

## **How California Lost Its Sovereignty**

### **Commentary by Fred E. Foldvary**

The state of California is supposed to be sovereign under the Constitution of the United States. There is no higher government authority above California. The Constitution provides for parallel sovereignty for the federal and state governments, each with its own realm of authority. The federal government is not supposed to have a superior status. The 10th Amendment emphasizes that powers not specifically allocated to the federal government by the Constitution are held by the states or the people.

The Constitution endows the states with ultimate sovereignty because they can change the Constitution. Article V of the Constitution states that "on the application of the legislatures of two thirds of the several states, (Congress) shall call a convention for proposing amendments" subject to ratification by three-fourths of the states.

The states have in fact submitted over 500 requests for such a convention to Congress, with the required two-thirds of the states asking for such conventions. The state applications for an Article V convention are registered in the Congressional Record. But Congress has violated the Constitution by ignoring these requests. In so doing, Congress has destroyed one of the checks on federal power that the founders had implemented.

The states have thus lost their sovereign ability to change the Constitution. This loss was in part the fault of the states themselves when they adopted the 17th Amendment to have a direct election of senators by the citizens rather than the original constitutional provision of having the state legislatures elect their senators. This situation could be reversed by the repeal of the amendment if two-thirds of the states call for it. But Congress refuses to comply.

Some people fear that a constitutional convention might propose amendments that will limit our liberty. However, any amendment would have to be ratified by three-fourths of the states. Few of the many past proposed amendments were ratified.

The convention could also propose amendments that would enhance liberty, particularly if the convention is called by the state legislatures to limit the power of the federal government. Indeed, many of the state calls for a convention have sought to limit federal taxation. This may be the reason Congress refuses to comply.

Many legal scholars think that the federal government has abused its constitutional authority over interstate commerce by interpreting all economic activity as being subject to federal authority. The federal government has gone around the 10th Amendment with revenue sharing that has strings attached, conditions that in fact enable the federal government dictate policy to the states. Moreover, the Supreme Court has in effect amended the Constitution for the worse when it has interpreted the commerce and other clauses in favor of federal power.

Regardless of whether one fears or welcomes a constitutional convention, the Constitution authorizes it, and if we are to have a rule of law under the Constitution, Congress must follow the provisions of Article V. Liberty is better served with divided powers than with power concentrated in the federal government.

Two lawsuits, *Walker v. United States* and *Walker v. Members of Congress*, have been initiated in federal courts to make Congress obey Article V (see [article5.org](http://article5.org)). The refusal of Congress to comply with Article V has received little public attention. Those of use living in

California should be aware that our individual sovereignty as citizens is also cut short when our state representatives have lost their constitutional authority. We no longer have a real Constitution and rule of law when Congress arrogantly asserts supremacy over the states.

Are Americans to have sovereign states as authorized by the Constitution, or will the states be demoted to mere administrative provinces under an all-powerful central government?

Fred E. Foldvary teaches economics at Santa Clara University and writes for The Libertarian Perspective. His column reflects his own views, and not necessarily those of The Signal.

*Copyright: The Signal*