



## Busting the Myth of the Convention of States’ “Myth Busting”

For all its focus on the future, the Convention of States (COS) organization has neglected to adequately study the past. Specifically, the history of the making of the Constitution for the United States.

In a recent document entitled “Myth Busting: There are No Rules,” COS claims that the warning that their convention could become a runaway convention and that the rules they set could be broken and that there would be little that could be done to stop it from doing those things is just something said by people trying to “scare you.”



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A couple of things: First, why are they so worried about people being afraid of their proposal if there were nothing to fear from it? When you’re about to go into surgery and someone says, “Don’t be scared,” they’re not saying there’s nothing to be afraid of. They are simply trying to tell you that even though there are definitely frightening things about to happen, you should be courageous and soldier on.

In the case of the COS convention, what inherent dangers are they aware of that they don’t want people to scare you about beforehand?

Here’s what they say in the “Myth Busting: There Are No Rules” page:

All delegates will have some familiarity of Roberts Rules of Order and Mason’s Manual. And most delegates would be legislators and attorneys well-versed in both. To think that a group of legislators and attorneys wouldn’t know how to conduct a convention is absurd.

Everyone there would know you need to elect a convention chairman for example. Everyone would understand the concept of making motions, calling the question, etc.

Even convention opponents admit that the convention will set its own rules. So saying that there will be no rules just isn’t honest.

First, predicting that most delegates will be politicians and lawyers isn’t exactly how you should start a document intended to make people less afraid and more trusting of your agenda. Of all the groups that Americans distrust the most, those two — politicians and lawyers — are always near the top!

Next, no one thinks the politicians and lawyers wouldn’t know how to conduct a convention. It’s just that of all the people that *could* be suspected of conducting a *corrupt* convention, lawyers and politicians would be the most likely to do just that.

Third, let’s assume that every delegate at the convention knows Roberts’ Rules of Order as well as



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Roberts. How does that stop them from violating those rules? As the great Richard Price observed, “Knowledge without virtue makes devils.”

Next, of course we admit there will be rules. Why was this necessary to say? There are Ten Commandments, too, but that doesn’t stop people from breaking them and it doesn’t stop people from pointing out that they are often broken and that people should be aware that the Ten Commandments only protect us if we follow them.

So, yes, we admit there will be rules. There will likely be pages and pages and pages of rules, if the attendees are, as COS claims, mostly lawyers and politicians. There will probably be a book of rules about how to interpret the rules and a committee formed to interpret the rules about how to interpret the rules about interpreting the rules. Oh, yes, we have no doubt whatsoever that there will be rules written for any convention that COS promotes and pays for.

Again, a lack of rules won’t be the problem. The problem will be following those rules. Who is more notorious for finding loopholes and exceptions to rules than lawyers and politicians? That is the issue. That and the fact that we do have the benefit of the lamp of history to inform us just how rules can be broken and how the very best of men — 33 of whom were lawyers — held a convention in Philadelphia in 1787 and how the rules set out in advance for that convention were thrown out pretty much the very first day they met to get down to business.

To put it plainly: If our Founding Fathers broke the rules that were set for their constitutional convention, then it is almost a sure thing that whoever attends the one being promoted by COS will break the rules set for that convention, too.

Here’s a little history lesson, then, to bust the COS “myth” of breaking rules at constitutional conventions.

In 1787, the document known as the Articles of Confederation was the Constitution of the United States. Article XIII of that document mandated that regarding any changes to the Articles:

[S]uch alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

When the Constitutional Convention met in Philadelphia in May 1787, that legally binding and constitutional provision was ignored. From the moment Edmund Randolph stood and proposed what was known as the “Virginia Plan,” the Constitutional Convention of 1787 became a “runaway convention” and its most important rule was broken.

There’s no debating that fact! There was a provision of the constitution prohibiting any changes to the Articles without unanimity. That provision was not only disregarded, but was replaced, eventually, by Article VII of the Constitution created at the Convention.

Article VII of our current Constitution reads:

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

That’s quite a bit different. With the approval of that new provision, the unanimity rule and the constitution were replaced.



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Of course, the COS organizers claim that the convention they support would not create a new constitution.

That's not the point. The point is that the COS *could* create a new constitution, just as the constitutional convention in Philadelphia did in 1787.

Ask your favorite COS supporter this question with regard to rules: Was the Convention of 1787 called to consider a new constitution? No, it was called "to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."

In other words, before the Convention began, the body that called for it to take place — Congress — set a very important rule: Delegates were only allowed to propose amendments to the Articles of Confederation that would help the country get out of the financial mess it was in in 1787. In fact, this rule was so important and intended to be so restraining that the congressional resolution authorizing the Convention in Philadelphia described the proposing of amendments to the Articles of Confederation the "*sole and express*" authority possessed by the delegates gathered there.

Lastly, a final point about Article XIII of the Articles of Confederation and why it is so important to remember today.

In its FAQ, the COS claims: "It [the Convention of the States] cannot throw out the Constitution because its authority is derived from the Constitution."

Two questions about the history of the drafting and ratification of the Constitution of 1787 will immediately reveal the ridiculousness of the claim that their convention couldn't possibly "throw out the Constitution because its authority is derived from the Constitution."

First, was the authority of the Constitutional Convention of 1787 derived from the constitution in effect when that convention was held in Philadelphia? Yes.

The Continental Congress' report calling for the Philadelphia Convention specifically references the "provision in the Articles of Confederation & perpetual Union for making alterations therein."

Second question: Did the convention in Philadelphia in 1787 "throw out the Constitution" in effect at that time and replace it with a new one, radically different from the one already *in legal effect*? Yes.

The differences between the Articles of Confederation and the Constitution of 1787 are significant. Not the least of which was the method established for adopting those changes and endowing them with the force of law. What once required a unanimous vote, now required the approval of only 3/4 of the states.

So, yes, there would be rules at a new Convention of States. But to suggest that those rules wouldn't be broken — which is functionally the same as having no rules — is the *real* myth.

Americans with a better grasp of history than the scholars at the Convention of the States organization should act now in their respective states to prevent this convention from happening and to prevent history from repeating itself.

That is, unless you trust, as apparently COS does, that a group of lawyers and politicians won't change or break the rules.



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