The "Compact" Gimmick To Circumvent The Powers Granted To Congress By Article V

The **supremacy clause** at Article VI, clause 2, US Constitution, says:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Two bills, SJR 31 & HJR 49, which purport to provide for the selection and control of "commissioners" to an "interstate convention" for "proposing amendments" to our federal Constitution, have recently been filed in the Virginia General Assembly. The bills assert that such an "interstate convention" is authorized by Article I, §10, clause 3; the 10th Amendment; and Article V of our Constitution.

As shown below, the bills are unconstitutional because they seek to circumvent Article V, and are not encompassed within Article I, §10, clause 3, or the 10th Amendment. Under the supremacy clause, they would be struck down.

1. **What Article V says about amending our Constitution**

Article V says:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing amendments…"

Our existing 27 Amendments were obtained under the first method: Congress proposed them and sent them to the States for ratification or rejection.

We've never had a convention under Article V – *they are dangerous!* If Congress calls an Article V convention, our existing Constitution could be replaced with a new Constitution which sets up a completely new structure of government.[1]

Nevertheless, the People granted *to Congress* at Article V the power to "call" a convention; and *to the Delegates* to the convention, the power to "propose amendments".[2]

Yet the Convention of States Project (COS), in brazen disregard of the plain meaning of Article V, has long insisted that *the States* "call" the convention; *the States* propose the amendments for the convention to rubberstamp; and *the States* will have total control over the Delegates to the convention.

SJR 31 & HJR 49 are an implicit admission that we who oppose an Article V convention have proved our point: *Congress really does* "call" the Convention; and pursuant to its grant of power to "call" the convention, *Congress really is* granted by Article I, §8, last clause, the power to make all laws "necessary and proper" to carry out the powers granted to Congress by Article V; and *the States actually have no power* over an Article V convention – except to ask Congress to "call" one.[3]

The Congressional Research Service Report dated April 11, 2014 likewise reflects Congress' clear awareness that it alone has the power to organize and set up an Article V convention. The Report says:

"First, Article V delegates important and exclusive authority over the amendment process to Congress…" [page 4]

"Second . . . Congress has traditionally laid claim to broad

responsibilities in connection with a convention, *including . . . (4) determining the number and selection process for its delegates;*[4] (5) setting internal convention procedures, including formulae for allocation of votes among the states; . . .” [page 4] [italics added]

And contrary to COS’s previous assurances that the States would have total control over an Article V convention, the CRS Report says on page 27:

“In the final analysis, the question what sort of convention?” is not likely to be resolved unless or until the 34-state threshold has been crossed and a convention assembles.”

In other words, *we’ll have to get a convention before we know what the Delegates are going to do!*

1. The new Gimmick to circumvent Congress’ powers under Article V

SJR 31 & HJR 49 make the bizarre claim that Article I, §10, clause 3, which says:

“No State shall, without the Consent of Congress … enter into any Agreement or Compact with another State…”,

is really talking about an “interstate convention” for the States to meet and “propose amendments” to our Constitution!

First of all, our federal Constitution doesn’t address “interstate conventions”![5] State and local governments and private organizations may hold nationwide conventions (gatherings) on an endless list of matters: trade shows, book fairs, sports events, high school marching band contests, agricultural fairs, meetings of County Sheriffs, whatever they like! And they don’t need permission from Congress.

Secondly, a “Compact *with another State*” within the meaning of **Article I, §10, clause 3**, is separate, distinct, and totally *unrelated* to **the Article V convention *called by Congress*** for

the purpose of addressing our federal Constitution. "Compact", as used in Article I, §10, clause 3, means binding agreements or contracts *between States* which deal with state matters. Traditionally, "compacts" have been used to resolve such matters as boundary disputes *between States*; and may be used to address various other issues *between States*.[6]

Article V governs amendments to our Constitution – not Article I, §10, clause 3! Virginia may not lawfully set up any gimmick to circumvent the powers granted by Article V *to Congress.* And Congress may not lawfully approve a "compact" which violates our Constitution!

Thirdly, SJR 31 & HJR 49 claim **the 10th Amendment** gives States the power to hold an "interstate convention" to propose amendments to the Constitution. *Rubbish!* The 10th Amendment addresses powers "*reserved to the States…or to the people*." It is inapplicable here because no powers respecting an Article V convention were reserved to the States: **The People granted *to Congress* the power to "call" an Article V convention**; and ***to the Delegates,* the power to "propose amendments**". The only power the States have is *to ask Congress* to call the convention.

Once the requisite number of States has applied to Congress, it's out of the States' hands. Pursuant to Article I, § 8, last clause;[7] *Congress* has the power to make all laws necessary and proper to carry out its power to "call" the convention. And *then*, our Fate is in the hands of the Delegates; and they can do whatever they want – as they did in 1787.

III. The new Gimmick attempts to circumvent the Plenipotentiary Powers of the Delegates to an Article V Convention.

Article V shows on its face that *the convention* is the deliberative body. The Delegates hold the Power to "propose

amendments"; or, to do what our Framers did at the federal "amendments" convention of 1787 (invoke the 2nd paragraph of the Declaration of Independence) and write a new Constitution which creates a new government.

So, while the States are free to propose amendments *to their Congressional Delegations* [and this is what James Madison advised];[8] the States have no authority to dictate the amendments to be proposed at the convention called by Congress.

And as shown in "Why states can't prevent a runaway convention" and "Delegates to an Article V Convention can't be controlled by state laws!" attempts to control Delegates with "unfaithful delegate" laws are laughably ineffective.

Apparently, the convention lobby now concedes that "unfaithful delegate" bills won't work, since with SJR 31 & HJR 49, they attempt to circumvent the plenipotentiary powers held by Delegates to an Article V convention, by fabricating a new kind of convention (meeting) out of Article I, § 10, clause 3!

1. The solution is to enforce the Constitution we already have

Americans don't know what our Constitution says and don't care what it says. They want what they want; and elect politicians like themselves. The politicians made a mess. To fix the mess, Americans must read our Declaration of Independence and Constitution, and enforce them with their votes and by repudiating unconstitutional federal programs. State and local governments must enforce our Constitution by renouncing federal funds to implement unconstitutional programs and by nullification. See also James Madison's specific suggestions on how States & Citizens can resist federal usurpations.

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Endnotes:

[1] This is why Brilliant Men (Madison, Hamilton, four US Supreme Court Justices, and other eminent jurists and scholars) have warned against another convention. And this flyer sets forth the Facts of the federal "amendments convention" of 1787 at which our existing Constitution was drafted to replace our first Constitution (the Articles of Confederation).

[2] The issue in U.S. v. Sprague (1931) was whether the 18th Amendment (Prohibition) should have been ratified by conventions in each State instead of by State Legislatures. The Supreme Court held that **Article V "is a grant of authority by the people to Congress"** and that **the people "deliberately made the grant of power to Congress in respect to the choice of the mode of ratification of amendments."** Accordingly, Congress had authority to select ratification of the proposed 18th Amendment by State Legislatures instead of by conventions in each State.

[3] THIS handy chart lists who has the power to do what respecting an Article V convention.

[4] Congress is under no obligation to permit States to participate in the Convention. Congress has the power to appoint its own members, federal judges, or whomever else they want as Delegates!

[5] "Convention" has several meanings. It can be a meeting or gathering, such as a national convention of County Court Clerks or architects; **or** it can refer to a treaty with foreign countries, such as the Hague and Geneva Conventions on the laws of war. The author of SJR 31 & HJR 49 may have fallen victim to the Fallacy of Ambiguity since he slips and slides between the two meanings. "Compact" in Art. I, §10, cl. 3, means "agreement" or "contract" – not meetings!

[6] E.g., States could properly enter into "Compacts", within the meaning of Art. I, §10, cl. 3, wherein they agree to prohibit waste being discharged into a River shared by them; or respecting the construction of a hydroelectric dam on the River. Even though the federal government has no delegated authority to deal directly with such issues; the requirement of Consent by Congress to such Compacts is proper because States situated above or below the proposed dam could be affected by the dam.

Neither the Federalist Papers nor Madison's Journal of the Federal Convention of 1787 set forth what our Framers meant by "compacts" at Art. I, §10, cl.3. Here are two secondary sources: The Evolving Use and the Changing Role of Interstate Compacts: A practitioner's guide, by Caroline N. Broun & Michael L. Buenger (see pages 1-9 for the historical basis of "interstate compacts"). See also Justice Story's "Commentaries on the Constitution of the United States" (1833), Book 3, Ch. 35, §§ 1395-1403.

[7] *Former law professor and pro-convention operative* Rob Natelson's statements to the contrary are untrue. See "Rob Natelson perverts the Necessary and Proper Clause and thinks in circles".

[8] E.g., Madison's letter of Nov. 2, 1788 to Turberville (pages 297-301) at the end of Madison's point 2 [and then read Madison's point 3!]