

Natelson Lays AVC Rules Egg

By Bill Walker

In yet another example of academic narcissism Robert G. Natelson, “foremost scholar” in the Article V movement released [a draft version](#) of proposed operational “rules” for an Article V Convention in the last week in July. Per his usual custom Natelson’s primary source of reference for his “rules” was himself who he quoted extensively. In addition to himself Natelson employed a totally irrelevant historic source which, as usual, he attempted to jury rig for the purpose of creating his version of AVC rules. His proposal was presented by the political organization Convention of the States (COS) at the annual meeting of ALEC in San Diego.

ALEC, or American Legislative Exchange Council, has been the money behind COS since its inception nearly two years ago. It is no surprise therefore that these the proposed “rules” carry on with the basics of a proposal made by Natelson [at that time](#). Reaction from ALEC legislative members was, according to COS, both swift and tepid. ALEC claims 2000 of the [7382 state legislators](#) in this country are members of ALEC. According to a [COS statement](#) a whopping 200 state legislators in ALEC showed enough interest to sign on to a “caucus” intended to review the work. So COS claims 10 percent of those legislators in ALEC or 2.7 percent of all state legislators in the country showed enough interest in the proposal to even want to review it. The fact is by only submitting his proposal to ALEC, Natelson denied it from being reviewed by 5382 state legislators as well as every member of Congress. Obviously Natelson was playing for a specific audience. Otherwise the proposal would have been sent to all state legislators regardless of advocacy affiliation.

The reason for this lack of enthusiasm by ALEC members probably lies in the fact Natelson’s proposal reaches a new low even for him. Rather than actually coming up with a new proposal which attempts to actually address the issues, objections and other matters surrounding an Article V Convention, Natelson reaches into the dust bin of history to dredge up a failed example of a convention and virtually steals its rules as the basis for his proposed rules. In short, from an academic point of view Natelson demonstrates he is either too lazy or so obsessed with the past, to prove he is capable of actually coming up with a new idea so as to solve the problems of today. Just because something worked in the past (and in this case the term “worked” is debatable) doesn’t necessarily mean it will work today; sometimes things in the past need to stay in the past. This is one of those examples.

Natelson uses the rules of the failed [1861 Peace Conference](#) (which he copied almost word for word from the [Proceedings of the Conference](#)) as the basis for his proposed rules. The proposed amendments made by the conference (which had already been bandied about prior to the conference being held) [can be read here](#). Natelson does admit in his proposal to copying the rules of the 1861 conference thus avoiding a charge of outright plagiarism. The 1861 Peace Conference (sometimes referred to as a convention) was a last desperate attempt by some individuals in some states to avoid the Civil War by means of proposal of amendments to the Constitution aimed at pacifying the southern states with amendments intended to permit the continuance of slavery in some form in the United States. The conference, which was held in Washington DC in February-March 1861 failed primarily because during its tenure several

southern states seceded from the Union meaning, unfortunately, events had outstripped the conference's attempt to peacefully resolve the issues which ultimately divided the nation.

But attempting to use the conference's 1861 rules as the basis for an Article V Convention held today is the biggest failure of Natelson's proposal: while the conference did "propose" amendments to the Constitution, it was not an Article V Convention. Therefore the conference had to rely on one of the two proposal bodies established in the Constitution to actually propose the amendments. In this case the proposal body was Congress which refused to act before its adjournment in early March, 1861. Thus the conference failed in its attempt to "propose" amendments to the Constitution because it was never authorized to do so in the first place.

The important point is this: the purpose of the conference was never to actually "propose" amendments, unlike Congress or a real Article V Convention both of which have the constitutional authority to actually directly propose amendments and the rules of the conference reflect this fact. The fact is the only power the 1861 conference had was the fact many of its members had political influence and thus could recommend proposed amendments—nothing more. Thus, by copying the rules of the 1861 conference, a body which while it may have been "called" by a state in fact was primarily composed of individuals who identified with various states, Natelson proposes a set of rules never intended to serve of the purpose of an actual Article V Convention. The fact is the records of the conference show that only three states actually sent individuals with state credentials actually identifying them as official representatives of the states they represented.

Thus Natelson suggests using rules for an Article V Convention which were never intended to be used as rules for an Article V Convention.

As a result Natelson's proposal, on its face, falls far short of the mark as they do not address the practicalities of a convention. Indeed even a cursory examination shows his proposal was never intended to address the real operational issues of a convention but instead intended to do nothing more than promote a specific political agenda for ALEX/COS. As noted there are several things wrong with Natelson's proposal starting with the fact it contains no methodology whatsoever for the convention to forward any amendment proposal made to Congress so that Congress can assign a mode of ratification to the proposal and thus get the proposal ratified. Without such procedure the proposal remains that—a proposal and nothing more.

Such an obvious mistake for someone of Robert Natelson's academic background is evidence enough to reject the rules outright. Clearly little thought was put into their proposal. The mandates of the Constitution require certain procedures be placed in any rules proposal for an Article V Convention and obviously, transmission of proposed amendments to Congress to begin the ratification process is chief among them. To ignore this process brings into question the validity, not to mention the creditability, of Natelson's proposal if not his entire body of work.

A few months ago I submitted a Proposed Convention Call to Congress for its consideration. As far as I know this was the first proposed call ever submitted to Congress and thus its fate remains uncertain. A few things I do know however. (1) any proposed "rules" for a convention will have to be submitted to Congress to be included in their call instead to ALEC; (2) under Supreme

Court rulings Congress does not have the authority to legislatively dictate convention operational rules though it can recommend in its call procedures related to the convention necessary to ensuring the convention accomplish its constitutional task. This is because the Supreme Court has ruled the president shall have no part of the amendatory process because the president could veto such process. Obviously defining the rules of a convention by means of legislation is clearly part of the amendatory process. The Constitution mandates any law proposed by Congress must be reviewed by the president who can veto it. As Article V is a process which cannot be vetoed, the Supreme Court ruled the process is separate from ordinary legislation meaning legislation cannot be used in such process. Therefore Congress cannot propose such legislation because the president is forbidden from considering it. Thus, without participation of the president Congress can propose no legislation; (3) a lot of objections have been raised about a convention and if any such rules are to be accepted they have to address these concerns which Natelson's rules definitely do not.

Thus a fair comparison between the two proposals is in order. One problem, which Natelson has shown in the past, is his propensity for ignoring already established law or court ruling and acting as if such rules don't exist in making his proposals. Hence, if the Supreme Court rules, (which it did in *Hawke v Smith*, 253 U.S. 221 (1920)) that convention delegates shall be elected, Natelson ignores that ruling and suddenly transforms delegates into commissioners irrespective of any legal bound to the contrary. This change in words is neither accidental nor minor. The dictionary defines delegates as being elected by the people; commissioners are defined as being appointed by the state. The problem is Natelson even ignores state laws which his prior works helped create which mandate the state sends delegates not commissioners.

True the current state laws in question dictate appointment but I believe when the time comes to actually hold the convention, those people in the affected states will rise up and demand to be a part of the process resulting in a quick federal court ruling in line with *Hawke* which will result in elected delegates for the convention. Natelson ignores the public in this matter as he has consistently done throughout his "theory." He forgets a basic rule of politics regarding those legislators in ALEC he seeks to have adopt his "rules." While he can afford to ignore the populace those ELECTED by that populace may not take too kindly to finding out their representative stands for cutting them entirely out of the amendment process. My proposed call reflects the *Hawke* ruling (See Rule 6; Rule 13a,d; Rule 14).

Another massive failure of the Natelson rules is because they are based on rules from a conference which did not have the actual constitutional authority to propose amendments the Natelson's rules do not spell out exactly what standard is required of the convention to propose an amendment. Mine does (See Rule 16f). Again such an obvious oversight on the part of Natelson renders his proposal highly questionable.

Natelson's rules do not deal with the processing of applications by Congress and establish rules for that processing such that Congress has a process in place to deal with all applications (766 from 49 states at last count). Mine does (See Rules 1 through 5 inclusive). The fact is Natelson's rules do not address the fact that presently Congress is required to call multiple conventions based on the numeric count of applying states and the number of submitted applications. Of course those who support Natelson's rules will simply state none of the applications have

aggregated sufficiently to meet the two-thirds rule of Article V on the same subject and consequently can be ignored. This, of course, is false on several points: (1) there is no requirement in the Constitution mandating applications be on the same subject and no advocate when challenged to produce any official evidence of this proposition has even been able to do so—including Robert Natelson; (2) at least three sets of applications have reached the two thirds mark—income tax repeal, balanced budget and apportionment; (3) the concept of applications being repealed or ignored raises the immediate question that if either the states or Congress can repeal applications why then are those favored by COS immune from the same process thus dooming any COS proposals to the scrap heap.

Natelson's rules do not address the requirement of official public record. Natelson ignores the basic fact that a proposed amendment is an official public record. Such fact requires authentication of the purported public record both in transmittal and in recording of that instrument. Mine proposal addresses this fact not only throughout the rules but particularly in the transmission of the proposed amendment to Congress and in its subsequent choice of mode of ratification and finally in regards to certification of the proposed amendment once it has been ratified (See Rules 18-22).

Natelson's rules do not address several concerns raised by convention opponents. For example, while Natelson has proposed a master/slave relationship for convention delegates, it is cumbersome at best. My Rule 16iv 1,2,3,4 deals with this issue and provides the state legislatures a real time input to the convention in regards to its agenda. In sum the rules allow state legislatures to notify the convention if there is sufficient opposition (or support) to allow for the passage of a proposed amendment. Obviously if not enough support/opposition exists, the political answer is obvious: the convention will not propose the amendment in the first place. Thus the legislatures "control" the convention outcome without actually controlling the convention. Instead the states use their power of ratification and simply tip their hand as to the outcome of a proposed amendment prior to it being proposed. Thus the states do not cross into control of the proposal process (which is what Natelson, COS and ALEC want—control of both processes simultaneously) which is constitutionally forbidden.

Natelson's rules do not address the unwarranted fears by some of a "runaway" convention. I have provided Rule 15 and its related subsections to deal with the eventuality allowing for the closure of the convention should it stray from its sole constitutional purpose of amendment proposal yet simultaneously guarding against the use of this rule by political opportunists who would use the rule to stop a proposed amendment. I believe the rule is unnecessary but that doesn't mean it shouldn't be there.

Natelson's rules provide no means whereby Congress cannot simply "edit" a proposed amendment thus circumventing Article V by allowing Congress to propose an amendment by means of majority (or less) vote rather than by the required two third vote. Rule 18d addresses this issue. True, it is no absolute guarantee but what in politics is. Presumably if Congress were to attempt such a trick the states would quickly defeat the proposal in ratification and demand the original convention created proposal be sent out immediately for ratification consideration.

Natelson's rules establish standing committees based on the particular political agenda COS hopes to promote and makes it nearly impossible for other issues to be considered by the convention. He also proposes debate limits and well as limiting the number of delegates allowed on the floor of the convention at any time. Various rules in my proposal address these issues properly. In the first place because multiple conventions are mandated, pre-set committees are meaningless. What happens when the pre-set subject is proposed by the convention and the next convention has to deal with a useless committee? Why are committees limited to only three subjects when in fact the applications of the state list nearly 50 subjects the states say they want discussed at a convention.

While I agree limits on debate must exist, a pre-determined rule essentially gagging delegates to a prescribed time limit and number of times a delegate may speak is clearly un-American not to mention foolish. So is limiting the number of delegates on the convention floor assuming these delegates are properly elected by the people from that state. These delegates are elected by the people based on the presumption they will represent the interests of those who elected them. Such a rule as Natelson proposes obviously denies the people their equal representation at a convention. The obvious solution of course is to mandate that a facility large enough to accommodate all delegates be chosen as the site of the convention.

As noted in my proposal, the convention has no taxing power meaning it has no income for such purposes as hiring a convention hall, paying staff and so forth. If Congress provides the money or the states do the same, clearly stipulations can be incorporated into such appropriations that regulate the convention as the funding body desires. Such a result is worse than the Natelson rules and therefore must be rejected. The only practical solution therefore is to "borrow" the necessary federal facility and personnel needed to conduct the convention. The only facility large enough known I know of in Washington DC which can accommodate 435 delegates and provide the required work space is House of Representatives. This is why it is proposed as the convention meeting hall.

The Natelson rules are obviously intended to stifle any creative thinking (read that opposition) by delegates and thus such draconian measures only serve to prevent the most important aspect of a convention: allowing the delegates to freely discuss issues and present differing points of view on a problem with the aim of arriving at a solution. Solutions are not always obvious and indeed the best ones seem to occur when people are allowed to brainstorm. Natelson's rules show every prospect of robotic thinking.

Natelson's rules do not address the issue of delegate influence except that it endorses his master/slave principle allowing control by a few select members of the state legislatures. He does not address the issue of money in politics which many have suggested will occur in the choosing of convention delegates. Rule 13e deals with this issue of political and monetary influence. Further Natelson's rules do not guarantee that the convention record will even be made available for public inspection. Mine does (See Rule 16j).

The fundamental issue of these rules is obvious: sovereign control. Natelson and his crowd say the states (meaning the state legislatures meaning the political parties and bosses behind those legislatures who control the legislatures) are sovereign and therefore they should control any

convention. My proposal, which is based on countless Supreme Court rulings, historic record and other official documentation, not the least of which is the Declaration of Independence as well as the Constitution which make it abundantly clear the people are sovereign not the states. The Declaration of Independence is emphatic: “that when any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it...” That right has never been given away and indeed is the fundamental rock upon which all other rights claimed by the people exist. Hence it is the people who are sovereign and therefore the people who should decide on the delegates as their elected representatives. Proof of this fact is irrefutable: all other political bodies which have anything to do with amendment of the Constitution—Congress, state legislatures and ratification conventions—are elected. There is no basis in American law which supports the contention that a convention should be treated any differently than the rest of these elected bodies. Indeed under the terms of the 14th Amendment equal protection under the law, no other conclusion is possible.

Natelson and his rules are yet another example of those who would steal the right of alter or abolish from the American people for their own selfish, un-American purposes. These people must be utterly rejected in favor of rules which promote open debate and an open public convention. I will grant that those reading my proposed rules will have objection to them in one form or another but I think all will agree that while my proposed call may need work it is certainly far more comprehensive and much closer to the mark of meeting the necessary requirements for a convention than Robert Natelson’s proposal could ever hope to become.