

THE  
FEDERAL SOLUTION  
FOR A  
FEDERAL CRISIS



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A Constitutional Mass 2010

A meeting to discuss the causes and remedies to our federal crisis.

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**ARTICLE V  
CONVENTION**

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We don't want your vote, we don't want your money,  
we just want you to listen.

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Hosted By: Mike Church

**APRIL 9<sup>th</sup>, 2010**

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XM Satellite Radio Studios, 1500 Eckington Place, Washington, D.C. 20002  
**MIKECHURCH.COM**

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## ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.<sup>1</sup>



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<sup>1</sup>Article V of the U.S. Constitution ratified June 21, 1788

# PREFACE

*To foster a greater awareness regarding one potential remedy to the current federal crisis as outlined in the U.S. Constitution, Mike Church and Founding Father Films are pleased to offer the full record of the Symposium convened to discuss an Article V, Amendment Convention. Championed by Virginian George Mason during the 1787 convention he argued that, “it would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their consent on that very account” Thus, thanks to his efforts, Article V was drafted so as to offer the states and the people one final avenue should the Central Authority over reach its precisely delegated authority. Professor Kevin R. C. Gutzman who is associate professor of history at Western Connecticut State University has prepared this preface. Professor Gutzman holds a bachelor’s degree, a master of public affairs degree, and a law degree from the University of Texas at Austin, as well as an MA and a PhD in American history from the University of Virginia. Happy to be a former attorney, Professor Gutzman devotes his intellectual energy to teaching courses in the Revolutionary and constitutional history of the United States, to writing books and articles in these fields, and to public speaking on related topics.*



With the Revolution of 1937, the Supreme Court effectively abandoned the enterprise of drawing a line between state and federal legislative authority. Since then, with limited exceptions, it has allowed Congress to legislate in any way it likes.

The result, fitfully for decades but now in a rising crescendo of legislation, has been exactly as the Founders feared. Democracy — unlimited legislative power — yields transfers of wealth from some members of society to others. The majority, as in the years leading up to the Philadelphia Convention that wrote the Constitution, takes money from the minority.

But, if anything, things are worse than that. As once American politicians could not lose by expropriating Indian land and giving it to white people — because Indians did not have the vote, while whites did —, today’s politicians seemingly cannot lose by taking money from posterity for the benefit of their constituents. After all, posterity cannot vote, and voters can reward politicians who borrow money from future generations to pay for goodies they can hand to today’s electorate.

What is to be done? Must Americans stand by and watch the Congress transfer money from the future to the present? Is spending for spending’s sake (President Obama’s explanation of his “stimulus” legislation) to be the road to America’s ruin?

The Constitution was intended to provide parameters of the Federal Government’s power. Congress could do only a few things, most of them listed in Article I, Section 8. Spending for spending’s sake was not among them.

Nor was No Child Left Behind. Nor NASA, four decades since it fulfilled its purpose. Nor payments to farmers not to farm. What to do?

Some seem to believe that throwing the bums out will solve the problem. If only the spendthrift Democratic Feinsteins and Dodds and Reids who gave us TARP, takeovers of General Motors and European-style health care could be replaced by a new crop of Republicans like Ted Stevens and Bob Packwood and Bob Dole who gave us things like SCHIP, No Child gets Left Behind and the Medicare Prescription Drug Entitlement, things might be righted.

But more people sense that that is not enough. In many states, Republicans and Democrats are now outnumbered by unaligned voters. These people do not expect 2010's elections to correct the legacy of 1937, any more than election of dedicated limited-government advocates in 1980 and 1994 did.

The time has come, then, to heed George Mason.

That greatest of Revolutionary America's constitution-makers insisted that Article V of the Constitution include a mechanism for amending the Constitution without involving Congress. Congress, he noted, might be the problem, and so relying on Congress to propose an amendment would not do. In response, he and his fellow Framers provided for an Amendment Convention.

What follows is a discussion of the idea of an Amendment Convention held in Washington D.C. on 9 April 2010. The constitutional mechanism is discussed, as are its political ramifications and the most popular objections. None of the four participants or the moderator came to the question lightly, and yet all conclude that the time is now, that ordinary electoral politics will not remedy the problem, and that the opportunity provided by Americans' current revulsion with out-of-control government must not be wasted.

The problem has been the same since 1937. Now, finally, the people have noticed. Please consider these proceedings with an open mind.



## PARTICIPANTS

- Randy Barnett:** Professor of Law at Georgetown University Law Center.
- Tony Blankley:** Former White House aide to President Ronald Reagan and Press Secretary to Speaker Newt Gingrich.
- Bruce Fein:** Former Associate Deputy Attorney General under President Ronald Reagan.
- Kevin Gutzman:** Associate Professor of History at Western Connecticut State University.
- Mike Church:** Nationally syndicated radio personality, documentary film maker of the founding era.

**Mike Church:** – You think Jefferson and Adams had a correspondence. Wait till he and I are dead, and they publish this one. —

As Kevin has pointed out, the time is now. Channel your energy. Stop worrying about 2010 elections. You're wasting your time. That's why I encouraged a gentleman earlier today to stop thinking about tax rates and fair tax. It's not the tax, man. It doesn't matter how they collect it or who collects it. It's the fact that they're collecting it from you, and they're not going to stop. Stop worrying about who's collecting it. Put the energy in.

And I think that's why we have the town hall, we have listeners in attendance here today. And we will get to your questions here, so get ready, we're going to come to you. And we're going to take a timeout here. We'll come right back. My representative, a state senator from Louisiana, A.G. Crowe is on the phone. We'll come to him when we come back, and we'll continue with our Article V – what is it called? What is that, Randy Barnett?

**Randy Barnett:** Amendments Convention.

**Mike Church:** Amendment Convention. Article V Amendment Convention. [Applause]



## SEGMENT V

**Announcer:** You are listening to the Mike Church Show on Sirius XM, Patriot 144, at America Right 166. [Applause]

**Mike Church:** Okay. Welcome back to our Convention to Amend. Article V of the Constitution is what we're discussing here today. Bruce Fein is with us, Dr. Kevin Gutzman, Tony Blankley, Professor Randy Barnett. Again, audience, great job from the panel. [Applause]

I was just listening to – I'm going to get to my senator, A.G. Crowe, in just 30 seconds here. But I was just listening to the Mark Levin promo that was running.

**Mike Church:** And he was haranguing about “a trillion here, a trillion there.” And I have Facebook comments that my wife is sending me. “Dude, the Facebook page has melted.” There’s hundreds of people worrying about the Pandora’s Box that we’re going to open. And I’m listening to Levin haranguing about trillions. What is that? Is that not a Pandora’s – that may be THE Pandora’s Box, maybe the one that Pandora wasn’t supposed to open is the one that Mark Levin was just screaming about of the trillions here and trillions there. I mean, how much worse can it get?

**Tony Blankley:** Well, you know, the concept of – the danger of taking this action. Ronald Reagan, one of his favorite lines, he used it in his first inaugural address, was Thomas Paine’s, “We have it in our power to make the world over.” It’s the least conservative statement that Ronald Reagan ever made. It is a radical statement of not believing in slow, organic change, but you have the power to actually change the world. And I think Reagan and Thomas Paine got it exactly right, that even if your natural instinct, like mine, like Reagan’s, was to be conservative and prudent, there are times when you have to overcome that prudence, and you have to make the world over again because it’s going in the wrong direction.

**Mike Church:** Anybody disagree with Thomas Paine?

**Audience:** No.

**Mike Church:** [Laughing] All right. I want to bring in a very special guest and a good friend of mine. He is a great legislator and our final state representative panel. He is from the great state of Louisiana. He lives in Slidell, Louisiana. He’s my good friend, A.G. Crowe. A.G., you there?

**State Senator Crowe (LA):** I sure am. Good morning to you.

**Mike Church:** Oh, it's always a pleasure, my friend. You've been able to eavesdrop a little bit on this conversation. And I told the panel during the discussion that A.G. is true-blue. And if we gave him the language to propose a resolution for Louisiana to call a convention, that you would march into the state senate, and you would file it on your constituents' behalf. Did I have that right?

**State Senator Crowe (LA):** Verbatim [laughter].

**Mike Church:** Well, just talk for a minute about what's going on in Louisiana, and what are your constituents hearing? And you just heard Tony Blankley say, man, the time to act is now. This calls for bold action. What do you think?

**State Senator Crowe (LA):** Well, I like the idea of an amendment convention because, again, we've had discussions here within our own state about our needing to, you know, have a constitutional convention to address fiscal issues. But again, you know, the fear is, as the representative from Tennessee mentioned, is the fact that, you know, you don't open up a can of worms. You don't want to give anybody opportunities to go backwards. So we do have to approach this in a very limited, very limited way.

As far as my healthcare bill, which was introduced a couple of weeks ago, maybe almost two weeks ago Monday, SB 26, the Louisiana Health Care Freedom Act, I'm thinking that the best way to approach that, in fact I'm convinced, is to stay focused, not on the politics, which is what, you know, many people are going to try to do, but on the simplicity approach of letting people know that this is not about anything other than constitutional violations, and how it's going to affect all of us here in the state, regardless of party or wherever you're from.

**Mike Church:** And Louisiana – and one of the reasons I wanted A.G. here is because we didn't even get a chance in our panel here to talk about the violations. Louisiana is a unique state inasmuch as we have a third of everything you get from outside of this country comes right up that river that's called the Mississippi. We are a hub. We farm sugar cane. We supply a lot of your sugar. Oil and natural gas. And since the 1970s, A.G., I mean, we are a poster child for federal excess; aren't we? The federal government orders us around, tells us how much of our resources we can use.

**Mike Church:** Aren't we, shouldn't we, Louisiana, be one of the leaders saying, all right, we're ready to do this?

**State Senator Crowe (LA):** Well, you know, Louisiana you can say is the Saudi Arabia of the United States in that 15 to, well, 50 percent of all the fuel, that's the diesel and the gasoline used in automobiles, are manufactured in Louisiana. We have 30,000 miles of pipeline for oil and gas in Louisiana. But yet we, you know, we get snubbed on and treated as if, you know, we're unimportant. And I want to remind people that after Hurricane Katrina, you know, with the energy industry shut down practically, we were just a few days away from Manhattan shutting down because of the interruption of oil supply through Louisiana.

So, you know, people I think around the country realize and appreciate the importance of Louisiana. I think it's just some of the people in Congress that may not, you know, give us credit. And, you know, this – the fact that we don't get royalties outside of three miles, but yet all the highways and byways of Louisiana are ripped apart and torn apart and all of our lower coast areas are ripped apart and allowing for the Gulf to come in and destroy and take more of our wetlands, I mean, these are issues that, because of the violation of the Tenth Amendment, we're not able to get the moneys that are due to us, duly due to us...

**Mike Church:** Right.

**State Senator Crowe (LA):** ...as a result of all this activity going on in the state.

**Mike Church:** All right. So, A.G., so you are for an amendment convention. I have that correct; right?

**State Senator Crowe (LA):** Yes, I am.

**Mike Church:** All right.

**State Senator Crowe (LA):** And very limited, and very, very controlled again, so that, you know, it does not get out of hand or does not get taken over.

**Mike Church:**

All right, my friend. Well, listen, that's all the time we have. Always a pleasure. So Louisiana is in. [Applause] I just want everybody to know, Louisiana is in. Now, a very special guest who'd like to talk to all of us, Dr. Tom Woods from the von Mises Institute, and co-author of your book, "Who Killed the Constitution?" Tom, you've been listening in on all this. You and I have talked, and you and Dr. Gutzman have talked for years about this, about an amendment convention. What do you have to add to what you just heard and what you've been writing about for years?

**Thomas Woods:**

Well, first of all, I am a pathetic pygmy next to the people you have on that panel. So I'm very honored that you'd have me in this discussion at all. Well, let me first note, as I think you've discovered, Mike, is that, if you even raise this issue, it's enough to get you dismissed and viciously smeared by a certain wing of what we might call the "liberty movement." And they immediately – you're suspect, your intentions are suspect. And I think that's just got to stop. I mean, for heaven's sake, you know, we have to listen to each other and what we're saying here. And my view is that it seems pretty unlikely at this point that Washington's going to be reformed. I mean, what's the alternative plan, that we vote for Mitt Romney? I mean, come on. I mean, how many times can we be, we'll just say, taken advantage of by these people?

Now, one argument that's made is that, if an amendment is introduced, well, you know, the federal government ignores the Constitution now. Maybe they would ignore the amendment. I want to answer that because I think there are two good answers to that. Number one is, even if an amendment that we introduce, like let's say making sure that the Commerce Clause is correctly interpreted, even if all we're doing is just clarifying what should already be obvious, the Tenth Amendment clarified what should already have been obvious, and we don't think the Tenth Amendment was a waste of time.

But secondly, let's say we amended the Constitution to clarify the Commerce Clause, and the federal government still continued to regulate every aspect of American life in defiance of the amendment. Then I would favor simultaneously introducing a structural change to the system that would restore some kind of state negative that was taken away by the Seventeenth Amendment. It could take the form of what Kevin has proposed, something like if two thirds of the states say no to a federal law, then that's it, it's overturned.

**Thomas Woods:** We need to reintroduce an ability to say no after the federal government has said yes to itself.

**Mike Church:** Okay. So let's start on the end here with Dr. – with Professor Barnett here. Because Tom, he's actually – this is part of your amendment; right? And Kevin, this is one of your amendments, you call it the Federalism Amendment here, an amendment to basically install or institute a Council of Revision, is I think how you called it? Professor Barnett, I'm not sure how you called it.

**Randy Barnett:** Article 6, Amendment 6 of the Bill of Federalism that I'm proposing says, "Upon the identically worded resolutions of the legislatures of three quarters of the states, any law or regulation of the United States identified with specificity is hereby rescinded."

**Mike Church:** Kevin? It's fantastic; right?

**Kevin Gutzman:** Well, I would agree, except I would make it easier. I don't know why three quarters. I'd say two thirds, if not a bare majority. Let's not get – let's not run away with the idea of deference to Congress here.

**Randy Barnett:** I will accept that amendment. We will make that change right now. I'll accept that amendment.

**Kevin Gutzman:** A friendly amendment.

**Randy Barnett:** It's a friendly amendment.

**Bruce Fein:** But even so, there's...

**Mike Church:** They like it, they like it. Bruce?

**Bruce Fein:** There's ambiguity in that. What happens if a state ratifies and then rescinds? Does the rescission count if it is done before you get the two-thirds benchmark or the three-quarters benchmark?

**Randy Barnett:** Well, that's, by the way, true right now in Article V. You've got the same ambiguity in Article V.

**Bruce Fein:** Yes. It is – that is true. But we should probably try to clarify it. But the other thing, it seems to me, Mike, we have to ask, why do we care about federalism? Why do we want these issues restored to the states? And it seems to me there are two reasons.

**Mike Church:** Okay.

**Bruce Fein:** One is, Cicero said, "Freedom is participation in power." The citizen is too remote from Washington. You don't participate in power here. It's so far away. The second thing, and may even be more important, is federalism creates competition in good government. If a state does something stupid, people can pick up, they leave, businesses go, and they've got to reform. I remember it wasn't long ago where in West Virginia the surgeons said, unless you put a cap on medical malpractice damage awards, we're leaving, and we're not performing any operations here. And you know what, they changed that law in about five seconds. Because there was options to move.

And this is critical. Because legislators are not going to respond to stupidity and imbecility unless they see harm out there. When the Congress acts, everybody's saddled with the same burden. You can't go anyplace. So you don't get the feedback that's available that said you're voting with your feet, you're voting with your taxes. That is why federalism matters. That's why you see even in some small way that the states compete for trying to attract investment into their states. We'll give you a tax write-off or a tax holiday. That's good. It stimulates states to think creatively about creating jobs. Congress, does that ever happen? No.

**Mike Church:** No.

**Bruce Fein:** Because it can't go anyplace.

**Mike Church:** Right.

**Bruce Fein:** So it's not just an abstract proposition. It has real, real concrete effects on how we're governed and why we have continuing feedback and improvement.

**Mike Church:** He just quoted your former boss, basically, if I heard right. President Reagan said, you don't like it, vote with your feet; right? Tony?

**Tony Blankley:** Yeah. You know, absolutely. But, you know, this whole discussion, when it talks about the details of the provision, I think that's getting the cart before the horse. The key thing is the public to have an impulse and a passion to amend. We should first get there. Yes, there are a lot of details. I practiced law for eight years before I got full-time into politics. I understand the details are important. But if we debate the details too much up front, we'll divide ourselves and dissipate the unity that is emerging out of the Tea Party movement. So I think we have to focus on first get to "yes, yeah, we've got to do it," and then we'll have the committees that'll work out the details.

**Mike Church:** I concur. Final comment from Professor Barnett. And Tom, if you'd hang on, because we've got to take a break. But go ahead, Randy.

**Randy Barnett:** One thing the Tea Party movement could do is they could demand of their congressmen that they enact procedures for having a convention. So – of the kind that have already been proposed and have already been drafted. They just have to put it into law. And that would be something that would be nonpart... it could be nonpartisan. It would be neutral. And that would lower the risk of having a convention. It's one reason why Congress won't want to do it. But it's something the Tea Party members can ask of every representative that they decide to support or not support.

**Mike Church:** Okay. We've got to take a break. Audience questions, to round out our panel here. Believe it or not, there's only 15 minutes left. Tom, if you would, hang on because we'd like to get your participation in that, too. We'll step aside, and we'll be right back with our final segment here on our Convention to Amend on Sirius. [Applause]

## About Founding Father Films

“To the victor go the spoils,” it has been said often, and unfortunately the spoils sometimes come in the form of recording the history of said victory. This company is founded upon the belief that American history is a treasure that needs to be guarded, then catalogued and shared, regardless of the political party in power. Our goal is to reverse the near annihilation of the history of liberty in these United States and recall to public consciousness those who defended American governments’ limited, republican form by telling their stories on film and in other digital media formats.

After the twilight of the American Revolution’s noble Spirit of ‘76 had begun to set in, Thomas Jefferson wrote of his concerns to his friend Phillip Mazzei. Jefferson then noted that, “We are likely to preserve the liberty we have obtained only by unremitting labors and perils.” In that spirit, we labor to preserve the history of the significant events that composed the lives of the men we know as Founding Fathers.

Thus began the mission of Founding Father Films. - 30 November, 2009



*“In a political environment in which hacks from both parties continue to put all their eggs in their little 2010 and 2012 baskets, Mike Church is one of the few, sane voices trying to put the federal government back in its constitutional box by returning to the principles of 1789. This is a conversation that’s long overdue.”*

-Jack Hunter, Columnist  
The American Conservative

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