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CONSTITUTIONAL CONVENTION CAN NOT BE CONTROLLED

by Tom DeWeese
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As Americans become more frightened by the disastrous direction our government is taking, and more frustrated that elected representatives are not listening to them, the demand is growing for drastic action. In recent months the action most heard in state houses across the nation is a rising call for a new Constitutional Convention (Con Con).

Supporters somehow think a Con Con is the solution to saving our Republic. They want to amend the Constitution to force a balance budget. They want to shore up ambiguous language to make the meaning clear. They want to assure there is no doubt what America is and should be. For most pushing such an agenda, their intentions are honest.

Their solution will be a disaster for one simple reason – no one can control a Constitutional Convent. It doesn't matter how well intentioned its purpose. It doesn't matter how well planned. It doesn't matter what the actual resolution says and the people think they are approving. A Con Con has no oversight or rules other than those made by the actual participating delegates themselves. There are no rules for selecting delegates.

Once a ConCon is called for by the legal number of states, as laid out in Article V of the Constitution, It is the duty of Congress to call for one. Period. That's as far as it goes. In this day, when Nancy Pelosi, as Speaker of the House was able to twist enough arms to force through the Health care plan against the wishes of a strong majority of Americas; when the current Congress was able to flimflam the American people into believing it had really cut the

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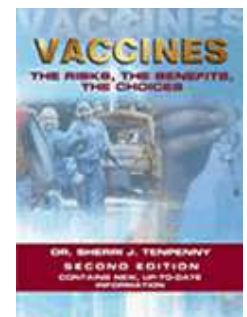
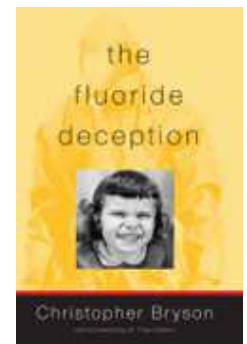
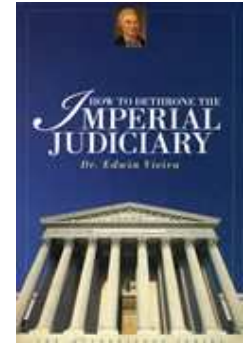
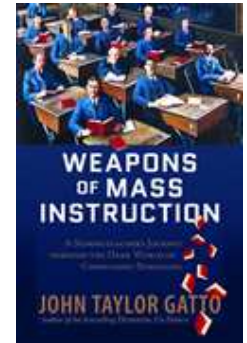
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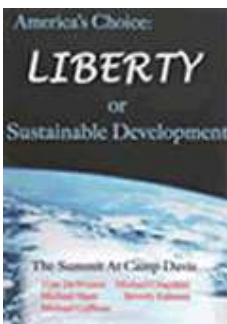
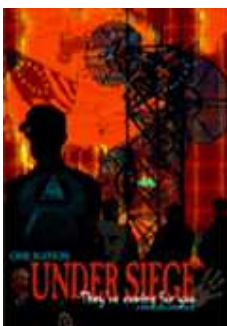
budget; when these same people are the ones who will set the rules for a Con Con, from establishing the delegate-selection process, to dictating who will be qualified to be delegates, how on earth can anyone support such a disaster in the making. A Con Con will result in one thing- our precious Constitution laid out on an operating table to be dissected and bludgeoned by Dr. Jekyll.

But still, a growing number of “conservative” leaders across the country and in the media are joining the chorus for the need for a ConCon. Some actually claim that they aren’t calling for an out and out Constitutional Convention, rather for an “Article V Convention. There is no such distinction. To suggest that some other category exists that isn’t as serious or dangerous than a Con Con is simply an untruth.

Here are the facts. The main groups pushing for a Con Con are the American Legislative Exchange Council (ALEC), a conservative association of state legislators; and a new group calling itself the 10 Amendments for Freedom, Inc, chaired by William Fruth, President of POLICOM Corporation, which provides independent economics research.



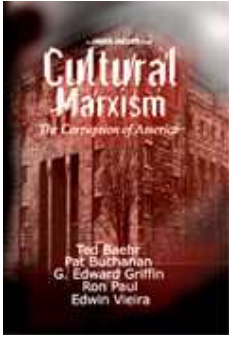
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While ALEC is working behind the scenes to build support for a Con Con among state legislators, Fruth and his 10 Amendments for Freedom group has moved into the public eye to sell the Con Con idea to mainstream America. In March, 2010, Fruth kicked off his campaign by mailing out a slick, expensive package to conservative leaders and to over 7,000 state legislators. The package contained a book written by Fruth entitled “10 Amendments for Freedom.”

In the book, Fruth lays out an argument for the need for, not just a balanced budget amendment, but a total package of 10 Amendments to the Constitution including, the balanced budget; repay the national debt in 50 years; government transparency; line item veto; term limits for Congress; control illegal immigration; English-speaking nation; no foreign law shall bind us; government restraint (preventing the Federal Government from growth beyond constitutional powers; and finally, an amendment declaring “in God we trust.” Of course, there is no doubt that these amendments have great appeal for most conservatives, answering their growing frustration and fear of government expansion.

Arguing that Congress “will not likely take any action to cause the 10 Amendments for Freedom to become law of the land,” Fruth calls for all ten amendments to be packaged by state legislatures to be passed in a resolution calling for a Constitutional Convention. His package would include specific instructions to Congress as to how the delegates would be selected and outlining rules that would be enforced to assure only the ten amendments would be voted on.



Arguing the advantages of the Con Con, Fruth says, “Can you imagine the excitement in the nation leading up to the Convention? Schools will have to dust off history books which teach how our nation was founded. Many people for the first time will read the Constitution. The issue will be discussed at length, exposing what happened to our country over the years.”

Fruth then scoffs at our fears of a Con Con and efforts to stop it. He says, “Simply, it is not reasonable to assume there can be enough delegates sent to a convention who will propose amendments which ‘repeal the bill of rights’ or ‘legalize socialism.’ Even if they did, the amendments would never be ratified,” concludes Fruth.

Anticipating opposition to his scheme for a Con Con, Fruth says that those who opposed the effort in the 1980’s, to call for a Con Con for a balanced budget amendment, told the American people that the delegates at the convention can “change the Constitution any way they want.” Argues Fruth, “We know that is not true.” He says, “it is both irresponsible and disingenuous for anyone to publicly say that the convention can change the Constitution.” And he says, “any recommended changes must be approved by three-fourths of the states.

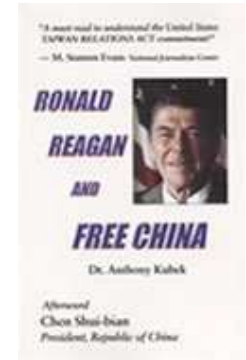
These are the arguments now being presented to every single state legislator and Governor in the nation as Fruth and ALEC put on a full-court-press to call for a Constitutional Convention. While the intention may be an honest desire to reign in the power of government, the fact remains that every one of these arguments for a Con Con is wrong.

The fact is, once 34 states petition Congress to convene a Constitutional Convention, the matter is completely out of the States’ hands. There is absolutely no ability to control what the delegates do in the convention. Attempting to instruct delegates to discuss only a specific issue like a balanced budget – or the whole package offered by the 10 Amendments for Freedom group -- is absolutely impossible. Instead, once the convention starts, the delegates become super delegates which can take any action they desire concerning the Constitution. In short, at the convention the Constitution can be literally change any section, or even the entire document if they desire.

What proof do I offer? Here are the exact words of Article V of the Constitution:

“...on the application of the Legislatures of two thirds of the several States, (Congress) shall call a Convention for proposing Amendments, which...shall be valid to all Intents and Purposes, when ratified by the Legislatures of three fourths of the several States.”

Article V gives absolutely no guidelines as to how it will be run, how delegates can be selected and who can do the selecting. Once the 34 states make the request, the entire matter is in the hands of Congress to decide. It does not matter if the states passed resolutions as Fruth proposes, containing absolute guidelines for delegate selection. The Constitution provides no rules – it is up to Congress to decide how delegates are selected and what



qualifications they will have. The guidelines proposed by Fruth carry absolutely no weight in the final process – even if every state passes the exact same resolution including those rules. Again, Article V simply says that when 34 states have called for a Con Con the Congress “shall call a Convention...” Period.

And there is more legal proof in support of the argument that delegates are not bound by an instructions or resolutions from the states.



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First, of course, is the famous letter written by former Supreme Court Justice Warren Burger to Phyllis Schlafly, President of Eagle Forum. In the letter Burger writes, “...there is no effective way to limit or muzzle the actions of a Constitutional Convention. The convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or to one issue, but there is no way to assure that the convention would obey. After a convention is convened, it will be too late to stop the convention if we don’t like its agenda. The meeting in 1787 ignored the limit placed by the confederated Congress...”

And there is more legal documentation proving that Congress or the states can control the agenda of a Con Con. Corpus Juris Secundum is a compilation of State Supreme Court findings. The following is the collection of findings regarding the unlimited power of the delegates attending a Con Con. (From Corpus Juris Secundum 16 C.J.S 9) “The members of a Constitutional Convention are the direct representatives of the people (1) and, as such, they may exercise all sovereign powers that are vesting in the people of the state. (2) They derive their powers, not from the legislature, but from the people: (3) And, hence, their power may not in any respect be limited or restrained by the legislature. Under this view, it is a Legislative Body of the Highest Order (4) and may not only frame, but may also enact and promulgate, Constitution. (5). The foot-note numbers after the citation quoted reference the particular cases from which the citations were made. (1) Mississippi (1892) Sproule v Fredericks (11 So. 472); (2) Iowa (1883) Koehler v Hill (14N.W. 738); (3) West Virginia (1873) Loomis v Jackson (6 W. Va. 613); (4) Oklahoma (1907) Frantz v Autry (91 p. 193); (5) Texas (1912) Cox v Robison (150 S.W. 1149).

Clearly, the position put forth by Fruth, and ALEC, that state legislatures can pass a resolution dictating the rules of the Con Con is simply wrong.

Delegate selection is another dangerous trap waiting to spring. Again, Article V provides no guidelines. The process is left for Congress to decide. That means the current Congress could control the entire delegate selection. Under the rules that Congress could set, States may not even be represented. If the states are allowed to

choose delegates, then what would be the method? Again, Congress will decide. Will the governor or the state legislature appoint delegates? Or could it be a bicameral panel or blue ribbon commission? Or could it be a plebiscite – a vote of the people? If so, then who would be eligible to vote? Would it be all eligible voters? Or taxpayers only? Or would we possibly, in the interest of “enfranchisement,” allow all citizens, and potentially foreign nationals (illegal immigrants) to vote for this “special election?” There are no guidelines and anything is possible.

And what would be the qualifications to be a delegate? Would it be exclusively lawyers? A mix of professionals? So-called “proportional representation” of all special interest groups – NGO’s? Will some be excluded because of “extreme” convictions? Of course, according to the Federal Department of Homeland Security, “extreme convictions” includes those who want to protect the Constitution. So, what will the criteria for eligible delegates be? All of these choices would be made by Congress.

But again, none of that will matter, according to those calling for the Con Con. William Fruth argues that no matter what such a convention does, it still must be ratified by two-thirds of the states, making it very difficult to do bad things against the will of the people. A history lesson is in order.

There has been only one Constitutional Convention in the history of the nation – that was in 1787. At the time, the nation was held together by the Articles of Confederation. The states were having a difficult time performing commerce among themselves. So it was decided to hold a Constitutional Convention to simply discuss how interstate commerce might be better organized. As the delegates were selected, delegations from a majority of states were given specific orders by their states to discuss nothing else beyond the commerce issue.

However, some delegates including James Madison had a very specific agenda planned for the convention and as soon as the delegates arrived at Independence Hall in Philadelphia, they closed and locked the door, pulled down the shades and met in secret for a month. When they were finished, they had created an entirely new nation. We were very lucky that the convention was attended by men like Ben Franklin and George Washington and Madison. They produced the most magnificent document ever devised for the governance of man.

Today, we have entrenched power forces led by the likes of Barack Obama, Nancy Pelosi and Harry Reid. And we have notoriously weak leaders like current House Speaker John Boehner and Senate Minority Leader Mitch McConnell who rarely miss a good compromise to keep the peace. These are the people who will decide the rules for the convention, including delegate selection. Do you trust them to follow the rules dictated by state legislatures? Do you think Pelosi and Reid would pass up an opportunity to set their own rules to guarantee a Constitution to their liking?

And there is more. Concerning the argument that no matter what the delegates produce, the states still must ratify it – thus serving as a safeguard to tomfoolery, consider this fact: The Articles of

Confederation required that any changes be ratified by 100% of the states. That was the document that was the law of the land – until something else was put into place. But, when the new Constitution was put to the states for a vote of ratification, suddenly they needed only two thirds to approve it. Why? The fact is, Article V of the new Constitution was used – even before the Constitution which contained it was approved. Now, what do you think Reid and Obama and company would do with that precedent? What if the new document produced by the Con Con said ratification only required a vote of Congress – or of some special commission? The precedent of 1787 says that could happen. So much for protection by the states.



And rather than an excitement in the nation with a rebirth of study of the Constitution, as Furth envisions, there would in fact be a long, hard, ugly and expensive battle over the process, guaranteed to leave the nation split along ideological lines. It's not difficult to envision civil unrest, riots or even civil war as a result of any re-writing of the current Constitution.

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These are the reasons why I, and many others around the nation, adamantly oppose a Constitutional Convention at this time. We fear a Con Con because the subject matter cannot be controlled. And if the worst happens, there is no guarantee that we can stop ratification. There has never been a worse time in the nation's history to consider changing this grand document. The Con Con delegates could literally put the Constitution on an operating table and use their scalpels to slice it up, creating an entirely new form of government. That new document, as precedence has shown, could be enforced without ratification by the states. Remember, our current Constitution was not ratified by the rules set forth in the Articles of Confederation, but by an Article V that wasn't yet law of the land. Now that the precedence is there, it can happen again. The Pelosi's of the nation, proven to have the power and the will to twist any issue or initiative as they desire, are rubbing their hands together at the prospect of a Con Con.

No doubt there is great need for several of the amendments Fruth and his group propose. But he seems to ignore the fact that there is a powerful, organized opposition. Again, I call your attention to the continuing battles over Health Care, taxes, illegal immigration and massive government spending. These are child's play compared to what will happen in a Con Con. Do Americans really want to risk

that in these uncertain times? Every freedom-loving American must stand up against this misguided call for a Con Con. Tell your state legislators NO.

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Tom DeWeese is one of the nation's leading advocates of individual liberty, free enterprise, private property rights, personal privacy, back-to-basics education and American sovereignty and independence.

A native of Ohio, he's been a candidate for the Ohio Legislature, served as editor of two newspapers, and has owned several businesses since the age of 23. In 1989 Tom led the only privately-funded election-observation team to the Panamanian elections. In 2006 Tom was invited to Cambridge University to debate the issue of the United Nations before the Cambridge Union, a 200 year old debating society. Today he serves as Founder and President of the American Policy Center and editor of The DeWeese Report

For 40 years Tom DeWeese has been a businessman, grassroots activist, writer and publisher. As such, he has always advocated a firm belief in man's need to keep moving forward while protecting our Constitutionally-guaranteed rights.

[The DeWeese Report](#) , 70 Main Street, Suite 23, Warrenton Virginia. (540) 341-8911

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