Robert Natelson v Compact for America
A Political Lesson in How to Beat Your Enemy by Destroying Yourself
Round Two

By Bill Walker

Having been distracted with personal issues which still plague me but finding at last some time to begin again to comment on events regarding the Article V movement, I'd like to discuss the continuing saga of Robert Natelson v Compact for America, (CFA), round two.

According to Google on April 3, 2016, Robert Natelson released a report blasting Compact for America as unconstitutional. On May 2, 2016, I posted an article examining the report. In that article I detailed the specifics of Mr. Natelson's attack on CFA and pointed out (correctly) that the same criticisms of unconstitutionality leveled by Natelson against CFA equally applied to Convention of States (COS), a group closely associated with Robert Natelson. COS and CFA differ in means not goals. Both advocate total control of the convention process by a few select state politicians. Both groups advocate total exclusion of the American people from the convention process—meaning voters cannot vote who will be delegates or what the convention agenda will consist of. Both groups advocate a pre-determined outcome for a convention in regards to amendment proposals.

As my first article detailed examples proving COS and CFA advocate exclusion of the American people from the convention process, these examples will not be repeated here. As to my overall conclusion that Natelson's report on the questionable legal and constitutional arguments of CFA equally applied to COS, Natelson provides nothing in his "final" report (issued June 25, 2016 according to Google) that either refutes that conclusion or gives reason for a retraction.

While Nick Dranias, who has held various leadership positions in CFA, and worked with Robert Natelson at the Goldwater Institute, vigorously attacked Natelson's first article condemning CFA, so far as I know he has been silent about the "final" article. Frankly I don't know if he's just accepted Natelson is right, figures the report is so bogus it isn't worth the time to respond, or pragmatically realizes that in attacking his organization Natelson is simultaneously exposing his own hypocritical position and that of COS.

As I wrote in an earlier article entitled, "The ALEC Report" Natelson, who was paid by ALEC (American Legislative Exchange Council) to write the report in question, advocated the people not be allowed to have anything to do with the delegate selection or convention agenda. (See pages 14-15 of the report).

Now, in his latest article Natelson has completely abandoned his prior position. He now quotes the Supreme Court ruling of Dillon v Gloss (256 U.S. 368, 377 (1921)) which states the people have a right through representative assemblies (i.e. a convention) to participate in the amendment process. (See page 8 of the report). Still some of the old Robert Natelson remains. Natelson redacts the first two sentences of the Dillon paragraph he quoted which clearly shows the Supreme Court was obviously discussing a convention in regards to "representative assemblies."

Natelson's version of the quote reads:

"Thus, the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several states and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the states shall be taken as a decisive expression of the people's will and be binding on all." [Footnote citing several prior Supreme Court rulings omitted].

The Supreme Court actually wrote:

"A further mode of proposal -- as yet never invoked -- is provided, which is that, on the application of two-thirds of the states, Congress shall call a convention for the purpose. When proposed in either mode, amendments, to be effective, must be ratified by the legislatures or by conventions in three-fourths of the states, "as the one or the other mode of ratification may be proposed by the Congress." Thus, the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several states and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the states shall be taken as a decisive expression of the people's will and be binding on all." [Footnotes omitted].

When reading the full quote of Dillon two things are obvious: (1) the Court obviously believes a convention is a "representative [amendatory] assembly" just like Congress and (2) it requires the "sanction" of the American people (i.e. voting on delegates and through this process holding a referendum on the agenda issues of the convention) to either propose or ratify an amendment to the United States Constitution. Dillon makes no distinction as to representative assemblies and indeed, appears to go out of its way to make it clear delegates to a convention must be elected by the people and falls under its definition of representative amendatory assemblies.

At the beginning of his report (page 2) Natelson again repeats "A caveat" used in his first article saying, "One should not read this Law Report as denying the power of state legislatures to determine the general subject-matter of a convention in their applications or to select or to instruct the convention commissioners. Those powers are implied in the grants in Article V."

Ignoring for the moment that in United States v Sprague, (282 US 716, 730-31 (1931) , the Court said, "The United States asserts that Article V is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates that this is true. … where the intention is clear, there is no room for construction and no excuse for interpolation or addition," and instead focusing only on what Robert Natelson presents in his report, Natelson shoots his own caveat to bits with his own evidence. Besides the aforementioned

Dillon citation Natelson refutes his caveat with statements on page 13 and 14 of his article. The report (in bold capital letters) states: “Article V assemblies must be free to deliberate within their historical sphere; no state legislative authority or other Article V Assembly may unduly interfere.” The first sentence of the report states, “The courts have held repeatedly that assemblies operating under Article V must be deliberative in nature; their conclusion cannot be prescribed in advance for them.” Further Natelson states, “States cannot use Tenth Amendment reserved power (state constitutions, laws or compacts) to control the Article V process.”

Both COS and CFA have advanced the proposition that state legislatures can enact laws to limit the deliberations of a convention. COS has even proposed delegates can face criminal arrest if they fail to obey “instructions” given them by a small select group of state legislators in regards to how delegates will “vote” on convention agenda matters. State laws have been enacted creating such penalties.

Robert Natelson is not the first person to advocate the position that a convention is federal, not state in nature. He also not the first person to advocate the states cannot control the delegates nor predetermine convention agenda by means of legislation. He certainly is not the first person to advocate the people must participate in the election of convention delegates. These issues were discussed in my 2000 federal lawsuit Walker v United States, pages 290-392.

While Natelson has written a detailed legal examination of the unconstitutionality of CFA, the fact remains these very same legal arguments equally apply to COS. When I wrote my original article and stated the fact Natelson’s arguments applied equally to COS and CFA there was a huge outcry from pro COS supporters. They criticized (but did not refute) my statement. No doubt Natelson was made aware of my article. Natelson has not presented anything in this “final” report proving my original statement was anything but correct.