



Written by [C. Mitchell Shaw](#) on March 24, 2017

## Texas Con-Con Battle Heats Up

The Texas Legislature is once again considering the controversial — and dangerous — course of applying to Congress for a constitutional convention. Two such Senate bills have been passed by that body and are waiting to be referred to committee. The House versions of those bills are already in committee. And while the Legislature debates this issue, Governor Greg Abbott is continuing to put his weight behind it.



Abbott has long advocated for a modern-day constitutional convention. In his speech at the Texas Public Policy Foundation's (TPPF) 14th Annual Policy Orientation for the Texas Legislature in January 2016, Abbott introduced his "[Texas Plan](#)" — which is modeled after the Convention of States Project plan for amending the U.S. Constitution. The "Texas Plan" is a plan to add nine amendments to the founding document. Abbott said his plan to amend the Constitution is necessary because it "fixes this government run amok" and "returns lawmaking to the process enshrined in the Constitution." Left unexplained is why it is necessary to change the Constitution if the form of government he desires is already "enshrined in the Constitution."

Continuing his trend of regurgitating the talking points put out by the Convention of States Project — while appearing not to notice the absence of anything resembling logical consistency in those talking points — Abbott said:

Our government was founded on the rule of law rather the caprice of man. That rule of law flows from our Constitution. That Constitutional foundation is now so often ignored that the Founders would hardly recognize it. Until we fix that foundation by restoring the rule of law all the repairs we seek through the policies you propose will never lead to lasting solutions.

In other words, the problem is not the Constitution; the problem is that the Constitution is ignored. In fact, in his "Texas Plan" to amend the Constitution, Abbott is even more explicit. After listing his ideas of what needs to be done to rein in the out-of-control federal government, Abbott writes:

Of course, the Constitution already does all of this. And thus it bears emphasis at the outset that *the Constitution itself is not broken*. What is broken is our Nation's willingness to obey the Constitution and to hold our leaders accountable to it. As explained in the following pages, all three branches of the federal government have wandered far from the roles that the Constitution sets out for them. For various reasons, "We the People" have allowed all three branches of government to get away with it. And with each power grab the next somehow seems less objectionable. When measured by how far we have strayed from the Constitution we originally agreed to, the government's flagrant and repeated violations of the rule of law amount to a wholesale abdication of the Constitution's design. [Emphasis in original]

Abbott is correct in all of that. He does a great job of recognizing the problem. The error in Abbott's "Texas Plan" is his proposed solution. Having drunk deeply from the poisoned well of the Convention of States Project — founded by conservative lawyers Michael Farris and Mark Meckler — Abbott seems to think that amending an ignored document will somehow prevent it from continuing to be ignored.



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This writer has attended more meetings and debates about this issue than he can enumerate. In many of those gatherings, Michael Farris was the speaker promoting the plan for a “convention of states” (which he illogically denies is a constitutional convention). On multiple occasions, this writer has been able — during the question and answer session — to ask, “If Congress, the President, and the Supreme Court ignore language as clear as that found in the First and Second Amendments — namely ‘shall make no law’ and ‘shall not be infringed’ — and continue to write, execute, and issue court decisions restricting those rights, what language can your proposed amendments possibly use that will demand their attention and adherence?” The response is always the same double-talk for which their arguments are famous.

And, while Farris and Meckler continue their verbal gymnastics in pretending that a convention called by Congress under Article V is not a Constitutional Convention ([despite the established legal definition of the term](#)), even Abbott, in his “Texas Plan” admitted that it is. He uses the phrase “Constitutional Convention” (capitalized) five times to describe the event that took place in 1787. At that convention, the delegates — who were assembled to “propose amendments to the Articles of Confederation” — drafted an entirely new Constitution. Abbott uses the phrase “constitutional convention” (not capitalized) four times to describe what he is advocating.

But, it appears that Abbott has been informed of the need to use the term “Convention of States” and eschew the more accurate term “constitutional convention.” In his 2017 State of the State address to the 85th legislative session of the Lone Star State’s lawmaking body, Abbot said:

For decades, the federal government has grown out of control.

It has increasingly abandoned the Constitution, stiff-armed the states and ignored its citizens.

This isn’t a problem caused by one president. And it won’t be solved by one president. It must be fixed by the people themselves.

That’s why we need a Convention of States—authorized by the Constitution—to propose amendments.

Rep. Miller, you know my support for this. I wrote a book on it.

More importantly, there are hundreds of thousands of Texans who are motivated by this.

The proposed amendments would include things like term limits, restoring the 10th Amendment, an amendment that reins in federal regulation and, yes, Rep. Workman, a balanced budget amendment.

We should demand that the federal government do two things. One: Fulfill important—but limited—responsibilities as written in the Constitution. And two: On everything else, leave us alone, and let Texans govern Texas.

Sen. Birdwell and Rep. King, the future of America can’t wait for tomorrow, so I’m making this an emergency item today.

It is interesting that when he “wrote a book on it,” he called it a “constitutional convention,” but when he referenced that book, he was calling it a “Convention of States.” It appears that Governor Abbott got the memo. And even as the Texas legislature closes in on approving an application to Congress for a constitutional convention, Abbot has continued to stump for it while avoiding that phrase.



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In a February 14 [interview with Glenn Beck](#) — who never seems to miss an opportunity to promote the idea of a modern-day constitutional convention (while refusing to call it a constitutional convention) — Abbott said:

There is such a strong movement in the state of Texas right now. I began talking about this when I wrote a book on it and started touring around the state of Texas talking about it. And there are well over a hundred thousand — I'm told hundreds of thousands — of activists, not just people who support it, but people who are actively engaged in the political process, who are taking the Capitol by storm, educating the members of the House and Senate that it needs to be done.

Remember this — and that is — last session we had here in the state of Texas, the Texas House of Representatives did adopt the Convention of States platform. At that time we were only a vote or two short in the Texas Senate. I think we will have enough votes in the House and Senate to finally get this done and make Texas a leader in this process of a Convention of States.

One is left to wonder from whom Abbott is hearing about these “hundreds of thousands” of activists. Is it the same people who taught him to avoid calling a constitutional convention a constitutional convention? Following the lead of his handlers in the Convention of States project, Abbott appears to have also moved away from his previous stand that “the Constitution itself is not broken.” In his remarks to Beck, Abbott went on to address what he sees as “flaws” in the Constitution:

Our Constitution has been eroded over time. So this wasn't a problem caused by one president; it cannot be fixed by one president. Simply because Donald Trump is in there doesn't mean our Constitutional flaws are going to be fixed.

Let me give you the most easiest example, and that is I know you and many of your listeners will know the Tenth Amendment. We want the Tenth Amendment to be upheld — and that is that all powers not delegated to the federal government in the Constitution are reserved to the States or to the People. Well, there's a problem in the way that provision is written. It doesn't specifically say who gets to enforce the Tenth Amendment. All we want to do is to add a clause or a sentence that says, “States have the power to enforce the Tenth Amendment.” That's easy, it's common sense, it's something we could get 38 States — which is three-fourth of the States — to agree upon. And it restores power to the States to enforce the Tenth Amendment.

The space constraints of an online article do not allow a full unpacking of the utter lack of anything resembling logic in Abbott's remarks here, but a couple of things must be addressed. First, the 10th Amendment is crystal clear and unambiguous. The Constitution only allows the federal government limited and enumerated powers. Everything else belongs to the States and the People. Scarcely a decade after being added to the Constitution, the 10th Amendment was laid out — point by point — in the Kentucky and Virginia Resolutions written by Vice President Thomas Jefferson. As he explained then — 219 years ago — the States have the power to nullify all unconstitutional federal laws.

Second, Article V — on which Abbott and his cohorts place all their trust — “doesn't specifically say who gets to” do a lot of things, but the advocates of a constitutional convention read into it what they want it to say.

Third, adding “a clause or a sentence” to the 10th Amendment will not magically make those who have spent their political careers ignoring the Constitution suddenly change their minds and begin following it. What it will do — if the method for adding that clause or sentence is the method of a convention — is open the Constitution up to all manner of unforeseen changes. Putting the people who have shown



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nothing but disdain for the Constitution in a room with a pen and paper for the purpose of “proposing amendments” to that Constitution cannot end well. The only other time anything like that was ever done was in 1787. In that convention — populated by patriots and statesmen — the assembly wrote a whole new Constitution — with a whole new process for ratification — creating a whole new government.

Finally, unless the States already had (and somehow lost) the power to enforce the 10th Amendment, his additional verbiage tacked on to the end of the 10th Amendment could not “restore” that power.

Ignoring all of that (or perhaps being ignorant of it), Abbott continues to push for a rousing game of Russian Roulette with the Constitution by putting the full weight of his office behind this dangerous plan. And he is correct about at least one part of his prediction back in February: There were enough votes in the Senate to pass both a Senate Joint Resolution (SJR 2) and a Senate Bill (SB 21) (both sponsored by Senator Birdwell).

SJR 2 authorizes an application to Congress for a “Convention of States” to amend the Constitution. Since enough people — including state legislators all over the country — have been educated about the dangers of a “runaway convention,” SB 21 is a bill to criminally prosecute any delegate to the convention that goes beyond the stated mandate of proposing only certain amendments. Of course, such a bill is a false security net, since the U.S. House Judiciary Committee wrote in 1993 that “If the State legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become instead part of the ratification process.” In fact, the Supreme Court ruled in [Dillon v. Gloss](#) (1921) that:

As a rule, the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require, and Article V is no exception to the rule.

And in [Leser v. Garnett](#) (1922), the Supreme Court ruled:

But the function of a state legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the federal Constitution, and it transcends any limitations sought to be imposed by the people of a state.

Both of those bills are waiting to be referred to committee, but — as mentioned earlier — their corresponding House Bills are also moving through the legislative process and could be voted on within days. Concerned Texans who understand the danger of this plan should call, e-mail, fax, write, and visit their representatives in the Texas House to educate them of the dangers and to encourage them to vote “no” on both bills.

And while Abbott cites those unnamed “hundreds of thousands” who he has heard are “taking the Capitol by storm,” [there are many activists in Texas who have worked tirelessly to protect the Constitution from a convention](#). Organizations such as the [North Texas Citizen Lobby](#), [Texas Eagle Forum](#), and this magazine’s parent organization, [The John Birch Society](#), have spent years combating this issue.

Barbara Harless is a prominent Texas activist and the founder of North Texas Citizen Lobby. She told *The New American* that she and others have been visiting legislators and testifying before the legislature about this issue for years. She also said that — rather than being the result of hundreds of thousands of pro-convention advocates taking the Capitol by storm — the success of these bills in the Senate is the result of “deals that were made.” She added that the “Convention of States” is “one of



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[Abbott’s] emergency items, so any of these have the power to break any rule that we might have on how bills are supposed to be heard and voted on.”

So, the governor, who has a vested interest in the passage of bills applying for a convention, has helped shove these bills through while claiming that this is what the people of Texas want.

To combat that coercion, Harless and the local chapters of the John Birch Society brought nationally-known speaker Robert Brown in to Texas for a multi-city tour to address the dangers. Brown told *The New American* that while the advocates of a convention claim that the Founding Fathers created the convention process in Article V for the purpose of reining in the federal government, it is simply not true. He said,

Every time the Founders talk about using Article V, it’s always preceded with “If we found a flaw in the constitution, if there’s a deficiency, if there’s an error, then we correct it through the Article V process.” Every time. On the other hand, when they talk about what to do when the federal government refuses to abide by — and just blatantly ignores — the Constitution, they never point to Article V. They often point to Article VI — which is the proper application of the supremacy clause and the proper application of the oath of office clause — Article VI, clauses 2 and 3.

Because of the ways the advocates of a convention mislead people by claiming that Article V is the “in case of emergency, break glass” provision, Brown has begun promoting the hashtag, #Article6not5 in an effort to help spread enough truth to combat the lies.

Texans (and the residents of other battleground states) need to redouble their efforts to defend, not amend, the Constitution. Many of Robert Brown’s materials — along with others to help educate others, including legislators — can be found [here](#).



*Photo: Texas State Capitol in Austin, Texas*



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