



The Phyllis Schlafly Report

VOL. 42, NO. 10

P.O. BOX 618, ALTON, ILLINOIS 62002

MAY 2009

Beware of Attacks on the Constitution

Con Con Is a Terrible Idea

Americans are fortunate to have a written Constitution that has withstood the slings and arrows of outrageous fortune for more than two centuries, and we certainly don't need a new constitution. There is nothing wrong with the one we have except that politicians do not obey it and liberal judges pretend it is a "living" document that they can re-interpret according to their own social and economic preferences.

Many liberals and globalists don't like our Constitution because it contains built-in stumbling blocks against their goals of big government and even global government. Even some conservative types express irritation with our Constitution when they cannot get Congress to pass the legislation they desire. So, different factions, seeking different goals, have turned to an attempt to use the never-used provision in the Constitution's Article V, which requires Congress to call a new Constitutional Convention if two-thirds (34) of the states pass resolutions calling for it. This is colloquially called a Con Con.

The Constitutional Convention that drafted the United States Constitution which governs our nation was held in Independence Hall in Philadelphia in 1787 and presided over by General George Washington. Washington and James Madison, known as the Father of the Constitution, both called the result a "miracle." It has lasted for 220 years, accommodating our great geographic and economic expansion and political problems, while preserving individual liberties. Unlike other countries, after every national election we have enjoyed a peaceful transfer of power.

Over the 220 years, various states have passed hundreds of resolutions asking Congress to call a Con Con, but no single topic ever passed in 2/3rds of the states. Some of those resolutions were for now-obsolete issues such as child labor laws or the direct election of Senators. In the 1960s, there was a movement led by prestigious politicians and academics to get a Con Con to change our form of government to a European-style parliamentary system and eliminate provisions they especially don't like such as the requirement for a 2/3rds Senate vote to ratify treaties.

In the 1970s and 1980s, 32 states passed resolutions call-

ing for a Con Con to consider a federal Balanced Budget Amendment, but the movement could not reach the trigger number of 34. At least 18 states passed resolutions for a Con Con to consider a Human Life Amendment. Other issues that inspired Con Con resolutions were the Line Item Veto, Term Limits for Members of Congress, and abolition of the Electoral College.

At the present time, there is a move in several state legislatures to call a Con Con for the purpose of repealing the 16th Amendment (which allows the Income Tax) and shifting to the Fair Tax (which is a consumer tax). That may or may not be a good idea, but it does not justify the risk of calling a Con Con.

The trouble with a Con Con is that there are no rules in the Constitution or in any law to limit a Con Con's purpose, procedure, agenda, or election of delegates. Congress has repeatedly rejected bills to establish rules or procedures. There is no way to control a Con Con in advance or to require it to consider only one subject. The Article V provision that authorizes the calling of a Con Con refers to considering "amendments" (note the plural).

The Con Con process would be a prescription for political chaos, controversy, confrontation, litigation, and judicial activism. Just about the only thing we can predict with certainty is that the convention could not be secret from the media and the public, as was the original 1787 Constitutional Convention (which met behind closed doors and had no leaks).

Many prestigious constitutional authorities say it is impossible for Congress or state applications to restrict what a Con Con does. The highest authority who has ever spoken out on this subject is the late Chief Justice Warren Burger, who wrote: "There is no effective way to limit or muzzle the actions of a Constitutional Convention. . . . After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda." (Read the entire Burger letter at <http://www.eagleforum.org/topics/concon/>)

Other distinguished professors of constitutional law, both Republicans and Democrats, who say it is impossible to restrict the agenda of a Con Con to one issue, include Charles

Alan Wright of the University of Texas, Gerald Gunther of Stanford, Charles Black of Yale, and Walter Dellinger of Duke. They all agree that even if Congress called a Con Con to consider only one issue, the Convention delegates can ignore that instruction, set their own agenda, and make their own rules.

It is not credible that various politically active groups would pass up the chance to try to force a Con Con to vote for their special interests. It's not believable that the powerful forces working to take away our right to own guns would overlook a golden opportunity to eliminate the Second Amendment.

Outside of a Con Con hall, demonstrators would be demanding constitutional changes: gay activists and their opponents, pro-abortionists and pro-lifers, radical feminists, the environmentalists, gun control advocates, animal rights extremists, D.C. Statehood agitators, those who want to relax immigration and those who would restrict it, mortgage defaulters, and the unions — all demanding consideration of amendments to recognize their asserted rights.

The most influential players in any Con Con would be Big Media giving us round-the-clock television coverage. It would be a bigger media event than a presidential election. The media consider themselves actors in the political process, not merely reporters. The confusion, uncertainty, and court cases involved in a Con Con would make us look foolish in the eyes of the world.

Who would be the delegates elected to serve in a Con Con? Based on the November 2008 election, it is clear that Barack Obama and the Democrats have the on-the-ground grassroots organization to dominate the election exactly as they elected a Democratic majority in Congress.

Article V specifies that, after application by 34 states, Congress is the body that "shall call" a Con Con. That means Speaker Nancy Pelosi and Senate Majority Leader Harry Reid will try to specify who can be delegates and how they will be elected.

Those who have attended a Republican or a Democratic National Convention know the power of the gavel to ram through predetermined motions and cut off debate. Now imagine a Republican and a Democratic National Convention meeting together — in the same hall at the same time — and you can visualize the pandemonium.

Irresponsible and radical as is the current Democratic Congress, a Con Con would be far worse for many reasons:

- 1) Members of Congress are bound by Article VI, which requires them to take an oath to support our present Constitution. But delegates to a Con Con would not have to swear to uphold the U.S. Constitution, and therefore would be free to throw out our existing Constitution and follow Barack Obama's plan for "re-making America."
- 2) Any action by Congress must pass two Houses. There

is no indication that a Con Con would have two Houses, so the big-population states would control, and the small-population states would be irrelevant.

- 3) Congress must muster a 2/3rds majority in both the House and the Senate in order to propose any constitutional change. No such rule would bind a Con Con.
- 4) Con Con delegates would be free from accountability for their actions because they would never have to run for re-election.

There is **no** public support across America for a constitutional convention. Between 1988 and 2004, at least ten states repealed their earlier Con Con resolutions: Alabama, Florida, Louisiana, Idaho, Utah, North Dakota, Arizona, Virginia, South Carolina, and Georgia. In March 2009 Wyoming became the 11th state to rescind all of its prior applications.

We don't see any James Madisons, George Washingtons, Ben Franklins or Alexander Hamiltons around today who could do as good a job as was done in 1787, and we should be leery about the politicians who think they can improve on our Founding Fathers. A call for a Constitutional Convention is a terrible idea and should be defeated in every state legislature where it rears its ugly head.

The Electoral College Serves Us Well

The Electoral College is one of the provisions of our U.S. Constitution that the liberals hate the most. When Hillary Clinton was elected to the Senate, her first legislative proposal was to call for the abolition of the Electoral College.

The Electoral College is one of the legacies of the inspired genius of our Founding Fathers. It was part of the Great Compromise between the big states and the small states which transformed us from 13 rival colonies into a constitutional republic. This Great Compromise brought together the large and small by means of a national Congress, with the House based on population and the Senate based on state sovereignty.

The Electoral College is grounded in this same brilliant compromise: it allows all states, regardless of size, to be players in the process of electing our President. Its rationale and structure are the perfect mirror of the Great Compromise that made our Constitution possible: the combination of equal representation of **states** with representation based on **population**. Our Presidents are elected by a majority of votes in the Electoral College, with each state's vote weighted based on its population.

The Electoral College induces presidential candidates to gear their time, money and policies toward the whole country, not merely toward the half dozen most populous states. If we had a popular-vote process, the temptation would be irresistible for presidential candidates to offer the moon wrapped in federal dollars to the states where big-city machines can pile up

extra millions of votes.

The Electoral College is the unique vehicle that gives us a President who achieves a **majority** in a functioning political process. It saves us from the fate of other nations that suffer from the complexities, uncertainties and agonies of *coalition governments* patched together when no candidate or party wins a popular-vote majority.

The Electoral College is particularly fortuitous in close elections because it saves us from the calamity of having to recount votes in many or even all 50 states. Remember the election of 2000, when the result was unknown for weeks while we waited for recounts in Florida. If victory had depended on the country's total popular vote, we would have suffered demands for recounts and legal challenges in many states — not only states that ended in a close vote, but also the states that carried big for one candidate, who could try to scrape up an additional few hundred votes.

Because of third parties, it is very difficult for a candidate ever to receive 50+% of the popular vote. We would nearly always be saddled with minority presidents without an adequate basis of support for leadership.

Remember, it is so easy to make credible charges of election fraud in almost every state.

Another advantage of our Electoral College is that, except as a last resort, it keeps the meddling fingers of Congress out of the election process. The Electoral College is the only function of our national government that is performed outside of Washington, D.C. The President is actually elected by electors chosen in their states according to their own state election laws, who meet and cast their ballots in their own state capitals. No Senator, Representative, or other federal official is permitted to be an elector in the Electoral College.

The Electoral College has served us well for more than two centuries, with repeated peaceful transfers of power, and there is every reason to believe it can continue to serve us for the next century. No one has proposed a better alternative.

Stealing the Presidential Election

A major attack has been launched on our Constitution by those who want to change our form of government by getting rid of the Electoral College without amending the Constitution in the proper way. Over the years, several amendments have been proposed to abolish or change the Electoral College, but they have gone nowhere, so now some politicians are trying to change our Constitution without complying with the amendment process. Their plan requires stealing votes on a massive scale.

This plot is called the Campaign for the National Popular Vote (NPV), and it apparently has a lot of money behind it. NPV is headed by three losers who were defeated in the 1980 Reagan landslide: John Anderson, Birch Bayh

and John Buchanan.

The plan is to get states with at least 270 votes in the Electoral College to enact identical bills requiring their own electors to ignore the winner of their own state's presidential election and cast **all** their state's ballots for the candidate who the politicians believe received more popular votes nationwide than the other candidates. NPV would construct a **fake majority** by stealing votes away from some candidates and transferring them to another candidate.

What could be more ridiculous and un-American than to force electors to vote against the votes cast by their own constituents! Yet NPV wants to require a state like Louisiana to cast its votes for the candidate who won in other states such as New York.

The NPV campaign lets people believe that their system will elect Presidents who win the majority of the popular vote, but that is absolutely false. The NPV plan would elect the candidate who achieved only a **plurality** of the popular vote. Because of third parties, we've had many elections (including three of the last five) when no presidential candidate received a popular-vote majority. Abraham Lincoln won less than 40% of the popular vote and only his Electoral College majority elected him President.

The elimination of the Electoral College would overnight make irrelevant the votes of Americans in about 25 states because candidates would zero in on piling up votes in large-population states. Big-city machines would take over, and candidates from California or New York would enjoy a built-in advantage.

People who pretend that the Electoral College system is undemocratic are not only ignorant of the history and purposes of the U.S. Constitution, but they probably don't even understand baseball — the Great American Game. Basing the election on a plurality of the popular vote *while ignoring the states* would be like the New York Yankees claiming they won the 1960 World Series because they outscored the Pirates in runs 55-27 and in hits 91-60. Yet, the Pirates fairly won that World Series, 4 games to 3, and no one challenges their victory.

The NPV slogan "Every Vote Equal" is stunningly dishonest because the NPV proposal is based on legalizing vote-stealing and on changing the rules of presidential elections by a compact of as few as 11 states instead of the 38 states needed to amend the Constitution.

Anderson, Bayh, Buchanan and their associates in the Campaign for the National Popular Vote know they can't change the Electoral College honestly by passing a constitutional amendment. Their devious plan to bypass the U.S. Constitution must be defeated. Their slogan that NPV will "make sure every vote counts in presidential elections," and their implication that NPV will elect Presidents who get the majority of the popular vote (whereas it would be only a plurality),

must be exposed as dishonest.

NPV has already been passed by Maryland, New Jersey, Illinois, Hawaii and Washington State. It's time to call a halt to this constitutional mischief.

Washington, D.C. Is Not a State

Another attempt to bypass the U.S. Constitution without amending it in the legitimate way is the devious plan to subvert the District Clause (Article I, Section 8, clause 17). This clause makes clear that the District of Columbia is not a state or a congressional district, and that Congress has the power "To exercise exclusive Legislation in all Cases whatsoever over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States."

Our Constitution's framers decided on a separate and independent federal enclave to serve as the seat of the new government, a territory outside of and independent from every state. The delegates to the Constitutional Convention of 1787 gave Congress complete authority over the District so that it would be insulated from undue pressures and interruptions.

This means that the District of Columbia does not have its own Senators and Representatives. That decision was not a mistake or oversight on the part of the Founding Fathers, but was an integral part of the original constitutional design to keep the seat of our Federal Government out of the political process so that it would remain the servant of all the people, and not become our master.

In the 1980s, the people who don't like our Constitution the way it was written tried to eliminate this provision by a proposed constitutional amendment to give Washington, D.C. representation in the Congress "as though it were a state." The "D.C. Representation" Amendment passed Congress, but it was rejected by the American people and died on August 22, 1985, after a decisive majority of 34 of the 50 states refused to ratify it.

The 23rd Amendment, ratified in 1961, is the 20th century's reaffirmation of the District of Columbia as a unique juridical entity in the American system. The 23rd Amendment allows District residents to vote for President and Vice President just like all other citizens, and even gives them an electoral vote disproportionately larger than all but the smallest states.

That should have been the end of it, but some misguided Members of Congress keep trying to make an end run around the Constitution by pretending the District is something that it isn't. They want to give the District a House seat by passing a law stating: "The District of Columbia shall be considered a Congressional district for purposes of representation in the House of Representatives."

Assuming that a Representative from the District would

always be a Democrat, the bill's sponsors tried to make this bill palatable to Republicans by another section that would increase the number of House members from 435 to 437 and give an extra Representative to Utah, a normally Republican state.

We urgently need Americans and American leaders to study the U.S. Constitution in order to learn what it says, why it has survived for more than two centuries, and why Americans should defeat all mischievous attempts to bypass it in unconstitutional ways.

Respect the Constitution's Treaty Provision

The globalists and world-government types hate the treaty provision of the U.S. Constitution, which states in Article II, Section 2: The President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." They look upon the two-thirds requirement as impeding their goal of putting the United States into various global organizations subject to foreign law, and so there is an ongoing effort to bypass the treaty requirement.

For example, the Brookings Institution published a paper on January 27, 2009 calling for President Obama to negotiate "cap and trade" agreements with other countries by bypassing the treaty provision. Brookings suggests that "in consultation with Congress, the President would decide that future climate and energy agreements are to be approved by the United States by statute rather than as treaties. Statutes require a majority in both houses of Congress, whereas treaties require two-thirds of only the Senate."

The Council on Foreign Relations published a "new initiative" on May 1, 2008 criticizing the U.S. Constitution for protecting American sovereignty against "incursions of international bodies." Specifically, this CFR report complained: "the separation of powers enshrined in the U.S. Constitution, which gives Congress a critical voice in the ratification of treaties and endorsement of global institutions, complicates U.S. assumptions of new international obligations."

Americans must constantly be on guard against all attempts to violate or bypass our Constitution or amend it by unconstitutional means. Our freedom depends on it.

The Phyllis Schlafly Report

PO Box 618, Alton, Illinois 62002

ISSN0556-0152

Published monthly by the Eagle Trust Fund, PO Box 618, Alton, Illinois 62002. Periodicals Postage Paid at Alton, Illinois. Postmaster: Address Corrections should be sent to the Phyllis Schlafly Report, PO Box 618, Alton, Illinois 62002. Phone: (618) 462-5415.

Subscription Price: \$20 per year. Extra copies available: 50¢ each; 10 copies \$4; 30 copies \$8; 100 copies \$15; 1,000 copies \$100.

<http://www.eagleforum.org>

eagle@eagleforum.org