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Convention of States Simulation Fails to Dispel “Runaway Threat”

The Article V Convention of States simulation failed to refute the “runaway convention” objection while misleading the public to believe revising the Constitution, not enforcing it, is the solution to Big Government.



Conservative proponents of an Article V Convention, also known as a constitutional convention or “Convention of States,” have long contended that such a convention would never become a runaway convention that would rewrite the Constitution. Furthermore, they have maintained that such a convention would only consider a single or limited number of proposed amendments, such as a Balanced Budget Amendment (BBA). However, as pro-Article V convention advocacy groups ramp up their efforts, it is becoming increasingly evident that such assurances are less than accurate.

On September 21 to 23, 2016, the Convention of States Project (COS) hosted their first ever “Article V Convention of States Simulation.” By invitation only, current and former state legislators, as well as several state legislative candidates, from all 50 states attended the self-proclaimed historic event in Williamsburg, Virginia. Referred to as commissioners, the state legislators deliberated, proposed, and quickly passed a litany of amendments that they would like to see added to the Constitution.

For those unfamiliar with COS, it is a project of Citizens for Self-Governance, which was founded by Mark Meckler, the former co-founder of Tea Party Patriots and co-host of the 2011 bipartisan Harvard Conference on the Constitutional Convention (ConConCon) along with left-wing convention advocate Professor Lawrence Lessig. COS was also co-founded by constitutional attorney and well-known homeschool advocate Michael Farris, who first suggested the idea of promoting an Article V convention to Meckler.

The stated objective of COS is to get at least 34 states (two-thirds of the states in accordance with Article V of the Constitution) to apply to Congress to call a convention “limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.”

Unlike the movement for a convention to propose a Balanced Budget Amendment (BBA), which



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currently has 28 states with outstanding applications, COS is much further away from the needed 34 states to force Congress to call a convention. Since COS first launched on October 2013, their model application has passed in the legislatures of eight states (Georgia, Alaska, Florida, Alabama, Tennessee, Indiana, Oklahoma, and Louisiana).

In COS's introductory video commentary to the live-stream of the simulation, COS co-founder Mark Meckler said of the simulation, "*This is the real deal*. This is kind of like the precursor to the real Super Bowl. It's sort of a dress rehearsal." (Emphasis added.) In other words, according to Meckler, the event constituted not just a mere gathering of state legislators, but rather the first concrete phase in amending the Constitution via an Article V convention. "The actual convention doesn't take place without this convention first," Meckler later stated.

Throughout the course of the simulation, Meckler compared it to the Annapolis Convention of 1786 that preceded the Philadelphia Convention of 1787. Of course, it was during the Philadelphia Convention that the Articles of Confederation were replaced with the current Constitution. During the intermission hour on the last day of the three-day simulation, Meckler made his point with the following statement:

History will record this event. Those of you who are watching, I mean this with all sincerity, you ought to write this down. You ought to put it in your diary or your journal. If you know American history you know that the Annapolis Convention is critical to the whole process of the drafting of the Constitution and passage ultimately. And when people study 1787, the convention, they have to look back to Annapolis. *This is the equivalent to Annapolis* in my opinion. [Emphasis added.]

Is Meckler right? Is the COS simulation the equivalent to the Annapolis Convention? While only time will tell whether or not COS is successful in having its model Article V application passed in 34 states in order for Congress to call a convention, one thing that is certain is that Meckler's convention simulation was just that — a simulation. It was a mock convention with no more real power on constitutional matters than a group of high-school and college students has on affecting actual global policies at a model UN meeting. Except rather than being high-school or college students, these invited delegates were, for the most part, actual current and former state legislators, none of whom were officially authorized or sent by their respective state legislatures. Instead, the simulation delegates were handpicked and personally invited by COS, which completely organized the entire three-day simulation and also paid for the travel, lodging, and lunch expenses for the delegates.

Most of the legislative delegates present were none other than the very sponsors and co-sponsors that have introduced the COS model applications in their legislatures. Despite wishful thinking and claims to the contrary by Meckler and Farris that the simulation is exactly how a real convention would operate, there is no guarantee that the legislative sponsors of the convention applications would be the delegates sent by their states to the actual convention. And unlike the delegates to the Annapolis Convention, the well-meaning and good-intentioned simulation delegates had no official power or authorization from their states. Those who attended were there of their own free choice. While the results of COS's efforts are yet to be determined, the simulation they organized will have no real bearing on an actual convention in the future.

Notwithstanding the fact that Article V of the Constitution does not provide for or require any preliminary convention, Meckler continued to exalt the grandeur of the simulation and boast of its future place in history, saying:



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And when historians study it, when our kids, and our grandkids, and our great-grand kids study it, yes they will study when we actually hold the convention but they will say, “how did this happen?” And they will look to history and they will look to this event. They’ll want to know who was here. They’ll want to know what was said. They’ll want to know what amendments were debated and passed. *This is literally extraordinarily history in the making.* [Emphasis added.]

The biggest take away from both Meckler and COS co-founder Michael Farris was their insistence, both during and after the simulated convention, that the simulation is exactly how the real Article V convention would occur. However, was the COS simulation a faithful representation of how an actual Article V convention would operate? If so, then the longstanding claims by Article V convention advocates that such a convention would be limited to a single or a small number of predefined amendment proposals is false. And if not, then this simulated convention will only serve to confuse people about what would happen at an actual Article V convention.

Before proceeding with an analysis of the simulated convention and its claims that it exactly depicted what would happen at a real Article V convention, it is important to note what happened at the simulation. The three-day event was by invitation only, and no outside media presence was permitted. On the first day, 137 delegates representing all 50 states were greeted and welcomed to historic Colonial Williamsburg, where the simulation was held.

On the second day, the delegates went to work in their respective committee assignments, which were organized and largely determined by COS. Using Michael Farris’ COS amendment proposals as their basis, the delegates had one day to hammer out the language and details of the amendments they would be proposing on the floor the following day. As Farris admitted in interviews during the live-stream on the third and final day, he was present in the room advising the delegates on the wording of the proposed amendments. He continued his advisory role with delegates the next day as he met with groups of legislators in the halls of the convention, suggesting tweaks to the wording of various amendment proposals.

The third and final day was broadcast live-stream via YouTube for both the public and media to watch. The delegates gathered together in a convention-type format with Utah State Representative Ken Ivory sitting front and center on the stage and wielding the gavel as the president of the convention, the same role occupied by George Washington at the Philadelphia Convention. To his left and right were the secretary and parliamentarian, both of whom were COS employees. The simulation did not utilize the convention rules recently adopted by the Assembly of State Legislatures (ASL) during their June 2016 meeting. ASL is a rival organization, composed entirely of state legislators, also dedicated to convening an Article V convention for proposing amendments.

Unlike COS, which markets itself to a conservative audience, ASL openly boasts of its bipartisan leadership of both Republicans and Democrats working together. Of the 137 delegates invited by COS to represent all 50 states, only four could be identified as Democrats (State Senator Joan Carter Conway of Maryland, State Representative Kris Roberts of New Hampshire, State Representative Bill Patmon of Ohio, and State Senator Elizabeth Crowley of Rhode Island). The remaining 133 delegates were Republicans, with the exception of one, State Senator Laura Ebke of Nebraska, who recently switched her party affiliation from Republican to Libertarian.

Thus, the COS simulated convention had a 96-percent Republican representation. There was not a



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single progressive delegate from the most progressive states in the Union, such as California, Illinois, Massachusetts, New York, Oregon, and Washington. Nevertheless, both Meckler and Farris maintain that this is exactly how a real Article V convention would be.

An actual Article V convention would be host to large numbers of moderate and liberal delegates, and unfortunately likely would have no grassroots conservative delegates from even the strongest of Red states, such as Montana and Wyoming, which despite having Republican majorities in their state legislatures do not have conservative majorities, much less constitutionalist majorities. Instead, the Wyoming and Montana legislatures are composed predominantly of moderate and liberal Republicans, much like the Republican majority in the U.S. House of Representatives under Speakers John Boehner and Paul Ryan.

Since the vast majority of legislative co-sponsors for COS-style applications are presumably conservative Republicans, they would stand little to no chance of being selected to represent their states at a real convention, even supposing that the delegates would be state legislators. In all likelihood, if the delegates were chosen by and among the state legislators, the delegates would most likely reflect the leadership or party majority of their respective legislature. This means there would be totally different faces from those seen at the COS simulation, especially from the aforementioned progressive states of California, Illinois, Massachusetts, New York, Oregon, and Washington.

Despite the overwhelming number of Republican delegates, there was still much disagreement over the wording and language of the proposed amendments. Nevertheless, in less than six hours the delegates quickly introduced, debated, and passed the following six amendment proposals:

1. Debt Limitation Amendment (DLA), requiring a two-thirds vote in both chambers of Congress to approve an increase of the public debt for a period lasting no longer than one year. This amendment would become effective three years from the date of its ratification.
2. Limiting Congress' power of regulating commerce to the "sale, shipment, transportation, or other movement of goods, articles or persons." It also prohibits Congress from regulating any activity solely on the basis that it affects commerce among the states. This amendment would become effective five years from the date of its ratification.
3. Congressional term limits of no more than six full two-year terms for members of the House of Representatives and no more than two full six-year terms for members of the Senate.
4. State abrogation amendment, requiring a minimum of three-fifths of the legislatures of the states in order to abrogate (i.e., nullify) any "federal law issued by the Congress, President, or Administrative Agencies of the United States, whether in the form of a statute, decree, order, regulation, rule, opinion, decision...."
5. Repeal the 16th Amendment, prohibit all federal taxes on gifts and estates, and prohibit any new taxes or tax increases unless approved by three-fifths of both houses of Congress.
6. Providing for an easy congressional override of "any proposed or existing federal administrative regulation, in whole or in part."

On the surface these proposed amendments may sound good. And, we agree that repeal of the 16th Amendment and ending death taxes would be a good idea. However, what's really needed instead of a flurry of new amendments is to increase the understanding of our constitutional republic among voters



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to the extent that they will elect congressmen who will enforce the Constitution we already have.

For example, various conservatives have estimated that only 20 percent of congressional spending is authorized by Article I, Section 8 (the section that grants enumerated powers to Congress) of the Constitution. Rather than adding “Band-Aid” amendments to the Constitution, what’s needed is for voters to force Congress to begin cutting the 80 percent of unconstitutional programs they have been authorizing.

After the simulation, COS sent out an email describing it as a “Complete Success.” But what if Meckler and Farris are wrong, what if the simulation is not how a real Article V convention would operate?

A real Article V convention would not be called by COS, Meckler, and Farris, but by Congress, which would likely determine the location, date, and parameters of the convention, such as the mode of selecting delegates and whether or not each state would have one vote or if it would be proportional by population. However, once the delegates arrived at the convention, they would be able to set up their own rules, unbound by any previous rules or recommendations set by Congress, ASL, or COS. In fact, COS would likely have little influence over the convention, because it would be just one of many outside lobbyists trying to influence the convention. COS had the unique situation of being the only lobbyist group at the simulated convention because it was a COS event. Besides, since the simulation had no real power, there was no reason why any outside groups would attempt to interfere.

Meckler and Farris both stated throughout the course of the simulation that their convention proved that a real Article V convention would not be a runaway convention. Of course the simulation was not a runaway convention, nor was there ever any likely possibility that it would become one because the delegates had no real power, thus there was no temptation to abuse or go beyond their power. Furthermore, the vast majority of delegates were supporters of Article V conventions, so it was in their interest to help “prove” that such a convention would not become a runaway. However, a real Article V convention would have the inherent power to be a runaway convention because it would supersede the power of Congress and would possess the power of the sovereign people to alter or abolish the current Constitution as its delegates would see fit.

Furthermore, the simulation delegates only proposed COS-approved amendments. They did not introduce the much sought-after Balanced Budget Amendment, for which 28 states have already applied to Congress to call a convention, nor was there any mention of the proposed campaign finance reform amendment to overturn the Supreme Court decision in the *Citizens United v. FEC* case, as advocated by Professor Lawrence Lessig and left-wing Article V convention groups such as Move To Amend and Wolf-PAC. At a real Article V convention, especially one not made up of 96 percent Republican delegates, the Wolf-PAC campaign finance reform amendment would likely be proposed and debated among the delegates, as would other liberal proposals such as a repeal or gutting of the Second Amendment.

Furthermore, unless Michael Farris was fortunate enough to be selected as a delegate for his home state of Virginia, which has so far rejected the COS Article V application, then he would likely not be allowed anywhere near the committee drafting rooms.

As fun as the simulation may have been for Farris, Meckler, and other COS enthusiasts to watch or be a part of, it was not an accurate depiction of what a real Article V convention would be.

Here’s one thing we can be certain of: The COS simulated convention did not prove that an actual Article V convention would not become a runaway convention.



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