



Written by [Joe Wolverton, II, J.D.](#) on February 22, 2013

Compact for America Con-con Bill Defeated in Arizona

The Compact for America's drive to call a new constitutional convention was dealt a crushing blow in Arizona Monday.

By a vote of 3-6, Arizona [HB 2328](#) was [defeated by the House Rules Committee Monday](#).

This defeat must be particularly painful for the Compact for America considering it happened in the backyard of the Goldwater Institute — one of the compact's chief supporters.



Standing [before the committee for about 30 minutes](#), the committee's legislative counsel, Tim Fleming, presented the outline of the con-con plan as set out in the Compact for America.

Numerous times, Fleming explained to members of the committee that the compact was unclear and led states into "unchartered territory" without the benefit of any "solid case law."

Several of these shortcomings were additionally highlighted in questions put to Fleming by representatives on the committee.

For example, [Representative Bruce Wheeler](#) (D-District 10), asked Fleming whether delegates to the con-con created by the Compact for America would be allowed to propose amendments other than the balanced budget amendment that the Compact for America insists would be the only amendment allowed to be deliberated by the convention.

"I don't know the answer to this," Fleming responded, once again admitting the weaknesses of the Compact for America.

Fleming went on to posit that not only was he unsure about the ability of a con-con delegate to propose additional amendments beyond the BBA, but he added that there is substantial scholarly support for the theory that an Article V con-con would be "a sovereign-type body" outside the control of states or Congress.

That is a frightening prospect when one considers the vast range of amendments that could be proposed and eventually find their way into our Constitution. Imagine, for a moment, that a pro-choice governor serving as a delegate to the Compact for America's con-con, introduced an amendment calling for the absolute, unrestricted right to abortion. Or what would stop an anti-gun zealot from proposing an amendment outlawing all private weapon ownership?

These scenarios are not straw men, they are real and frightening possible outcomes of an Article V constitutional convention. There is no legal or constitutional authority for the Compact for America's claim that the delegates could only consider a balanced budget amendment.

Supporters of the compact and the Article V amendment it proposes point out that a rogue delegate would be dismissed, recalled by the state he represents. Again, that's a nice theory, but the facts don't support the existence of that supposed safeguard.

Rob Natelson, a professor of law and ardent advocate of an Article V convention writes [in a handbook](#)



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[on the subject he authored for the American Legislative Exchange Council \(ALEC\)](#) that “at the very least, delegates who willfully disregarded limits on their authority would suffer severe loss of reputation and probably compromise fatally their political futures.”

Congressmen regularly violate their constitutional oaths of office and “willfully disregard limits on their authority,” yet they are routinely reelected. Their lack of fidelity to their oaths or to the constitutional limits on their power seems hardly ever to prove fatal to their political careers.

On a procedural front, suppose a state delegate (be he a governor or otherwise) decided to try and get “unauthorized” amendments introduced at the con-con, what would states do to enforce penalties against this rogue delegate? Would the state police be sent to arrest him? If so, what state official would be authorized to make that call? Who would send the state police? Would this be the state attorney general’s call? If the state police were sent to apprehend the rogue delegate, would the state police of Arizona, for example, have any jurisdiction in Texas?

On the other hand, could the non-conformist delegate claim some quasi-diplomatic immunity from arrest?

Demonstrating the growing bi-partisan opposition to this bill, a similar constitutional issue was raised in a question posed by Republican [Representative Eddie Farnsworth](#).

Citing Article 3, Section 3 of the Compact for America, Representative Farnsworth noted that after the three-fourths threshold of state signatories has been crossed, the agreement forbids states that have entered the compact from leaving it without the unanimous consent of the other participants.

Rightly identifying this as a constitutionally and legally suspect binding of future legislatures, Farnsworth expressed doubt that such a provision would ever hold up in a court.

Another questionable aspect of this arrangement not addressed by Farnsworth is the fact that by restricting states in this manner, the Compact for America is essentially disenfranchising voters by preventing them from freely exiting the compact should they decide to do so in a subsequent referendum.

This is hardly consistent with the decentralization theme espoused by the Compact for America in their literature promoting their version of the Article V con-con.

Besides, state governors could do more for the cause of decentralization of power and balancing the budget if they would refuse to take another dime from the federal treasury.

These are all situations not anticipated by the Compact for America, but are nonetheless very serious and represent wholesale changes to the Constitution, the separation of powers, and the enumerated powers.

Working these issues out would inevitably drive states farther apart, resulting in a chaotic, embryonic court case, and not in the balancing of the federal budget.

Furthermore, were the promoters of the Compact for America serious about restraining the federal government and balancing the budget, they would include provisions in their bill that forbids Congress from passing any bill spending another dollar on any policy or program that is not specifically permitted in the enumerated powers of the Constitution.

And, although they claim to be committed constitutionalists, the balanced budget amendment offered by the Compact for American includes a radical re-write of Article II and, in the absence of



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congressional agreement, gives the president unprecedented, unchecked, and unconstitutional power over the federal checkbook.

Finally, as evidenced by the hearing by Arizona House Rules Committee, state legislators in other states considering sponsoring a call for an Article V con-con or proposing the adoption of the Compact for America would be well served by paying close attention to the serious and unresolved constitutional and legal issues associated with the Compact for America specifically and with the Article V con-con generally.

Although this defeat is a big victory for constitutionalists, there are procedural ways to resurrect the bill later in this session of the Arizona legislature.

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