

An Open Letter to the Article V Movement

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It was a dark and stormy day.

Pushing through those heavy rain storms, and through the resulting accidents and traffic jams, over 40 volunteers for the Convention of States Project (COSP) in Tennessee drove up to six hours each way to attend a hearing in the House State Government Committee on Tuesday, March 7. Dozens, or perhaps hundreds, more volunteers across the state were glued to their computers, watching online.

The media attention in Tennessee for the last two months has been on the political intrigue and the use of arcane parliamentary maneuvers to push Governor Haslam's proposed gas tax increase through a Republican-controlled General Assembly (at a time when the state has a billion-dollar-per-year budget surplus.) Although these volunteers were concerned about the gas tax, they had their sights on an issue with much greater long-term impact for the state and the country – protecting the integrity of the Article V process.

Their efforts that day and in the weeks prior were a completely grassroots effort led by a self-governing all-volunteer Tennessee team of about 70 servant leaders, hundreds of active volunteers, and well over 20,000 supporters across the state. These leaders, volunteers and supporters have been deeply educated on Article V. This network has conducted and attended well over 100 meetings across the state over the last three years, participated in numerous webinars, and engaged in thousands of social media posts. The TN COSP volunteers are *passionate* about Article V. They see Article V as the only solution which can save our Constitutional Republic from impending disasters on many fronts, and they are 100% committed to protecting and defending the Article V process, even at heavy personal costs.

The storm clouds were not just in the sky. It was also a dark day for the Article V movement. In a sad set of circumstances, an issue which should have been resolved peacefully and quietly among friends, and which could have created a win-win, instead broke out into a very public and contentious debate in front of the Tennessee House State Government Committee. The members of the committee, friends of people on both sides of the issue, were reluctantly forced to make a win-lose decision. How did this happen?

For the most part, each of the Article V groups "does its own thing" advocating for its own applications. In many cases the groups work together to fight common enemies – the Article V fear-mongering groups such as Eagle Forum, the John Birch Society and the National Association of Gun Rights (and the NAGR's many "front" groups). Unfortunately, in this sequence of events, cooperation was replaced by contention.

The root cause of the contention can be traced to decisions made months prior to the hearing. Sometime in 2016 (only they know when), the Balanced Budget Amendment Task Force (BBATF) quietly made plans to conduct a formal "Nashville Planning Convention". The plans were first made public with an announcement at the American Legislative Exchange Council meeting in November, 2016. The announcement surprised and bewildered many in

the Article V movement, but particularly the volunteers in the Tennessee COSP, whose state had been chosen to host this planning convention and whose lawmakers were seen as leading the effort. Press conferences were held. Articles appeared in newspapers. Yet “We the People” were not informed, much less consulted. Only when the resolutions were filed could we start to piece together what was truly happening.

The BBATF's stated purpose of the planning convention was to develop a set of procedural rules for an Article V convention limited to the topic of a balanced budget convention, and to recommend to Congress a date and location for such an Article V convention.

Unlike the simulated convention conducted by the Convention of States Project last September, which was a privately funded and unofficial event, the BBATF planning convention was intended to be an official convention of states sanctioned by state legislatures with formal resolutions, formal delegations, and funded partially at taxpayer expense. (Funding issues are discussed later.) This point is significant. If the BBATF wanted to hold a privately-funded, unofficial event to promote its efforts and even develop its own unofficial set of rules for an Article V convention, there would have been no complaints from the TN COSP team. We would have gladly observed and gleaned what we could from such an event, like the BBATF probably gleaned information from the COSP simulated convention.

That said, it must be pointed out that the COSP very purposefully engaged the grassroots of every state in the nation in planning for the Simulation. The state grassroots teams provided the national team with insight as to which state legislators were key to the Article V movement in their states and should therefore be included in the invitation list. *Moreover, the national COSP team made a purposeful decision to include in that invitation list legislators who were involved in the Article V movement even if they had championed a BBA-first or BBA-only perspective.* The goal of the Simulation was to advance the Article V movement as a whole by proving that the process worked – not to advance only its specific effort.

The BBATF representatives stated in their testimony that they understood that the rules developed at the proposed planning convention would not be legally binding on any eventual Article V convention. An Article V convention could choose to adopt them in whole or in part, or even to completely ignore them. However the BBATF also stated that they believed that virtually all states would attend the planning convention, and that it was their goal to have enough states participating that it would be difficult for the Article V convention to ignore the rules created at the planning convention. In other words, they sought to set the rules of the Article V convention in advance.

To help ensure that the first Article V convention adopted the rules from the planning convention, the BBATF resolutions called for the states to send the same delegates to the planning convention who would ultimately be sent to the Article V convention. (We'll come back to this later).

The TN COSP team concurred with the BBATF that the planning convention would have effectively set the rules of procedure for the first Article V convention. In fact, after reading the resolutions, we quickly came to the conclusion that the planning convention would not only set the rules for the first Article V Convention but would also effectively set the rules for the second and subsequent Article V conventions, regardless of the topics of any of the conventions. Like most legislative bodies, a subsequent gathering will always save time by adopting the rules of prior legislative bodies, possibly with some minor tweaks. Likewise, the second Article V convention would not want to re-invent the wheel, but would instead simply adopt the vast majority of the rules from the first Article V convention. The BBATF failed to recognize this. The members of the House State Government Committee however, understood that reality, and thus understood the long-term impacts that this planning convention could have on the overall Article V effort. These rules need to be done well, and every voice needs to be heard.

As proof of their contention that the rules for a BBA-only convention would be different from the rules for other Article V conventions, the BBATF cited a list of committees that would be different. What they did not say is that the list of committees is the **ONLY** thing that would make the "BBA-only" rules different. In all likelihood, all the other rules for Article V conventions would not vary significantly from convention to convention.

How can we know this? All you need to do is examine the three sets of existing proposed Article V rules from Article V groups, including the [Assembly of State Legislatures](#), [American Legislative Exchange Council](#), and [Convention of States Project](#). All three sets of rules are "generic", meaning they were developed independent of any Article V application topics. The only exception is that the Convention of States Project rules contain a list of committees, as would the BBATF rules. (Regarding the ASL rules, please note that the Tennessee delegation to the ASL rejected them. Please also read the [assessment by Rob Natelson](#)).

The plain fact is that 99% of the rules that would have been produced at the proposed planning convention would have set precedent for all future Article V conventions, not just the BBA-only Article V convention. Think about it this way: each state legislative chamber uses virtually the same rules from year to year yet the laws they consider from year to year vary widely. The rules of legislative processes are independent of the topics being discussed. Thus, Article V conventions will use virtually identical rules from convention to convention regardless of the topic(s) of the convention.

Because the rules created by this official planning convention would have set precedent for all Article V conventions, it was wholly inappropriate for a single Article V group to monopolize influence over those rules to the exclusion of all other Article V groups. The rules for Article V conventions are topic-agnostic and belong to all groups, all lawmakers, all taxpayers and all citizens. Any "official" work on rules by state legislatures should NOT be limited to just one Article V effort but rather should include all stakeholders.

This is how the TN COSP Team viewed the situation: an out-of-state group with zero grassroots presence in Tennessee, the BBATF, wanted our state legislature to lead an "official" planning convention which would be run and controlled by the BBATF and which would specifically exclude all other Article V groups, including our group of almost 20,000 state supporters, and yet would set the direction for the rules for all future Article V conventions. This was not about "fairness". This was about shutting out the voice of "We The People" and leaving it up to king-makers.

Further, the resolution calling for the planning convention strongly suggested that the delegates who attended the planning convention also attend the first Article V convention, effectively determining the Tennessee delegates to the first Article V convention. In their haste to call the planning convention, there was no opportunity for input from the grassroots on the criteria for who should attend either convention nor to propose specific candidates and no opportunity to consider the strengths and weaknesses of the candidates. The lawmakers simply chose from among themselves.

To make matters worse, the funding for this convention was unclear. We had heard from one Tennessee legislative leader that it was to be privately funded. Other lawmakers hinted at in-kind donations. We did not get to this issue in the testimony at the hearing, so we will never know for sure. Nonetheless, we knew for certain that it was NOT completely state-funded. We had significant issues with any private funding of any kind of an official convention of states, particularly on such an important issue as the rules for Article V conventions.

To make matters even worse, a special interest group, the National Federation of Independent Businesses (NFIB), had been lobbying for the planning convention in Tennessee regularly for several weeks. To be clear, we respect the rights of any person or group to speak on any Article V-related topic. What we rejected was the NFIB lobbying to exclude "We The People" from the Article V process.

During all of this, the Tennessee COSP leaders repeatedly offered a compromise to the Senate and House sponsors of the resolutions, to the BBATF (through the sponsors) and to Jim Brown, Tennessee State Director of the NFIB. The compromise was simple: expand the planning convention to include other Article V efforts so that they could have a voice in the rules which would drive all Article V conventions for decades to come. The planning convention could still identify Article V convention committees specific to each application. If a state had not passed one of the applications, they could simply recuse themselves from the discussions about those other Article V applications. With that simple compromise, all Article V groups wishing to be involved could join in the effort, and all of us could put our minds together to develop the best set of Article V convention rules possible.

The compromise was flatly rejected multiple times by the sponsors of the planning convention, the BBATF and the NFIB. To demonstrate that we were (and still are) sincere in our offer of compromise, we requested a member of the committee, Vice Chair Hulse, to file a resolution with all of the same language, except that it did not limit the planning convention to only the topic of the balanced budget. Even when this offer of compromise was made public by the filing of the compromise resolution, the proponents of the BBA-only planning convention refused to budge.

On a related note, during the last several weeks some of the actors stated or implied that an Article V convention called on just one topic can be more easily “controlled” than an Article V convention on more than one topic. This is simply not true. The same mechanisms which constrain a single-subject convention with only one committee also constrain a multi-subject convention with multiple committees. The only difference between a single-subject convention and a multi-subject convention is how much can be accomplished during the convention. Those who say a multi-subject convention is more “dangerous,” undermine all Article V efforts, including the single-subject applications they are supporting.

Several strategic errors were made during this process. The first was the failure to consider the impact of an official planning convention to the entire Article V movement. The second is that other groups were not consulted early in the process to seek comments or identify potential issues. Instead, the issues ended up being argued in front of legislators. The third is related to the first two, which was to reject a reasonable compromise once it became clear that another Article V group was set to resist the efforts in a legislative showdown. The fourth, and maybe most crucial, was to exclude “We The People” from the process by failing to provide for public input mechanisms at any step in the process.

In the end, one group “won” and another group “lost” – but truly we all lost. We cannot allow such things to happen again. We MUST at least find a way to alert each other regarding legislative actions we each intend to submit (beyond passing applications) in order to give the other groups a chance to raise concerns.

The Tennessee COSP team is already outlining the topics which we believe need to be discussed in the summer study called for by the House State Government Committee. We are committed to educating the Tennessee General Assembly on a host of Article-V-related topics and discussing possible improvements to our faithful delegate law, delegate qualifications, delegate nomination procedures, general delegate instructions (non-application-specific), processes for taking constituent input, joint committees and, of course, Article V convention rules. We welcome and encourage ALL Article V groups with a presence in Tennessee to join us in those efforts.

We would love to see Tennessee (or any state) host a planning convention in the summer of 2018 – as long as that planning convention is open to all Article V groups and anyone else who wishes to participate and as long as it is funded solely by public (taxpayer) dollars, excluding all special interest contributions and in-kind donations. We strongly encourage all other state legislatures to reject the idea of a BBA-only planning convention (or any such convention limited to only one effort).

We hope the Article V movement can join together to proclaim the message of Article V and remove the memory of this dark and cloudy day.

For Liberty and Self-Governance,

Norman Bobo

Tennessee State Director

Convention of States Action

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