

THE
FEDERAL SOLUTION
FOR A
FEDERAL CRISIS



A Constitutional Mass 2010

A meeting to discuss the causes and remedies to our federal crisis.

**ARTICLE V
CONVENTION**

We don't want your vote, we don't want your money,
we just want you to listen.

Hosted By: Mike Church

APRIL 9th, 2010

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★
XM Satellite Radio Studios, 1500 Eckington Place, Washington, D.C. 20002

MIKECHURCH.COM

THE
FEDERAL SOLUTION
FOR A
FEDERAL CRISIS



A Constitutional Mass 2010

A meeting to discuss the causes and remedies to our federal crisis.

**ARTICLE V
CONVENTION**

We don't want your vote, we don't want your money,
we just want you to listen.

Hosted By: Mike Church

APRIL 9th, 2010

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★
XM Satellite Radio Studios, 1500 Eckington Place, Washington, D.C. 20002
MIKECHURCH.COM

First Published as an electronic PDF by Founding Father Films in 2010.

**Copyright © 2010 by Founding Father Films.
All Rights Reserved.**

This PDF may not be reproduced, in whole or part, in any form (beyond that copy permitted by Sections 107 and 108 of the U.S. Copyright Law and except by reviewers of the traditional and electronic press), without written permission from the publishers.

Layout & Design
Allison Bricker

Transcriptionist
Elaine Farris

For this and other educational works produced by Founding Father Films, please see www.FoundingFatherFilms.com

ISBN X-XXXXXX-XX-X

Printed in the United States of America

**Founding Father Films
21489 Koop Road
Suite Numbr 2
Mandeville, Louisiana 70471**

TABLE *OF* CONTENTS

ARTICLE V.....	I
PREFACE.....	2
PARTICIPANTS.....	3
SEGMENT I.....	4
SEGMENT II.....	15
SEGMENT III.....	25
SEGMENT IV.....	28
SEGMENT V.....	40
SEGMENT VI.....	48

ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.¹



¹Article V of the U.S. Constitution ratified June 21, 1788

PREFACE

To foster a greater awareness regarding one potential remedy to the current federal crisis as outlined in the U.S. Constitution, Mike Church and Founding Father Films are pleased to offer the full record of the Symposium convened to discuss an Article V, Amendment Convention. Championed by Virginian George Mason during the 1787 convention he argued that, “it would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their consent on that very account” Thus, thanks to his efforts, Article V was drafted so as to offer the states and the people one final avenue should the Central Authority over reach its precisely delegated authority. Professor Kevin R. C. Gutzman who is associate professor of history at Western Connecticut State University has prepared this preface. Professor Gutzman holds a bachelor’s degree, a master of public affairs degree, and a law degree from the University of Texas at Austin, as well as an MA and a PhD in American history from the University of Virginia. Happy to be a former attorney, Professor Gutzman devotes his intellectual energy to teaching courses in the Revolutionary and constitutional history of the United States, to writing books and articles in these fields, and to public speaking on related topics.



With the Revolution of 1937, the Supreme Court effectively abandoned the enterprise of drawing a line between state and federal legislative authority. Since then, with limited exceptions, it has allowed Congress to legislate in any way it likes.

The result, fitfully for decades but now in a rising crescendo of legislation, has been exactly as the Founders feared. Democracy — unlimited legislative power — yields transfers of wealth from some members of society to others. The majority, as in the years leading up to the Philadelphia Convention that wrote the Constitution, takes money from the minority.

But, if anything, things are worse than that. As once American politicians could not lose by expropriating Indian land and giving it to white people — because Indians did not have the vote, while whites did —, today’s politicians seemingly cannot lose by taking money from posterity for the benefit of their constituents. After all, posterity cannot vote, and voters can reward politicians who borrow money from future generations to pay for goodies they can hand to today’s electorate.

What is to be done? Must Americans stand by and watch the Congress transfer money from the future to the present? Is spending for spending’s sake (President Obama’s explanation of his “stimulus” legislation) to be the road to America’s ruin?

The Constitution was intended to provide parameters of the Federal Government’s power. Congress could do only a few things, most of them listed in Article I, Section 8. Spending for spending’s sake was not among them.

Nor was No Child Left Behind. Nor NASA, four decades since it fulfilled its purpose. Nor payments to farmers not to farm. What to do?

Some seem to believe that throwing the bums out will solve the problem. If only the spendthrift Democratic Feinsteins and Dodds and Reids who gave us TARP, takeovers of General Motors and European-style health care could be replaced by a new crop of Republicans like Ted Stevens and Bob Packwood and Bob Dole who gave us things like SCHIP, No Child gets Left Behind and the Medicare Prescription Drug Entitlement, things might be righted.

But more people sense that that is not enough. In many states, Republicans and Democrats are now outnumbered by unaligned voters. These people do not expect 2010's elections to correct the legacy of 1937, any more than election of dedicated limited-government advocates in 1980 and 1994 did.

The time has come, then, to heed George Mason.

That greatest of Revolutionary America's constitution-makers insisted that Article V of the Constitution include a mechanism for amending the Constitution without involving Congress. Congress, he noted, might be the problem, and so relying on Congress to propose an amendment would not do. In response, he and his fellow Framers provided for an Amendment Convention.

What follows is a discussion of the idea of an Amendment Convention held in Washington D.C. on 9 April 2010. The constitutional mechanism is discussed, as are its political ramifications and the most popular objections. None of the four participants or the moderator came to the question lightly, and yet all conclude that the time is now, that ordinary electoral politics will not remedy the problem, and that the opportunity provided by Americans' current revulsion with out-of-control government must not be wasted.

The problem has been the same since 1937. Now, finally, the people have noticed. Please consider these proceedings with an open mind.



PARTICIPANTS

- Randy Barnett:** Professor of Law at Georgetown University Law Center.
- Tony Blankley:** Former White House aide to President Ronald Reagan and Press Secretary to Speaker Newt Gingrich.
- Bruce Fein:** Former Associate Deputy Attorney General under President Ronald Reagan.
- Kevin Gutzman:** Associate Professor of History at Western Connecticut State University.
- Mike Church:** Nationally syndicated radio personality, documentary film maker of the founding era.

In SYMPOSIUM Assembled at the federal city of WASHINGTON, District of Columbia held in the SIRIUS XM PERFORMANCE STUDIOS on the FOURTH day of APRIL, 2010, for the purpose of discussing potential constitutional remedies to the current federal crisis.



SEGMENT I

Announcer: Welcome to Sirius XM's presentation of a town hall meeting to discuss amending the Constitution. And now, live from the Sirius XM performance studio in Washington, DC, your host, Mike Church. [Applause]

Mike Church: All right, that's what I wanted to hear. Okay, so welcome aboard here. We are obviously in the XM performance studio. This is our Article V Summit, as you could see on the posters: Federal Solution to a Federal Crisis. And I'm going to go through a little setup here. I'll introduce our distinguished panel, and then I'll ask the first set of questions. And the members of the audience, can we hear you out there? Are you guys out there?

Audience: Oh, yeah.

Mike Church: All right. I'm just making sure. Members of the studio audience will have a chance, and I hope you got your sheets in advance so you know when, you would like to ask a question, don't be bashful. That's why this is a town hall. Now, remember, there are no members of the current session of Congress at this table. So there's no need to yell at any of us. I'm just – I'm just letting you know here. As a matter of fact, the members of Congress are busy having their own convention in the capital right now, so they couldn't make it. But they were invited here. So many of them received invitations.

Let me set up what we're going to do here today. Article V is a section of the U.S. Constitution which you wouldn't be here if you weren't a friend of or a fan of, an admirer of, someone that maybe takes the words in it, and the fact that it was ratified by the states back in 1788, that doesn't take it to heart.

Mike Church: And as we all know, we have a very serious federal problem here. I don't think – before we start, does anyone disagree that we have a runaway freight train for what passes as a federal government today? No one disagrees.

I'll ask the panelists, does anybody disagree that our current course is unsustainable? We'll start with you, and I'll fly in the introductions here as a manner, or as a way to sneak them in. We'll start with Professor Randy Barnett. And Randy, do you think that we have a – that we're on an unsustainable course?

Randy Barnett: We're on an unsustainable course, and we have a Congress that recognizes no limits on its own powers.

Mike Church: Tony Blankley, who is an esteemed writer. And the reason Tony is here, and I really, I'm so glad that he was able to make it, he has actually worked inside the belly of the beast. He was Speaker Gingrich's press secretary for seven years. You probably see him on CNN and on NBC. He's on other television shows. He's written books. Tony, you've been inside this monster before. Is there a – do you have any confidence at all that, through the electoral process currently as it stands, that this thing can be fixed?

Tony Blankley: Well, I was also on the Reagan White House staff for six and a half years. And I have less and less confidence, let me say, every passing year, that it can be fixed. And part of my moving towards thinking about it in these terms is precisely because what we tried to – I worked for Reagan and Newt, two pretty conservative guys who believed in limited government. And we didn't – we weren't able to limit it. We could slow the growth a little bit, and then more powerful people take over, want to drive it even further. So that's what is my own experience in government, that even when the good people sort of have control, that you can't stop the process with the current structure.

Mike Church: I'll take that as a no. To my right, the esteemed Dr. Kevin Gutzman, author of several books many of you are familiar with, including "The Politically Incorrect Guide to the Constitution." I know your answer, but please give it. Is this course sustainable?

Kevin Gutzman: No. Politically it's not sustainable. Economically it's not sustainable. I think I join Professor Barnett in believing that the Congress is out of control. I would also add that I think that federal courts are in the business of legislating, with less and less attempt to justify the new incursions on state authority that they promulgate on a regular basis. And it seems to me that the federal executive, especially when it comes to matters related to war-making, has arrogated to itself a lot of the authority that was supposed to reside in Congress. So it's not only the Congress, although of course the Congress is the root of the problem. It's not only the Congress.

But no, I don't think that the current situation is sustainable at all.

Mike Church: And seated to your right is Bruce Fein. Bruce, you worked in the Reagan administration. You were in the Justice Department. You have also been inside the belly of the beast, so to speak. Same question to you, my friend. Sustainable? Not sustainable? What's your view?

Bruce Fein: No, it's not. And I think it's the political culture. It's all the branches of government that have combined. I call it the "psychology of empire," knows no limits. It's not just the Congress that passes the laws. The President signs them. The President often encourages Congress on that score. We have war, it's endless war, everywhere on the planet. The tiniest threat, another, you know, hundred billion, two hundred billion dollars to go to Yemen or Somalia. We don't have defense as genuine defense. It's always preemptive warfare.

And also I think the political culture demonstrated by even President George W. Bush, with his \$800 billion Troubled Asset Relief Program, is seeking a risk-free existence. That's what empires do. You can't have freedom and try to have a risk-free existence because you've got to have some breathing room for liberty to prevail, and you could fail, as well, if you're going to have freedom. So I blame the entire political culture that has enabled this situation to occur.

And we have ruination at our doorstep, in my mind. It is ruination the same way the Roman Empire fell. It's overreach. We have trillion-dollar budget deficits as far as the eye can see. There's no – and we're going to satisfy those deficits by phantom cost-saving measures that always are pushed down the road 50 years away.

Bruce Fein:

And the ultimate remedy is in the people – the people sitting in this room, the people listening to us – calling a constitutional convention outside of the framework of the Congress that is the alternate method of amending the Constitution, and say we don't want the Constitution to be a homonym of what it was in 1787. We want it to be the genuine article. We want to go back to the republican virtues that marked our founding fathers. We don't want socialism. We don't want paternalism. We want freedom rather than empire.

Mike Church:

I couldn't agree more. And let me – let's get into a little bit of the history here, so we can flesh out what Article V is. Before I do that, the vehicles this must go through are the people contacting their state representatives, state senators, governors and what have you, so it's in the states here. And Clint, if you would flash that graphic up for the folks. I just want to show you a map here on the television. You guys over here will be able to see it. Kevin, you won't be able to see it. But I'll describe it to you.

What you're going to see here is a map of the states that currently have chosen to either file amendments or resolutions – there you go. There's the map. That's the states. That's a nice map there. I only see a couple of states missing that have not decided that their sovereignty has been encroached upon, enough is enough, and they've either filed resolutions asserting their sovereignty, which as Dr. Gutzman will discuss later, are worthless and useless. And they do nothing, the resolution does nothing. Or they have filed actual bills in their state assemblies to actually repeal certain things. And we'll try to get into that.

But now that we've got that up here, and we know that there is a movement out there in the states, let's talk about the states here, and let's talk about their role in it. And professors, let's go back to 1787, around September 13 or so, a first draft of a document that you know called the U.S. Constitution came from a committee of style and substance, I think it was called. And they had written it out. They had debated it since May 25 of that year. And they presented it to the delegates. There were 40 left, I think, at that time in attendance. We can talk about the number later.

And the delegates went one by one, Article I, Section 1, all the way down, discussing whether or not they would approve of it. And they had to vote by state, yea/nay, so they did.

Mike Church:

When they got to Article V, George Mason, who may have been the greatest of all founders, in my opinion, stood up and said, no, Article V is not written correctly. What happens if the Congress becomes oppressive? What method are you giving the people and the states to reclaim the power? And so they sat down right there, Gouverneur Morris, James Wilson, and Elbridge Gerry, sat down right there with Mr. Mason, and they inserted the language.

And Clint, if you would flash the Article V text up there, the language that we're going to discuss here today, which is that whenever two thirds, upon application of two thirds of the state legislatures deem it necessary to call a convention, that this was the remedy that was left. So that's just a little bit of history.

Then I'll start with you, Randy – Randy Barnett. As you view what happened in that room and what Mason said today, talk for a minute about the actual – what was on the minds of the founders? What do you think Mason was trying to preserve? And what was done with that after his motion?

Randy Barnett:

Well, before I answer that, let me just say how I got into this myself. You actually almost described it. I was called by some reporters to ask me my opinion about these state sovereignty resolutions that were being proposed in various houses along the states. And I said, look, you know, these are purely symbolic. Under current constitutional doctrine they have no legal effect whatsoever, I said, but the Constitution does actually give states a constitutional power to do something, to bring pressure to bear on the political elite as they currently exist in Washington. And that is Article V, in which they can, under the Constitution, call for an amendments convention. And that's something they actually have the power to do, as opposed to these resolutions, which are not something.

So after that I started thinking a lot more about the amendments convention and route. First of all, I think we ought to call it an amendments convention, not a constitutional convention.

Mike Church:

Okay.

Randy Barnett:

Because under the Constitution it's a convention for purposes of proposing amendments. So the Constitution already builds in a limit on the scope of these conventions.

Randy Barnett: The second thing to think about of a convention is a convention historically, in political theory, has been considered a popular alternative to whatever is a standing legislature. You can think of it really as a special-purpose legislature, and a legislature outside the existent power, the recurrent ongoing legislature, the general assembly. And it's a special assembly that really has virtually the same powers as the general assembly, but they're – in other words, they're an alternative to it.

Mike Church: Right.

Randy Barnett: So if you think about what a convention would be, it's simply the power the Congress currently has to propose amendments to the states.

Mike Church: Kevin?

Kevin Gutzman: Yes.

Mike Church: On Mr. Mason, 1787, and what he proposed. What do you think he was trying to leave to the states, and what have the states done with it since?

Kevin Gutzman: Well, the answer to the second part of that question is the states have essentially done nothing with it since. That is, there has been a real hesitance since the beginning of the current federal system to call for such a convention. In fact, the idea of having another convention was first raised by people who were dissatisfied with the unamended Constitution, people who wanted to have a Bill of Rights before they ratified, people who were falsely labeled Anti-Federalists, people actually we should think of as proponents of the Bill of Rights, not Anti-Federalists. So you had a hesitancy to have a second convention.

And built into the tendency of American resisters of the Constitution to oppose the idea of a convention is a more general idea of opposing amending the Constitution. Essentially, in the 1790s, the Federalist Party, which really was the Nationalist Party, had undertaken a series of unconstitutional measures.

Kevin Gutzman: And when, because of that, the people voted them out of office in 1800, there was a rift among the members of the new majority, the Jeffersonian Republican Party.

Some people – Edmund Pendleton, John Taylor of Caroline, these prominent Virginian revolutionaries – said well, we need to have amendments to make explicit that sedition acts and federally chartered banks and neutrality proclamations by the President without asking Congress, that these measures that the Federalists took were unconstitutional. We don't just want the people to have validated our position by electing us because, if we don't amend the Constitution and make explicit that these actions were unconstitutional, they will serve as precedents for future Congressional majorities and presidents. That was the attitude that Taylor and Pendleton took.

On the other hand, James Madison advised Jefferson that really – and he had said this in *The Federalist*, then he repeated the argument in 1801 – that really it's a bad idea to be amending the Constitution on a regular basis. We've amended it 11 times already. We want to teach the people to venerate it. And so we don't need to amend it.

And what ended up happening, of course, was that Pendleton and Taylor proved right, and the actions the Federalists had taken in the 1790s did serve as precedents for claims to, in the end, virtually unlimited power in Congress, and in the executive to make foreign policy and so on. So even though the Federalists' behavior in the 1790s was across a wide sweep of policy areas unconstitutional, and even though they were instantly voted out of office for having behaved in that way, ultimately we ended up with a constitutional system that – more or less that they created.

Mike Church: And it's interesting that Dr. Gutzman says, "They were voted out of office." And you're hearing a lot of bluster these days about, "Oh, we're going to get them back in 2010. You just wait and see. We're going to elect a new class."

And I'm coming to the other esteemed members of the panel for this question here. Bruce Fein, you've worked, again, inside the legislature. What is the attitude of the people – and you've been in the Justice Department and that end of it. What is the attitude that federal judges, people in the Justice Department, what is their attitude towards the rights reserved, the power reserved to the states, and about what they're doing?

Mike Church: Do they give a second thought that, “Hey, man, I’m actually amending the document here. I’m not adjudicating what’s already happened. I’m actually proposing an amendment.”

Bruce Fein: Yeah. Well, it goes back, Mike, into this idea of original intent really binding those who follow in interpreting the Constitution. If you don’t want to follow original intent, then you have to amend the document. And that’s an issue that continues to this very day. I say it’s – we’ve now come to accept the Constitution today as a homonym of what it was in 1787. That’s not how it’s supposed to be. But I remember when I was at the Justice Department, we prepared a hundred-page report on federalism, sent it over to the Reagan White House. Tony may have been there. And it was flouted – it was honored in the breach, rather than the observance.

The political figures over there, they calculated what’s good politics. Principle didn’t govern a darn thing. The same was true in Congress. The last thing people think about is whether this is principled. They have ideas that are like restricted railroad tickets, good for this day and train only. They’ll say one thing on Day X. The next day they’ll say the opposite. Because their minds are focused on power, not on principle. That is the problem.

And that’s even true with the states. We had a hard time getting state attorneys general to come and defend their prerogatives. “No, we got enough money.” “Hey, it helps us in XYZ.” So they’ll go ahead and accept it. It goes back, you know, even to the Civil War. The Fugitive Slave Act, perhaps the most muscular exercise of federal authority, that’s what the Southern states wanted. Now, they wanted to defend states’ rights — except when it came to catching slaves. And this doesn’t work.

You’re not going to have a principled basis for government when those in office view the principles as simply expendable if it helps them politically. And we need to get back to thinking, “We want principle.” Even if we lose in the short run, we come back and argue, you know, a second day and try to get it right. But otherwise we’ll just yield. There’ll be no principle that governs, and the federal government will step in whenever it’s politically convenient.

Mike Church: Just a second. Tony, you were there.

Tony Blankley: Yeah.

Mike Church: You received that document. You've worked inside the government, as well. What's the attitude? You worked for Newt. I mean, how do these guys view the states and what we're talking about?

Tony Blankley: Let me tell you specifically regarding federalism because the Reagan White House was divided into the Meese Wing and the Jim Baker Wing. The Meese Wing were the Reaganites. I was part of the Reaganite Wing. The Jim Baker Wing were the pragmatists. They were the Washington operatives who knew how to get things done. Reagan, who I believe was a wonderful man and a principled president, wanted both because he understood that if he just had the keepers of the flame, just the principled people, he wouldn't get anything done. And if he just had the operators, it wouldn't matter what you got done because you wouldn't be acting according to principle. He tried as best he could to bring a balance.

And that's why, when we're talking about this issue, I keep – I come out of politics. I've been ... most of my adult life, other than as a prosecutor, has been in politics, elective politics. And if we're – this is politics. This is not merely debating. If this is going to mean anything, this effort to get a convention, it's got to come out of the existing political world in which we exist.

That's our dilem... — our challenge, that the existing political system, which we don't like, which is corrupting our Constitution and our way of life, somehow has to be manipulated, coerced, overpowered within the system that we have, and reform itself.

And of course that's where the public comes in. And if you can get enough of the public, they can trump the existing system. So our challenge is to bring the principles vividly to the mind of enough of the public that they can force the pragmatists to follow the principled ones.

Randy Barnett: Yeah, now, Kevin, I can make this observation about the origins of the Constitution itself, which sort of even transcends Article V. Those who were in Philadelphia didn't have a – remember, they were so-called “amending” the Articles of Confederation. That was their task. That was their – they were deputized to do that, amend the Articles of Confederation, which were deemed deficient. They didn't do that. They went way beyond that. They said, “The heck with the Articles.

Randy Barnett:

We are going to rewrite the whole Constitution. And if the people, since the people are sovereign, and they adopt it, who cares whether we went beyond our writ, because the legitimacy comes with popular will.”

Even without Article V, remember the most famous words in the Constitution, the first three: We The People. Sovereignty is in us. If we want to change the Constitution outside of Article V, and the country validates it, that’s going to be good enough going forward. That’s what the founding fathers themselves did. And we can talk about Article V, do all the states have to propose the identical amendment to have a convention or whatever.

But Tony’s got it right. The real issue we confront is less the technicalities of Article V, but our political culture changing and saying we don’t want this anymore. And people who don’t do what we want, we’re voting them out of office. We need a new dispensation, a new birth of freedom like Lincoln spoke about at the Gettysburg. We don’t want the government to be paternalistic. We want to take the risk of failure. We want to go back to those republican virtues that marked the United States as special and different. We don’t want all that debt. We want to work hard.

Mike Church:

Is that what you guys want? [Applause] All right. Kevin is chomping at the bit.

Kevin Gutzman:

Well, I can remember in 1980 when not only did President Reagan secure election, but Birch Bayh and Frank Church and George McGovern and a lot of people who had behaved in a, shall we say, more Jim Baker kind of fashion, were voted out of office. And you might have thought, well, okay, we’re going to reestablish this situation on a firm, principled footing. But whenever I think about the passes in American history, such as 1980 or 1800, I am always called back to James Buchanan. James Buchanan is an economist who won the Nobel Prize in economics for what’s called “public choice theory.” And essentially his thesis is that particular political systems produce particular kinds of outcomes. So we don’t need to wring our hands over the question, was it because Newt didn’t really turn out to be principled, or Reagan didn’t really turn out to be principled...

Tony Blankley:

Take exception to that, by the way.

Kevin Gutzman: The bottom line, the issue isn't whether people were really phony when they purported to be principled. The fact is that they were operating within this certain system. And over time that system will produce consistent outcomes. Now, they've been produced at an accelerating rate over time. But I posit that it's the system we have that produces these outcomes. Winning the election of 2010 for people who were opposed to stimuli and bailouts and so on is not going to provide a long-term solution to the problem, the Buchananite problem that we are going to get this particular kind of government from the system we have. Winning an election or a suite of elections won't change that situation. You need to change the system.

Mike Church: Tony, you took exception to something in there, I heard.

Tony Blankley: I took exception to the allusion that Newt wasn't principled. I...

Kevin Gutzman: No, I didn't mean that.

Tony Blankley: Oh, I mean, because he struggled. He struggled in the kind of problem I was describing, the kind of problem that Reagan struggled with. How do you, from a base where you don't have enough solid conservative votes to pass everything, do you somehow get things accomplished? And you end up – politics is compromise. If you compromise too much, you've sold out. If you don't compromise enough, you get nothing done, trying to get it right. And even Reagan, as good at compromise – he had a great sense of how far to slice the bologna and when to stop, even with Reagan we ended up moving down the path. So I agree, we need some structural changes to allow honorable people...

Mike Church: Just a second. We've got to take a timeout. This is really – this is fantastic. When we come back, I want to pose the question, and I want to bring the audience in on this because that's why we have the town hall here. What I just heard said here is that the people are going to have to change and demand that the elected class do reflect the change that they have undergone. If I'm to understand what Professor Buchanan wrote, what Bruce Fein just said, and what Tony said, and what Randy has said. So it's up to you people.

So I think we should hear from you.

Mike Church:

And we'll take a couple of questions, comments from the audience. We have to take a timeout. We have two of our state representatives on the line, as well. We have Bob Marshall from Virginia, who was instrumental in Virginia's recent resolution, which passed the House, passed the Senate, and was made pocket legislation by Gov. McDonnell not vetoing it, just letting it sit there. It became law, and that was Virginia's Healthcare Freedom Act, I think it's called. Carl Wimmer from Utah. Kevin, I know you're familiar with Carl. He's a great legislator. He's a founder of the Patrick Henry Caucus. They're both on the line. Plus our studio audience here. So it is a convention to amend, as we have amended the title of our discussion here today. It is live from the XM Studios. We'll be right back. [Applause]



SEGMENT II

Mike Church:

All right, welcome back. We're on our Article V town hall convention here. And we have our panelists, have Randy Barnett, we have Tony Blankley, we have Dr. Kevin Gutzman, Bruce Fein. We have our wonderful town hall audience here. We just had a discussion here about the role of the people – you the people, we the people, I the people – in all this. And I thought we would take some questions from some of the people. So we'll come over here. And it's Rick?

Todd:

No, it's Todd.

Mike Church:

Todd. Todd will be first up. Todd, just talk into that microphone right there. Go ahead and ask your question or make your statement, whatever you choose.

Todd:

All right. Thank you, Mike. Thank you for everyone who's on the panel. Mike, I believe you brought up on Wednesday's show that there is an issue that I hadn't even thought of before, that we wouldn't be in the position that we are in now had the states not been complicit all along, for over 200 years, or at least a hundred years, since the Seventeenth Amendment was passed.

Todd: My fear is, assuming that the Article V is successful, and we're able to implement these changes or whatever changes come down the pike, how do we make it stick?

Mike Church: Professor Barnett, how do you make it stick? How do we make Congress abide by laws that we amend the Constitution to when they don't abide by them today.

Randy Barnett: Well, the best way to go about doing that, if that's what you're interested in, is to make structural changes, not simply parchment changes in which you order Congress to do X, Y, and Z, and then they don't do it, and then the courts don't make them do it, which is kind of the problem we have with the Constitution we've got now. So the part of the Constitution that we have now that works somewhat are the structural changes. Like what? Well, for example, like you could, if you amended the Constitution, you could give the state legislatures the power to rescind an act of Congress. If three quarters of the states would enact that law, then a law of Congress would be rescinded. They wouldn't have to amend the Constitution. They could simply repeal the bill. And that's not as big a deal as amending the Constitution. You might have to amend the Constitution to give them that power. But you could do that.

You could create, if you wanted to, I'm not sure that I like this idea better, but it's another idea, you could have the governors of the states serve as their own 50-person body who could repeal acts of Congress. So in other words, these are structural changes to think about, not just "thou shalt not" changes, which will be one more line of text that the Congress might overlook.

Mike Church: Tony?

Tony Blankley: I don't – I don't – I agree that structural change is arguably the best way to get those kind of substantive changes. But fundamentally, the public has to believe in the principles of its governance. And what we're experiencing right now with the Tea Party movement is an education process, a self-education process where millions of Americans are becoming informed about what they believe the Constitution requires. And if enough Americans believe that, then a system will inevitably follow that. But what we've had, we've had passive voters for a long time who have just gone along

Tony Blankley: So while I'm not against changing structure, if necessary, I think a convention may well be needed to empower some processes, the more important part is the public to educate themselves because after all our founders said you have to have a virtuous electorate to maintain a republic.

Randy Barnett: I was going to make a similar point. But I thought that my – I was trying to directly answer the question. But I really do agree with Tony. Everybody on this panel, including you, Mike, I'm afraid, are part of an elite. And an elite actually isn't – aren't going to be able to make the kinds – I hate to tell you, Mike, but you are. You got that mic in your hand, that makes you elite. And elite isn't going to be – aren't going to be able to make these kinds of changes without popular support. And I want to agree with Tony a hundred percent. The American people, for a very long time, haven't known what was in this book, the Constitution. They really haven't known what was there.

Mike Church: I think you'll get rapt agreement from the audience here. Do you agree with that? [Applause]

Randy Barnett: And it's still, it's still the law of the land. And you can still read it. And it's still there. And what makes this Tea Party movement distinctive is that this is what the Tea Party movement is talking about. It's in this book.

Mike Church: How many people in the audience, let's say in the last two years, discovered that document in Professor Barnett's hand? [Applause] Not everyone, but a nice – a portion of it. Let me turn to this side for just a comment here. What you just heard about the structural changes and what the gentleman proposed about, okay, what if we do amend it, how you going to enforce it?

Kevin Gutzman: Well, I...

Mike Church: Kevin Gutzman.

Kevin Gutzman: Well, I do think that education is a big part of the solution here. But I think we haven't identified one major element of the problem. Bruce Fein referred earlier to the culture we live in. One element of that is that people are taught about the Constitution, not by reading the history of the Constitution, but by reading case law, which often is absolutely opposite the Constitution. And so I would correct that tendency. It seems to me that, if you have kids in college, or if you're interested in the Constitution, tell them to avoid constitutional law classes. Go take a history course. Don't...

Mike Church: This isn't good for business for you two.

Kevin Gutzman: Sorry. Don't read what – well, I teach constitutional history, not constitutional law. So just get out of the tendency of saying to yourself, "What does the Establishment Clause mean? Let's ask Justice Black." That is not the way to find out.

Mike Church: Bruce?

Randy Barnett: Given that I do teach constitutional law, let me just say I agree a hundred percent with Kevin about this. Constitutional law, as given by the Supreme Court, is not the same thing as the Constitution itself and is often contrary to it.

Mike Church: Okay. Bruce Fein?

Bruce Fein: First, it's just not the public that's unschooled in the Constitution. I am regularly before Congress. The ordinary member of Congress does not have a ghost of an idea what's in the document. I say, "You know, you took an oath to support and defend the Constitution of the United States. Do you know what your limitations on authority are? Do you know what your obligations are?" Nothing. Staring. "Well, you raised a constitutional issue today." "Well, who cares about that? We'll leave that to someone else."

Mike Church: Or you get Ms. Pelosi laughing at you [laughing].

Bruce Fein: So it's, yeah, it's something like that. "Well, what's the Constitution amongst friends?" And that's sort of the attitude. So the problem of ignorance is far greater than just a general public problem. Remember also, the Constitution in some sense is intended to trump public opinion, our natural instincts, because it says in a Constitution "you can't do this even if the majority wants to do it." So to some degree, the Constitution has to rise above the culture. To my mind, what has destroyed the major features of federalism is the income tax amendment. Because once you give the federal government money, they bribe anybody. They bribe states, they bribe localities: "Hey, you do X, we'll give you the money." So we need to repeal the income tax amendment. And that would solve a huge amount of problems. [Applause]

Mike Church: There's a home run of the day.

Bruce Fein: The second thing, and this is what Thomas Jefferson, Thomas Jefferson proposed. He never introduced it. But he had an idea prohibiting the federal government from borrowing money. He didn't want that to be available for the same reason. You give – it's like the golden rule. He who has the gold makes the rules. That's just the way things are going to operate. And then you can have specific prohibitions about what the government can do. How about a provision that says the government cannot own Citibank; it can't buy the stock of General Motors or AIG? That's very simple. It's an absolute prohibition like the prohibition on infringing freedom of speech or freedom of religion. It does [indiscernible] institutional change, says you just can't go there as a government.

The last thing I'd want to say about – I think that it's just that leaders can make a difference. It is true that institutions and popular culture produce recurring patterns. But individual decisions can count. And let me recount one that I know Tony will remember from the Reagan administration, that I view as one of the last great lost opportunities to really put teeth in federalism. And it was the first appointment to the United States Supreme Court that opened under President Reagan, Ronald Reagan. Potter Stewart was the one who resigned. He was a moderate. I was at the Justice Department, and we had a list of candidates to replace the first justice, even before there was a vacancy. And one who was on the list, who was about five universes above everyone else, was a gentleman called Robert H. Bork.

Bruce Fein: He had been solicitor general under Richard Nixon. He had written books. Fabulous speaker. Principled man. A marine. He was there, and he did tough – made tough decisions.

What happened before we could even get Bork's name over to the White House, there's a gender gap. Find us a woman. Find us a woman. Wait a minute. We're here about principles. We got elected on original intent. That was the theme. No longer the jurisprudence of idiosyncrasy. And then we got a dictate, it has to be a woman. So we ended up with a search, oh, who can we find? And we ended up with Sandra Day O'Connor who was, you know, a huge, huge disappointment. I tell you, like Lloyd Benson about Dan Quayle: Sandra Day O'Connor, I've met her, she is no Robert Bork.

And if Robert Bork was the first nominee, he would have been confirmed easily because at that particular point the change in philosophy would have not had a watershed effect on five-four decisions. And we would have had Robert Bork there. He would not have been defeated like he was in 1987 because of the political complexion. And so the leadership, however, Tony Blankley said, well, we need to get somebody confirmed who's easy...

Tony Blankley: [Indiscernible].

Bruce Fein: ...or to the White House...

Tony Blankley: [Indiscernible].

Bruce Fein: ...who was ever doing it. We ended up for that political compromise losing our last best hope to get an institutionalized check.

Mike Church: Randy?

Randy Barnett: I don't agree with Bruce about this. I mean, one of the things that Robert Bork stands for, and in fact a lot of people who agree with Robert Bork, is deference to Congress, judicial deference to Congress. In fact, Robert Bork is an explicit majoritarian. Now, I agree with him about some things.

Randy Barnett: But if you had a court of Robert Borks, they would all be rubber-stamping. Whatever Congress wants to do, they'd be rubber-stamping it today. And they would not be enforcing the enumerated powers scheme because they would think that's not something within the judicial competency to do.

Mike Church: Okay. I need to get to our state – we have to discuss this. We can pick this up in a minute here. But we have state legislators who are on the line, and they represent some of the people in this room because Mr. Marshall is from Virginia; Carl Wimmer is from Utah. And since the states actually have to do the Article V amending, have to make the resolutions in their states to call for the convention, I thought we would get their opinions. So we do have Mr. Marshall and Mr. Wimmer online?

**Delegate
Marshall (VA):** If I said I wasn't here, would you believe me?

**State Rep.
Wimmer (UT):** Yes.

Mike Church: No, I would not believe you. Mr. Marshall, are you there?

**Delegate
Marshall (VA):** Yes, I'm here.

Mike Church: Okay, good. You heard some of the discussion here. Does your state want to take power back? We'll start with you in Virginia, Bob Marshall.

**Delegate
Marshall (VA):** We want to exercise authority, and we want to do it in a prudential way. And that's why both the House and the Senate passed my Healthcare Freedom Act, and there were Senate versions, as well. And I do differ a little bit with Randy. He doesn't think these things have the necessary clout. But they're necessary in our constitutional system because it gets citizens activated and energized and involved in a process that most of them, and I've talked to a number of Tea Party groups, have not been involved.

**Delegate
Marshall (VA):**

The most they've done is vote. Very few have gone to rallies. Very few have decided they're going to go out and go that extra step further.

But, I mean, this is the bottom line. You've got a phrase on the top of the Archives Building, "Eternal Vigilance Is the Price of Liberty." Government for the people does not exist consistently apart from government by and of the people in this. It requires participation at the precinct level. And I've been involved with this stuff for about 50 years. I'm 65 years old.

Mike Church:

Wow.

**Delegate
Marshall (VA):**

So we have to do this. Look, I started off as a Democrat. My parents were from Johnstown, and I was a Yellow Dog Democrat. And when I watched the McGovern convention, I said I'm no longer – I'm not a Democrat. I'm not on the same planet with these people. And Reagan was the first Republican that I ever voted for.

Mike Church:

All right. Now, Carl Wimmer, you – I heard you chiming in there.

**State Rep.
Wimmer (UT):**

Yeah, yeah. You know, you asked the question, do the states want to take the power back? Absolutely.

Mike Church:

Does your state of Utah want to take power back?

**State Rep.
Wimmer (UT):**

Absolutely. It's interesting. My group here in Utah, we proposed 12 different resolutions and bills, some of which were fairly, are fairly cutting-edge and pretty extreme. And, quite frankly, I thought going into the legislative session we would be lucky if we passed three or four of them. However, I'm happy to say that at the end of the legislative session that just ended just a couple weeks ago, we passed all 12 of our state sovereignty pieces of legislation, and our governor signed off on all of them.

**State Rep.
Wimmer (UT):**

I mean, we got everything from opting out of the healthcare bill, which has given us standing for the lawsuit, to starting the eminent domain process over certain parcels of land against the federal government — because of course 70 percent of Utah is owned by the federal government. And we are starting the eminent domain process to take back some of those pieces of land. And that’s something that’s going to end up in the court system, as well.

So, yeah. We are fighting like crazy. And, you know, the one thing I’d say about the Article V, we have an interesting history here in Utah. Back in the ‘90s our governor, Governor Leavitt, he’s not the governor anymore, of course, but Governor Leavitt at the time tried to organize what was called a “Conference of the States.” And this was not an Article V Convention. It was just simply the states getting together.

And when he was getting up around 35, 36 of these states to agree to meet – and they were going to have it in an historic place, they were going to have it, like, in Philadelphia – to meet together in this Conference of the States, at that point the John Birch Society, who I consider friendly, and the Eagle Forum around the country began to freak out about a Constitutional Convention. And they went around state by state and had each state change their mind. And ultimately the Conference of the States never took place, even though this was not a Con-Con. They’re that afraid of a Constitutional Convention.

Mike Church:

Well, Carl [Wimmer], can I – I’m short on time here, so let me just interrupt you.

**State Rep.
Wimmer (UT):**

Yeah.

Mike Church:

Would you stand up to the John Birchers today in Utah, or are they still – who calls the shots in the Utah legislature? The legislature, or Mr. McManus of the John Birch Society?

**State Rep.
Wimmer (UT):**

Oh, no, no, no, no, no. Make no mistake about it. At this point, this Utah state legislature...

Mike Church:

Okay.

**State Rep.
Wimmer (UT):** ...is at its wit's end. And we are ready to move forward with a call for a convention.

Mike Church: Okay. Bob Marshall, Virginia.

**State Rep.
Wimmer (UT):** I'm just saying [indiscernible].

Mike Church: Okay, Carl [Wimmer], thank you very much. Bob Marshall, Virginia. Do we have any constituents of Mr. Marshall in the room? I know Adam is from Virginia. Any other Virginians? We have some Virginians here. You have some constituents here. Bob Marshall, same question to you. I've just got about 30 seconds. If it were to come up in the Virginia legislature, or would you propose it in the Virginia legislature, to call for an Article V Convention to amend the Constitution? Your thoughts.

**Delegate
Marshall (VA):** I don't think we'd do it in the absence of some guarantee from people I don't trust in Washington that you could limit the call to the certain specified proposition. The original Constitutional Convention was held in secret. That gives a problem for some of us, for these folks in DC who really can't be trusted.

Mike Church: Okay. So we're going to discuss this. Dr. Gutzman will fill some of the gaps in on that. Professor Barnett can help fill some of the gaps in on that. I want to thank both of you for your participation. We're out of time for this segment. Thanks for calling.

**State Rep.
Wimmer (UT):** Thank you. Sure.

Mike Church: I tell you what, we'll come back to that question. Can we limit this? Does Congress have a role in this? Can Ms. Pelosi take it over? Does Harry Reid serve as the chairman of the convention just because it has to pass through the Senate? All good, fair questions, I think. And I think everyone wants them answered. I know there were skeptics, and that's why we want that question answered. And we'll ask it when we come back. So give us about three minutes, and we'll be right back with you. [Applause]

SEGMENT III

Mike Church: ...why we should do it, whether or not we should do it, how should it be done. Interesting question posed in the last segment. And I had actually saved this for the next hour because I know that the answer to this is going to be long. We only have five, four and a half minutes to discuss this. And here's the question, let me reset it, from Bob Marshall, who is a state representative from the state of Virginia. What he asked was, well, I'd go along with this if I had any guarantee, or you could give me some guarantees that Congress isn't going to take this over and turn it into a Lollapalooza for the Constitution or whatever. They're going to take it over and just run with it.

Now, Kevin, I know that you have answered this question many times. Can you give me a one-minute response, and we can pick it up next hour because I want to get everybody in on this.

Kevin Gutzman: Well, there are two elements, I think, two necessary elements to any answer to this question, or this objection. The first one is that implicit in this objection is the idea that the Constitution as it currently lives, or doesn't, somehow restrains the Congress. And this calls to mind this recent episode in which a reporter asked Speaker Pelosi, well, what is it in the Constitution that justifies you in adopting President Obama's proposed healthcare reform? And her response was, instantly, to laugh, and then to say, "You've got to be kidding," and then to laugh again. And I put it to you that that is the majority sentiment in Congress. Actually it's probably the majority sentiment in both party caucuses in Congress.

So the first thing is, it doesn't currently keep the Congress from doing anything. The second thing is that a convention can only make proposals. So even the worst-case scenario in which everybody elected to the convention is a fascist or a communist or whatever, they get behind closed doors, they make their proposals, they're never ratified.

Mike Church: So 38 states have to ratify.

Kevin Gutzman: Right. So this whole doomsday scenario that the John Birch Society is out selling, that we're going to throw out the U.S. Constitution and bring back Leonid Brezhnev or something, is just fantasy.

Mike Church: Tony, I see you and Bruce both want to chime in. We'll go to Tony Blankley first. And then, Bruce, we'll come to you.

Tony Blankley: Yeah, look, I think seeking freedom is not a risk-free enterprise. There is some risk involved. And I've not been in favor of it until now because I thought that we had too much to protect in the existing freedoms we had. Now, as they're shifting away, I think that we have less to protect and more to gain. So in the balance of risk it's now worth taking the chance that there could be a runaway convention because we've got to run away from what we're getting now, which is unacceptable.

Mike Church: Bruce Fein?

Bruce Fein: There are at least two approaches to this. One, it's – and there have been flirtations with this in Congress before. Congress could enact a statute just providing the procedures for a convention that was summoned by the various states. This would be the necessary and proper clause in executing the Article V amendment process. It'll be convened only if all states adopt the same agenda for amendments. Or it has to be in secret or not in secret, depending upon what Congress said. They could prescribe the rules by which this convention operated.

The other way to try to provide a check is, if there was a concern by a state that it could be a runaway, it could simply condition its proposed Constitutional Convention on "only if these procedural specificities are satisfied is this to count as authorization." And that's a way in which the states would be safeguarded against just jumping into a black hole.

Mike Church: Professor Barnett?

Randy Barnett: These rules have already been drafted. In 1985 Senators Hatch, Thurmond, and DeConcini drafted a bill – it's called Senate Bill 40; it was reported out of the Senate Judiciary Committee; it was never enacted by either the Senate or the House – in which they laid out all the rules of how to have an amendments convention. And it does exactly what Bruce says. You won't even have to reinvent it. You just have to pass it. The text is already there.

Randy Barnett: And it essentially says that every state shall have, in terms of who gets represented, you have an election, a special election, like you would have for Congress, only it's a special election of this.

It's done by district. Every district, congressional district gets one representative. And then there's two at large, which would correspond to your senators. And then they meet, but the senators, those at-large members just have one vote. And they meet by states, and they each have one vote. And it's all the procedures, as well as the limited topic, and then how it gets proposed to the states. It's already been drafted. It just needs to be enacted.

Mike Church: So then the Congress could pick this up. You said Senate Bill 40 from 1980...

Randy Barnett: '85.

Mike Church: 1985. Are you familiar with this?

Kevin Gutzman: Well, notice that that's a bipartisan group of Senators, just for your information.

Randy Barnett: Right. Well, [indiscernible].

Tony Blankley: [Indiscernible] suspect.

Mike Church: Well, the alarm bells, I have alarm bells here that, if you put it to an election, and who is to say that George Soros doesn't buy the elections in certain key states where he can spend the money...

Randy Barnett: But here's another thing I said at the top of the show. All a convention has are the powers that Congress currently has...

Mike Church: Correct.

Randy Barnett: ...to propose amendments. It's just a special Congress for purposes of proposing amendments. They don't have any more power than Congress now has. We have a runaway Congress. This is being proposed – the risk of a runaway convention is small compared to the current reality of a runaway Congress, which is what we currently have.

Mike Church: All right. We have about 30 seconds left, so I'm going to wrap this up. At the top of the next hour, what I will do is, because Professor Barnett has some amendments that he has brought to me today, we'll discuss some of these. And I think they're one and the same as yours, Kevin. Your amendment is one amendment with six clauses. Randy's has a list of 10. But I think, if I'm to understand, it's about the same, one amendment with 10 clauses. Let's actually discuss what we want to fix. We'll identify the problem and then identify how you could fix it in the Article V Convention. So we have a seven-minute intermission, and we'll be right back.
[Applause]



SEGMENT IV

Announcer: Welcome to Sirius XM's presentation of a town hall meeting to discuss amending the Constitution. And now, live from the Sirius XM performance studio in Washington, DC, your host, Mike Church. [Applause]

Mike Church: Wow, and welcome back – thank you very much – to our Article V town hall convention here at the performance studio at XM. Everybody having a good time so far? Are we learning a lot?
[Applause]

Informal poll here, as we're one hour in. We're halfway in. And don't be embarrassed by this. Did anyone come in with an apprehension and wasn't quite convinced that this Article V idea was a good idea? Any skept- there is a skeptic. That's good. I mean, we want skeptics. That's – and you are, sir, that's...

Marty: Marty.

Mike Church: Marty the cop from New York.

Marty: Yes.

Mike Church: Oh, okay. Don't disagree with him, he might ... I don't know if I want to go into ... so we have one skeptic. It's good to have a great home field advantage here. But I think one of the purposes for this is – and to bring these wonderful, wonderful brain trust here that we have on the stage with Professor Barnett, Tony Blankley, Dr. Kevin Gutzman and Bruce Fein. [Applause]

Since I got targeted and tagged for the rest of my life as an “elite” last hour, so let me join the elites here. And I want to pick up on the question that – and I think Professor Barnett answered it in the abstract that, well, yeah, you can appoint – you could appoint the Prime Minister of Czechoslovakia, if you wanted, to the convention, and they could ride over here, and they could have their vote and say, but states don't have to ratify.

Just to clarify this, because I think there is some questions that I heard during the break, Congress can specify, if I'm to understand this correctly, Congress can specify – Dr. Gutzman, Professor Barnett, Mr. Blankley, Mr. Fein – can specify the manner in which the delegates are chosen. Is that right, or is that a subject of discussion? Because my understanding of the chain of events that happened in 1786, guys met in Annapolis, nothing was done, Madison and Hamilton say, hey, man, we've got to get Congress to sanction this. They go back, and in February of 1787 they propose that a convention be held on the second Monday of May next, I think is what it said, to propose amendments to the Articles of Confederation.

But each delegate, Kevin, showed up with a commission in their hand. They read them aloud. It was the first thing they did on May 25, 1787, is they read their commissions. Why did they read their commissions if Congress specified how they were chosen? I just, I want to be clear on this, or just get some clarification on it. Kevin Gutzman?

Kevin Gutzman: Well, Congress – hmm. The issue how to apportion a convention and the issue how to select the delegates I think are both open questions. So it seems to me that we have the example of the Philadelphia Convention, of its apportionment, of the way the delegates were selected. But we also have in Article V language saying that Congress will call a convention. And I think it's arguable, not obvious, but arguable that Congress could specify the way that the delegates would be selected.

On the other hand, if the Congress were to say that there should be a selection of delegates by state legislatures, and they should have a popular election in some state, and those delegates showed up with commissions, I'm doubting that their seats would be refused them. So my own preference would be to leave it entirely to the states to decide how they would select their delegates. But I find it unlikely

... well, it's actually a symptom of the problem that one cannot imagine Congress not trying to tell the states how to do that. So these are issues that would have to be worked out in the political process.

Mike Church: Professor Barnett, you have – I see you have the Constitution in your hand.

Randy Barnett: Right. And I was going to make the same point, which is that...

Mike Church: Okay.

Randy Barnett: ...the Constitution says that Congress shall convene a convention, which does put the onus on Congress to do the convening of the convention. The idea that Congress would adopt terrible rules, I think – let's just step back for a minute. How would this ever come about? How would it ever get to the point where there's two thirds of the states who have called for a convention, and now Congress has to do this. This would be because – it would be a result of a massive outpouring of political sentiment by the people that they're not happy with what's going on. Then you have to put yourself into that position.

You're not talking about the Congress of today. You're talking about the Congress who's on the receiving end of that kind of message.

Randy Barnett: Number one, we're never going to get to that point because by the time you get close to two-thirds of the states, Congress is going to be so whipped by this political outflow that they'll probably start proposing the amendments that the people want anyway in the first place. So you won't have to have a convention. But even if you got that far, you have to put yourself in the position of what that politics is going to look like. And at that point I think it's going to be like, for example, the way President Clinton came hat in hand to Congress after the Republicans took Congress in '94. It wasn't the same President Clinton after that election as it was before that election.

Mike Church: Tony Blankley, you were there when President Clinton came [mimicking President Clinton] "hat in hand to the - y'all forgive me. Don't hurt me."

Tony Blankley: Yes he did. And the era of big government was over, according to him, at that point.

Mike Church: Right, that's right. Everybody remembers that.

Tony Blankley: Until the people went back to sleep...

Mike Church: Right.

Tony Blankley: ...and then big government woke up. Yes, generally I agree with the professor. But given what's just happened on the healthcare bill, where an overwhelming majority of the public, including in Massachusetts, was against it, and the congressmen voted against the will of the people, many of them in their own district. So it shows you that under certain circumstances, and we just went through it, it's a very ideological Congress, led by a very ideological President, prepared to take a chance against the people.

So I go back to the argument that the vouchsafe for this process is a self-educated public that remains aroused long enough to sanction, by not voting for the politicians, because you may have to go through a round. They may do what they just did, vote against the will of the people, and the public's got to keep aroused for another seven months to vote them out.

Tony Blankley: And then we've got to go through another cycle. So it could take a while. But the foundation of our freedom is a vigilant public. And if it's not there, then all the procedures are not going to work.

Mike Church: Bruce Fein?

Bruce Fein: Well, I certainly concur with that general observation. But I think it doesn't cover situations where the rules of the game can be decisive on outcome, like gerrymandering. And remember the original Constitutional Convention had the voting by states.

Mike Church: Right.

Bruce Fein: It wasn't by delegate numbers. Could Congress say that the votes to determine whether an amendment gets proposed to the states is by states or by just the total number of delegates there in general? I don't know whether we want to empower Congress to manipulate those kinds of rules. As opposed to, for example, the Congress could convene the convention, but you could have it like a Republican/Democratic National Convention, and the convention delegates themselves fashion these kinds of rules of procedure, which could be very, very decisive. And that's something I would never want to leave to Congress because they will try to manipulate the rules to thwart the popular will, especially if they think congressional powers are at risk.

Mike Church: Well, let pseudo-historian then ask the question. Can, in the resolutions voted on in the various several state legislatures, can they instruct, for example, their delegation, "Hey, you go there, you call this convention, and you make it do this. We're going to apportion our own delegates. You're going to send it back to us. We're going to elect our own people. You have no say-so over it. We're going to choose to vote by states, not by representatives." Kevin, do you think that would limit, I mean, would this then wind up tied up in the courts, if each – if the 34 petitions arrive on November 5 – just happens to be a good day – of this year, saying we want this convention, and all 35 said what I – some semblance of what I just said. Would that hold up?

Mike Church: What if Nancy Pelosi said, “I got 20 – I got two months left to do – I’m going to undo what you guys just did, and I’m going to send this back to you with my language. You have to appoint me as the Speaker.” Does that hold up in court? I mean, we have legal things. Somebody had mentioned in one of the things that I read here today about the legal avenues of this. Does it get challenged?

Tony Blankley: Look, you can’t perfectly choreograph politics and democracy. It’s going to play out the way it’s going to play out. It can, however, you can minimize the ability of the entrenched powers to resist the public to the extent that we’ve got a coherent, you know, we have the leadership, that every state has passed the same resolution in the same language, and it becomes harder and harder for them to resist it. But ultimately, the future is played out by all the players, which is all the people. And there’s no way around that.

Mike Church: Professor Barnett?

Randy Barnett: Probably this is as good a time as any to mention a column I had on Forbes.com about a year ago called “The Bill of Federalism,” in which I proposed 10 amendments to the Constitution. But I put a preface to that resolution. And this is what the first clause of the preface said: Whereas, first, that Congress shall call a convention consisting of delegates from the several states, selected by procedures established by their respective legislatures. I mean, this is one of – it’s one of a number of things that are in this proposal, precisely to anticipate this question. So that if two thirds of the states pass this identical language, a Congress, even Nancy Pelosi would be very hard-pressed to say no, no, we’re not going to do it this way. And if they did, the states could say, well, this was the condition on which we authorized a convention.

Bruce Fein: Yeah. I agree with that. The problem, I think, with regard to some of the detailed procedures of having, you know, two thirds states agree on every single detail on how you would vote and how much time you had and then...

Mike Church: Right, that would...

Bruce Fein: That's just – that's unmanageable. Everything would be a little bit different. And that's why I'd be generally in favor of saying, this is how the delegates, but let them decide the detailed rules at the convention itself.

Mike Church: Why don't we ask two state representatives that question, since they would have to actually write the resolutions, propose them in their respective houses? And we just happen to have Rep. Daniel Itse, who has been a leader on this issue for years, from the great — well, it was Live Free or Die, I hope it's still Live Free or Die — state of New Hampshire; and Rep. Susan Lynn from Tennessee, who may be one of the nation's foremost authorities — who is an actual representative of the people in a state legislature — on the Constitution, the convention, and the way it was ratified. Daniel and Susan, welcome to our little town hall meeting. You heard the question that was posed. Daniel, we'll start with you in New Hampshire. What's your take?

State Rep. Itse (NH): Well, my first take is we are actually in the process of rescinding our call for a convention because it's simply a call for a convention, which is dangerous. The first action of any legislative or parliamentary body is to adopt its own rules. Even we every year have to readopt our own rules. Even if we're just adopting the same rules that have stood for the last 50 years with, you know, we make any amendments that we feel fit, which includes things like what the standing committees are going to be. So you're not going to get around the body having to adopt its own rules. And that would include how they're going to take the vote.

Mike Church: So does that mean in the state of New Hampshire, because I saw the resolution to repeal your previous calls for a convention, does that mean that the state of New Hampshire is not amenable to a convention to amend, to propose amendments? Or that you are, and you just want to start all over again and propose...

State Rep. Itse (NH): I would say right now I would want to start all over, just because what's there is simply a call to amend.

Mike Church: Okay.

**State Rep.
Itse (NH):**

And that's, I mean, just such a blanket statement is dangerous. I think one of the things that is really debilitating us is a lack of a formal communication route among the legislatures of the several states. We don't – and probably the thing that we really need to have before we would allow this to go forward is a majority of states where the people have really paid attention and elected state legislatures that are ready to defend their states.

Mike Church:

And I think that that day is approaching, if the members of our town hall meeting are any example. Same question to you, Susan, and welcome. Good to have you with us. We have some folks here from Tennessee, as a matter of fact, came all the way from Tennessee. Same question to you, Susan, about the – your state is also proposing a resolution to repeal your previous calls for a convention. Can you elaborate on that?

**State Rep.
Lynn (TN):**

Well, first of all, let me say hi to the folks from Tennessee. Hello, everybody. So glad you're there. [Applause] Hey. And yes, we are repealing that also because also it is a very general resolution, too. It is not narrow, as it ought to be. And, you know, it causes a lot of nervousness, especially at this time when there's just so many in this nation ready to move towards socialism. It's very scary.

So I think that we would definitely want to participate in a more narrow constitutional convention, but not something so broad because it could be dangerous. There's a group in our state, Eagle Forum, which is all over the United States. And they are constantly warning the legislators about the danger of just, you know, calling a constitutional convention without limiting it to something more specific that could prevent damage being done.

Mike Church:

Well, what about – what do you hear from the people of Tennessee? And Daniel, same question to you because we've had a lot of discussion here. If the people don't want it, we can talk about it all day long, and there can be all sorts of measures and challenges and resolutions to do it. Starting with you in Tennessee, Susan, what do you hear from the folks in Tennessee? Yes? No? They want to amend to stop this runaway freight train known as the federal government? Or they just want to take their chances with status quo?

**State Rep.
Lynn (TN):**

No, I hear that the people want to stop this runaway freight train. They want to have a constitutional amendment convention. But when it is explained to them that we have to go about this very carefully, we may even need to pass some state laws on the actions of delegates that are assigned to the convention, you know, it is certainly understandable. Once the danger is explained, it is understandable. But you know what, we have to be brave. We have to be brave and move forward to whatever it is we need to do to take back our nation. And that's all there is to it. You know, our founders were very brave. And we have to have that same bravery.

Mike Church:

What was that you said earlier, Tony, about making democracy – it's not a risk-free environment?

Tony Blankley:

It's not, yeah, democracy is not a risk-free enterprise.

Mike Church:

Right.

Tony Blankley:

And I commend the state legislator, Susan, for saying we've got to be brave. Because it does require some bravery. And also I just – one thought, she was saying we have to be very careful and explain stuff. The other side of that is the energy is building, and you don't want to disperse the energy by endless arguments over dotting I's and crossing T's.

Mike Church:

Kevin Gutzman would like to talk to you as well, Susan, and Daniel, who are both still on the line.

Kevin Gutzman:

Well, what the two representatives' comments have called to mind for me is that I have been hearing from people all over the country about this idea of a constitutional convention or an amendment convention. And I do like that name better, I think.

Mike Church:

Amendment convention.

Kevin Gutzman: And, well, I've often heard people say that they have been contacted by the John Birch Society or the Eagle Forum and told that this is a dangerous idea. And I have to say that this strikes me as a very ironic development. You know, it was the John Birch Society in the 1950s and '60s that was saying "Impeach Earl Warren" because they thought that Earl Warren was undermining the Constitution. And in fact in the '50s and '60s we had a spate of Supreme Court decisions, not only Supreme Court decisions but Appellate Court decisions throughout the country that inverted the Constitution in several significant respects. And then we have the Eagle Forum joining the John Birch Society and warning people against having an amendment convention. The Eagle Forum's leader, Phyllis Schlafly, was chiefly responsible for defeating the Equal Rights Amendment, which the Supreme Court has since given us anyway.

So it seems to me that, if anybody recognizes the problems that we need to address, it should be the people in the John Birch Society – we still live with Earl Warren's entire legacy – and the Eagle Forum, whose leader's chief accomplishment was thwarted by a runaway federal Supreme Court. I don't understand the impulse here to defend the ERA and the Warren legacy by preventing an amendment convention. I think that this actually should be a couple of organizations who were foursquare in favor of facilitating a convention, not trying to thwart this movement.

Mike Church: Bruce Fein, I see you would like to chime in.

Bruce Fein: It seems to me that it's rather simplistic to say you could have a runaway convention, the government can go amok, because that's true whether you have a democracy or any kind of government. And that's what James Madison recognized in the Federalist Papers. You have to have a government that can control the people, but you need also internal checks on the government itself. That's what the trick is, to try to devise an architecture that accomplishes both of those. You can't have government without a risk because any government you endow with powers can be abused unless you have proper checks on it.

Mike Church: Right. Daniel Itse from New Hampshire, you're still there. You've heard all this.

**State Rep.
Itse (NH):**

Yeah, I want to – I really do want to chime in here because I – the chief most problem we have at this time is a populace that is ignorant of their rightful powers and their duties to enforce the Constitution; state legislatures that are ignorant of their duties to enforce the Constitution. And, I mean, I would say that, except for, you know, a few selected amendments, like the Seventeenth and the Thirteenth (?), that our Constitution is really quite adequate. The real defect is in enforcing it. And, you know, we could go, and we could have a wonderful convention, and we could correct all the perceived defects in the Constitution. But if the people in the states don't enforce it, we're no better off than we are now. The issue is really a court that is ignoring the Constitution – and we have that problem on the state level, as well – and legislatures that are unwilling to or un-understanding of their power and duty, at least as equal as the courts, to enforce that Constitution.

Mike Church:

So if I'm to understand, then, Daniel, you're not a fan of an amendment convention.

**State Rep.
Itse (NH):**

Well, there are certain amendments that I think are really necessary, like repealing the Seventeenth, that I don't...

Mike Church:

Okay.

**State Rep.
Itse (NH):**

...see happening outside of a convention.

Mike Church:

Okay.

**State Rep.
Itse (NH):**

But until you have a populace and states that are ready to enforce the Constitution, I don't know that it does us any good.

Mike Church:

All right. We're just about out of time. Susan Lynn of Tennessee, state representative, a final word from what you've just heard. And what do you – when you go back to legislate, to your session in Tennessee, what are you going to do with what you've heard?

Mike Church:

And is there already a movement in the Tennessee legislature, after you've de-resolved the resolutions that you have, to propose another resolution?

**State Rep.
Lynn (TN):**

You know what, I work with a group every single Wednesday. We've been meeting for quite a while. Remember my letter to the states, and we asked some groups to form and work on these issues of federalism and the Tenth Amendment. And I meet with a group every single Wednesday. We're a national group. And what we have been working on is how could we have a constitutional convention that is limited? What would we propose to do, and how could legislatures pass some state laws that put up firewalls against a runaway convention and, you know, really make those delegates accountable to the state legislature that sent them there?

So we have been working on that for months. And we've come up with some good stuff. You know, just like there's many other groups who are working on the issues of federalism. And, you know, they've come up with wonderful things like, you know, anti-cap-and-trade legislation and the Healthcare Freedom Act and things like that. We've all been in communication with each other and working together. And so, listen, this is something that we want to do very much as – and we want to do it right. We want to do it carefully. Not in an absolute panic, but very thoughtfully, and so that we can accomplish what we need to accomplish.

Mike Church:

All right, I want to thank both of you for being with us, Rep. Daniel Itse from New Hampshire and Rep. Susan Lynn from Tennessee. Well, Tony, you heard a little bit of that trepidation in there, and Kevin and Bruce and Randy, you heard that – now, these are from the folks that actually have to do this. They actually have to go in their legislatures and say, I've got an idea. Why don't we amend the Constitution? I think you heard some of the alarm bells that – or at least a warning of sorts that, well, we've got to tread really lightly. We've got to go very, very carefully here. And we're out of time for this segment. We'll come back and we'll discuss this.

But to Tony's point, and to the entire panel's point, I think that you people out there listening, and those in attendance, have got to light the fire under these people because, as Kevin has pointed out to me in an email chain that is six and a half miles long for the last two and a half years of our correspondence here.

Mike Church: – You think Jefferson and Adams had a correspondence. Wait till he and I are dead, and they publish this one. —

As Kevin has pointed out, the time is now. Channel your energy. Stop worrying about 2010 elections. You're wasting your time. That's why I encouraged a gentleman earlier today to stop thinking about tax rates and fair tax. It's not the tax, man. It doesn't matter how they collect it or who collects it. It's the fact that they're collecting it from you, and they're not going to stop. Stop worrying about who's collecting it. Put the energy in.

And I think that's why we have the town hall, we have listeners in attendance here today. And we will get to your questions here, so get ready, we're going to come to you. And we're going to take a timeout here. We'll come right back. My representative, a state senator from Louisiana, A.G. Crowe is on the phone. We'll come to him when we come back, and we'll continue with our Article V – what is it called? What is that, Randy Barnett?

Randy Barnett: Amendments Convention.

Mike Church: Amendment Convention. Article V Amendment Convention. [Applause]



SEGMENT V

Announcer: You are listening to the Mike Church Show on Sirius XM, Patriot 144, at America Right 166. [Applause]

Mike Church: Okay. Welcome back to our Convention to Amend. Article V of the Constitution is what we're discussing here today. Bruce Fein is with us, Dr. Kevin Gutzman, Tony Blankley, Professor Randy Barnett. Again, audience, great job from the panel. [Applause]

I was just listening to – I'm going to get to my senator, A.G. Crowe, in just 30 seconds here. But I was just listening to the Mark Levin promo that was running.

Mike Church: And he was haranguing about “a trillion here, a trillion there.” And I have Facebook comments that my wife is sending me. “Dude, the Facebook page has melted.” There’s hundreds of people worrying about the Pandora’s Box that we’re going to open. And I’m listening to Levin haranguing about trillions. What is that? Is that not a Pandora’s – that may be THE Pandora’s Box, maybe the one that Pandora wasn’t supposed to open is the one that Mark Levin was just screaming about of the trillions here and trillions there. I mean, how much worse can it get?

Tony Blankley: Well, you know, the concept of – the danger of taking this action. Ronald Reagan, one of his favorite lines, he used it in his first inaugural address, was Thomas Paine’s, “We have it in our power to make the world over.” It’s the least conservative statement that Ronald Reagan ever made. It is a radical statement of not believing in slow, organic change, but you have the power to actually change the world. And I think Reagan and Thomas Paine got it exactly right, that even if your natural instinct, like mine, like Reagan’s, was to be conservative and prudent, there are times when you have to overcome that prudence, and you have to make the world over again because it’s going in the wrong direction.

Mike Church: Anybody disagree with Thomas Paine?

Audience: No.

Mike Church: [Laughing] All right. I want to bring in a very special guest and a good friend of mine. He is a great legislator and our final state representative panel. He is from the great state of Louisiana. He lives in Slidell, Louisiana. He’s my good friend, A.G. Crowe. A.G., you there?

State Senator Crowe (LA): I sure am. Good morning to you.

Mike Church: Oh, it's always a pleasure, my friend. You've been able to eavesdrop a little bit on this conversation. And I told the panel during the discussion that A.G. is true-blue. And if we gave him the language to propose a resolution for Louisiana to call a convention, that you would march into the state senate, and you would file it on your constituents' behalf. Did I have that right?

State Senator Crowe (LA): Verbatim [laughter].

Mike Church: Well, just talk for a minute about what's going on in Louisiana, and what are your constituents hearing? And you just heard Tony Blankley say, man, the time to act is now. This calls for bold action. What do you think?

State Senator Crowe (LA): Well, I like the idea of an amendment convention because, again, we've had discussions here within our own state about our needing to, you know, have a constitutional convention to address fiscal issues. But again, you know, the fear is, as the representative from Tennessee mentioned, is the fact that, you know, you don't open up a can of worms. You don't want to give anybody opportunities to go backwards. So we do have to approach this in a very limited, very limited way.

As far as my healthcare bill, which was introduced a couple of weeks ago, maybe almost two weeks ago Monday, SB 26, the Louisiana Health Care Freedom Act, I'm thinking that the best way to approach that, in fact I'm convinced, is to stay focused, not on the politics, which is what, you know, many people are going to try to do, but on the simplicity approach of letting people know that this is not about anything other than constitutional violations, and how it's going to affect all of us here in the state, regardless of party or wherever you're from.

Mike Church: And Louisiana – and one of the reasons I wanted A.G. here is because we didn't even get a chance in our panel here to talk about the violations. Louisiana is a unique state inasmuch as we have a third of everything you get from outside of this country comes right up that river that's called the Mississippi. We are a hub. We farm sugar cane. We supply a lot of your sugar. Oil and natural gas. And since the 1970s, A.G., I mean, we are a poster child for federal excess; aren't we? The federal government orders us around, tells us how much of our resources we can use.

Mike Church: Aren't we, shouldn't we, Louisiana, be one of the leaders saying, all right, we're ready to do this?

State Senator Crowe (LA): Well, you know, Louisiana you can say is the Saudi Arabia of the United States in that 15 to, well, 50 percent of all the fuel, that's the diesel and the gasoline used in automobiles, are manufactured in Louisiana. We have 30,000 miles of pipeline for oil and gas in Louisiana. But yet we, you know, we get snubbed on and treated as if, you know, we're unimportant. And I want to remind people that after Hurricane Katrina, you know, with the energy industry shut down practically, we were just a few days away from Manhattan shutting down because of the interruption of oil supply through Louisiana.

So, you know, people I think around the country realize and appreciate the importance of Louisiana. I think it's just some of the people in Congress that may not, you know, give us credit. And, you know, this – the fact that we don't get royalties outside of three miles, but yet all the highways and byways of Louisiana are ripped apart and torn apart and all of our lower coast areas are ripped apart and allowing for the Gulf to come in and destroy and take more of our wetlands, I mean, these are issues that, because of the violation of the Tenth Amendment, we're not able to get the moneys that are due to us, duly due to us...

Mike Church: Right.

State Senator Crowe (LA): ...as a result of all this activity going on in the state.

Mike Church: All right. So, A.G., so you are for an amendment convention. I have that correct; right?

State Senator Crowe (LA): Yes, I am.

Mike Church: All right.

State Senator Crowe (LA): And very limited, and very, very controlled again, so that, you know, it does not get out of hand or does not get taken over.

Mike Church:

All right, my friend. Well, listen, that's all the time we have. Always a pleasure. So Louisiana is in. [Applause] I just want everybody to know, Louisiana is in. Now, a very special guest who'd like to talk to all of us, Dr. Tom Woods from the von Mises Institute, and co-author of your book, "Who Killed the Constitution?" Tom, you've been listening in on all this. You and I have talked, and you and Dr. Gutzman have talked for years about this, about an amendment convention. What do you have to add to what you just heard and what you've been writing about for years?

Thomas Woods:

Well, first of all, I am a pathetic pygmy next to the people you have on that panel. So I'm very honored that you'd have me in this discussion at all. Well, let me first note, as I think you've discovered, Mike, is that, if you even raise this issue, it's enough to get you dismissed and viciously smeared by a certain wing of what we might call the "liberty movement." And they immediately – you're suspect, your intentions are suspect. And I think that's just got to stop. I mean, for heaven's sake, you know, we have to listen to each other and what we're saying here. And my view is that it seems pretty unlikely at this point that Washington's going to be reformed. I mean, what's the alternative plan, that we vote for Mitt Romney? I mean, come on. I mean, how many times can we be, we'll just say, taken advantage of by these people?

Now, one argument that's made is that, if an amendment is introduced, well, you know, the federal government ignores the Constitution now. Maybe they would ignore the amendment. I want to answer that because I think there are two good answers to that. Number one is, even if an amendment that we introduce, like let's say making sure that the Commerce Clause is correctly interpreted, even if all we're doing is just clarifying what should already be obvious, the Tenth Amendment clarified what should already have been obvious, and we don't think the Tenth Amendment was a waste of time.

But secondly, let's say we amended the Constitution to clarify the Commerce Clause, and the federal government still continued to regulate every aspect of American life in defiance of the amendment. Then I would favor simultaneously introducing a structural change to the system that would restore some kind of state negative that was taken away by the Seventeenth Amendment. It could take the form of what Kevin has proposed, something like if two thirds of the states say no to a federal law, then that's it, it's overturned.

Thomas Woods: We need to reintroduce an ability to say no after the federal government has said yes to itself.

Mike Church: Okay. So let's start on the end here with Dr. – with Professor Barnett here. Because Tom, he's actually – this is part of your amendment; right? And Kevin, this is one of your amendments, you call it the Federalism Amendment here, an amendment to basically install or institute a Council of Revision, is I think how you called it? Professor Barnett, I'm not sure how you called it.

Randy Barnett: Article 6, Amendment 6 of the Bill of Federalism that I'm proposing says, "Upon the identically worded resolutions of the legislatures of three quarters of the states, any law or regulation of the United States identified with specificity is hereby rescinded."

Mike Church: Kevin? It's fantastic; right?

Kevin Gutzman: Well, I would agree, except I would make it easier. I don't know why three quarters. I'd say two thirds, if not a bare majority. Let's not get – let's not run away with the idea of deference to Congress here.

Randy Barnett: I will accept that amendment. We will make that change right now. I'll accept that amendment.

Kevin Gutzman: A friendly amendment.

Randy Barnett: It's a friendly amendment.

Bruce Fein: But even so, there's...

Mike Church: They like it, they like it. Bruce?

Bruce Fein: There's ambiguity in that. What happens if a state ratifies and then rescinds? Does the rescission count if it is done before you get the two-thirds benchmark or the three-quarters benchmark?

Randy Barnett: Well, that's, by the way, true right now in Article V. You've got the same ambiguity in Article V.

Bruce Fein: Yes. It is – that is true. But we should probably try to clarify it. But the other thing, it seems to me, Mike, we have to ask, why do we care about federalism? Why do we want these issues restored to the states? And it seems to me there are two reasons.

Mike Church: Okay.

Bruce Fein: One is, Cicero said, "Freedom is participation in power." The citizen is too remote from Washington. You don't participate in power here. It's so far away. The second thing, and may even be more important, is federalism creates competition in good government. If a state does something stupid, people can pick up, they leave, businesses go, and they've got to reform. I remember it wasn't long ago where in West Virginia the surgeons said, unless you put a cap on medical malpractice damage awards, we're leaving, and we're not performing any operations here. And you know what, they changed that law in about five seconds. Because there was options to move.

And this is critical. Because legislators are not going to respond to stupidity and imbecility unless they see harm out there. When the Congress acts, everybody's saddled with the same burden. You can't go anyplace. So you don't get the feedback that's available that said you're voting with your feet, you're voting with your taxes. That is why federalism matters. That's why you see even in some small way that the states compete for trying to attract investment into their states. We'll give you a tax write-off or a tax holiday. That's good. It stimulates states to think creatively about creating jobs. Congress, does that ever happen? No.

Mike Church: No.

Bruce Fein: Because it can't go anyplace.

Mike Church: Right.

Bruce Fein: So it's not just an abstract proposition. It has real, real concrete effects on how we're governed and why we have continuing feedback and improvement.

Mike Church: He just quoted your former boss, basically, if I heard right. President Reagan said, you don't like it, vote with your feet; right? Tony?

Tony Blankley: Yeah. You know, absolutely. But, you know, this whole discussion, when it talks about the details of the provision, I think that's getting the cart before the horse. The key thing is the public to have an impulse and a passion to amend. We should first get there. Yes, there are a lot of details. I practiced law for eight years before I got full-time into politics. I understand the details are important. But if we debate the details too much up front, we'll divide ourselves and dissipate the unity that is emerging out of the Tea Party movement. So I think we have to focus on first get to "yes, yeah, we've got to do it," and then we'll have the committees that'll work out the details.

Mike Church: I concur. Final comment from Professor Barnett. And Tom, if you'd hang on, because we've got to take a break. But go ahead, Randy.

Randy Barnett: One thing the Tea Party movement could do is they could demand of their congressmen that they enact procedures for having a convention. So – of the kind that have already been proposed and have already been drafted. They just have to put it into law. And that would be something that would be nonpart... it could be nonpartisan. It would be neutral. And that would lower the risk of having a convention. It's one reason why Congress won't want to do it. But it's something the Tea Party members can ask of every representative that they decide to support or not support.

Mike Church: Okay. We've got to take a break. Audience questions, to round out our panel here. Believe it or not, there's only 15 minutes left. Tom, if you would, hang on because we'd like to get your participation in that, too. We'll step aside, and we'll be right back with our final segment here on our Convention to Amend on Sirius. [Applause]

SEGMENT VI

Announcer: You are listening to the Mike Church Show on Sirius XM, Patriot 144, at America Right 166.

Mike Church: ...here for our Convention to Amend. We started out calling it the Article V Convention. We still have to use Article V to accomplish what we want. Our panel has just been marvelous – Bruce Fein, Kevin Gutzman, Tony Blankley, Professor Barnett. [Applause] And you guys have been great, too.

So I want to just – and Dr. Woods is still on the phone here. Let's go to the audience and get some questions here because, as has been said here all day long, and I think everyone will agree, without the people burning that fire and taking your state representative or your congressman's feet and holding it to it, none of this is possible. I think everyone agrees on that. Can we take a vote on that? Do we all agree on that? Okay.

We agree also on, in principle, on the Federalism Amendment. Dr. Barnett, or Professor Barnett and Dr. Gutzman pretty much have the same idea for the Federalism Amendment, which whether it encompasses this Council of Revision or the ability of the states to meet or by application to repeal...

Kevin Gutzman: Why not both? Why not both?

Mike Church: Why not both? It's a free discussion. So I think we've had some productive stuff. By the way, the six amendments that Professor Gutzman has proposed are on the TV screen over there. And we will post all of this online at MikeChurch.com, and you can read Professor Gutzman online. You can read Professor Barnett online. As a matter of fact, he has his article in Forbes magazine. Tony Blankley is going to write a wonderful opinion piece about this event, I know he is. Even if he doesn't, he's already written about repealing the Seventeenth Amendment. So you would read him in the Washington Times, Townhall.com. Bruce Fein is all over the place.

Bruce Fein: Yes, my most recent book is “The American Empire: Before the Fall.” Everything that I’ve stated here is put out in spades there, and why we stand at the precipice of ruination unless we do what Mike’s calling for.

Mike Church: Well, I appreciate that. And our first question is from Visitor...

Dan: Dan.

Mike Church: Dan. Hi, Dan.

Dan: I have more so of a statement to make.

Mike Church: Okay.

Dan: I just recently graduated high school.

Mike Church: Okay.

Dan: And my eighth-grade history teacher said that, as long as everything stays the same, nothing is ever going to change. The American people have let the government get out of control and have not done anything. I believe that it’s time that we finally stand up, take power back into our hands. It is We the People, not We the Government.

Mike Church: I think everyone agrees with that. Thank you, Dan. [Applause] We kind of heard that all day long here today, basically, that – and I know, Kevin, you’ve talked about this over and over and over. And to hear Professor Barnett talk about this, about – and then for Tony to bring up Thomas Paine and Ronald Reagan, and for Bruce to bring it up, as well, doesn’t now seem like the time? I mean, how much more do you take? If the healthcare bill is enacted and is not stopped by the states, is anyone on this panel of elites, myself included, does anyone on this panel believe that, if this is not nullified or stopped, that in the space of a decade we will all suffer under a single-payer healthcare system? Anyone?

Tony Blankley: Sure. Of course that's going to happen.

Mike Church: No one believes ... okay, so we all agree on that. So the question is, as I say on the radio all the time, what are we going to do about it? Either we stop it now, or we don't. Next question, sir.

Mike Blasey: Hi. I'm Mike Blasey, and for reasons like this is why I'm running for the House of Delegates in Maryland.

Mike Church: Great. [Applause] House of Delegates, Maryland. We need...

Mike Blasey: Yeah. I saw your map. We're not on the map yet, but I'll work on that.

Mike Church: The state that gave us Luther Martin...

Mike Blasey: That's right.

Mike Church: ...now gives us Martin O'Malley.

Mike Blasey: Great. Everybody mentioned things about treading lightly. We need to break out the steamroller. We don't need to tread lightly. We need to break out the steamroller, get this through, and vote in delegates with enough stones to stand up to this and get this rolling. And like Dr. Gutzman said, every state's got to ratify it. It doesn't matter what's on the table.

Mike Church: I agree. I think everyone agrees with that. And we need more state people to run for state elected office. The map that was up earlier, I said I think it was 38 states had called. And you, sir...

William: William from North Carolina.

Mike Church: William from North Carolina. That's five states now represented. Hi, William. Thanks for coming.

William: Yeah, there's a group that are likeminded to me that kind of meet kind of regular, worried about things going on in this country. And, you know, some of the questions we all have, if the states decide to call for a convention, Congress, if I'm reading it right, they have to issue the call. Knowing that Congress doesn't do what they're supposed to do anyway, if they don't issue the call, where does that come in?

Mike Church: I think that Tony answered this question earlier today. You would have to turn to Mr. Blasey and people like him; right?

Tony Blankley: Yeah, I mean, ultimately it only gets implemented because the people will it. And the politicians follow the will ultimately. I mean, there's no guarantee that a document is going to be enforced. There wasn't one in 1789. There's not one in 2010. It's the people. If there's enough energy in the public, then chances are it'll go along the way we want it to.

Mike Church: Okay. Thank you for your question. Adam Light is here, and he's running for Congress. Who are you opposing, Adam?

Adam Light: Right now we're still in the primary, well...

Mike Church: The Republican primary, right.

Adam: But we will be against Rick Boucher in the fall.

Mike Church: And he's a Democrat; right?

Adam: Yes.

Mike Church: Okay, and he voted for PelosiCare.

Adam: 28-term incumbent.

Mike Church: 28-term incumbent. So he's...

Adam: Or, I'm sorry, 28-year incumbent.

Mike Church: 28-year incumbent. So that's a large Leviathan to slay.

Adam: Yes, yes.

Mike Church: And your question or comment.

Adam: My question, I guess kind of a comment, too: I remember what Patrick Henry said about knowing the truth, knowing the worst, and providing for it. And the truth is, our Constitution is not being adhered to now. So wouldn't we all be better off, even if there were left-wingers, libs, socialists, involved in this process, and they proposed an amendment, and we forced them to go through the amendment process as opposed to just legislating and circumventing the Constitution anyway? So really, what are we afraid of? If three-fourths of the states have to ratify, and they ratify a left-wing socialist amendment, then we're, really, where are we at anyhow?

Tony Blankley: Well, look. I think that's important. And depending on where the public is at a given moment, it could be more or less risky. That's why I think now, when these passions are organized around the country, is the optimum time. Five years ago, two years ago, I wouldn't want to have suggested this. But now the people are spontaneously fighting for the things that we all believe in. This is the exact moment to now trust in the people, while our people are energized.

Adam: Right.

Mike Church: Good question, and a good answer. Professor Gutzman?

Kevin Gutzman: Well, what led me to this idea was that there was this outpouring of Tenth Amendment resolutions, and it seemed obvious to me that they weren't going to have any legal effect at all. And so then the question becomes, well, what alternative is there to having states adopt feckless resolutions? And this is the mechanism that George Mason provided for us. This is what we have. It may not be optimal. It may not be risk-free. It may not have a very good prospect of success. But it's what we have, and we have to try it, it seems to me.

Mike Church: And I like the – and that's great. Professor, Barnett, go ahead.

Randy Barnett: Yeah, I mean, we obviously got into this the same way, when we were asked about these sovereignty amendments. It's going to be very important for the people to understand what is in the document called the Constitution. Bruce mentioned his book. Let me mention my book. It's called "Restoring the Lost Constitution: The Presumption of Liberty." It was published in 2005, before all this happened. And it's available on Amazon.com. And it basically goes over the limited-government principles that are in the original Constitution. It's kind of a users' guide to what's in this little booklet called "The U.S. Constitution."

Mike Church: And Bruce Fein, yes.

Bruce Fein: Shakespeare writes in "Julius Caesar," to amplify on Tony, "There are tides in the affairs of men which, taken on the flood, lead on to fortune." And this is – timing is everything in politics. And it can make a lot of difference when you call or summon the constitutional convention. And it is now. And I just want to say, the spirit of America was that gentleman on United Airlines on 9/11 who said, "Let's roll!"

Mike Church: Right.

Bruce Fein: And we've got to be bold. That's how this country was made. We don't want to live a life of vassalage or serfdom. It isn't worth it. If we can't...

Mike Church: Let's roll.

Bruce Fein: ...live as free people, let's not do it.

Mike Church: And can I just add to that, that that quote from Shakespeare in January of 1776, when John Adams was on his – when he had first arrived in Philadelphia after meeting with Washington in Cambridge, wrote a letter to Abigail and told her that the Continental Congress was made up of one-third Tories, one-third timid, one-third true blue – meaning Jefferson, Franklin, Adams. Your founding fathers. Two-thirds of the people against them. Abigail wrote back and said, “There is an affair and a tide...”

Bruce Fein: “Tide in the affairs of men.”

Mike Church: “A tide in the affairs of men which, taken on the flood, leads on to fortune.” When you said that, actually the founding did happen quoting Shakespeare, and Abigail Adams was encouraging John, “Dude, you can't give up. You've got to stick with it. We're going to win this thing.” And of course by the Fourth of July – the first of July, when the Lee Resolution passed, when John Dickinson, in the greatest act of patriotism I've ever witnessed written down, walked out of Independence Hall, took his vote away from the Pennsylvania delegation, made it so that Franklin and James Wilson and Mr. Clyburn, I think, could vote for independence. It was unanimous. The Declaration passed unanimously because of the actions of basically two men – John Adams, Jefferson of course writing, but John Dickinson in the great act of, okay, I won't get in the way. I won't mess your – I won't rain on your party. And he walked out. He didn't vote. And because of that there was a unanimous declaration.

Bruce Fein: Now, now, the gentleman quoted Patrick Henry, as well, in that this time he said, “This be treason, let's make the most of it.” Which they did.

Mike Church: Well, we have just a minute left. And I just want to wrap up here and tell you that – thank you all for coming. We have, what? New York? We didn't count New York.

Mike Church:

We have at least people from seven states that traveled here to hear this wonderful conversation with our panel here. You're all patriots. You all care about your country. I didn't hear the word "race" come up in this discussion one time. Did you? I only heard "Obama," and I counted, once. I heard it one time. So anyone that says that we're all here because when we leave here we're going to go get our robes and our hoods is obviously not paying attention to the brilliance that was inside this room today. I thank you very much, and Godspeed to you. [Applause]

ATTEST Elaine Farris, Transcriptionist



About Founding Father Films

“To the victor go the spoils,” it has been said often, and unfortunately the spoils sometimes come in the form of recording the history of said victory. This company is founded upon the belief that American history is a treasure that needs to be guarded, then catalogued and shared, regardless of the political party in power. Our goal is to reverse the near annihilation of the history of liberty in these United States and recall to public consciousness those who defended American governments’ limited, republican form by telling their stories on film and in other digital media formats.

After the twilight of the American Revolution’s noble Spirit of ‘76 had begun to set in, Thomas Jefferson wrote of his concerns to his friend Phillip Mazzei. Jefferson then noted that, “We are likely to preserve the liberty we have obtained only by unremitting labors and perils.” In that spirit, we labor to preserve the history of the significant events that composed the lives of the men we know as Founding Fathers.

Thus began the mission of Founding Father Films. - 30 November, 2009



“In a political environment in which hacks from both parties continue to put all their eggs in their little 2010 and 2012 baskets, Mike Church is one of the few, sane voices trying to put the federal government back in its constitutional box by returning to the principles of 1789. This is a conversation that’s long overdue.”

-Jack Hunter, Columnist
The American Conservative

Founding Father Films
21489 Koop Road
Suite Numbr 2
Mandeville, Louisiana 70471
<http://www.FoundingFatherFilms.com>



founding father films™