

Publius Huldah's Written Testimony Against SJR 1

1. With our Constitution of 1787, **we created** a federal government to which we delegated only a tiny handful of powers. Most of the powers delegated over the Country at large are listed – *enumerated* – at Art. I, §8, US Constitution.

This chart illustrates **The Structure** of the federal government and the powers we delegated over the Country at Large: <https://publiushuldah.files.wordpress.com/2013/08/chart-showing-federal-structure-3-1-part-a2.pdf>

2. Our problems arose because of the moral and intellectual decline of our People and because they don't understand our Founding Principles (set forth in the 2nd para of the Declaration of Independence) and because everyone has ignored our Constitution for 100 years. The Constitution doesn't need fixing - it needs to be dusted off, read, and obeyed.

3. The federal government has been able to usurp thousands of powers not delegated because:

- **Americans don't know the short list of enumerated powers delegated to the federal government.** Alexander Hamilton expected *the people* to be “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority” ([Federalist No. 16](#), next to last para).
- **The federal government has *paid* the States to go along with usurpations.** According to the PEW Report, for FY 2014, 35% of Ohio's revenue was from federal funds. What reserved rights and powers were relinquished by the State of Ohio to get these federal funds?
- **Americans don't understand, and don't employ, the “checks” already built into our Constitution to restrain usurpations by the federal government.** The Oath of Office at Article VI, clause 3 requires all persons in federal or State elected or appointed offices to obey *the Constitution*. The Oath is not to obey the Supreme Court, or the President, or Congress. So when any branch of the federal government violates the Constitution, it is the sworn Duty of the other branches of the federal government – as well as all elected and appointed officials in the States – to refuse to go along! ***The Oath is to The Constitution – not to the “government”!***
 - When federal judges usurp power, *a remedy already exists within the Constitution*: Article III, § 1 says federal judges hold their offices “during good Behaviour”. In Federalist No. 81 (8th para), Hamilton said that when federal judges usurp power, the remedy is for Congress to impeach them and remove them from the Bench. But Congress has failed to exercise *this existing*

Constitutional remedy because the people in Congress aren't sufficiently enlightened to know the difference between "a legal exercise and an illegal usurpation of authority" – *or they don't care.*

- When the President issues Executive Orders he has no lawful authority to issue, or otherwise violates the Constitution, a remedy is already built into the Constitution: Impeachment! Alexander Hamilton explained this remedy in Federalist No. 66 (2nd para) and Federalist No. 77 (last para). But Congress has failed to exercise *this existing Constitutional remedy* for the same reason it has failed to impeach usurping federal judges.
- Our Constitution already limits federal spending to the enumerated powers. If you go through the Constitution and highlight the powers delegated to the Legislative and Executive Branches, you will get a complete list of the objects on which Congress is authorized to spend money [*It's a short list* – see [THIS](#).] It is the clear Duty of the President, imposed by his unique Oath of Office (Art. II, §1, last clause), to veto and refuse to execute unconstitutional programs enacted by Congress.
- **Americans don't know that the federal government is merely the "creature" of the Compact the States made with each other (our Constitution of 1787) and is completely subject to its terms.** They don't know that our Framers said that the States, who, *by ratifying the Constitution, created the federal government*, and thus are **the Final Authority** on whether their "creature" (the federal government) has violated the Constitution. That our Framers said this is proved [HERE](#). But States don't employ this remedy of nullification because Americans don't know about it, have lost their courage, and *States don't want to jeopardize their federal funding.*

So today we are being told that when the federal government tramples over our Constitution and usurps thousands of powers not delegated, the only solution is *to amend the Constitution.* Is that not absurd on its face?

4. The COS argument for applying for an Article V convention is *based on a misrepresentation of what George Mason actually said* at the federal convention of 1787 (where our present Constitution was drafted). **Mason didn't say that when the federal government overpowers the States, the remedy is to "amend the Constitution"!**

James Madison's Journal of the Federal Convention of 1787 shows that on [June 11, 1787](#), **George Mason said,**

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]

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 had just spent 4 months helping draft a Constitution which delegates only a handful of powers to the federal government.

When the federal government usurps powers not delegated, they’re ignoring *the existing limitations* on their powers. How could amendments rein them in?

What Mason wanted was a method of proposing amendments - to remedy defects in the Constitution - which didn’t depend on Congress! ¹

¹ I skimmed Madison’s entire Journal, pulled out all references to what became Art. V, and wrote it up. [HERE](#) it is.

Madison opposed an Art. V convention and wanted Art. V to provide that, “The Legislature of the United States, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the Legislatures of the several States, shall propose amendments to this Constitution...” See entry for [Sep. 10, 1787](#) on page 559.

Mason objected to Madison’s wording because, “As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind, would ever be obtained by the people, if the government should become oppressive, as he verily believed would be the case.” See entry for [Sep. 15, 1787](#) on page 629.

There *are* occasions when an amendment would be proper to correct an Act of Congress which is constitutional, but unjust and oppressive. Consider the Tariff Act of 1828: it was authorized by Art. I, §8, cl. 1. But it was unjust and oppressive because it benefited infant industries in the North at the expense of the Southern States. A proper amendment could provide that tariffs may be imposed only to raise revenue to carry out the delegated powers of the federal government; and may not be imposed to benefit domestic industries, or to benefit one part of the Country at the expense of another part. [This is my example, not Mason’s; but illustrates his point: Congress might not agree to propose such an Amendment - so The People should have the right to propose it.]

Mason *didn’t say* that if the federal government engages in a pattern of usurpations and abuses, the remedy is to “amend the Constitution”!

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 slavery]; and **the Delegates knew they couldn’t keep future generations from doing what they 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 consistently opposed the convention method provided by Art. V: See [Federalist No. 49](#) (Feb. 1788); his [letter to Turberville of Nov. 2, 1788](#); his [letter to George Eve of Jan. 2, 1789](#); and [on June 8, 1789](#), he circumvented the application previously submitted by Virginia [on May 5, 1789](#) for an Article V convention by introducing into Congress a proposed “bill of rights”. That is the procedure we have followed ever since.

5. Mr. Meckler’s assurances of how an Article V convention will operate are not supported **a)** by the text of Article V; **b)** by Congress’ preliminary preparations for Article V conventions in the past; **c)** by our history; or **d)** by the new Constitutions which are already drafted or being drafted in preparation for an Article V convention.

a) The text of Article V says Congress “calls” the Convention. The States don’t “call” it – the States “apply” to Congress for *Congress* to “call” it.

Article I, § 8, last clause, delegates to Congress the power to make the laws necessary and proper to carry out powers delegated in the Constitution. So *Congress* has the power to make the laws to carry out its delegated power to “call” the convention. *The States don’t have that power.*²

b) That Congress so construes its powers is shown by the [April 11, 2014 Report of the Congressional Research Service](#): In Congress’ preliminary preparations for Article V conventions in the past:

- Congress has traditionally laid claim to broad responsibilities in connection with a convention, including . . . (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states . . .” (page 4)
- “. . . [In previous bills filed in Congress] [a]pportionment of convention delegates among the states was generally set at the formula provided for the electoral college, with each state assigned a number equal to its combined Senate and House delegations. Some bills included the District of Columbia, assigning it three delegates, but others did not include the federal district. . .” (page 37)
- “. . . A related question concerns vote allocation in an Article V Convention. Would delegates vote per capita, or would each state cast a single vote, during the convention’s deliberations, and on the final question of proposing amendments?...” [then follows a discussion of different views on this *undecided* issue] (page 41)
- “Article V itself is silent on membership in an Article V Convention, so it is arguable that Congress, in summoning a convention to consider amendments, might choose to include the District of Columbia and U.S. territories as either full members at a convention, or possibly as observers. As noted previously, some versions of the Article V Convention procedures bills introduced in the late 20th century did provide for delegates representing the District of Columbia, although not for U.S. territories . . .” (page 42)

² This Chart sets forth who has the power to do what re an Art. V Convention <https://publiushuldah.files.wordpress.com/2016/02/myth-v-fact-chart-caavc1.pdf>

Page 40 of the Report says there doesn't seem to be any "... constitutional prohibition against [U.S.] Senators and Representatives serving as delegates to an Article V Convention..."

So! As the CRS Report states on page 27:

"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."³

c) We have had only one "amendments convention" in our federal history – the federal convention of 1787. This is what happened:

- **Our first Constitution** was the [Articles of Confederation](#). That was our Constitution until our present one was ratified on June 21, 1788. **It is our second Constitution.**
- 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](#) - and wrote *our second Constitution*. Because of *the inherent authority of Delegates to throw off their Form of government and set up a new one*,⁴ it is impossible to stop it from happening at another convention.
- **A third Constitution will have its own new mode of ratification - whatever** mode will ensure approval. Our first Constitution required the Continental Congress & **all** of the then 13 States to ratify Amendments to the Articles of Confederation ([Article XIII, pages 8-9](#)). But our second Constitution, drafted at the *amendments* convention of 1787, provided at Art VII that it would require only 9 States for ratification: 13 States and the Continental Congress needed to ratify *amendments* to *our 1st Constitution*; but only 9 States needed to ratify *our 2nd Constitution*.

³ To paraphrase Nancy Pelosi, "We'll have to get a convention before we know how it is going to operate."

⁴ See footnote 1, next to last para.

d) 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 are being prepared *in preparation for a convention*. Here are some:

- 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. *[All State Legislators will lose their positions!]*
- The [Constitution 2020 movement is funded by George Soros](#) and supported by Eric Holder, Cass Sunstein, and Marxist law professors all over the Country. They want a Progressive Constitution in place by the year 2020. They need a convention to get it!
- **Do you know about the North American Union?** During 2005, George W. Bush met on his ranch in Texas with the Prime Minister of Canada and the President of Mexico, and they sketched it out. Canada, the United States, and Mexico are to merge and a Parliament will be set up over them. The Task Force Report (2005) of the Council for Foreign Relations is [HERE](#) and lays it all out. Heidi Cruz was on the Task Force which wrote the Report. **The United States will need a new Constitution wherein we surrender our sovereignty to the North American Union.** This is what the Establishment Elite want and they need a new Constitution to make it happen.

6. As already noted, a People have the inherent authority, recognized in the 2nd para of our Declaration of Independence, to throw off their Form of government and set up a new one. In our own history, we invoked this Principle in 1776 to throw off the British monarchy; and we invoked it again in 1788 to throw off the Articles of Confederation and the government it created; and with our new Constitution of 1787, we created a new government.

Delegates to an Art V convention today have *the same power* to get rid of our present Constitution and impose a third Constitution which creates a new government. James Madison, Alexander Hamilton, three US Supreme Court Justices, and other eminent Jurists and scholars have said that neither Congress nor the States have any power to control the Delegates to an Article V convention or what they do at such a convention:

James Madison, Father of our Constitution, said in his Nov. 2, 1788 letter to [Turberville](#) that he “trembled” at the prospect of a second convention; and that if there were an Art. 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. 49](#), Madison warned against a convention to correct breaches of the Constitution. He said, the legislators who caused the problem would get themselves seats at the convention and would be in a position to control the outcome of a convention.

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

Former US Supreme Court Justice Arthur Goldberg reminds us in his [Sep. 14, 1986 editorial in The Miami Herald](#) that at the convention of 1787, the delegates *ignored their instructions* from the Continental Congress and instead of proposing amendments to the Articles of Confederation, wrote a new Constitution; and that

“...any attempt at limiting the agenda would almost certainly be unenforceable.”

Former US Supreme Court 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...”

US Supreme Court 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?"

At the link are additional letters and articles by eminent Jurists and scholars to the same effect. <http://leg.mt.gov/bills/2007/Minutes/Senate/Exhibits/jus71a15.pdf>

Please see Judge Van Sickle’s Law Review Article on page 3a of the link pointing out that the plain language of Article V and the history of its drafting demonstrate that the states, like Congress, have no authority to limit the scope of the convention to a single topic; and a state does not have the ability to defeat its application by claiming viability of its application only if the convention accedes to that state’s improper demand that only one topic be addressed at the

convention. The States have no authority to place such an unconstitutional demand in the application.

Any person who does NOT seriously consider these warnings from these eminent authorities is a fool. One must ask, “Is it *possible* that James Madison, Alexander Hamilton, Justice Goldberg, Justice Burger, Justice Scalia, Judge Van Sickle, and the others understood something about the plenipotentiary powers of delegates to an Article V convention which *I* haven’t yet grasped?”

The “faithful delegate” laws passed by some State Legislatures are a joke: States have no power to overrule the 2nd para of our Declaration of Independence. They have no power to control the Delegates, because the Delegates would be the Sovereign Representatives of the People, performing a federal function, who are not under the authority of the States or Congress, and who have the power by means of the new Constitution they propose to ELIMINATE THE STATES and CONGRESS ALTOGETHER! This *is* what will happen if Delegates propose the already prepared Constitution for the Newstates of America, or one like it. And since the Newstates Constitution is ratified by a national referendum, whoever controls the voting machines in States like California will decide whether we get a new Constitution!

7. Ever since the Ford Foundation produced the proposed Constitution for the Newstates of America some 50 years ago, the push for an Article V convention has always been from the top down. Powerful global forces want to move us into the New World Order and they need an Article V convention to get rid of our Constitution so they can get their new one imposed. The big money is, and has always been, behind it. Politicians are literally being bought to support it: <http://www.dallasnews.com/news/texas-legislature/2017/03/01/major-conservatives-piggy-banks-behind-texas-obsession-amending-constitution>⁵ Can all this money also buy Delegates to an Article V convention?

8. Are Americans too ignorant to be free? We will soon find out. If the State Legislatures continue to foolishly pass applications for an Article V convention; and Congress calls a convention, we can be sure that a new Constitution will be imposed. How will you like being in the North American Union? Read the CFR Task Force Report on the NAU!

What will **you** do if, through **your** actions, we are moved into the NAU? Will you say, “I didn’t know!”

And many of us will say, “You were warned; but you wouldn’t listen. **You** did this to us.”

Thank you and I welcome the opportunity to address your Questions:

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

⁵ One properly takes issues with calling these financial backers “conservatives”.