson makes the following statement: "Article V denotes the petition to Congress as an application and provides that it may be issued only by a state legislature. *However, when two-thirds of the states have applied on the same topic, Congress must call the convention to deal with that topic; Congress has no discretion in that matter.*" He footnotes this source of this statement as Federalist 85 written by Alexander Hamilton. Hamilton served on the Committee of Style and Arrangement at the 1787 convention which wrote the final language of the Constitution. Therefore it is reasonable to state *Hamilton understood the meaning and intent of what he helped write*.

Natelson's statement has problems. First of all three amendment subjects—balanced budget, apportionment and repeal of federal income tax—have all reached the two-thirds mark with the result of no call by Congress. This is not my opinion. [As I reported earlier](#) the American Bar Association reported the balanced budget amendment had reached the two thirds requirement by 1973. COS, CFA etc. never mention these facts or if they do, brush their importance aside. CFA in particular never mentions the fact the balanced budget amendment they seek with applications has already been satisfied because none of these applications give CFA the political power it seeks. For the same reason COS ignores them *unless* the applications submitted allow them to control the resulting convention. So it would appear on the basis of congressional inaction Natelson is wrong—a call has not been forthcoming even when the states apply in sufficient number on a specific subject/topic. But let's give him the benefit of the doubt on this one as Congress has clearly shown regardless of what proposition is advanced or how many states apply, it will not call.

Natelson doesn't get a pass on the second point however. It is the crux of the argument of COS and CFA—applications must be on the same subject/topic and therefore submitted applications not on the same subject/topic don't "count." The most damaging argument against this theory is if COS, CFA and Natelson are correct, that prior applications don't "count" and therefore can be ignored by Congress then what separates their applications from all others before them? If Congress has the right to ignore applications for whatever reason it chooses, then what's to stop it from ignoring the COS/CFA applications as well? Once it's established Congress can ignore applications, they can ignore applications. All these brilliant lawyers are doing is shooting themselves in their collective feet with their own proposition which allows Congress to ignore applications—including theirs.

The third point regards crediting Alexander Hamilton with this "same topic" proposition in Federalist 85. Here is copy of [Federalist 85](#). Nowhere in this document does Hamilton state "*when two-thirds of the states have applied on the same topic, Congress must call the convention to deal with that topic.*" Hamilton does state Congress has no discretion on the call but not that the applications must be on the same subject or topic before Congress must call. Reasonably, Hamilton, who helped write the final version of the Constitution, had to know whether or not applications had to be on the same subject/topic before Congress is obligated to call in order to write the proper final language so as to reflect this intent on the part of the Founders. Therefore, when discussing under what circumstances Congress was obligated to call, it logically follows he would have mentioned this caveat if in fact that was the intent of the language. He mentions no such thing. Instead he refers to the matter as a "mathematical" proof of his political statement. Math in this case refers to numeric counts and fractional ratios he uses in Federalist 85 (obviously as the reference immediately follows his assertion in the previous paragraph of counts of states ("nine states or rather ten) causing Congress to call and have nothing to do with subject or topic. In short Hamilton's Federalist 85 doesn't support Natelson on his more crucial argument—it defeats it.

Notably, even Hamilton's opponents said he was correct regarding the obligation of Congress to call. (Their belief not enough states would ever apply to satisfy the two thirds requirement has long since been disproved). Further none of these opponents ever mentioned same topic/subject as a condition of the call nor corrected Hamilton's statement in their own writings. In short, there was universal agreement among all—proponents and opponents of the proposed Constitution—that the call was a numeric count of applying states—period.

Hamilton precluded the possibility of same subject/topic when he used the word "peremptory" to describe the obligation of Congress. Peremptory is a legal word which attorney Natelson refers to but obviously doesn't comprehend. Unlike us poor peasants who take time to look up its meaning in a dictionary Natelson obviously hasn't. Peremptory means absolutely no choice whatsoever—you must perform the task no matter what. There is no excuse and so forth. Hence same subject (or topic since COS cleverly avoids backing a specific amendment proposal as that has always been the third rail in so far as public support is concerned) cannot exist because Congress, when considering the applications, would have no choice but to first decide if the applications were all on the same subject or topic. Through this lawyer loophole Congress can then decide the applications are not on the same subject/topic and refuse to call. Hence, giving Congress a choice—any choice--defeats the entire premise of the call being peremptory which is

why it is peremptory—so that a convention is called and Congress can't stop it. Most people including a lot of people with "J.D." behind their names don't get this point. *You have to start with the fact the call is peremptory as this is reflected in the actual language of the Constitution ("Congress shall call") and finish with that fact meaning the term itself excludes any addition whatsoever that would in any fashion not make the matter peremptory. It therefore is mandated that any interpretation be based on the premise that a call is peremptory and the key question that therefore must always be asked is whether or not the condition being considered will, in fact, compromise in any manner the peremptory requirement such that it cannot be executed as a peremptory action—that is provide Congress a choice in the matter no matter what that choice is. If the condition does compromise the peremptory requirement the call can no longer be said to be peremptory. But Constitutional language cannot be ignored. Hence that condition cannot be part of the call as it defeats the overreaching constitutional language, which is "Congress shall call."* This is why a convention call is based on a simple numeric count of applying states *and nothing else* because a numeric count is absolute, universally understood and no requires no interpretation whatsoever. Hence no choice can or is involved. Either 34 applications from 34 states exist or they don't. A child in third grade can determine that and he will base his determination on the same mathematical principles (referred to by Hamilton in Federalist 85) as any adult.

I've always had one advantage in "my" position (which in fact is nothing more than my reporting public record based on statements and actions of the Founders, Supreme Court rulings, admissions made in public court during the two Walker lawsuits, an extensive public record, exchanges between myself and public officials (generally off the record) and last federal public law) which Robert Natelson has always lacked. I can draw from this vast public record to present the truth. When you do this you find an amazing fact—it all fits elegantly together. By using the *full* public record, the convention method of amendment fits like a brilliantly created jigsaw puzzle in that the record already answers all the questions. It's not that history has not spoken—it's that many don't want to hear. I've never once had to "discard" something or twist something to make it "fit" the mold. I can take the writings of the Founders, the motions made in the 1787 Convention, the Supreme Court rulings, federal law, the statements in Congress, the admissions of the Federal Government in the Walker lawsuits and much, much more—all of it and it comes together without trimming, twisting, turning or—*lying*—to make it work. I don't have to contrive anything. That is how you know something is the truth—when someone doesn't have to explain anything—it simply is.

Robert Natelson cannot draw on federal criminal law to buttress his arguments. He cannot point out if the FEC acts so as to prevent elections of convention delegates they, the FEC commissioners, violate federal criminal law. Further, he cannot prove if the FEC *accepts* his theory the FEC will be in *compliance* with other federal laws and Supreme Court rulings. No surprise as *neither federal laws nor Supreme Court rulings supports his theory*. Instead he can only present the untested theory of law which only Convention of the States and Compact for America support.

The second obstacle is the public record. With the advent of passage actual public laws at the state level designed to implement Natelson's theory the public can read the laws on the Internet and know what will occur *if* Natelson, COS and CFA have their way. There is no arguing with

this public record—it clearly states the people shall have no part in amending the Constitution. Let us be clear on this matter. The Natelson theory advocates the American people shall have no say in choice of representation for delegate to a convention, what amendments subjects (or topics) will be discussed at such a convention, or under what circumstances a vote is taken (if the word “vote” can even be applied given if delegates fail to follow “instructions” under these state laws they can face felony arrest) in order to propose an amendment. Under the CFA plan even ratification of a “proposed” amendment is pre-determined. In sum under these state laws *an amendment can be placed in the Constitution without the American people ever having anything to say about the matter whatsoever.*

The third obstacle is the federal government, most notably the Supreme Court which has long since put the kibosh on Robert Natelson’s fiduciary (master/slave) theory. In sum, the Court has ruled repeatedly in a series of decisions literally stretching back to the beginning of this nation that the people are the source of sovereignty in this nation—not the states (for example see [McCulloch v Maryland](#) pp 402-408). Therefore before the Constitution can be altered, the consent of the people is mandated. The Court has expressly and repeatedly stated this means the people shall elect representatives for participation in the amendment process whether they are members of Congress, delegates to a convention, state legislators or state ratification convention delegates. The Court has also made several other rulings which directly refute key points of Natelson’s theory. Further, Congress has also pitched in making it a federal crime *not* to elect convention delegates.

The response by COS, CFA and Natelson is to simply ignore these rulings, laws and public record or state they have no relevance. As part of this disinformation campaign COS and Natelson have [carefully orchestrated public appearances](#) so that those who might present opposing views are either downplayed or outright ignored. Thus, like a boxer protecting a glass jaw, Natelson has stayed out of the corners and avoided a knockout punch. COS, CFA, and Natelson, for example, have made no effort to “test” their “theory” of the form of government they want to foist on the American people in states other than those “safe” ultra-conservative states.

Natelson’s public aversion to public scrutiny is universal. Whenever I’ve confronted him in an email exchange about some aspect of his theory and the questioning obviously gets too close he will inevitably bail by giving an excuse that he has to go, can’t be bothered to answer the challenge or, on at least two occasions, stated he is done with the matter of an Article V Convention and leaving the subject for other unrelated academic work—only to reappear like a bad penny a few days or weeks later—at some rally of ultra conservatives discussing guess what?—an Article V Convention. Given that COS is obviously a financial source for Natelson such reappearance is not a surprise—when your boss calls, you come or get fired. In this case termination is not possible—COS and CFA have no other cockamamie theory *except* Natelson’s. Theirs is a perfect example of a parasitic relationship—like a tick sucking blood out of its host. Only in this case it is John Q Public that is getting sucked.

Above all COS, CFA and Natelson have avoided any confrontation in a public forum before a neutral party (such as a court of law) empowered to reach conclusions about Natelson’s theory and the state laws effectuating that theory. Between the efforts of COS and CFA 15% of the

American people have been disenfranchised. Six states have disenfranchised their citizens—Georgia and Alaska favoring the CFA plan—Indiana, Florida, Utah and Tennessee joining the COS bandwagon. All this has come about with little fanfare or protest—yet.

However the honeymoon may be coming to an end. Thanks Mr. Jon Huizer of North Carolina, Natelson's theory is being put to an important test—will the federal government accept it as a principle of law? Now, for the first time his “theory” is being examined by federal authorities empowered to judge and rule on it. Mr. Huizer recently submitted [a petition for amendment](#) to the Federal Elections Commission (FEC) requesting a change in federal election regulations (specifically 11 CFR 100.4) defining what is an elected federal office. Currently the regulation describes elected federal offices as the office of the President, Vice President, Senator or Representative or Resident Commissioner to the Congress of the United States. Mr. Huizer petitioned the FEC to alter 11 CFR 100.4 to add the position of delegate to an Article V Convention to that list.

Because Mr. Huizer's action mandates affirmative action (either the FEC will or will not change the regulation) there is no way the federal government cannot make a decision. If government attempts to “bury” Mr. Huizer's request, it will, in fact, be an official endorsement by the federal government of Robert Natelson's theory meaning the states (not the people) “regulate” the convention and ultimately the entire amendment process.

Regardless of how the FEC reacts COS and CFA are not standing still. The [Assembly of State Legislatures](#) (ASL), an ad-hoc group of state legislators created following the [Mt. Vernon meeting of last year](#), apparently believe they have the right to draft “rules” (meaning implementing Natelson's “theory”) for a convention. The group meets at the Naval Heritage Center, 701 Pennsylvania Ave NW, Washington, DC on December 8 & 9, 2014 to do just that. The December 8 session extends from noon to 5 p.m. while the December 9 meeting lasts from 8:30am to 2pm. There is no word on who is financing this shindig. The apparent authority of ASL to set the rules for a convention is ASL self-righteous belief it has the right to do it.

According to reports, ASL either has, or is in the process of, counting applications (not very hard given you have [762 to pick from and only require 34](#)) and will use their own count as the basis for their convention call scheduled to take place shortly after the December meeting. Talk about hijacking the Constitution. The ASL ignores the part of the Constitution that says Congress must call a convention. True Congress is disobeying the Constitution. But you don't preserve the Constitution by joining in with those who disobey it by disobeying it yourself. Apparently however ASL believes the best way to “preserve” the Constitution is to ignore it entirely.

While several individuals supporting an open convention as well as members of the media have requested permission to join the meeting to present their views and report on events that transpire, the response so far by ASL has been total silence. In my opinion it is foolish for open convention supporters to give any credence to ASL at all. The ASL has no legal standing whatsoever. While its individual members may be state legislators the fact is the states from which they come having given no official sanction whatsoever to this organization in regards to a convention. Neither, for that matter, has Congress. Therefore, for all intents and purposes, the group is nothing more than group of private citizen all of whom happen state government jobs.

As a result the only thing the ASL may accomplish (assuming they actually attempt to hold a convention with the expectation that any amendment coming from such convention shall have actual constitutional and legal force) is federal criminal charges for conspiring to overthrow the constitutional form of government. Article V prescribes a particular process for adding an amendment to the Constitution; part of that process *is not* having ad hoc political committees, regardless of who comprises them, propose amendments *all based on a legal theory which academically is supported by exactly one individual*. The Supreme Court has *explicitly* ruled on this point. Hard as it has proven to be, the only way to achieve a convention is to stay true to the mandates of the Constitution, meaning deal with Congress and take every public advantage to prove they, the members of Congress, are not. Public pressure is the answer and thus far it has been sorely lacking from those groups who have the political muscle to do so but are more interested in feathering their own political nests than actually getting a convention. You accomplish nothing by being even more in violation of the Constitution than Congress is then expecting everyone to accept your illegality as legal.

Thus the silence by ASL appears to indicate it is merely a front group for COS and CFA. Thus ASL is really not interested in holding an open, elected convention. This is the height of irony. All the members of ASL are all elected state legislators. By seeking election supposedly they believe in the American process of right to vote and choice of representation. Those who do not favor it in the past have suffered for it at the polls. Thus, should they attempt to push their agenda of exclusion of the American public from the amendment process, it is likely many of them will be looking for jobs come next Election Day.

Nevertheless if the federal government fails to act, it will default control of the convention to COS and CFA. If the government instead acts affirmatively to implement Mr. Huizer's requests, it will cripple, if not outright destroy Robert Natelson's theory and thus permit an open, freely elected convention by the people something federal criminal law demands.

The question is whether such a convention will be held under the Natelson theory of exclusion of the American people or under the rules of the Constitution which will provide not only participation of the American public but a free, open convention able to discuss and propose solutions to our national problems. A more classic showdown between sovereign control of the Constitution—by the people or by the state—cannot be imagined.

The FEC posted Mr. Huizer's petition in the Federal Register and invited public comment on it which ended November 3, 2014. Only a few people or groups made public comments. The event passed as usual with no notice by the mainstream press. Besides myself others making comments included [John DeHerrera](#) , [The Convention of States Project](#) (authored by COS co-founder Michael Farris) and [The Free Speech Defense and Education Fund, Inc. \(FSDEF\)](#)—an organization so secret it has no website—in conjunction with two other right wing groups, Free Speech Coalition, Inc. ([FSC](#)) and the U.S. Justice Foundation ([USJF](#)). An additional comment from Terre Meek Kellagher, Representative of [National Convention PBC](#) , the Delaware Public Benefit Corporation founded by Mr. Huizer, was also submitted.

John De Herrera and Terre Meek Kellagher made brief supporting statements but provided little else in the way of documentation to support their positions. The FSC, FSDEF and USJF coalition stated they supported the Constitution, free speech and so forth but judging by their opposition to free elections saw no problem supporting repressive state laws aimed at establishing mass disenfranchisement of the American people.

I submitted two versions of my comments to the government—one to the [Federal Register](#) which permitted submission of comments and evidentiary support in ten individual files (one of which was the actual comments) and to the [FEC](#) which only permitted submission in three individual files, (one of which was the actual comments with the remaining two providing evidentiary support). While the Federal Register allowed “live” links in the comments, the FEC did not. (Reader note: To find the specific comments on the FEC website go to the year 2014 and then to REG 2014-05Amendment of 11 C.F.R. 100.4). As a result of these different requirements slight variations between the two submitted texts occurred. For ease of reading the [Federal Register](#) version containing “live links” used in the text and “live links” in the various footnotes (linked to the appropriate reference files) used in the presentation is presented here. As I had no way of knowing the Internet address where the Federal Register would store my files I could not link to the footnotes in advance. This version updates that flaw so I suggest all read the Federal Register version as it is more user friendly.

Many people believe you should not “judge a book by its cover.” In other words judge someone not on what they say but what they do. So if someone says their organization is established to benefit “We the people” it is in their actions, the passage of actual law formalizing their actual position or in public positions taken, that judgment should be based. The actions of those commenting, particularly COS, cannot be clearer. Despite their public position that a convention is for “We the people” COS co-founder Michael Farris opposed making the office of delegate to an Article V Convention an elected federal office. Thus, despite the fact the Supreme Court explicitly has ruled conventions are elected so as to represent the people and states operate under the *federal* Constitution rather than state constitutions when involved in amending the federal Constitution, Farris spoke out against “We the people” urging their right to vote on representation be denied.

Mr. Farris must be called for a factual error made in his comments. He stated the states have never applied in sufficient number on the same amendment subject (or topic). He then stated this is basis on which a convention call is made. This is false. First, as already noted, public record shows the states have submitted sufficient applications *on three separate amendment issues* to satisfy the two-thirds requirement of the Constitution. Second, the Supreme Court in *Lesser v Garnett* and *U.S. v Sprague* emphatically ruled the content of an amendment proposal shall have no effect on the amendment process. Ergo, the content of applications has no effect on whether a convention must be called. Thus, according to the Constitution, only the number of applying states has any effect on whether Congress is mandated to call a convention. The public record shows 49 states have submitted applications—more than enough to satisfy the two-thirds requirement of applying states expressed in Article V.

Farris’ position rested on a single source—Robert Natelson’s fiduciary (master/slave) theory. Farris provided no legal citations or other academic sources reinforcing Natelson. Instead Farris

stated the FEC lacked authority to make the requested regulatory change as the regulation in question was simply a restatement of a federal statute. However as stated in my comments the language of the regulation in question, the statutory authority of the FEC and the only mention of the conditions for election of delegates to a convention in federal law were virtually identical. Moreover the FEC cannot simply ignore a statute because it doesn't fit in the mold as Farris requests. Unlike Farris who is free to ignore whatever laws, court rulings and so forth which don't agree with his position, the FEC is bound by law to obey the law and therefore must take all of the law into account when rendering a decision. What Farris failed to provide (even though he cited Court cases bolstering his argument while ignoring Court cases which countered his claim) was a statute stating the FEC *could not amend the regulation to include convention delegates when Congress already passed a law mandating convention delegates be elected.*

If nothing in federal law says the FEC can't do as requested by Mr. Huizer and Congress has already breached the matter by passage of two complimentary *federal* laws, it falls to the FEC to connect the dots Congress has drawn. Statutorily stating it is a federal criminal offense to interfere in the election of delegates clearly mandates there first *be* an election of delegates—a *federal* election as the law in question is a *federal* law. Elections are held for the purpose of placing someone in an *office* which means there must be a *federal* office for the *elected* delegate to occupy. Otherwise the election is meaningless as is an election but no actual officeholder. Thus the federal law prohibiting interference in an election of a delegate is nullified. The FEC clearly does not have the power to nullify a federal criminal law. Therefore as the law in question is federal law regulating *federal elections* and the FEC, statutorily assigned both regulatory and judicial powers of *federal* elections and the courts have mandated only the *federal Constitution prevails in the federal amendment process* it follows the *Federal Election Commission* has authority to extend the *federal* regulation in order to execute and resolve this legal issue. It remains to be seen if the FEC will follow this logic or that of Robert Natelson. Will the FEC condemn the convention to dictatorship not to mention establishing federal criminal law can be thwarted by state legislative action, not to mention its own initiative?

Thus, the FEC faces a quandary: if it rules in favor of Farris' position, technically it has committed a crime in that the commissioners of the FEC have prevented election of delegates to an Article V Convention because it has failed to create *an office* for the delegate to be elected to *and* it has participated in the perpetration of a fraud against the United States. If it does change the regulation the FEC has fulfilled its duty and is free of any legal entanglements regarding an Article V Convention.

I presented several other important pieces of information to the FEC in my comments. First, I presented material related to the [John Guise federal criminal complaint](#) sent to Attorney General Eric Holder in 2012. I noted AG Holder sent the complaint to the Criminal Division of the Department of Justice. From there it was sent to the FBI. As I have reported in [an earlier article](#) , person or persons unknown in the FBI, in violation of federal law, refused to investigate the complaint. However the FBI has never officially closed the complaint meaning it is still remains active.

Next, I presented [a proposed convention call](#) to the FEC in order to prove that the issues of a convention could be addressed while still being in compliance with relevant Supreme Court

rulings, the Constitution and other public records. To my knowledge I don't think anyone else has ever attempted to write a comprehensive convention call which is the only means whereby Congress can "regulate" a convention—with a non-binding call. Congress cannot pass legislation controlling a convention because the Court has forbidden participation of the president in the amendment process. However the Court did not state the president cannot use other assigned constitutional powers to affect constitutional obedience by Congress nor that other officials in the government cannot be involved in that process. Further, and I believe for the first time, this proposal deals with exactly *how Congress will conduct a count of applications using powers authorized in the Constitution*. Beyond addressing several other operational factors the proposal addresses the always present issues of "runaway" convention, regulation of the convention in real time by the states and elimination of political influence on the delegates while still maintaining congressional as well as state oversight. Further I informed the FEC of [my filing a criminal complaint](#) against the states, CFA and COS with the Voting Rights Section of the Department of Justice. Information regarding the progress of that complaint can be obtained by calling Ms. Sandra Hill, DOJ at (202) 305-7734 or (202) 307-2767.

Unlike Farris who skirted around the laws of the states his group has helped to pass by not presenting their text to the commission I presented [a copy of the Florida state law](#) to the commissioners. This law clearly disenfranchises the voters of that state from any representation vote on convention delegates. The state laws from the other five states are either copies or clones of the Florida law. In short, I let the public record speak for itself. I also provided [a copy of my rebuttal to Robert Natelson's theory](#). Thus, for the first time, Natelson's theory and a rebuttal to it will be compared side to side before a relatively neutral body empowered to judge the merits of the two presentations.

The dangers of the Natelson theory are obviously not apparent to its supporters. While Natelson, COS and CFA may or may not have in mind what I will now discuss there is no denying their actions feel an awful lot like the playbook from 1930's Germany where legislation first took away rights and then by intimidation, amendment finished the job and set up a dictator. Certainly a plausible case can be made.

The Natelson theory, beyond establishing political control by a political minority over the amendment process, does something even more diabolical. Reminiscent of Hitler's one-two punch (the [Reichstag Fire Decree](#) followed closely by the [Enabling Act of 1933](#)) to strip the German public of its constitutional freedoms and establish dictatorial control of the government by Hitler, Natelson's theory advances the idea that *all voters can be legislatively discriminated against and deprived of their constitutional rights*, in this case, the right to vote on representation in a governmental body. (True it was President Hindenburg who signed the Fire Degree but all who have ever studied the event agree Adolf Hitler was behind it all—Hindenburg was simply one of many dupes Hitler used to achieve his goal).

Further the theory permits *legislative* control (meaning majority votes by the legislature *if such votes are taken*) of the amendment process. A study of the state laws in question however shows these laws allow for a select group of individuals (within the legislature) to make the actual controlling decisions about the delegates rather than the entire legislature. Hence the delegates are in fact controlled by a few individuals instead of the elected state legislators as COS would lead us to believe. Natelson's theory allows the states (or a state) to "deviate" from the explicit

terms of the Constitution. The theory nullifies all the supermajority rules of the Constitution intended to protect against just such mischief as Natelson theory.

The problem for the United States Government in dealing with the Natelson theory is that by discriminating against *all* citizens, *no citizens are discriminated against as all are treated exactly equally*. Hence the fundamental principle of discrimination and hence laws intended to prevent such discrimination are technically not violated but instead nullified as there is no discrimination against one group of citizens as opposed to another group of citizens. Instead *all* citizens are discriminated against—by legislatively removing their rights, in this case the right to vote on representation from everyone. This is exactly what Hitler did in his one-two punch—depriving every German citizen of their rights then taking political advantage of the discrimination he created to foist an amendment on Germany by muzzling any public objection to the act by use of the legislation he had enacted allowing him to do this.

Further, the state laws in question extend state authority past state boundaries into the boundaries of another state. This raises serious questions as to state sovereignty. Under the Natelson theory for example, if North Carolina passes a law making a certain act illegal and a citizen from that state commits the act in the state of Washington, then under the theory he may be prosecuted for the crime in the state of North Carolina even though the event took place outside state boundaries in a state where such act may not be illegal. This brings up another important question. If the convention is held in a state where such laws as Natelson proposes exist and one *rejects* his notion of trans-state sovereignty, then it follows the state laws of that single state apply not only to the delegates of that state but to *all delegates to the convention as the state laws passed in the original states where the convention is not held have no force in the state where the convention is held and only the state law of that state is what actually matters*. Hence we have the situation where a single state can regulate, control and dictate all aspects of a convention regardless of any state laws *outside that state* to the contrary.

The matter does not end there. Under the Natelson theory, even members of Congress as well as other state legislatures and members of the public who would serve as delegates to a state *ratification* convention can be controlled. The usual defense for such state dictatorship by members of Congress is they are immune from such laws because of the [Speech and Debate Clause](#) of the Constitution. However the Speech and Debate Clause contains an important exception to this protection—“except in the case of felony”—which is exactly what these state laws create—felony prosecution—for those failing to obey the “instructions” of the state. Hence, under the theory the state could end up not only controlling the convention but Congress as well. The question is do Natelson’s laws create “valid criminal law” or not? And who determines that—under the Natelson theory—those states which pass the laws in the first place.

Further, Natelson’s theory takes advantage of the fact there is no actual right to vote in the Constitution. Rather the Constitution mandates that members of Congress shall be elected by electors who are qualified to vote for the election of the upper house of the state legislature. Given that under his theory voters can be legislatively denied the right to vote *en masse* it is not too far a stretch to propose that once such a legal principle is established in a state it may be extended to affect *all* voting which involves the amendment process—hence both houses of the state legislature. This act it would permit members of Congress to be appointed since the upper

legislative house is appointed and thus the qualification of electors to elect the upper house is no electors are qualified having been denied the right of vote for choice of representation.

The reason COS and CFA have gotten away with hijacking the Constitution is most people are just not interested in the amendment process. They sleep at their own peril. Just as most Germans were not interested in 1932-33 when Adolf Hitler seized power in Germany and overthrew the democratic constitutional government, the parallels between the actions of COS and CFA and 1932 Germany are striking and foreboding.

While the specific details of the process of the Natelson theory vary somewhat from that of 1932 Germany, the basic flight plan is being followed. Hitler used the Reichstag Fire to suspend several articles granting rights to the German people in the [German \(Weimar\) Constitution](#). The Articles were 114,115,117,118,123,124 and 153—or removal of the protection of individual rights, prohibition of entry by officials into private residences, the right of privacy of correspondence, the right of free speech, the right of peaceful assembly, the right of political association and the right of property ownership. The Enabling Act of 1933 completed the process by amending the German Constitution to allow the German Government to “deviate” from the Constitution. It was all Hitler required to establish his dictatorship by removing the remainder of the rights of German citizens. The key point of comparison between the Natelson theory and the actions of Hitler is Hitler first *legislatively* removed the rights of German citizens and once this was established gained control of the amendment process by intimidation (read that arrest delegates if they fail to follow instructions) and then by *amendment* completed his seizure of power.

As I discuss in my comments it is possible that a state or individuals filled with their own self-importance that *their* political agenda is the correct one and therefore any means necessary to achieve their political ends is justified may attempt (or are already attempting) to use the Natelson theory to their advantage by legislatively controlling the amendment process.

Those who would rely on the courts to stop the above scenario should take time to read my comments regarding Coleman v Miller [in my FEC comments](#). In sum the Court walked away from interpretation of the amendment process in 1939 stating that any ruling the Court might make would be “an advisory opinion, given wholly without constitutional authority.” The Court has left the people, Congress and the states to solve this problem the old school way—by sheer political force—a dangerous Court policy which, hopefully, will not get out of hand. Where reasonable men are denied a reasonable process to resolve their disputes they often turn to unreasonable means to resolve them. Just ask anyone who has studied the history of events leading up to the Civil War. Near the end of peace between the states desperate attempts by individuals literally weeks before war broke out were made to hold a convention to resolve the matter peacefully. They failed and we know the result. There is nothing in America history nor human experience to prove Americans when they are oppressed enough will not resort to violence to resolve the problem—especially if they are denied any peaceful alternative to do so.

In sum while the FEC petition received no press coverage and little public interest, in fact a great public battle is occurring one which will have massive repercussions on this nation. If the FEC fails to thwart the Natelson-CFA-COS triumvirate by either taking no action or affirmatively

ruling against Mr. Huizer's petition it will be viewed as a sign from Heaven by those bent on extending despotic control of the Constitution. It will spread, as I said in my comments, like wildfire and be nearly impossible to stop.

The time for public comment now closed, the issues rests with six commissioners—three Democratic members and three Republican members. The Republican Party [is already on record](#) as opposing a convention and urging all members of its party to disobey the constitutional mandate (meaning their oaths of office) of Article V. So we can pretty well guess how they will vote. The chances therefore appear slim with the odds favoring Natelson. If the commission vetoes the petition or takes no action then Natelson, COS and CFA win meaning the convention will be controlled not by the people but by a small minority of political hacks with a golden freeway (courtesy of the FEC) to control of the Constitution laid before them.

The only way for the people to prevail in this is for the FEC to change the regulation thus taking the office of convention delegate out of the hands of those who would use state law to subvert the Constitution for their own purposes. At least by doing this the FEC insures the people play their constitutional part in the representations and agenda of the convention. Frankly the chances don't look good for Mr. Huizer's petition. But perhaps the FEC will surprise us and stop Natelson in his tracks. If not then the resulting political avalanche will make 2015 an interesting year as CFA, COS and Natelson move forward in their relentless pursuit of absolute political power.