

## Proposed COS Amendments Sent to Congress

### By Bill Walker

Sometimes in politics the best strategy to expose something is to go along with it—briefly. With that in mind this past weekend [I sent the five proposed amendments from the Virginia Convention of States \(COS\) of September 21-23](#) to Congress requesting Congress formally commence choice of ratification mode for the proposed amendments as specified in Article V. It is five amendment proposals, by the way, not six as some might think—the two proposed amendments on federal executive and legislative jurisdiction being on the same subject must be construed as one giant amendment because both deal with federal executive and legislative jurisdiction.

It is not that I have “flip-flopped” my position on COS nor do I believe I have lost my mind political or otherwise as some might think. I firmly believe in an openly elected free of smoke filled room politics Article V Convention rather than the off limits to the American people politicians run it all convention COS favors. If the COS amendments are what national policy should be, I believe the American people must have the opportunity to decide that for themselves. COS does not believe this and, using a theory of government concocted by Robert Natelson based on tyranny, has put theory into practice. I refer to King George III who is described as a tyrant in our Declaration of Independence.

If something is designed to create a particular curve not unexpectedly the end product will have that curve. The King was a tyrant. Not surprisingly the COS plan is a tyranny. Robert Natelson based his vision of our country today on a time in our history when King George routinely dissolved state legislatures, denied people trials, stonewalled needed laws, controlled the judiciary, used troops to enforce his orders, and generally did what all tyrants do—deny people their basic rights. That’s why we in America got fed up with King George, called him a tyrant and revolted—to establish a form of government designed to prevent tyranny.

The problem I have with Robert Natelson and his plan is he wants to bring back these good old days because he says conventions between the colonies held during that time operated in a certain way. Therefore our conventions should operate this same way. The fact none of the over 700 state conventions held since independence operated this way is ignored of course. The fact the King controlled these conventions with the same iron hand as he did everything is ignored meaning the conventions of that day operated as they did because the King ordered it. If you read [Natelson’s vision objectively](#) you’ll see King George’s stamp all over it. So why would we want to adopt that mode of government as our model for an amendments convention when the American people rejected that mode of government centuries ago and the Founders specifically designed our amendments convention *not* to be like a King George convention? While I’m all for nostalgia this is one part of history I have no desire to relive.

The biggest obstacle in our form of government we the people took to guarantee our government did not become King George 2.0 is the election process. We described in the Declaration and later put into practice in the Constitution a form of government whereby the people had to give their consent to alterations of that government. True, the form of government we established was by indirect (representative) rather than direct democracy but always by *direct* consent of the

people on choice of representation rather than by *implied* consent as Robert Natelson, COS and King George advocate. In the colonial conventions the people had absolutely no say on representation or agenda, both being determined by the King. The reason the people in 1776-89 favored indirect democracy was primarily logistical rather than political. It just wasn't practical to have everyone vote on every issue on the frequency required to get things done. Now is different. We could construct a form of direct democracy where the people vote electronically and with frequency while still retaining our representative form of government by simply binding those representatives to that vote. But that is another article for another time.

This form of indirect democracy established certain principles and legal barriers which effectively prevent a tyranny. The Natelson/COS plan eliminates them; electoral exclusion of the people, no review of convention agenda through public debate; threat of felony arrest if "commissioners" don't obey politician instructions. Fine; COS and Natelson are entitled to their opinion of how government should operate—so long as the theory remains a theory. COS however went further. It persuaded state legislatures in several states to enact Natelson theory into enrolled state laws transforming the theoretical into binding national policy. It's these state laws that make the difference with COS and Compact for America (CFA) which [uses the compact clause to bind the states to an equally dangerous political position.](#)

These state laws are poorly written but nevertheless, until struck down by a court or repealed by the state legislature, binding. The laws reflect obvious political influence and little thought to the legal and more importantly constitutional consequences of their enactment. The chief weakness is these laws all refer to a "Convention of States called by the states" rather than quoting Article V and referring to an Article V Convention "called by Congress." Enacted by politicians who believe the federal government is "overreaching" and I'm not saying they are entirely incorrect, these laws describe a convention with the checks or balances provided by election eliminated thus leaving the state politician controlling the national amendment process with no review by the people.

What COS and these state politicians didn't consider (or maybe they did and chose to take advantage of the fact) was these laws introduced the Natelson/COS tyranny into our national legal system via the full faith and credit clause of the Constitution. That constitutional provision recognizes a law passed in one state must be recognized in *all* states. Quoting a legal opinion of the Supreme Court taken from Black's Law Dictionary: "A judgment or record shall have the same faith, credit, conclusive effect, and obligatory force in other states as it has by law or usage in the state from whence taken. *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill Co*, 243 U.S. 93 (1917)."

Thus when a tyrannical law is enacted in one state it has the same "obligatory force" and "conclusive effect" in all states as it does in the state "from whence taken." When COS states only eight states support them, people should realize by COS getting its state law enacted in just a few states, they've slipped their form of government into all 50 states. True there are means to overthrow such despotism but no one seems to be doing anything about that at the moment. Until they do these laws are binding. Under the terms of our Constitution, for example, the state law enacted in the state of Indiana featuring electoral exclusion for convention "commissioners", establishes a convention controlled by a select group of state politicians and has

“commissioners” facing arrest for failure to follow instructions is legal and binding in all 50 states. Mixed with other facts it creates a very dangerous recipe.

Take the fact the full faith and credit clause makes the COS law law in all 50 states. Add the fact Congress has never counted state applications (except informally) yet repeatedly concedes in and out of court [sufficient state applications exist to cause several convention calls](#). Mix well with the fact there is no federal legislation regarding a federal convention meaning state law is the binding law now. Add the fact the COS law is currently the only state law regarding an amendments convention. Throw in the fact state laws allow for unelected “commissioners” as representatives of the state legislatures (not the people) as “delegates” at a convention. Add a dash of the fact the federal judiciary (all the way to the Supreme Court) has repeatedly ruled citizens lack standing to compel Congress obey the Constitution meaning there is no established legal right for the people to participate in the amendment process. The practical effect is no one can sue to change these state laws. Add the fact the recent COS Virginia convention was comprised of official state officeholders from all 50 states who took recorded votes on proposed amendments under the authority of state laws recognized as binding in all of states. Top off with the fact none of the usual checks and balances designed to prevent such a convention from proposing amendments (such as election and certification of “commissioners”) exist in the state laws and you have your recipe for tyranny.

The only thing missing from the recipe was the legal fact none of the state laws in question contained an enacting clause, that is, a legal process whereby any proposed amendments from a COS convention would be transmitted to Congress to begin the ratification process. Why this oversight exists I have no idea. It certainly speaks to the lack of confidence its supporters have as to its merits of the Natelson/COS plan for this nation. Everyone knows that without ratification proposed amendments are meaningless. You would expect the transmittal rule to be number one on the hit list for COS. But no, it doesn't exist—not in the state laws nor the Virginia convention rules.

Works for me; as I point out in my letter to Congress, just as was done in 1787, there being no legal prohibition in law against calling a convention to propose alterations to the Articles of Confederation, Congress, by creation of a congressional committee designated to do just that, was able to call one. The same principle applies here: there being no legal prohibition defining submission of proposed amendments to Congress for ratification by a COS convention in the state laws anyone can do it. So I did.

So why did I take such a step? Simple; Congress will find a legal reason *not* to accept the COS Convention as legal. Whatever reason they will use (and there are several some of which are discussed below) it will go a long ways to shutting COS down thus opening the path for support of a populist elected convention. Politically Congress will stick its collective neck out a mile to choose a mode of ratification based on one man's theory American government return to King George's time and electorally exclude the American people from the amendment process. That ought to sit real well with the American people when they go to the ballot box to vote on these members of Congress in a month. But if Congress takes the risk and does propose a mode of ratification then COS is done; its convention has been held, there is no longer a reason for its existence. Again the way is open for a populist elected convention. Either way I win.

Not that I'm worried about these proposed amendments. Even if ratification did occur which is highly doubtful for political and constitutional reasons, the amendments are useless. Now that they have been proposed by a convention they cannot be altered by Congress. The Constitution provides no rewrite clause for amendment proposals once proposed by a convention nor does it permit Congress the right to "edit" them before sending them out for ratification. This is why it is so important there is vigorous public debate on proposed amendments so the directly elected representatives at the convention get it right. The debate exposes all potential faux pas. But not to fear; from a political standpoint only about 20 percent of the American public (except possibly for repeal of federal income tax) favors the proposed amendments. Ratification is not going to happen with 20 percent of—oh I forgot—COS doesn't believe the American people have a part in the amendment process—so what the people support or don't support during *ratification* when the process is no longer controlled by COS doesn't matter. Right. If Congress does send these things out the proposals will quickly go down in flames because the people don't support them.

Constitutionally, the proposed amendments also fail. For one thing they have no enabling clause. Many amendments in the Constitution contain the sentence, "Congress shall have power to enforce this article by appropriate legislation." This is required to be in the amendment because of the language of the "necessary and proper" clause in Article I use the word "foregoing" to limit Congress to those powers described in Article I. This example of check and balance means anything written in the Constitution *after* the "necessary and proper" clause requires specific written consent to extend the legislative power of Congress to that article (and only to that which is described within the article) or amendment. If this were not so Congress would run amok and legislatively control every part of the Constitution.

None of the proposed amendments contain this language. Without it, neither the states nor Congress is empowered to enact legislation effectuating the amendment. If you read the language of the proposed amendments, all require legislation either at state or federal level to effect the amendment. The states give themselves the power of nullification of federal laws, for example, but without legislation this power is useless. A vote of a number of states is required to nullify a federal law or regulation. How is this accomplished? Which state originates the vote? What language shall it contain? If the language varies from state to state is it the same resolution? How is a vote be transmitted from the states and to whom in the federal government shall it be addressed when completed? How does the federal government process the nullification—by what means is it officially accomplished? Can a state rescind a nullification vote already made by a state legislature prior to the necessary number of states being obtained or does it reserve the right to nullify the nullification by withdrawal of its vote after the necessary number of states is accomplished? If the federal government rewrites the regulation, law and so forth in question while the states are still in the process of vote does this effectively nullify the nullification? If a court rules on the state power can the states nullify the ruling if they don't like it? Questions like this are answered with legislation and/or in federal court rulings. Ironically as COS didn't put in an enabling clause it will be entirely up to the federal court system to provide the answers thus extending the reach of the federal judiciary which is exactly what COS says it wants to prevent.

COS supporters will scream the convention was a "simulated" convention. So I ask: in what aspect was this convention "simulated?" The convention was convened under authority of state

laws which sanction a “convention of states called by the states.” It was attended by current state officeholders who are legal representatives of their states. These officeholders met in convention to propose amendments and did so. There is no definition in the state laws defining what constitutes a “convention of states called by the states.” The state laws do not refer to a convention called by Congress. However Congress has refused to do its required duty and call the convention and thus is in violation of the Constitution. As I note in my letter there is strong legal precedent that under such circumstances the states have the right to convene a convention so that they remain in compliance with the Constitution.

Therefore there is nothing to say this convention, in which official state representatives from all 50 state legislatures participated and proposed amendments, was not a convention “called by the states.” State laws do not describe a “simulated” convention nor provide exemption for such a convention. This means if a “convention of states called by the states” meets, by law, it is a not a “simulated” convention. For those COS supporters inclined to refute me on this don’t give me rhetoric on these points as you have thus far every time I write about COS: give me facts, court rulings (from the states of course) or other proof. Otherwise, because we are discussing binding state law rather than political theory where rhetoric is sufficient without facts to back your side, I’m correct.

COS wanted a “simulated” convention which is part of the federal amendment process. Very well; let’s see how the rest of the simulation plays out. The Constitution provides no option for Congress to refuse proposed amendments from a convention. It only provides Congress shall chose mode of ratification for those amendments. So, if Congress refuses to choose a mode of ratification for the proposed amendments and as there is no federal law, court ruling or constitutional provision permitting them to do so where do we stand? Does Congress then have the power to refuse all proposed amendments from a convention even if Congress calls it under Article V? Has COS opened to door in its efforts to eliminate federal overreach to the prospect of Congress turning a convention into nothing more than a congressional committee rather than an independent constitutional body as intended by the Founders because COS wasn’t bright enough to consider the constitutional consequences of turning harebrained Natelson theory into binding state law?

Will Congress, however unlikely, politically accept a “convention of states” where “commissioners” by law, represent the state legislatures and not the people? Do these state legislatures have authority to amend the Constitution without electoral review by the people? If the people can be electorally excluded from the amendment process in terms of election of governmental bodies involved in the process, do not the terms of the 14<sup>th</sup> Amendment apply to all other governmental bodies in that amendatory process? If so, the principle of electoral exclusion must apply to all members of Congress (amendment proposal, selection of mode of ratification, enrollment of ratified amendments) and state legislators (application for convention call, ratification). And by the way before you attack me on this point I suggest you read the peculiar language of Article I/ 17<sup>th</sup> Amendment as to qualification of electors for election of members of Congress. Congress is elected by electors qualified to vote for office in the upper chamber of the state legislature. Make that state office electorally excluded and no vote by the people for members of Congress. Now that *really* puts the Natelson/COS tyranny plan into effect. King George will beam from his grave.

Frankly it wasn't hard to correct the arguments of Natelson/COS in order to create a viable legal argument for the presentation of the amendments to Congress. I've listening to people like COS for over 25 years talk about Article V and constantly misrepresent the facts about an Article V Convention. Using the real facts I repeatedly have poked holes in their statements. To do that requires understanding their arguments thoroughly. Their arguments are contrived because they avoid facts in order to contrive the argument. They are easily shot down by simply bringing to light the facts they avoided to create the contrivance in the first place. The "tell" is whenever I present facts countering their contrivance and they respond with vitriolic rhetoric. They say I'm wrong or say I have an "attitude" or say I should "join" them but never prove *why* I am wrong. But for this one time I decided to "join" them and give COS an idea what will occur if I did. I don't waste time on rhetoric. I get the job done. You want the convention, you get the convention. So if that means sending proposed amendments by a convention to Congress I do it.

Perhaps Congress will surprise us and immediately choose a mode of ratification while singing "The Impossible Dream" like the choir at the end of Man of La Mancha when Don Quixote goes to face the Spanish Inquisition. More likely however after reading those parts of the state laws about arrest of commissioners for failure to follow instructions, electoral exclusion on a statewide basis, and assumption of sovereign state power over popular sovereignty (which by the way is not a phrase but a legal fact) and other similar contrivances, Congress will deny the proposed amendments ratification based on any number of violations of federal laws. Denial of vote is illegal. It is against federal law to use a false or otherwise illegal record for any official purpose.

Perhaps Congress will simply point out it is Congress that calls the convention, not the states and therefore any "convention of states" authorized under state law that is "called by the states" is unconstitutional, "simulated" or not. Obviously Congress is not bound to propose a mode of ratification if the "convention of states" is not authorized under Article V. If that is the result, a determination by Congress a "convention of states" doesn't constitutionally exist, it will spell the end of COS as well as CFA. Article V mandates Congress call an Article V convention *elected by the people* and this backed up by numerous Supreme Court rulings stretching back to 1798. However, state laws are involved in this "convention of states called by the states." State officeholders conducted this "convention of states called by the states." Congress will not take this matter lightly nor will the federal government. Denial of right to vote on a statewide basis is a serious matter and will be addressed by the federal government in a serious response.

I believe in a free and open convention with freely elected delegates who are not automatons to a bunch of state politicians ordering them under threat of arrest to put in place a particular political agenda as national policy through the amendment process. Not until the American people vote on delegates, have vigorous public debate on the proposed policy and have that proposal go through the political blast furnace which is the Article V Convention. It's not that I oppose the national policy COS advocates. For the most part I agree with it. I just happen to believe the American people should have the choice in deciding whether that proposal becomes the national policy by means of the amendment process. Frankly if the COS political platform is as good as its followers believe it is, they should not fear a national debate on its merits; they should welcome it.

But they obviously do fear such a debate. The only possible answer for this is they believe their program has no merit but they still want it as national policy. So fearing open public debate they contrive a plan designed to circumvent any inspection of the proposal by the people. Worse, supporters in a few state legislatures transform this contrivance into state law which has already done great harm to this nation.

Establishment in the American system of government that for whatever reason, wholesale abolition of the right of vote at a statewide level may occur should chill every patriotic American heart. The right of vote, or “alter or abolish” or “consent of the governed” is the cornerstone fundamental right expressed in our Declaration. It is the difference between us and tyranny of King George. Without this right there is no guarantee of any other right we cherish. COS blithely proposes, and more importantly has obtained, official state sanction by enactment of formal law for the removal of that right. Can’t anyone at COS see or at least understand that once you establish the right of vote can be removed on a statewide basis for one reason, it can be removed for any reason someone else cares to create? Obviously not; instead the insidious poison is spread quietly by COS like a theft in the night, state by state, removing the American people’s right to vote who sleep while their right is stolen.

I am not one of them. I don’t have the millions that COS has at its disposal from undisclosed sources so that I get interviews with all the national media whenever I want. I don’t have the money to buy PR types who spin doctor the facts and hide the truth from the people. I have only one voice and little affect but I’m going to continue to use that voice by whatever means are at my disposal. COS made a mistake by holding a “simulated” convention. Had the attendees not been current officeholders or had they not taken actual votes on proposed amendments, were there no enrolled state laws involved then the convention would have indeed been a “simulated” convention. But such is not the case. The convention was “real.” If it was a “real” convention which proposed amendments, the Constitution states the next step in the amendment process is ratification assuming the “real” convention of states is authorized under Article V, a question that now will be formally addressed by Congress. Let the federal government have a chance to decide on the validity, constitutionality and legality of the Convention of States and its associated state laws.

COS supporters say the “simulated” convention showed what a “real” “Convention of States” will be like. That is true. It featured electoral exclusion of the American people and little, if any, debate on an agenda prearranged by COS. The press was excluded. The outcome was therefore a foregone conclusion: the COS political agenda, the only one discussed by the convention, was stamped with overwhelming approval by the COS convention. A very efficient convention all in all—if all you want is efficiency in government then tyranny is, without doubt, the most efficient form of government there is. I prefer the more inefficient form of government called democracy and a populist elected convention that reflects that form of government however inefficient it may be. In short, I want my voice to be heard at an Article V Convention.