Written by **Joe Wolverton, II, J.D.** on January 10, 2013

How the Compact for America Threatens the Constitution

The constitutional convention proposed by the Compact for America Initiative would pose an unacceptably high risk of damage to the Constitution.

* * *

July 4, 2013. Chartered planes carrying delegates from all 50 states touch down in Dallas, Texas. Thirty-eight states are being represented by their governors with the remaining states represented by one to three state-appointed delegates. These delegates have arrived en masse at the Lone Star State for a historic one-day convention whose sole purpose is purportedly the perfunctory proposal of a balanced budget amendment (BBA) to the Constitution.

Upon arriving at the designated site, the delegates and their retinues settle in around the extraordinarily large conference table and make small talk while taking in the impressive view of the Dallas skyline.

“Ladies and gentlemen,” the designated chairman announces, “thank you for coming to this historic meeting and for being willing to stand up to the federal government’s runaway spending that is ruining our Republic.”

“As you all know,” he continues, “we have 24 hours to accomplish the one item on our agenda: the proposal of a balanced budget amendment to the Constitution, as already pre-ratified by 38 (three-fourths) of the state legislatures.”

With that brief restatement of the publicized and promised purpose of this high-powered confab, the chairman retakes his seat, awaiting one of the governors to move for a vote on the BBA and another to second that motion.

“Point of order, Mr. Chairman,” declares a popular southern governor endowed not only with charisma, but appeal to the powers-that-be in national political circles.

“I certainly agree that this is a historic meeting which is being held to rein in an out-of-control federal government that is ruining our republic. Furthermore, I would remind the chairman that our Founders envisioned just this situation in the Declaration of Independence when they stated:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

The popular southern governor continues: "The key part of this quote is, 'That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.'

"Since the Founders agreed on this right of the People to alter or to abolish our government, and to institute new Government, they provided a procedure for holding a convention for 'proposing amendments' to our Constitution in Article V of the Constitution itself.

"Today we are gathered here as the duly appointed representatives of the People in just such an Article V constitutional convention. Based on the Right of the People to alter or to abolish our government, and to institute a new government, and in light of the longstanding out-of-control spending by the federal government, I move that the rules previously agreed to by state legislators in our states be set aside and that a new slate of rules for this convention be considered by the body. This new slate of rules would permit any amendment proposals that delegates believe would improve our government in such manner as they believe seems most likely to effect the Safety and Happiness of the People of the United States of America."

"Second the motion," comes the immediate reply from the ambitious governor of a western state.

"Gentlemen, the governor's motion is out of order," the chairman says, rising from his seat.

"With all due respect, Mr. Chairman," says the southern governor confidently, "I have made clear that my motion is entirely justified by the inherent Right of the People as clearly proclaimed in our nation's founding documents, the Declaration and the Constitution."

"I object to this railroading of the rules and will not be a party to it," the chairman demands. With that, the chairman and four likeminded governors walk demonstratively out of the conference room.

"The question has been put and seconded," says the southern governor without delay.

"All those in favor, say aye. All opposed, nay. The ayes have it. The body will adjourn into a committee of the whole for consideration of new rules and new proposals for amendments to the Constitution of the United States to be deliberated and adopted by this body."

* * *

Some will say that this introduction is nothing more than a melodramatic doomsday scenario that could never happen. Sadly, they are wrong. This fiction could become fact very soon if a group of conservative activists gets its way.

This month, a group known as the Compact for America (CFA) Initiative will begin lobbying state lawmakers to propose in their respective legislatures a measure that would make that convention of delegates from 50 states gathered in Dallas a reality on July 4, 2013. Thirty-eight (or more, depending on how many states adopt the CFA legislative package) governors along with state-appointed representatives from the remaining 12 (or fewer) states would be delegates to a constitutional convention (con-con) supposedly called for the sole purpose of proposing a balanced budget amendment (BBA) to the Constitution. The problem is, there is no way to make sure the assembled delegates representing the People wouldn't exceed that mandate to propose a BBA, and even if they did adhere to the mandate, there is no guarantee that the CFA's Balanced Budget Amendment would improve America's financial prospects.

Overview of the Compact for America Initiative

The CFA Initiative is composed of three parts: First, there is a multi-state compact petitioning Congress to convene a con-con with state governors of member states serving as delegates and notifying Congress that members of the compact have pre-ratified the BBA called for and defined by the CFA; second, there is a balanced budget amendment as defined by the CFA that would be added to the Constitution; and third, there is a congressional resolution that would call a constitutional convention when and if 38 states join the CFA compact, and then would automate the steps required to add the BBA to the Constitution upon receipt of a certified copy of the BBA evidencing that the convention has approved the BBA for ratification.

The "Compact for America Timeline" at the end of this article shows how the CFA leaders expect these three components to work together to amend the Constitution by adding a BBA.

A fair analysis of the three-pronged proposal of the CFA Initiative reveals the formation of a modern-day Trojan Horse that could sneak the opportunity to make radical changes to our Constitution right past the protections of federalism put in place by our Founders to prevent unwise and unnecessary changes to our Constitution and the liberties guaranteed by it.

Here is how the CFA website describes its goal:

> The Compact for America Initiative (the "Initiative") is a non-partisan effort to promote and seek the passage of legislation by the states and the U.S. Congress to ratify a balanced budget amendment into the Constitution of the United States in a way that has never been done before. The Initiative includes educating elected officials, citizens and residents of the United States and the several states of the novel use of an interstate compact agreement and the counterpart federal legislation to coordinate the use of Article V of the Constitution of the United States by state legislatures to originate and ratify a specific constitutional amendment that would require Congress to operate under a balanced budget.

Why the CFA Initiative's Balanced Budget Amendment Won't Work

Although calls for BBA con-cons are nothing new, the CFA Initiative is particularly frightening because of the ingenuity and insidious nature of the method proposed by its creators to alter the Constitution.

Before state legislatures vote for an Article V con-con proposal that could cause real and radical damage to our Constitution, they should first consider whether a balanced budget amendment is necessary and whether it would actually steer our Republic away from the fiscal problems we are facing.

The fact is that determined citizens and state legislators could rescue the United States from its financial peril without resorting to opening up the Constitution to tinkering by 38 or more governors and a sprinkling of state-appointed delegates, many of whom would be bought and paid for by special interests and corporations.

Thomas Jefferson wrote: "If a nation expects to be ignorant and free … it expects what never was and never will be." A fundamental requirement of vigilance is holding elected representatives' feet to the fire by compelling them to honor their oath of office and not exceed the limits of their power as set forth in the Constitution.

Furthermore, there is no historical proof that a balanced budget amendment would drive Congress back to within its constitutional corral. Even the most conservative estimates indicate that about 80 percent of expenditures approved by Congress violate the U.S. Constitution. That fact wouldn't change by

adding an amendment to the Constitution.

Whether these bills spend our national treasure on unconstitutional and undeclared foreign wars, billions sent overseas in the form of foreign aid, expanding the so-called entitlement programs, or redistributing wealth via corporate and individual welfare schemes, none of these outlays is authorized by the Constitution.

And don't forget, a committed, concerned, and constitutionally aware citizenry can balance our budget more quickly than any balanced budget amendment and without the danger of letting the wolves of special interests and their political puppets into the constitutional hen house.

Equally important to anyone considering the CFA's proposal is the fact that rather than forcing Congress to adhere to spending money only in those areas specifically permitted by the Constitution in Article I (something the Constitution already does), the Compact for America's Balanced Budget Amendment does nothing to restore the concept of enumerated powers because it allows Congress to spend money on anything, no matter how unconstitutional, so long as the amount does not exceed the limits set in Section 2 of their BBA. Thus, the CFA's BBA does nothing to break Congress of its unconstitutional spending habits.

Under the CFA's budget-balancing scheme, Congress could continue spending on projects and programs not authorized by the Constitution. In fact, Section 3 of the CFA's BBA explicitly authorizes an increase in the federal debt limit to 105 percent of the actual debt level on the effective date of this amendment. That hardly sounds like a balanced budget.

Beyond the initial five-percent increase in the national debt permitted by the CFA's BBA, Congress could increase the national debt under the BBA at any time if it could get the approval of a simple majority of the states. Given that many states have their own debt problems and are dependent on the federal government for large portions of their budgets, finding 26 states to approve an increase in the national debt might be much easier than the CFA's proponents think.

Perhaps most perplexing of all the fiscal failures of the CFA's Balanced Budget Amendment is the fact that although it does require a two-thirds vote in both Houses of Congress to raise taxes, it does not prohibit Congress from doing so. Higher taxes, loopholes for increased federal spending, and no requirement that expenditures conform to constitutional limits on congressional power are a powerful one-two-three combination that could K.O. the American middle class, all in the name of balancing the budget.

A Trojan Horse

But before the CFA's Balanced Budget Amendment constitutional convention would begin, at least 38 state legislatures would need to join an interstate compact calling for the convening of the con-con in Dallas.

In a video posted on the CFA website, CFA Board Member (and Goldwater Institute Director of Policy Development and Constitutional Government) Nick Dranias explains the pincer strategy planned for the BBA multi-state compact and the congressional resolution.

The Compact for America "consolidates the entire Article V process in two pieces of legislation: one state compact and one congressional resolution."

Described by Dranias as analogous to a "house loan closing," the two measures would work together to construct a Trojan Horse. At first blush, many state legislators determined to stand up to Washington

would likely welcome the Compact for America and the state compact it offers as an ally in that battle. In fact, the CFA is so thorough that the state compact contains "all the legislation necessary for the Article V process to work." Therein lies the principle defect of this program.

As harried and overworked as they are, would all state lawmakers legitimately enlisted in the war against federal despotism understand that by joining the CFA they would also be agreeing to set in motion a constitutional convention that could quite possibly throw the baby of the Constitution out with the bathwater of out-of-control federal spending?

The bottom line is that the outcome of the Dallas con-con could range from a textbook following of the CFA script for proposing a BBA and nothing else, all the way to a runaway convention based on the right of the People in convention to revise their government when it becomes destructive of the ends of securing our God-given rights. This is the crux of the argument against convening an Article V con-con, no matter how loudly the proponents of such a convention assure us that they can limit the number of amendments and/or the content of the amendments that would be considered.

Over the past 30 years, most state legislators have wanted no part of an unlimited con-con, and have accordingly voted no on most new con-con proposals. In fact, over the past 24 years nearly 20 state legislatures have gone further and voted to rescind all previously passed Article V con-con calls still on their books.

If the Dallas con-con envisioned by the CFA were to become a runaway convention as portrayed in the opening paragraphs of this article, many dangerous amendments could be proposed. However, con-con proponents assure us that we do have a safeguard against dangerous or harmful amendments. Following the precedents of our original Constitutional Convention in 1787 and the provisions in Article V of our present Constitution, the Dallas convention would only *propose* amendments that would then be submitted for *ratification* by the states, either by state legislatures or state conventions.

Nonetheless, this safeguard has not been effective in stopping all bad amendments. For example, three-fourths of the states ratified the 16th (establishing the income tax), the 17th (establishing the direct election of senators), and the 18th (establishing the prohibition against alcoholic beverages) amendments. Most constitutionalists believe all three amendments were harmful, yet all three were duly ratified.

In fact, American history reveals that a convention called for nothing more than offering amendments to the existing national charter can quickly become a convention scrapping the old constitution and replacing it with something completely different, despite the restrictions set by state legislatures on the authority of the attendees.

Article V: Runaway or Restrained?

Attempting to refute the remarks of The John Birch Society and other constitutionalist organizations, the CFA Initiative contends that the constitutional convention held in Philadelphia in the summer of 1787 did not exceed its mandate. In fact, based on the undeniable success of the constitutional convention of 1787, the CFA Initiative claims that the con-con they plan on convening on July 4, 2013, can accomplish just as much good, can be confined to considering only the balanced budget amendment, and can be kept from becoming a "runaway convention" that could result in a new constitution, one that doesn't resemble the current one.

The Compact for America Initiative claims that the historical record of the convention of 1787 proves that it was not a "runaway convention" and that a modern-day convention could be carried out without

exceeding a very limited purpose.

Unfortunately for the CFA Initiative, their account of those seminal events is not completely accurate. A core premise of the CFA's conclusion is that the delegates to the Constitutional Convention of Philadelphia did not exceed their mandate. In an earlier report published by the Goldwater Institute, the claim was made that, "48 of the 55 delegates [to the Philadelphia Convention] had instructions which allowed them to go beyond amending the Articles of Confederation."

To assert, then, that the Constitutional Convention was not "runaway" with regard to those 48 delegates is arguably true. However, what of the seven delegates whose commissions expressly forbade them from ratifying, or even participating in, any proposal calling for the dismantling of the government created by the Articles of Confederation? What of the states represented by those delegates? Yet after ratification of the Constitution crafted in Philadelphia, the citizens and governments in those states were considered to be equally bound to abide by the terms of that contract.

Furthermore, as discussed above, regardless of any state or congressional legislation requiring them to consider only a balanced budget amendment, the assembled delegates in Dallas would possess unlimited, though not unprecedented, power to propose revisions to the existing Constitution, based on the inherent right of the People in convention to alter or revise their government.

The prospect of a convention endowed with power of this magnitude, populated by politicians (many of whom would likely be bought and paid for by powerful lobbyists and special interest groups) determined to tinker with the precision gears that give movement to works of our mighty Republic, is frightening and should give pause to everyone considering supporting the Compact for America Initiative.

The Compact for America and the Threat to the Constitution

The material presented by CFA lists 208 existing interstate compacts as evidence of the commonality and usefulness of such agreements.

That such agreements exist and function is true. In many instances, interstate compacts are the grease that allows the gears of federalism to drive the engine of the various commercial interests of the several states.

How, then, CFA adherents would ask, is the Constitution threatened by passing another multi-state compact?

The primary difference between the agreements listed by CFA and the one they propose as a vehicle for the passage of a balanced budget amendment is that the former do not impact the Constitution. None of the 208 compacts CFA lists changes one letter of the existing Constitution. They primarily deal with matters relating to the behavior of the states that are parties to the agreements, leaving the Constitution — including its checks, balances, and separation of powers — unchanged. The same can't be said of the interstate compact proposed by the Compact for America Initiative.

In several sections, the balanced budget amendment proposed by the CFA endows Congress and the president with new powers not already granted them in the Constitution.

For example, in Section 4, the president is given the authority to:

> enforce said [debt] limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding public debt shall not exceed the authorized public debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first

> designates an alternate impoundment of the same amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor.

This provision of the CFA's BBA would grant the president new, sweeping authority over the budget-making process. Furthermore, giving the president the right to "designate" any spending request is tantamount to giving him the power to rewrite laws passed by Congress, which would amount to rewriting both Articles I and II of the Constitution. Article I of our current Constitution explicitly places "all legislative power" in Congress.

Next, Section 3 of the BBA offered by the Compact for America allows Congress to increase public debt if a simple majority of state legislatures sign off on the measure. This is part of the CFA's decentralization strategy: Taking power from Washington and giving to the states. That is a proposition that appeals to all constitutionalists, but it begs a question.

Why is such a scheme necessary when states already possess the power to prevent federal excess? By ratifying the Constitution, states did not cede their sovereignty to the federal government. In fact, the continuation of our Constitution and our Republic requires states to assert themselves and to reject any act of Congress that goes beyond the narrow scope of authority granted to it by the states in the Constitution.

The Remedy: Enforce the Constitution, Don't Change It

In support of their position, bloggers, pundits, and politicians advocating for the adoption of the Compact for America plead with fellow constitutionalists (the Eagle Forum and The John Birch Society, specifically) to "get on board before we no longer have a country and a Constitution for you to protect."

While an anxiety for the salvation of our Constitution and our constitutional republic is laudable and never to be dismissed, the author of that last warning fails to take into account other remedies for the cancer afflicting our body politic.

To begin with, rather than expose the Constitution to the whims of special interest groups, political action committees, corporations, and the politicians they pay for, why not enforce the Constitution as written?

For example, there is not a single syllable in the Constitution providing for foreign aid ($74 billion spent from 2010-2011), undeclared wars in Afghanistan and Iraq (nearly $4 trillion spent since 2001), or the 185 federal welfare programs (nearly $2 trillion spent from 2010-2011). In the past decade, based on just those three examples alone, Congress has authorized the spending of over $6 trillion for unconstitutional purposes! Wouldn't the country's economic outlook be improved by forcing our federal representatives to obey the limits on their power as provided by the Constitution, rather than allowing the delegates to a CFA con-con in Dallas (and the powerful interests many of them would be financially beholden to) to hold a new constitutional convention that not only would do nothing to restrain the federal government, but could potentially rewrite our Constitution? The certain risks associated with a CFA con-con far outweigh the promised benefits of a BBA.

Fortunately, there is another way for states to exercise their collective authority on the federal government without resorting to a constitutional convention. It is the concept described by Thomas Jefferson as the "rightful remedy" for any and all unconstitutional acts of the federal government: nullification.

Simply stated, nullification is a concept of legal statutory construction that endows each state with the right to nullify, or invalidate, any federal measure that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

In the Virginia Resolution of 1798, Madison reaffirms this fundamental principle of constitutional construction:

> Encroachments springing from a government, whose organization cannot be maintained without the co-operation of the states, furnish the strongest excitements upon the state legislatures to watchfulness, and impose upon them the strongest obligation, to preserve unimpaired the line of partition.

With these facts in mind, it would seem that our nation's fiscal and political well-being is better served by governors jealous of their states' sovereignty and their rightful role as "shelters against the abuse of power," signing into law state bills nullifying unconstitutional federal measures (including those that have propelled our national indebtedness into the stratosphere) than by governors uniting at a constitutional convention with unchecked power to amend our Constitution out of existence in the name of balancing the budget.

What's more, by seeking out and electing federal representatives committed to never voting for a single spending bill that violates the enumerated powers of the Constitution and refusing to reelect those members of Congress that do vote for such measures, the federal budget would be balanced — by following the Constitution, not "fixing" it.

Enforcing the Constitution and demanding that states stand up to their would-be federal overlords accomplishes the same goal as the CFA's balanced budget amendment without putting the Constitution so close to the shredder that an Article V convention could become.

To its credit, the Goldwater Institute, one of the organizations behind the CFA Initiative, recognized in one of its previous efforts to call a constitutional convention that "abuses of the Article V constitutional amendment process are possible." Given the ready availability of the remedies of (1) election of representatives committed to controlling spending according to the already existing constitutional limits, and (2) nullification, there appears to be no argument persuasive enough to convince state or federal lawmakers to suffer the potentially Constitution-threatening side effects that would accompany swallowing the pill of the Compact for America's constitutional convention scheduled for July 4 this year.

All Americans and state legislators who stand united in their resistance to unconstitutional federal spending and the ever-increasing tax burden that supports it that has bankrupted our nation, must also unite in their opposition to the Compact for America Initiative. This includes refusing to support passage by the state legislatures of the interstate compact and the balanced budget amendment it proposes. The states and people must also forcefully reject the Article V constitutional convention called for by the CFA Initiative, a convention that would be beyond the control of the people or their representatives, one that could result in the proposal by the assembled delegates of potentially fatal and irreversible alterations to our Constitution that could very well end up being ratified.

* * *

Compact for America Timeline

This timeline is based on information published by the Compact for America Initiative at http://www.compactforamerica.org.

• December 2012: Six to 12 governors agree to having their states join the CFA Compact.
• December 2012-January 2013: CFA sponsors are identified in the 50 state legislatures.
• January 2013: Lobbying teams begin working in the 50 states to promote passage of legislation to join the CFA Compact.
• January 2013: Lobbying teams are in place to push passage of the CFA's Omnibus Resolution in the U.S. Congress.
• April 2013: CFA's Congressional Omnibus Resolution is passed by Congress.
• January-May 2013: States join the CFA Compact, with the 38th state joining by the end of May, triggering the provisions of the compact to go live.
• June 2013: Thirty-eight state applications for a balanced budget amendment (BBA) constitutional convention are delivered to Congress and an Article V constitutional convention is called pursuant to the provisions of the CFA's Compact and the CFA's Congressional Omnibus Resolution.
• July 4, 2013: A 24-hour convention is held in Dallas, Texas. The governors from at least 38 states and state-appointed representatives from the remaining states assemble as delegates and vote to propose the CFA's BBA as an amendment to the Constitution.
• July 7, 2013: Congress is notified of the proposed BBA, and the proposed amendment is automatically submitted to the states and ratified pursuant to the terms and provisions of the compact and the Congressional Omnibus Resolution.
• July 31, 2013: The Archivist of the United States is notified of the ratification of the BBA by the 38 member states, and shortly thereafter, the archivist certifies the incorporation of the BBA into the Constitution of the United States.

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com.*

(Contact your state legislators in opposition to any Compact for America legislation to bring about a con-con.)