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first understanding
our history.

Can We Trust the Constitution? Answering The “Runaway Convention” Myth

By Michael Farris, JD, LLM

Some people contend that our Constitution was illegally adopted as the result of a “runaway convention.” They make two claims:

1. The convention delegates were instructed to merely amend the Articles of Confederation, but they wrote a whole new document.
2. The ratification process was improperly changed from 13 state legislatures to 9 state ratification conventions.

The Delegates Obeyed Their Instructions from the States

The claim that the delegates disobeyed their instructions is based on the idea that Congress called the Constitutional Convention. Proponents of this view assert that Congress limited the delegates to amending the Articles of Confederation. A review of legislative history clearly reveals the error of this claim. The Annapolis

Convention, not Congress, provided the political impetus for calling the Constitutional Convention. The delegates from the 5 states participating at Annapolis concluded that a broader convention was needed to address the nation's concerns. They named the time and date (Philadelphia; second Monday in May).

The Annapolis delegates said they were going to work to “procure the concurrence of the other *States* in the appointment of Commissioners.” The goal of the upcoming convention was “to render the constitution of the Federal Government adequate for the exigencies of the Union.”

What role was Congress to play in calling the Convention? None. The Annapolis delegates sent copies of their resolution to Congress solely “from motives of respect.”

What authority did the Articles of Confederation give to Congress to call such a Convention? None. The power of Congress under the Articles was strictly limited, and there was no theory of implied powers. The states possessed residual sovereignty which included the power to call this convention.

Seven state legislatures agreed to send delegates to the Constitutional

Convention *prior to the time that Congress acted to endorse it*. The states told their delegates that the purpose of the Convention was the one stated in the Annapolis Convention resolution: “to render the constitution of the Federal Government adequate for the exigencies of the Union.”

Congress voted to endorse this Convention on February 21, 1787. It did not purport to “call” the Convention or give instructions to the delegates. It merely proclaimed that “in the opinion of Congress, it is expedient” for the Convention to be held in Philadelphia on the date informally set by the Annapolis Convention and formally approved by 7 state legislatures.

Ultimately, 12 states appointed delegates. Ten of these states followed the phrasing of the Annapolis Convention with only minor variations in wording (“render the Federal Constitution adequate”). Two states, New York and Massachusetts, followed the formula stated by Congress (“solely amend the Articles” as well as “render the Federal Constitution adequate”).

Every student of history should know that the instructions for delegates came from

Continued to back page



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Continued from front page

the states. In *Federalist 40*, James Madison answered the question of “who gave the binding instructions to the delegates.” He said: “The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents [i.e. the states].” He then spends the balance of *Federalist 40* proving that the delegates from all 12 states properly followed the directions they were given by each of their states. According to Madison, the February 21st resolution from Congress was merely “a recommendatory act.”

The States, not Congress, called the Constitutional Convention. They told their delegates to render the Federal Constitution adequate for the exigencies of the Union. And that is exactly what they did.

The Ratification Process Was Properly Changed

The Articles of Confederation required any amendments to be approved by Congress and ratified by all 13 state legislatures. Moreover, the Annapolis Convention and

a clear majority of the states insisted that any amendments coming from the Constitutional Convention would have to be approved in this same manner—by Congress and all 13 state legislatures.

The reason for this rule can be found in the principles of international law. At the time, the states were sovereigns. The Articles of Confederation were, in essence, a treaty between 13 sovereign nations. Normally, the only way changes in a treaty can be ratified is by the approval of all parties to the treaty.

However, a treaty can provide for something less than unanimous approval if all the parties agree to a new approval process before it goes into effect. This is exactly what the Founders did.

When the Convention sent its draft of the Constitution to Congress, it also recommended a new ratification process. Congress approved both the Constitution itself and the new process.

Along with changing the number of required states from 13 to 9, the new ratification process required that state conventions ratify the Constitution rather than state legislatures. This was done in

accord with the preamble of the Constitution—the Supreme Law of the Land would be ratified in the name of “We the People” rather than “We the States.”

But before this change in ratification could be valid, all 13 state legislatures would also have to consent to the new method. All 13 state legislatures did just this by calling conventions of the people to vote on the merits of the Constitution.

Twelve states held popular elections to vote for delegates. Rhode Island made every voter a delegate and held a series of town meetings to vote on the Constitution. Thus, every state legislature consented to the new ratification process thereby validating the Constitution's requirements for ratification.

Those who claim to be constitutionalists while contending that the Constitution was illegally adopted are undermining themselves. It is like saying George Washington was a great American hero, but he was also a British spy. I stand with the integrity of our Founders who properly drafted and properly ratified the Constitution.

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