

Publius Huldah's Written Testimony Against HJR 2
Committee Meeting March 21, 2017 at 4:00 p.m.

Chairwoman Roegner, Vice Chair Lipps, Ranking Member Leland, and Members of the Federalism and Interstate Relations Committee: Thank you for this opportunity to speak with you.

The prospect of an Article V convention should make us “tremble”, for the same reason it made **James Madison**, Father of our Constitution, “tremble”: ¹ A convention gives the enemies of our Constitution the opportunity to get rid of it and impose a new one. **And *that's what I'll prove to you today.***

Article V of our Constitution provides two methods of amending it. **Congress:**

- Proposes amendments; or
- Calls a convention to propose amendments if two thirds of the States apply for it.

The first method was used for *the existing 27* amendments: **Congress** proposed them and sent them to the States for ratification or rejection.

Under the second method, **Congress** calls a convention. We've never had a convention under Article V – *they are dangerous* – and James Madison, Alexander Hamilton, 3 US Supreme Court Justices, and other eminent jurists and scholars, ² warned against it.

But the pro-convention lobby has been pushing for a convention for 50 years – ever since the Ford Foundation produced the Constitution for the Newstates of America. Read [this proposed Constitution](#) and tremble for your Country.

In the past, conservatives defeated the periodic pushes for a convention.

So the convention lobby changed tactics: Now they are marketing a convention to appeal to conservatives: They are saying *the only way* to rein in the federal government is *to amend our Constitution.*

And they are saying we can only get the amendments we need *at a convention.*

¹ [Madison's letter of Nov. 2, 1788 to Turberville.](#)

² <http://leg.mt.gov/bills/2007/Minutes/Senate/Exhibits/jus71a15.pdf>

1.

Let's look at the Constitution the convention lobby says must be amended in order to limit the power and jurisdiction of the federal government.

When we ratified our Constitution of 1787, we *created* the federal government. It is

- a *federation* of sovereign States united under a national government **only** for those *limited purposes itemized* in the Constitution;
- with all other powers reserved by the States or the People.

We listed every power we delegated to the national government: Most of the powers delegated over the Country at Large are listed at Art. I, §8, clauses 1-16.

All our Constitution authorizes the national government to do over the Country at Large falls into four categories:

1. Military defense, international commerce and relations;
2. Immigration and naturalization;
3. Domestically, create a uniform commercial system with uniform weights and measures, patents and copyrights, a money system based on gold and silver, bankruptcy laws, mail delivery and some road building; and
4. With some of the Amendments, secure certain civil rights.

All other powers are reserved by the States or the People.

[This Chart](#)

- illustrates *the federal structure* of our government; and
- lists *the powers* delegated to the federal government – *as you see, it's a short list*.

It's **only** with respect to the enumerated powers *listed* in the Constitution that the federal government has lawful authority:

- If it's *on the list*, Congress may make laws about it.
- But if it's **not** *on the list*, Congress usurps power and acts unlawfully when it interferes.

When a government merely secures God given Rights, as ours was *created* to do,³ we are never put in conflict with each other, because no one has his hand in anybody else's pocket, or is telling them what to do.

³ "...That to secure these rights, Governments are instituted among Men..." (Declaration of Independence, 2nd para)

2.

So why did the federal government turn into Frankenstein?

Everybody ignores the Constitution.

It is *ignorance* of our Constitution - *along with* the collapse of religion, morality and personal responsibility, which brought us to the brink of destruction.

We forgot that the federal government has lawful authority *only* over the 18 - 21 powers *enumerated* in the Constitution.

Because we didn't know what our Declaration of Independence and Constitution say, the federal government was able to usurp thousands of powers which are *not on the list* of delegated powers. State governments *collaborated* with the usurpations by taking federal funds to implement unconstitutional federal programs.

To claim these problems can be fixed by amending our Constitution is like saying a wicked nation can be fixed by revising The Ten Commandments.

3.

Even so, the convention lobby *insists* the problem is ... the Constitution.

They say amendments will "limit the power and jurisdiction of the federal government."

But our Constitution *already limits the power and jurisdiction of the federal government* to those "few and defined" powers listed in the Constitution. ⁴

So the claim that we can control those who ignore the Constitution, by amending the Constitution, is absurd!

⁴ "The powers delegated by the proposed Constitution to the federal government are few and defined." [Federalist Paper No. 49](#), 3rd para from the end (Madison).

4.

Mark Levin and Michael Farris are aggressive promoters of the “convention of state” application for an Article V convention. They say we need a convention so we can get amendments which “limit the power and jurisdiction of the federal government.”

So let’s look at *their* proposed amendments:

Michael Farris’ [“parental rights” amendment](#) **delegates power over children to the federal government!** Section 3 says:

“Neither the United States nor any state shall infringe these rights without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.”⁵

Mark Levin’s “liberty amendments” also do the opposite of what he claims.

- His amendment “**to limit the federal bureaucracy**” [p 99 of his book] *legalizes* what are now unconstitutional federal agencies: Education, Energy, Agriculture, Environmental Protection, etc., etc., etc. Our Constitution doesn’t authorize these agencies! They are **not on the list!** But Levin’s amendment legalizes all such agencies for as long as Congress re-authorizes them.
- Article I, § 1 of our Constitution says only *Congress* may make laws. But since Woodrow Wilson, federal agencies have been writing “rules” – the Code of Federal Regulations. All these rules are unconstitutional as outside the scope of powers delegated, and as in violation of Art. I, § 1. But Levin’s amendment to “limit the federal bureaucracy” *legalizes* these rules and rulemaking as long as Congress approves them!
- Levin’s amendment “**to limit federal spending**” [p 73] also does the opposite of what he says. Our Constitution limits federal spending to the enumerated powers. **If you go thru the Constitution and highlight all the powers delegated to Congress and the President, you will have a complete list of the objects on which Congress is authorized to spend money.** That’s how our Constitution controls spending!

But everyone ignores it!

⁵ Under our Constitution, the federal government now has ***no*** lawful authority (over the Country at Large) over the rearing of children!

Levin's amendment substitutes a budget for the enumerated powers, and thus *legalizes* the current practice where Congress spends money on *whatever* is put in the budget.

His amendment thus **changes the constitutional standard for spending from** whether the object is an enumerated power; **and creates a completely new constitutional authority to spend on whatever Congress or the President want to spend on.**

And while his amendment *pretends* to impose a limit on *the amount* of spending, the limit is *fictitious* because it can be waived whenever Congress votes to waive it. ⁶

So their amendments **don't** limit the power of the federal government - they *increase* the powers of the federal government by delegating new powers and by legalizing powers it has *already usurped*.

5.

They say we must amend the Constitution because people in Washington "don't understand it".

Rubbish!

Our Constitution is so simple Alexander Hamilton said *The People* are "the natural guardians of the Constitution". Hamilton expected **us** to be "enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority." [[Federalist No. 16](#), next to last para].

- If it's *on the list*, the federal government may do it.
- If it's **not on the list**, they can't lawfully do it.

For clauses the Supreme Court has perverted, such as the "interstate commerce", "general welfare" and "necessary and proper" clauses: We don't need a convention to draft amendments showing what these clauses mean – just look the clauses up in *The Federalist Papers*! I've already done it – [here it is on one page](#).

⁶ Some of Levin's other proposed amendments are addressed here:
<http://www.renewamerica.com/columns/huldah/140415>

6.

The convention lobby's whole case is based on a fabricated George Mason quote. They claim he said the Article V convention was given to State Legislatures as **the** remedy when the federal government "overpowers" the States.

Mason *never said* that.

James Madison kept a Journal at the federal convention of 1787. I went through it, pulled out every reference to what became Article V, and wrote it up – [here it is](#).

This is what *really* happened: Under the Articles of Confederation – our first Constitution – Amendments had to be approved by the Continental Congress and all of the States.

The dispute at the convention of 1787 was whether Congress – under the second Constitution then being drafted (the one we now have) - should have any power over Amendments.

George Mason wanted the people to be able to make Amendments without the approval of Congress. He said if only *Congress* can propose Amendments, the People won't get the Amendments *they* want if Congress doesn't agree. ⁷

So the convention method was added so *Delegates* could propose Amendments. ⁸

Mason *did not say* that when the federal government overpowers the States, the remedy is to amend the Constitution: That's not in Madison's Journal; and Mason and the others had just spent four months creating a Constitution which delegates only *a handful of powers* to the federal government.

Amendments cannot restrain federal power when the federal government is usurping powers not delegated – they are ignoring *the existing* limitations on their powers! *And no one at the federal convention of 1787 suggested amendments could be used for such a purpose!*

George Mason agreed that *the purpose* of Amendments is to remedy *defects in the Constitution*. Madison's Journal shows that on [June 11, 1787](#), **George Mason said,**

⁷ See entry in Madison's Journal for [Sep. 15, 1787](#) on page 629.

⁸ That the proposal to add the convention method was agreed to doesn't mean that all thought it a terrific idea! It was a compromise [like the evil of slavery]; and the Delegates knew they couldn't keep future generations from doing what they themselves had already done twice: Invoking the Right, acknowledged in the 2nd para of our Declaration of Independence, to throw off one government and set up a new one. They invoked that Principle during 1776 to throw off the British Monarchy; and during 1787, they invoked it again to throw off the Articles of Confederation – and the government it created – and set up a new Constitution which created a new government. See [Federalist No. 40](#), 15th para (Madison).

The Constitution now being formed “will certainly be defective”, as the Articles of Confederation have been found to be. "Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the Natl. Legislature, because they may abuse their power, and refuse their consent on that very account.” [boldface mine]

Our problem today is not *a defective Constitution*. Our problem is *disobedient state and federal governments*; and ignorant people. That calls for different remedies and our Framers spelled them out.

7.

The convention lobby insists the States will appoint the Delegates; each State gets one vote; and Congress and the Delegates have *no power* over the convention – the States run the whole show.

That’s not true.

Article V says States may “apply” for a convention. Period.

Congress “calls” it. A “call” is the official summons for a convention to take place. And Article I, §8, last clause, delegates *to Congress* the power to make the laws “necessary and proper” to carry out its delegated power to “call” the convention.

The [April 2014 Report of the Congressional Research Service](#) (CRS) shows that Congress sees Article V as *delegating to Congress* exclusive authority over setting up the convention; shows that Congress has traditionally claimed power to determine *the selection process* for delegates; that Congress has planned to apportion delegates to match Electoral Votes (so California would get 55 delegates; Ohio 18); and shows that in Congress’ preparations for Article V conventions in the past, Congress has provided that delegates would receive immunity from arrest. ⁹

Please also see short excerpt from **Judge Van Sickle’s Law Review article** [HERE](#).

The convention lobby insists they know *exactly* how a convention will operate. But page 27 of the CRS Report says:

“In the final analysis, the question what sort of convention? is not likely to be resolved unless or until the 34-state threshold has been crossed and a convention assembles.”

See? We’ll have to *get* a convention before we know how it is going to operate.

⁹ CRS Report on page 37, middle of the page, under the subheading “Funding”.

[This chart shows what State Legislatures, Congress, and Delegates have the power to do.](#) The only power the States have is to ask *Congress* to call a convention. Once that's done, it's **out of the States' hands**.

So it's not a "convention of states" - it's a *federal* convention, called by Congress, to perform a *federal* function.

Why do they **call** it a "convention of states"?

COS supporter Rob Natelson said on [Sep 16, 2010](#), that he would **stop** calling it a "constitutional convention"; henceforth, he would call it, among other things, a "convention of states".

I suggest the term is a marketing gimmick to make people believe that Article V provides for a convention controlled by States.

The Delegates won't be under State authority. They will be *sovereign representatives of the people performing a federal function*. As I will show you, as the sovereign Representatives of The People, they can impose a new Constitution which *eliminates* the States and the federal government. **They have the power to oust President Trump with a new constitution which creates a new government!**

So! *Congress* sets up the convention.

And *then* the Delegates - as Sovereign Representatives of The People - have the power to throw off *this* Form of government and set up a new one.

8.

The convention lobby says a convention is safe because three fourths of the States have to ratify **whatever** comes out".

That's not true. Here's why:

The Declaration of Independence *says*, at the second paragraph, that **it's the Right of the People to alter or abolish their *Form* of government, and set up a new government.**

- Our Representatives invoked that Principle in 1776 to throw off British rule. We later ratified [The Articles of Confederation](#), to establish our new government.
- In 1787, we invoked *that same Principle* to throw off the Articles of Confederation and the government it created; and we set up a *new* Constitution which created a *new* government.
- If there is an Article V convention today, the Delegates will have the same power to get rid of our second Constitution and impose a third Constitution which creates a new government.

How did we get from our first Constitution to our second Constitution?

There was a convention to propose Amendments to our first Constitution!

Pursuant to Article XIII of [The Articles of Confederation](#), the **Continental Congress** [resolved on February 21, 1787](#) to call a convention to be held at Philadelphia:

“for the sole and express purpose of revising the Articles of Confederation”.

But the Delegates *ignored* this limitation, and they ignored [the instructions from their States](#)¹⁰ and they wrote *our second Constitution*. Because of *the inherent authority of Delegates to throw off their Form of government*; it is impossible to stop it from happening at another convention.

If we have a convention now, George Washington, James Madison, Benjamin Franklin, and Alexander Hamilton won't be there to protect you.

You don't know who the delegates will be. But they will have the power to impose a third Constitution.

¹⁰Article XIII of the Articles of Confederation required approval of amendments by the Continental Congress and by every State. [The Instructions to Delegates from their States said the purpose of the Convention was:](#)

- for “alterations to the Federal Constitution which, **when agreed to by Congress and the several States, would become effective**“: Virginia, Pennsylvania, Delaware, Georgia, S. Carolina, Maryland, & New Hampshire;
- **“for the purpose of revising the Federal Constitution”**: Virginia, Pennsylvania, North Carolina, Delaware, and Georgia;
- **“for the sole and express purpose of revising the Articles of Confederation”**: New York, Massachusetts, and Connecticut;
- **“provisions to make the Constitution of the federal Government adequate”**: New Jersey.

PLEASE UNDERSTAND: A third Constitution will have its own *new mode of ratification*.

Our first Constitution required the Continental Congress and **all** of the then 13 States to ratify Amendments.

But our second Constitution, drafted at the *amendments* convention of 1787, provided at Article VII that it would require only 9 States for ratification:

- 13 States and the Continental Congress needed to ratify *amendments to our first Constitution*; but only
- 9 States needed to ratify *our second Constitution*.

If we have a convention today, there is **nothing** to stop Delegates from proposing a **third** Constitution with its own new mode of ratification.

New Constitutions are already prepared or in the works:

- The [Constitution for the Newstates of America](#) is **ratified by a national referendum** [Art 12, § 1]. The States are dissolved and replaced by regional governments answerable to the new national government.
- Here's the proposed [Constitution for "The New Socialist Republic in North America"](#).
- The [Constitution 2020 movement](#) is backed by George Soros, Eric Holder, and Marxist law professors. They want a Progressive Constitution *in place* by the year 2020.

Do you know about the [North American Union](#)? During 2005, George W. Bush met on his ranch with the Prime Minister of Canada and the President of Mexico and they sketched it out. The three Countries merge and a Parliament is set up over them. While you are on the website of the CFR, click on the link for the Task Force Report on the North American Union. **It erases our Country. Heidi Cruz, Ted's wife, was on the Task Force which wrote the Report.**

They need a new Constitution to transform us *from* a sovereign nation *to* a Member State in the North American Union; **and they need a convention to get that new Constitution.**

How do they get a convention? Tell the American People that the purpose of a convention is to get amendments to rein in the federal government.

9.

The convention lobby says Delegates to an Article V convention can be controlled by “faithful delegate” laws passed by States.

That’s absurd!

Delegates will be the Sovereign Representatives of the People performing a *federal* function.

And just as Members of Congress have immunity for their speech and debate in Congress (Art. I, §6, clause 1); Delegates to an Article V convention – as Sovereigns - will have immunity for their speech and debate and votes.

Even if Delegates didn’t have such immunity, it’s easy to circumvent "faithful delegate" laws:

- Delegates can make the proceedings secret – James Madison’s Journal shows that’s what they did on [May 29, 1787](#) at the "amendments" convention where our present Constitution was drafted.
- If the proceedings are secret, the States won’t know what is going on – and can’t stop it.
- And if Delegates vote by secret ballot – the States would NEVER know who did what.

So, it would be impossible for States to prosecute or remove Delegates who ignore State instructions.

And remember: The second paragraph of the Declaration of Independence recognizes their right to throw off our Constitution of 1787 and set up a new Constitution which creates a new government.

10.

James Madison, Alexander Hamilton, *three* US Supreme Court Justices, and others, have warned that the Delegates can’t be controlled.

In [Federalist No. 49](#) (9th para), **Madison** said the legislators who *caused the problem* would get themselves seats at the convention and *would control the outcome* of a convention.

In his [November 2, 1788 letter to Turberville](#), **Madison** said he “trembled” at the prospect of a second convention; and if there were an Article V Convention:

“the most violent partizans”, and “individuals of insidious views” would strive to be delegates and would have “a dangerous opportunity of sapping the very foundations of the fabric” of our Country.

In [Federalist No. 85](#) (last para), **Hamilton** said he “dreads” the consequences of another convention because the enemies of the Constitution want to get rid of it.

Justice Arthur Goldberg said in his [1986 editorial in the Miami Herald](#) that any attempt at limiting the agenda would almost certainly be unenforceable.

Chief Justice Warren Burger said in his [June 1988 letter to Phyllis Schlafly](#):

“...there is no effective way to limit or muzzle the actions of a Constitutional Convention * * * After a Convention is convened, it will be too late to stop the Convention if we don’t like its agenda * * * A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn...”

Justice Scalia said on [April 17, 2014 at the beginning of this video](#): "I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?" ¹¹

[HERE](#) are additional letters and articles by eminent Jurists and scholars to the same effect.

What happened at the federal convention of 1787 shows that Delegates can’t be controlled.

The convention lobby *ridicules* these warnings as “fear mongering”.

So I ask them: Is it *possible* that James Madison, Alexander Hamilton, three Supreme Court Justices, and the other eminent authorities, understood *something* about the *plenipotentiary powers* of Delegates which you have not yet grasped?

And are there “violent partizans” and “individuals of insidious views” among us today? Yes, and they want a convention.

But the convention lobby says only “moral and wise” people will be Delegates. Let’s look at that claim. There are three ways to select delegates:

- **Congress:** Do you trust Congress to appoint “moral and wise” people as Delegates?
- **State Legislators:** Do you trust State Legislatures in the other States to appoint “moral and wise” people as Delegates?
- **Popular Election:** Do you trust the People to elect “moral and wise” Delegates?

This is the most corrupt period in our history; and “moral and wise” people haven’t been in charge of anything for 100 years.

¹¹ The convention lobby quotes *Law Professor Scalia* from 1979, when he supported an Art. V convention. But by 2014, **the wiser Justice Scalia had changed his mind and no longer supported it.** .

11.

The convention lobby has been able to mislead people because *they don't know* that:

- Our Constitution *already limits* the federal government *to* the 18-21 enumerated powers *on the list*; and
- Our Constitution *already limits* Congress' spending *to* the enumerated powers.

Because they don't know, they can be *manipulated* to believe *the Constitution* is the problem.

But Amendments don't control governments which already ignore the Constitution:

- The First Amendment didn't stop them from banning Christian speech.
- The Second Amendment didn't stop them from restricting guns.
- The Fourth Amendment didn't stop them from spying on us without a warrant; and
- The Tenth Amendment didn't stop them from usurping thousands of other powers.

12.

What should we do? Our Framers advised two remedies:

First, James Madison said our Constitution depends on *the people* having the “virtue and intelligence to select men of virtue and wisdom” to office. ¹²

Because we didn't know *or care* what *these* say, we elected people who didn't know and didn't *care*. And we must rediscover our Virtue.

Second, don't go along with lawlessness!

The Declaration of Independence says *colonial legislatures opposed* the King's “invasions on the rights of the people” (7th para).

Today, *State Legislatures* must ***oppose violations of our Constitution!***

Hamilton, Jefferson, and Madison said that when the federal government does things which are *not on the list*, each State has the *natural right* to nullify *of their own authority* all such acts of the federal government. Nullification is based on the creator - creature relationship between the States and the federal government. Since the States *created* the federal government, they are ***the final authority*** on whether their creature has violated *the constitutional compact* the States made with each other. ***Those are our Framers' words*** - you can find them [here](#) and [here](#).

¹² http://oll.libertyfund.org/titles/madison-the-writings-vol-5-1787-1790#Madison_1356-05_596 at margin note [223]

13.

The Tenth Amendment says all powers not delegated to the United States by the Constitution are reserved to the States or the People. *What happened to these reserved powers?*

The States *surrendered them* to the federal government:

Tennessee didn't nullify Obamacare because if Tennessee did, we'd lose \$6 billion in federal funds. I'm told the feds paid Tennessee \$500,000,000. to adopt Common Core.

According to [the PEW Report, for FY 2014](#), 35% of Ohio's revenue was from fed funds.

The States aren't victims of federal tyranny - they *go along* with federal tyranny. They do it for the money, and all that money is added to the national debt.

14.

Ohio has already submitted 7 applications for an Article V convention to Congress.¹³

Please rescind them! The John Birch Society has model rescission forms.¹⁴ We're getting close to Congress calling a convention. So *please* rescind Ohio's existing applications *this session!*

15.

Our Constitution filled all Europe with "wonder and veneration".¹⁵ There is nothing wrong with it except for some Amendments we *already got conned* into supporting. James Madison says we should instruct our Delegations to Congress to propose Amendments to repeal the bad ones.

Thank you for allowing me to testify; and I welcome your Questions.

"Publius Huldah" is the pen name of *retired* attorney Joanna Martin. Her website is <https://publiushuldah.wordpress.com/>

¹³ [HERE](#) is an unofficial source for applications filed with Congress.

¹⁴ At [THIS LINK](#), scroll down to "Take Action" and see 4th & 5th bullets down.

¹⁵ [Madison's letter of Nov. 2, 1788 to Turberville.](#)