

Testimony of Jim Lewis Opposition to HJR 1
2-9-2022

Thank you for the opportunity to present my arguments against HJR1 – the joint resolution calling for an Article V Constitutional Convention of the States. I teach classes on the Constitution and have been doing so for 11 years. My testimony will be short and hopefully to the point.

Those that want to amend the Constitution of the United States want to do so to make the federal government obey the Constitution???

This makes no sense.

Those who want this Article V convention say it is needed because the federal government is not obeying the Constitution as it is written, so we need to amend it so that we can restrict the powers of the federal government and in essence make them obey the Constitution.

They are saying that the same politicians who are ignoring the Constitution now will suddenly, magically obey new amendments added to it.

Calling an Article V convention to amend the Constitution is dangerous for several reasons.

First, our only precedent for an “amendments convention” is the Federal Convention of 1787 which was called by the Continental Congress “**for the sole and express purpose of revising the Articles of Confederation**”¹ (AOC). But the Delegates ignored Congress’s limiting instructions (and the limiting instructions from their State legislatures) and wrote a new Constitution – the one we have now.

How could the delegates ignore their instructions and write a whole new Constitution you ask?²

In Federalist No. 40, James Madison, who was a Delegate to the Federal “amendments” Convention of 1787, invoked the Declaration of Independence as justification for the Delegates’ ignoring their instructions and writing a new Constitution which created a new Form of Government. In summary Madison wrote:

The sum of what has been here advanced and proved, is that the charge against the convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; **that if they had exceeded their powers**, they were not only warranted but required, as the **confidential servants** of their country, by the circumstances in which they were placed, to exercise the liberty which they assumed, and that finally, if they had violated both their powers, and their obligations in proposing a constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America.

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When delegates to these conventions are seated, they assume plenipotentiary powers, they are acting for the PEOPLE they represent, not the States or the Congress. They may do whatever they deem best for the people irregardless of any instructions they may have been sent with to the convention.³

James Madison and **Alexander Hamilton** were Delegates to the “amendments convention” of 1787 and had personal knowledge that Delegates can’t be controlled. That’s why **Madison trembled** at the prospect of an Article V convention; **Hamilton dreaded** one; and future **Chief Justice John Jay** said another convention would run “**extravagant risques.**” ⁴

Secondly, Amendments to the Constitution were meant to address defects found in the Constitution’s organization, not to limit the Federal government’s power.

In Federalist No. 85 (13th para), Hamilton said useful amendments would address the “organization of the government, not...the mass of its powers”

In Federalist No. 49, James Madison shows a convention is neither proper nor effective to restrain government when it encroaches.

Remember, our Constitution is one of enumerated or listed powers only. Here is an excerpt from James Madison’s speech in the Virginia Ratifying Convention, June 6, 1788

“The powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.”

The Constitution limits Congresses delegated powers mainly to those listed in Article 1, Section 8 of the Constitution. If the federal government tries to exercise a power not on the list and passes a law based on that power then as Alexander Hamilton said in Federalist Paper #78 that legislative act is not valid.

So what do we do about federal overreach? The founder’s NEVER said to amend the Constitution to curb federal overreach. This is what they said.

“the **State Legislatures** will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than any other power on earth can do; and the greatest opponents to a Federal Government admit the **State Legislatures** to be sure guardians of the people's liberty...”

~ James Madison Introduction to the Bill of Rights June, 1789

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“it will be upon thirteen **legislatures**, completely organized, possessed of the confidence of the people, and having the means, as well as inclination, successfully to oppose it.”

~ Theophilus Parsons Massachusetts Ratifying
Convention 1788

“...It may safely be received as an axiom in our political system, that the **State governments** will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority... “

~ Alexander Hamilton Federalist No.28

Our Constitution is not broken, it is not being followed.

The founders did not recommend amending the Constitution to rein in the federal government.

I think it would be wise to heed their counsel today.

Exhibits

1 - Exhibit 1 – From the Library of Congress, select pages of Farrand’s Records showing the instructions from the Articles of Confederation Congress and the States to their respective delegations showing they were limited but did not follow the limitations

2 – Exhibit 2 – Why the States Should Not Ask For an Article V Convention

3 – Exhibit 3 - Why “Faithful Delegate” Laws Can’t Control Delegates

4 – Exhibit 4 – Brilliant Men