

Robert Natelson v Compact for America

A Political Lesson in How to Beat Your Enemy by Destroying Yourself

By Bill Walker

In what is best described as a prostitution of his beliefs Robert G. Natelson of [Convention of States](#) (COS) fame has, for the second time, attacked his old boss from the [Goldwater Institute](#) Nick Dranias, now executive director of [Compact for America](#) (CFA) in a [recently released “legal treatise.”](#) Natelson has worked for several organizations since leaving the University of Montana, (1987-2010). This list is by no means exhaustive but of my personal knowledge he has had four jobs in six years: the [Goldwater Institute](#), [ALEC](#), [the Federalist Society](#) and now the [Independence Institute](#) based in Denver, Colorado.

As COS and CFA are political competitors for convention applications from state legislatures supporting “their” convention agenda and both agendas require a state legislature to “exclusively” support “their” agenda, it is little wonder this academic catfight has broken out. Currently COS and CFA have [six and four applications](#) respectively. However the state legislatures don’t seem to accept the “exclusive” part about COS/CFA. Public record shows the movements share two states, Alaska and Georgia; so who actually has what states is in doubt.

More importantly both groups ignore public record such as [Congress is now obligated to call TEN Conventions](#). This fact has grave consequences for both groups. At their current rate of gaining one application a year long before either COS or CFA achieves “their” 34 applications for “their” amendment proposals the required TEN conventions already applied for will have been held. The result: those CFA and COS applications already submitted to Congress will be disposed of (along with all other submitted applications) over the course of the TEN conventions. Thus long before the actual CFA and COS proposals are have reached “their” 34 applications, the issues in them will have raised, debated and resolved in the blast furnace that is the Article V Convention amendment process.

As I [described earlier regarding his first attack](#), in the desperate battle to “win” state legislative support COS supporter Robert Natelson has launched this latest effort to discredit CFA legal assertions about an Article V Convention.

To accomplish this Natelson throws his key “[belief](#)” that an Article V Convention is a “state” process under the bus. Natelson, who founded the “what I say applies to others but not me” wing of the Article V Convention movement originated the ALEC/COS Master/Slave theory of convention control by select state officials. His theory advocated exclusion of the American people from the convention process. To my knowledge he has not raised a single public objection to state laws making it a felony for convention delegates to ignore “instructions” from a few state officials in regards to voting, agenda and so forth. Natelson at one time believed all this was constitutional but now says CFA proposals which are near mirror images of Natelson’s theory are unconstitutional.

The fact is, as far as goals are concerned, agenda control by a few selection politicians, exclusion of the American people from the convention process and a pre-determination of convention outcome, CFA and COS are twins separated only by the means to accomplish these goals. So if one set of goals is unconstitutional, obviously the other is equally so. Only the names have been changed to protect the guilty. Natelson of course ignores this fact.

CFA proposes using a “compact” to make an end run around Article V and then control the entire convention in Dallas, Texas. Natelson’s COS favors pre-determination of every aspect of a convention, i.e., delegate selection, agenda, outcome and so forth in the various state legislatures. Both organizations favor criminal arrest of delegates should they fail to follow “instructions.” Both believe in banning the American public from any participation in the convention process. Natelson calling CFA unconstitutional is clearly the kettle calling the pot black.

Both groups believe convention control is a STATE power. Or at least they did until Robert Natelson stated (twice now in two separate “attacks” on CFA) that the convention is FEDERAL not state (Spoiler Alert! See page 7 of the treatise for proof of this Natelson assertion).

Having tossed his original state Master/Slave theory under the bus which he wrote at the Goldwater Institute, Natelson tries to salvage the academic prostitution of his theory with a “caveat” at the beginning of his treatise. It reads, “One should not read this Law Report as denying the power of state legislatures to determine the general subject-matter of a convention in their applications or to select or to instruct their convention commissioners. Those powers are implied in the grants in Article V.”

Natelson cites several case laws in his treatise. One he avoids entirely however defeats his caveat of “implied grants in Article V.” That case is *United States v Sprague*, 282 U.S. 716 (1931) which states, “The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of construction. A mere reading demonstrates this is true. ... where the intention is clear there is no room for construction and no excuse for interpolation or addition.” Without rules of construction, interpolation or addition you can’t have implied powers (or grants as Natelson calls them) because that is what is used to create them. In other words, according to the Supreme Court there are no “implied grants in Article V.”

Natelson then drives the academic dagger he unsheathed on page 7 of his treatise saying “Article V is federal law” all the way to the hilt saying on page 8, “Accordingly state law (including legislation such as that promoted by CFA) [\[and COS\]](#) cannot control the ratification or proposal process. See also *Dyer v. Blair*, 390 F.Supp. 1291 (N.D. Ill. 1975) (Justice John Paul Stevens).”

That’s worth repeating: “Accordingly state law cannot control the ratification or proposal process.” COS accomplishes determination of “the general subject-matter of a convention in their applications or to select or to instruct their convention commissioners” by state law (as demonstrated by the Indiana law) just like CFA. Therefore the only possible conclusion is when Robert Natelson says state applications or laws “cannot control the ratification or proposal process” this fact includes both COS and CFA. Despite Natelson’s attempt at using several pages of his treatise to prove CFA’s proposal is wrong but somehow when COS does the same thing

it's right, he fails. He never explains where the difference lies because there is none. Once Natelson concedes states "operate under the federal constitution when involved in the amendment process" and "states cannot control the ratification or proposal process" turn him over, he's done. Deciding what subjects will be on a convention agenda and who will discuss them is clearly part of the proposal process.

Obviously Natelson hopes everyone misses the point that if Article V is "federal" not "state" then this fact equally applies to COS and CFA. Thus whether states favor COS or CFA they cannot control the convention and its proposal process either by application or state law. Natelson presents no evidence in his treatise contradicting his own conclusion. Equally obvious: neither COS nor CFA can deny the American people their inalienable right of alter or abolish in election of convention delegates. This is expressly stated in *Hawke v Smith* which Natelson quotes in his treatise but ignores that portion of the Supreme Court ruling for obvious reasons. Bottom line: Robert Natelson has succeeded in again proving his own work bogus.

Nice job shooting yourself in your COS foot Bob.