



Written by [Steve Byas](#) on December 31, 2014

Will “Conservatives” Give Us a New Constitution?

Conservatives rightly take exception to the attacks upon the Constitution by the political Left. The late Supreme Court Justice Thurgood Marshall dismissed this magnificent work of the Founders as not particularly “profound.” Progressives, at least since the days of Woodrow Wilson, have considered the Constitution an impediment to their plans for expanding the power of the government, especially at the federal level. President Barack Obama, as a recent example, has lamented the 18th-century document’s deficiency in addressing only “negative liberties” (keeping the government from infringing on the rights of citizens) and not allowing for “positive liberties.” Positive liberties — those “rights” granted by government as opposed to natural or God-given rights — usually involve yet another expansion of government power.



It is to be expected that assaults upon the Constitution, and its emphasis upon limiting the power, size, and scope of the federal government, would come from the progressive Left. What constitutional conservatives must lament, however, is that a group from our own “camp” has bought into the idea that we need a Convention of the States (COS) to remedy the failure of the Constitution to restrict the growth of federal government power. While most of these “conservative” advocates of a COS are sincere in their belief that this would accomplish the worthy goal of limiting the power of the federal government, *their sincerity does not make this belief correct.*

The latest “conservative” to join the push for a COS is retiring U.S. Senator Tom Coburn, an Oklahoma Republican. Coburn told the *Oklahoman* newspaper, “[I’m] going to be working on a convention, hopefully to scare the hell out of Congress [so] that they’ll pass a balanced budget amendment. I’m going to travel the country trying to talk state legislatures into [calling for a constitutional convention].” Coburn, a practicing physician, should know that treating a disease with the wrong drug can actually do more harm than good. The ancient proverb for a physician is most apt here: “First, do no harm.” For example, giving insulin to a diabetic when what the patient needs is food, can be fatal.

While one can certainly sympathize with Coburn and other conservative proponents of a COS who are sincerely concerned with any infringement on the rights of the states by the expanding federal government, what the nation needs now is not a new Constitution, or a multitude of amendments. Federal government officials *simply need to follow our present Constitution.*

The U.S. Constitution provides two methods for the proposing of constitutional amendments. The first is the one used all 27 times the Constitution has been amended, in which amendments are proposed by a



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two-thirds majority vote of both houses of Congress. Ratification then comes from approval of three-fourths of the states, either through their state legislatures or special state conventions. The other method provided to propose changes to the Constitution (never used since our current Constitution was ratified) is for two thirds of the states to apply for Congress to call for a national convention to propose amendments. Any such amendments there proposed would then have to be approved by three-fourths of the states, as with any other proposed change to the Constitution.

Senator Coburn, despite his reputation as a staunch constitutional conservative, was among those who voted for the TARP bank bailout in 2008. When challenged concerning its constitutionality, Coburn retorted that had Congress failed to act, “your ATM would have shut down,” followed by an economic depression. He also had no problem with the spying activities of the National Security Agency (NSA). “Everything the NSA is doing right now, I’m happy to have them do on my family,” Coburn told the *Oklahoman*.

Popular talk-show host Mark Levin is another well-known conservative who is pushing for a COS, even to the point of writing a book, *The Liberty Amendments*, largely to promote the idea. Some of Levin’s suggestions are quite good, especially that we repeal the 17th Amendment, which weakened federalism and the power of the states by making U.S. senators elected by popular vote, instead of by the state legislatures. The Association of Mature American Citizens (AMAC), the conservative alternative to the liberal American Association of Retired Persons (AARP), has recently joined the call for a convention. AMAC called their endorsement a “natural extension” of the organization’s charge to “restore the nation’s heritage, culture and values,” and “rein in the power of the federal government.”

Proponents of the Article V COS, such as Michael Farris of Patrick Henry College, claim that the *states*, not the Congress, will control any convention process. Ironically, Patrick Henry himself expressed deep concern about the 1787 Philadelphia convention, which produced the present Constitution of the United States. “I smell a rat,” Henry said, and his concern is certainly relevant to the present discussion. The 1787 convention was called by the Confederation Congress for the “sole and express purpose of revising the Articles of Confederation.” Recognition that the 1787 convention could not be limited to its call has led many conservatives to express concerns similar to Henry’s about a 21st century COS.

In an effort to win enough support for ratification of the Constitution by the states, leading supporters, such as James Madison, promised they would push through amendments to the Constitution in the first congressional session. These amendments would address the concerns of Henry, George Mason, and others, by restricting the ability of the new federal government to encroach upon the rights of the states and individual American citizens. Ten of the 12 amendments sent to the states were adopted by 1791, and are now known as the Bill of Rights.

This is instructive to our present discussion. The First Amendment stated in clear words that Congress would have no power to make *any* law abridging the freedom of speech or of the press. Yet, only *seven years later*, Congress passed the Sedition Act, a law which abridged freedom of speech and freedom of the press! Representative Nathaniel Macon of North Carolina expressed wonder that Congress could pass such a law in clear violation of the First Amendment.

Current supporters of the call for a national convention contend that such a gathering would rein in an out-of-control federal government. Perhaps. But even if such a convention were limited to this noble cause, one must wonder what would make today’s politicians and judges obey a new constitutional amendment. They certainly have no problem in ignoring the clear wording of several parts of the present Constitution, including the Tenth Amendment. Passing one or more new amendments would



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simply provide even more parts of the Constitution for them to ignore.

It must be asked: Is any possible good that could come from such a convention worth the grave risks involved?





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