

## A Question of Accuracy-- Shall The John Birch Society Decide The Constitution?

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Recently Mr. Tom Deweese of the American Policy Center led an effort to prevent the state of Ohio and its citizens from exercising their constitutional right to apply for an Article V Convention. Based on comments Mr. Deweese has made, it is clear he is quite proud of the fact he has denied the right of alter or abolish to the citizens of Ohio. Mr. Deweese has stated in numerous articles he believes an Article V Convention could overthrow everything Americans hold dear in this country by rewriting the entire Constitution if it so desires. He describes a convention that will set out to destroy every civil right Americans enjoy, remove constitutional amendments by fiat and be controlled by powerful forces in Congress. In short, Mr. Deweese describes a situation so terrible, so unthinkable, and so frightening that only mad men would use it. This is exactly his purpose.

The only problem with his prophecy of constitutional Armageddon is Mr. Deweese, [whose sympathies clearly align with the John Birch Society](#), provides no evidence of his claims. Yet, Mr. Deweese, on his say-so alone, apparently expects us to abandon the Constitution and its form of government (which includes an amendment convention) and follow him down whatever path he plans for this nation. He does not say what that plan is, but it certainly does not involve obeying the Constitution as it is written. Thus, Mr. Deweese advocates the very same thing he says a convention will do.

Take for example his recent tirade in his January 17, 2009 column entitled [“Preserving the Constitution; The Battle To Stop The Constitutional Convention.”](#). This column is a typical attack ad on the Article V Convention—long on accusations, short on proof. On December 24, 2008 in his own American Policy Center blog [Sledgehammer](#), Mr. Deweese wrote, “Thirty-two (32) other states have already called for a Con Con (allegedly to add a Balanced Budget Amendment to the Constitution). 34 states are all that is required, and then Congress MUST convene a Convention. The U.S. Constitution places no restriction on the purposes for which the states can call for a Convention. If Ohio votes to call a Con Con, for whatever purpose, **the United States will be *only one state away from total destruction.***” [Emphasis in the original].

Total destruction. That is pretty heavy. Mr. Deweese is saying if 34 states apply for an Article V Convention, it will destroy the entire United States. Mr. Deweese says, “34 states are all that is required, and then Congress MUST convene a Convention.” He also says in his January 17, 2009 column, “Today, we have Nancy Pelosi and Harry Reid. Do you trust them to produce a document [referring to the present Constitution] of such magnitude? ... They [Pelosi and Reid] are itching to get their hands on the old parchment.”

However, the facts about Congress' desire to call an Article V Convention instead raise an entirely different question. If Nancy Pelosi and Harry Reid are "itching" to get their hands on the old parchment, what are they waiting for? Mr. Deweese fails to mention the fact that all 50 states have submitted over 650 applications for an Article V Convention and continue apply for a convention to this day. We have the [texts of these applications to prove our statement](#) available for anyone wishing to read them at our website ([www.foavc.org/](http://www.foavc.org/)). We have photographic copies taken from the Congressional Record of the texts of the applications by the states showing where the states themselves have demanded Congress call a convention because [the proper number of states has applied for a convention](#). In short, based on these facts alone, if Nancy Pelosi or Harry Reid were "itching" to get their hands on the old parchment, all they have to do is issue a convention call. The states have applied. The facts however show a convention call is the last thing either politician (or anyone else in Congress for that matter) wants to do. (And for the record not *one* of the applications request removal of any right currently enjoyed by Americans. Indeed, [the evidence shows](#) the states wish to increase the rights of Americans.)

Thus, the public record of the applications defeats Mr. Deweese's main argument—that we are only two states away from a convention. The public record shows Congress is no more disposed to obey the Constitution than he accuses a convention will be. But what gives Congress to right to disobey the Constitution? This action of congressional disobedience is a clear and present danger. However, Mr. Deweese appears to have no problem with Congress running constitutionally amok vetoing clauses as it pleases. Instead, he focuses on what a convention might consider in its agenda saying, "the subject matter cannot be controlled and we have no guarantee that we can win state ratification fights if changes to the Constitution are offered."

News flash Mr. Deweese. The same exact arguments hold true if Congress proposes an amendment to the Constitution. The states have no say as to what language Congress might propose in an amendment and no vote is ever guaranteed until it is taken. But as he expresses no doubts regarding a congressional proposal, it appears Mr. Deweese places all his faith in Congress meaning he believes Nancy Pelosi and Harry Reid will do right by us if they propose an amendment in Congress, but, if Harry and Nancy decide to call a convention suddenly all the terrors of the universe will descend upon us...controlled by Harry and Nancy of course. Now if you can figure out that schizophrenic logic, please let me know.

How do I know Harry and Nancy do not want to call a convention? Because in 2006 their attorney of record, the Solicitor General of the United States acting in his official capacity acknowledged before the Supreme Court of the United States that a convention call was based on a simple numeric count of states (which Mr. Deweese himself admits), that there were no other terms or conditions regarding the call, that the call was peremptory (a legal term meaning Congress must call—which Mr. Deweese also admits), and to refuse to call was a federal criminal offense by the members of Congress. In short, Nancy and Harry would rather go to jail than call a convention. So much for the idea,

they are “itching” to call an Article V Convention. Two federal lawsuits have been filed concerning Congress’ refusal to obey the Constitution. In both cases, the government opposed Congress obeying Article V. Thus, their opposition is a matter of public record. All details of the lawsuits [can be read on our site](#).

Mr. Deweese tries to raise the specter of convention delegates being controlled or selected by Congress. There is no legislative authority granted in Article I, Section 8 of the Constitution giving Congress such authority. Further, in 1798, the Supreme Court put any such notion out of the ballpark. In *Hollingsworth v Virginia*, 3 U.S. 378 (1798) the court said, “And the case of amendments is evidently a substantive act, *unconnected with the ordinary business of legislation, and not within the policy, or terms, of investing the President with a qualified negative on the acts and resolutions of Congress.*” [Emphasis added] The court then continued, “The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution.”

Any control of a convention would be in the form of legislation enacted by Congress aimed at regulating the proposition of amendments by a convention, thus making the convention a rubber stamp controlled by Congress. The Constitution demands all legislation proposed by Congress be presented to the president (for possible veto) before it can become law. As legislation as discussed deals with the proposition of amendments in that such legislation would control how and what a convention would propose, the Supreme Court makes it clear the president cannot participate. If the president cannot participate, Congress cannot propose legislation to control a convention because it cannot be constitutionally enacted as law. To do otherwise allows the president (via the use of his veto) exclusive control of the entire amendatory process of the Constitution, i.e., a dictatorship. This is why the court in 1798 removed the president from the amendatory process. In doing so the court separated legislative control by Congress from amendatory proposal meaning the two are separate constitutional powers. This also explains why amendatory proposal has such high standards of ratification (3/4<sup>th</sup> of the states) as well as 2/3rds proposal by either convention or Congress; to ensure any amendment has been well vetted *before* becoming part of our Constitution.

Mr. Deweese also fails to mention another fact. Any amendment that is ratified can be rescinded, as was the case of the 18<sup>th</sup> Amendment to the Constitution by the 21<sup>st</sup> Amendment. Thus, we have a safety valve built in the Constitution even if an amendment is ratified that is not, in the end, to our advantage.

As to electing delegates, the Supreme Court addressed this issue in *Hawke v Smith*, 253 U.S. 221 (1920) when it said, “conventions call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people.” In other words, the court has said that conventions must be composed of delegates elected by the people. Given that the 21<sup>st</sup> Amendment was ratified by state conventions consisting of delegates elected by the people, this is an indisputable fact.

Mr. Deweese would have everyone believe there are no laws or court rulings to control a convention. I respectfully disagree. Anyone wishing to discover how much law actually applies to a convention should read the [first legal brief filed in 2000](#) regarding an Article V Convention. In sum there are over 208 Supreme Court decisions addressing every aspect, every issue, every problem Mr. Deweese raises. Does Mr. Deweese refer to these Supreme Court rulings and refute them? No, he simply chooses to ignore them.

Mr. Deweese perpetuates the myth about the 1787 convention, that it met in secret (which it did) and no body outside knew what it was doing. Again, a false statement. The reference for this can be found [in our video](#) we recently released. In it we quote the February, 1787 convention call of Congress in which Congress instructed the convention to “report to Congress and the several legislatures such alterations and provisions as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and the preservation of the Union.” Thus, Congress instructed the convention to make whatever changes it felt necessary to the Articles of Confederation to improve the government (which the Constitution certainly did) and preserve the Union (which so far it has) and report those suggestions to Congress, which the convention did. Further, if one carefully reads the Articles of Confederation, you will see that parts remain in the Constitution meaning the convention “grandfathered” the Constitution. Thus, when the 13 states voted to ratify the Constitution, they also ratified the changes to the Articles of Confederation. The Articles did not require a separate vote by the legislatures to ratify the Constitution and change the Articles of Confederation. One ratification vote did double duty.

Given these easily checked facts and comparing them to the rhetoric of Mr. Deweese, it is obvious his fears are groundless. He presents no evidence to support his claims, no references that any of the dire predictions he makes have ever happened at a convention. Given the fact there have been [well over 600 state conventions in this nation alone](#) not to mention hundreds in other countries, surely at least one of them would have done what Mr. Deweese alleges a convention might attempt. In short, the public record shows conventions to be a safe way to bring about constitutional change when the government is not disposed to do so. Mr. Deweese presents no evidence to the contrary to refute this statement. He merely spouts fear and expects that to suffice as his “evidence.”

Finally, in his January 17, 2009 column, Mr. Deweese discusses the so-called Burger letter, which he states “is a major and damning piece of evidence against a call for a Con Con because it verifies our fears that states could not control the subject matter discussed at the convention.” The fact is this so-called Burger letter is the only source quoted by opponents to a convention. Mr. Deweese ignores of course, as does this so-called letter said to be “[written in 1983 by Chief Justice Warren Burger](#)” (quoting Mr. Deweese in a January 12, 2009 column), the real power of ratification by the states. We at FOAVC pride ourselves in accuracy and verifiable, referenced materials such as we have shown in this column. We believe the Burger Letter may not be authentic because statements made in it, as well as facts surrounding it, don’t match up with easily verified public record. We have released [a video on You Tube](#) summarizing our concerns about this letter. Such a letter may exist. We only question whether Warren Burger was the person who wrote it.

We question the authenticity of the so-called Burger Letter for the following reasons:

---The letter, according to Mr. Deweese and other sources, was written in 1983 and describes Chief Justice Warren Burger as “retired.” Fact: Burger served on the Supreme Court from 1969 to 1986.

---The letter refers to Burger as chairman of a committee. The committee did not exist until 1985, two years after the date of the supposed letter.

---The source of the letter was Doug Kelly a known John Birch Society operative not Phyllis Schlafly the supposed recipient of the Burger letter.

---The letter says Justice Burger spoke on the issue of an Article V Convention “many times.” Because he was active on the court at the time of the letter, it is unlikely Burger would have made such statements, as it would have compromised his judicial objectivity.

---Burger states there is no way to control the agenda of an Article V Convention. This statement, if made by Burger, shows a complete ignorance regarding the ratification procedure put in place by Article V specifically to control any agenda of either Congress or a convention. Does it make sense a chief justice of the Supreme Court of the United States would be that ignorant about the Constitution?

---In the letter Burger perpetuates the myth about the 1787 convention acting on its own to create the Constitution. As we have shown in this column, public record disproves this claim. Would a chief justice of the United States make such an obvious blunder so easily checked in public record?

---Burger mentions state rescissions made in 1983. Fact: [the public record clearly shows](#) there were no rescissions submitted to Congress in the year 1983.

Please note Mr. Deweese does not refute one question of accuracy we raise in our video in his column. Indeed all he does is make reference, (without link) to a post by Phyllis Schlafly in her webpage [which created the file on January 19, 2009](#). (Doesn't it stand to reason that a letter said to have been written in 1983 (or 1988) would be in a file dated BEFORE the issue of its authenticity was raised as it had to exist since that time?). At this point, we believe the John Birch Society will have to produce much more than this to be believed.

We at FOAVC as well as many other Americans realize there is a great need for an Article V Convention. We have many systematic problems that only can be resolved by a convention. If there is going to be a debate over a convention, shouldn't both sides at least have enough respect for the Constitution and America to present the facts as they truly are instead of presenting half-truths? Mr. Deweese and others like him may have legitimate concerns about a convention. But instead of working to resolve them, they resort to what can only be described as fear mongering. We invite all to come to our

website at [www.foavc.org](http://www.foavc.org) and learn the facts and truth about an Article V Convention.  
Then decide.