

COS Publishes Proposed Amendments

By Bill Walker

The political organization Convention of States (COS) today published [five amendment proposals](#) which the organization believes should be added to the Constitution. As history has shown the chances of getting a single amendment into the Constitution is low, proposing five simultaneously, in the end, may be viewed as the political death knell for COS.

Up to now COS has avoided a great deal of public scrutiny and opposition due to its policy of only speaking in generalities when discussing proposed amendments. This was done because prior amendment proposal groups were politically destroyed by their opponents when a specific written amendment proposal was presented by that group. With the publication of their five amendment proposals, COS will no longer enjoy this political advantage.

Clearly a conservative group, the set of five proposed amendments, reflects the political ideology of COS. The proposals were created at a so-called “simulated” convention held in [Williamsburg, Virginia](#) during the third week of September, 2016. Attendees (referred to as commissioners by COS) were state legislators (and others) from all 50 states. In all 137 “commissioners” attended the event. The COS attendee list appears to contain many “commissioners” who apparently were not state legislators contradicting earlier COS advertising that only state legislators would attend the event. The total number of state legislators in the United States is approximately [7000](#).

A question not answered (or avoided) by COS is whether these “commissioners” in fact actually held a convention with the authority to propose an amendment. As all the attendees were (according to COS), state legislators and COS believes a convention is controlled by the state legislatures, the question of whether a convention comprised entirely of state legislators which proposed actual amendment language is not an idle one. However the Constitution was still in place the Monday following this COS event and it still requires Congress call the convention (which it did not) so it appears this “convention” like many in the past of similar description was simply an informal gathering of individuals calling themselves a convention. However, no doubt, from now on, regardless of whoever holds a practice convention the term “simulated” will be employed.

As to the proposals themselves, over the coming days, weeks and months political opponents will attack, not only COS but the amendment proposals themselves, and begin to tear away at them. This is part of the political blast furnace known as the Article V Convention. Public debate begins on amendment proposals even before the convention is called. It is a vital part of the amendment process. While it is obvious COS would prefer to avoid the process entirely and simply enact “their” proposals into the Constitution under what amounts to dictatorial means, the Constitution still prevails meaning like all other amendment proposals, these will suffer public review.

Naturally COS featured a comment by Professor Robert G Natelson (and no one else) who solemnly declared, “The verdict is in: the process works.” News flash Bob—there have been

over 700 state conventions held in this nation since its founding and guess what—they all worked. Natelson’s comment has as much value as his saying, “Julius Caesar is dead today.” Outside of those who support COS press and general public reaction appears to be a yawn.

To sum the “simulated” convention proposals they are: (1) Fiscal Restraints, limiting federal debt and elimination of unfunded federal mandates on the states; (2) Federal Jurisdiction, limiting congressional use of the commerce clause, giving states the right of standing to file suit in court for violation of the provisions of the amendment; (3) Term limits for all members of Congress; (4) Federal Jurisdiction, giving the states authority to nullify any federal statute, decree, order, regulation, rule, opinion, decision in any form by a vote of three-fifths of the legislatures. The amendment permits nullification of any current law and forbids the federal government from attempting to enforce the law after it is nullified. The amendment permits the law to be reinstated after a period of six years; (5) Repeal of the 16th Amendment and prohibition on federal taxation of incomes, gifts or estates. The proposed amendment requires a three-fifth vote in both houses of Congress to raises any tax, duty, impost or excise; (6) Authority of Congress by one quarter vote to vacate a federal regulation and requires that no regulation go into effect without congressional approval.

There is one point that should be made immediately about these amendment proposals by COS at its convention however. It begins with the fact no state has ever submitted an application dealing with federal use of the commerce clause. A list of the applications grouped according to subject [is available at this link](#).

COS believes states have the right to criminally prosecute convention delegates who fail to follow "instructions" from the state legislature. At the "simulated" or mock convention held by COS in September, 2016, one of the proposals made was a limitation on the commerce clause. As stated, and it deserves restatement, such a proposition has never been advanced by COS nor any state legislature in any application submitted to Congress. The rest of the proposed amendments have applications on file with Congress. Thus it can be argued the COS convention "acted" under the instructions of the state legislatures.

However the proposed commerce clause amendment was never requested in any state application nor is it mentioned in any COS material. Thus the proposed amendment was entirely convention created and not based on any instructions from any state legislature. Under the terms of already enacted state laws in regards to convention conduct in a COS convention (and thus recognized in all states under the full faith and credit clause of the Constitution) this amendment proposal is illegal as it was not made according to state legislative instructions. The COS "simulated" convention therefore in fact violated its own political position and state laws which it lobbied to be enacted in regards to limiting amendment proposals to only those which were pre-approved by the state legislatures at their own convention.

Let the debate on these proposals begin.