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**MARK LEVIN REFUTED**

By Publius Huldah  
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What Mark Levin says in "The Liberty Amendments" in support of an Article V convention is **not true**.<sup>[1]</sup>

On one side of this controversy are those who want to restore our Constitution by requiring federal and State officials to obey the Constitution we have; or by electing ones who will. **We** show that the Oath of Office at Art. VI, last clause, *requires* federal<sup>[2]</sup> and state officials to *support* the Constitution. This requires them to refuse to submit to - *to nullify* - acts of the federal government which violate the Constitution. *This* is how they "support" the Constitution!

We note that the Oath of Office requires obedience *to the Constitution alone*. The Oath does not require obedience to persons, to any agency of the federal government, or to any federal court.

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We understand that resistance to tyranny is **a natural right – and it is a duty**.

We have read *original writings of our Framers* and know what our Framers actually told the States to do when the federal government violates the Constitution: *Nullification* of the unlawful act is among the first of the recommended remedies—not one of which is "amendment of the Constitution."<sup>[3]</sup>

It is already proved in "[James Madison Rebukes Nullification Deniers](#)" that our Framers endorsed nullification by States of unconstitutional acts of the federal government. Thomas Jefferson and James Madison summed it up as follows:

“...when powers are assumed which have not been delegated, a **nullification of the act**”<sup>[4]</sup> is “**the natural right, which all admit to be a remedy against in supportable oppression**...”<sup>[5]</sup>

The claims of the nullification deniers have been proven to be false. To persist in those claims - or to do as Levin seems to do and *ignore the remedy of nullification* - is intellectually and morally indefensible. So why don't they

apologize to the public and recant their errors?

Instead, they continue to tell us that what we need is a “convention of the States” (which Levin and his mentors insist is provided by **Article V of the Constitution**) to propose amendments to the Constitution, and that *this* is the only way out.

**Yes, they tell us, the only way to deal with a federal government which consistently ignores and tramples over the Constitution is .... to amend the Constitution!**

Do you see how silly that is?

**Levin’s Amendments**

Levin starts his book by saying how bad things are and how the federal government has trampled and mangled the Constitution. *Those* pages are true. And they serve the purpose of making readers believe that Levin is “on our side.” And because of that, many are induced to lay aside their critical thinking skills and accept on trust what Levin tells them. That is a deadly mistake.

Levin’s amendments actually *gut* our Constitution. Most *increase* the powers of the federal government by making lawful what is now unconstitutional because it is not an “enumerated power.” Others put a band-aid on a problem without solving the problem. The amendments pertaining to “overrides” undermine the Constitution as the Objective Standard of what is lawful and what is not – and substitute majority vote therefore.[6]

**A Defective Constitution? Or a Disobedient Federal Government?**

We must distinguish between *defects within* a Constitution, and a government’s refusal to obey the Constitution to which it is subject. **These are different problems calling for different remedies.**

There were defects in the Constitution produced by the Federal Convention of 1787, such as provisions permitting slavery. Provision for amendment must be made to repair such defects.[7]

But our problem now is a disobedient federal government. That calls for different remedies – and our Framers spelled them out.[3]

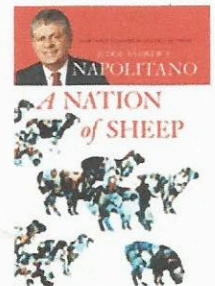
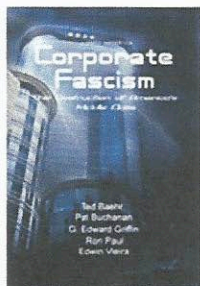
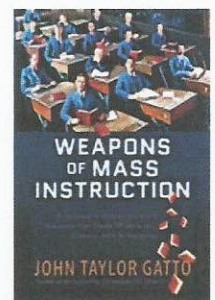
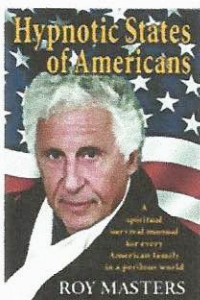
**It is idiotic to assert that you can rein in a federal government which ignores the Constitution by amending the Constitution! Yet, that is “The Levin Plan.”**

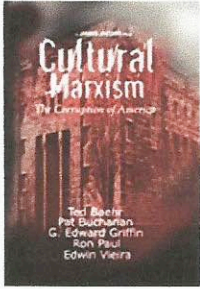
Now let us read Article:

**What Article V Really Says**

**“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...”** [boldface mine]

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Note that **Congress “calls” the Convention. The States don’t “call” it – all they can do is apply to Congress for Congress to call it.**

There are many questions about Article V conventions; and James Madison raised them on two occasions at [the Federal Convention of 1787:\[8\]](#)

- On September 10, Madison remarked on the vagueness of the term, “call a Convention for the purpose”: **How was a Convention to be formed?** By what rule decide? What the force of its acts?
- On September 15, Madison commented on this again, and said that difficulties might arise as to the form, the quorum, etc., which in constitutional regulations ought to be avoided when possible.



Mr. Madison saw that these questions are not addressed by Article V. Eagle Forum has also raised this issue in [Twenty Questions about a constitutional convention.](#)

**But since Congress “calls” it, Congress has the power to appoint whomsoever they will as delegates;[9] and nothing in the Constitution says they can’t do this.**

Now note that Art. V provides for two conventions:

- The first is the one called by Congress to propose amendments.
- After amendments are proposed, Art. V empowers Congress to select the mode of ratification: Shall the State Legislatures be the body to ratify or reject? Or shall each State convene a convention *for the purposes of ratifying or rejecting the proposed amendments?*

The only convention Art. V authorizes States to convene is one within their respective borders to ratify or reject an amendment proposed by Congress or by the convention Congress called.

#### What Levin Claims Article V Says

As you see, Art. V makes no provision for a “state convention process” where the States control the convention.

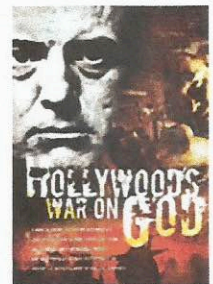
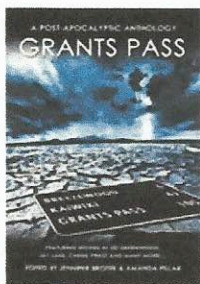
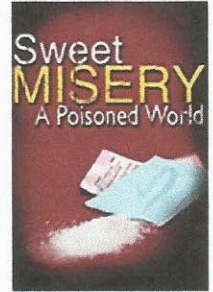
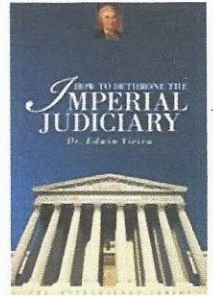
Yet Levin makes *the bizarre claims* (cp 16-17) that Art. V authorizes this “state convention process”; and that the convention called by Congress pursuant to Art. V is really:

- A “creature ...of the state legislatures”;
- That during ratification of our Constitution, the Founders always talked about conventions for proposing amendments as representing the States; and
- That the state legislatures determine the method for selection of their delegates; and the subject matter of the convention.

Does Levin cite any authority for these claims? Words of our Framers, perhaps?

No! He cites an article written by former law professor, Robert G. Natelson, who Levin says is an “expert” on this “state convention process” (p16, notes 28 & 29).

[Here is the article by Natelson](#) Levin cites as “authority” for his claims. Note that:



- Natelson announces that he will no longer call what he wants a “constitutional convention.” Henceforth, he will call it a “convention for proposing amendments,” an “Article V Convention,” an “amendments convention” or a “convention of the states.”<sup>[10]</sup>
- Natelson doesn’t cite any authority *from our Framers* for the claims Levin regurgitates in his book. Instead, Natelson cites *other law review articles*; and
- Natelson claims it was “custom” at the time of our Founding for States to have all these powers in conventions.

### Custom?

Natelson’s article is no authority at all. And even if he had proven that the “custom” at the time of our Framing was for States to have all these powers in conventions [someone really should have told James Madison about this “custom”]; what is there to make the Congress of today follow **this 18th century “custom”** when Congress “calls” the convention under Art. V?

Levin also says he knows Congress’ role in the “state application process” is minimal and ministerial because:

- The Framers and ratifiers adopted this “state convention process” for the purpose of establishing an alternative to the congressionally initiated amendment process; and
- Alexander Hamilton said so in Federalist Paper No. 85.

Here, Levin commits the logical fallacy of “[circular reasoning](#)”: We know, Levin argues, that Congress’ role in the state application process is “minimal and ministerial” because the Framers adopted this as an alternative to the method where Congress proposes the amendments directly. *Do you see?*

Levin next claims that in Federalist No. 85, Hamilton said, respecting an Art. V convention, that Congress has “no option,” “will be *obliged*,” and that “nothing in this particular is left to the discretion of that body” (p 16-17).

Levin *misrepresents* what Hamilton says. In [Federalist No. 85](#), Hamilton merely says that Congress must call a convention when two-thirds of the States apply for it:

“... By the fifth article of the plan, the Congress will be obliged ... on the application of the legislatures of two thirds of the States ... to call a convention for proposing amendments ... The words of this article are peremptory. The Congress “shall call a convention.” Nothing in this particular is left to the discretion of that body. ...”

Levin wrongly extends Congress’ lack of discretion on the issue of “to call or not to call” **to what follows the “call”**: How the convention is to be formed, the appointment of delegates, the other questions raised by Madison on September 10 & 15, 1787, and Eagle Forum’s Twenty Questions.



I have never seen any of the Framers say that Congress has no power over *what follows* Congress’ “call”; and Levin doesn’t produce evidence that any of them ever did.

## **Levin misrepresents what happened at the Federal Convention of 1787.**

[This 4 page chart](#) lays out what really happened at that Convention respecting Article V.

To introduce his discussion of that Convention, Levin makes the following fanciful claims:

“The Constitution itself provides the means for restoring self-government and averting societal catastrophe (or, in the case of societal collapse, resurrecting the civil society) in Article V.” (p 12)

“The fact is that Article V expressly grants state legislatures significant authority to re balance the constitutional structure for the purpose of restoring our founding principles should the federal government shed its limitations, abandon its original purpose, and grow too powerful...” (p12-13)

Of course, Article V says no such thing!

Levin then quotes Edmund Randolph & George Mason, delegates to the Convention, as support for his claims respecting the purpose of Art. V.

**Mr. Randolph & Col. Mason wanted a method of amendment Congress had nothing to do with.** This became an issue at the Convention; **Randolph & Mason held *the minority view*.**

On September 15, 1787, Randolph & Mason said they would not sign the Constitution unless Art. V were amended to require another general convention to approve amendments proposed by what *they* called “state conventions.”

So they moved that the following be added to Art. V:

“that amendments to the plan [Constitution] might be offered by the State conventions, which should be submitted to, and finally decided on by, another general convention.”

**This was voted on and all the States answered, “No.”**

So Randolph & Mason - on whom Levin relies to support his fanciful claim that the purpose of Art. V is for **the States** to hold conventions to amend the Constitution when the federal government gets out of line - **didn't sign the Constitution because Art. V didn't provide for the “state conventions” and the “general convention” they demanded; and Congress retained its major role in the amendment process.**

**Do you see? Levin and his mentors are trying to resurrect Randolph's & Mason's plan of “state conventions to propose amendments” which was REJECTED by the Federal Convention of 1787!**

**Our Framers' Concerns about “Conventions”**

Now let us examine the “convention for proposing amendments” which **Congress calls** pursuant to Art. V; the “runaway” the Federal Convention of 1787 turned into, and “general conventions.”

We saw that **James Madison** raised concerns on [September 10 & 15, 1787](#), about **Art. V conventions called by Congress**, because of questions

respecting **how was a Convention to be formed, by what rule, & the procedures** of such conventions.

Yet Levin claims that in Federalist No. 43, Madison shows he considered an Art. V convention as prudent a method of amendment as having Congress propose the amendments (p 15).

*Madison does not say that in Federalist No. 43!*<sup>[11]</sup>

Second, Levin's claim is contradicted by [Madison's words in his letter of November 2, 1788 to G. L. Turberville](#) on the same subject.

In his letter to Turberville, Madison speaks, with reference to modes of originating amendments, of both a "general convention" and an "Article V Convention," on the one hand; and, on the other hand, "the origination of amendments in Congress."

**Madison advises that amendments be originated in Congress - not in an Art. V Convention, for the various reasons set forth in his letter; and that:**

"2. A ["general"] Convention cannot be called without the unanimous consent of the parties who are to be bound by it, if first principles are to be recurred to; or without the previous application of - of the State legislatures, if the forms of the Constitution [Art. V] are to be pursued. **The difficulties in either of these cases must evidently be much greater than will attend the origination of amendments in Congress, which may be done at the instance of a single State Legislature, or even without a single instruction on the subject...**" [boldface mine]

Do you see? Madison advises that when States want amendments, they instruct their Congressional delegation to pursue it. **This** is the best way for the States to "originate amendments"!

**That** is the mode Madison strongly recommended; **that** is the mode we have followed. On [May 5, 1789, Rep. Bland](#) (pages 258-261) introduced into Congress the petition from the State of Virginia for an Art. V Convention to propose amendments. But [on June 8, 1789, Madison](#) (pages 448-460) introduced 12 proposed amendments **for Congress to propose to the State Legislatures**. And on [September 24, 1789](#), the House & Senate having agreed on the wording of the proposed 12 amendments; the House requested the President to transmit them to the States for ratification.

If we cannot elect to Congress people who will follow the instructions of their State Legislatures & constituents and propose those amendments which actually need to be made; how can we trust **Congress to "call" a convention?**

And as to **another "general" or "runaway" convention**, perish the thought!:

On [September 15, 1787](#), in response to Randolph's & Mason's demands for a "**general convention**" to decide on amendments, Mr. Pinckney pointed out that nothing but confusion and contrariety will spring from calling forth the deliberations and amendments of the different States, on the subject of government at large. States will never agree in their plans; and the deputies to **a second convention**, coming together under the discordant impressions of their constituents, will never agree. "Conventions are serious

things, and ought not to be repeated.”

In [Federalist No. 85](#) (9thpara), **Hamilton** spoke of:

“...the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded...”

**James Madison** warned against another general convention in [his letter to Turberville](#):

“3... an election into it would be courted by the most **violent partisans** on both sides; it ... would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain **individuals of insidious views**, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a **dangerous opportunity of sapping the very foundations of the fabric**. ... it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by **the first Convention**, which assembled under every propitious circumstance, **I should tremble for the result of a Second, meeting in the present temper of America...**” [boldface mine]

Do we have “**violent partizans**,” “**individuals of insidious views**,” and any who would **exploit an opportunity to sap “the very foundations of the fabric”** today? Yes, we do. They are in Congress, the executive branch, the federal Courts, “conservative” circles – and they are invading our Country at a furious rate. And what now is the “present temper of America”?



**Why a “Runaway” Article V Convention is a Real Possibility and a Grave Danger.**

Pursuant to the authority granted by Article XIII of [The Articles of Confederation](#), the **Continental Congress Resolved** on [February 21, 1787](#) (p 71-74):

“**Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation** and reporting to Congress and the several legislatures such alterations and provisions there in as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union.” [boldface mine]

So! The Convention of 1787 was called by the Continental Congress for the “sole and express purpose” of proposing revisions to the Articles of Confederation.

But the *delegates* ignored these limitations and *wrote anew Constitution*.<sup>[12]</sup>

As to *delegates*, the Continental Congress expressly directed the States to appoint the delegates.

But there is no requirement in Art. V of *our Constitution* that States be permitted to appoint delegates; and no “custom” from the era of the Continental Congress can bind the Congress of today.

So if Congress of today were to call an Art. V convention, Congress would most likely get delegates who would do what Congress wants.

And will Congress appoint Islamists as delegates? La Raza Mexicans? Other special interest groups? *How can Congress be prevented from appointing whomsoever they will?*

And if the delegates duly appointed by Congress, and acting under the Authority of Congress, come up with a new Constitution, will the new Constitution outlaw Christianity? (Obama is outlawing it in the military, and Congress isn't doing a thing about it). Will it institute Sharia? Will it disarm the American People? Will it follow the UN Model where “rights” are privileges granted and withdrawn by the State? Will it outlaw private property?

And this new Constitution will have its own mode of ratification. This new mode of ratification can be whatever the delegates want – a majority vote in Congress, perhaps?

There is no way to stop them from “running away” and writing a new Constitution with its own mode of ratification. They can cram a new Constitution down your throat and you won't be able to do a thing about it.

On page 15, Levin commits a formal fallacy (an argument defective as to form) when he attempts to prove that an Art. V convention can't possibly turn into a “runaway.” Here is **the form** of his argument:

1. He was originally skeptical of “the state convention process” because it could turn into a “**runaway**.”
2. Art. V says a proposed **amendment** has no effect unless ratified by ¾ of the States.
3. Therefore, the “state convention process” can't result in a “hijack of the Constitution” [**runaway**].

His conclusion (3) is a form of non sequitur – it doesn't follow from the premises (1 & 2). And our concern is not with amendments – those are subject to approval by three-fourths of the States. Our concern is that the convention will “runaway” and write a new Constitution with a new mode of ratification which does not require approval by three-fourths of the States. Do you see?

### **Conclusion**

Few of us can name even 5 of the enumerated powers of Congress and 4 of the enumerated powers of the President. Why? Because we never bothered to learn our Constitution. Alexander Hamilton expected THE PEOPLE to be “the natural guardians of the Constitution.” But you can't “guard” the Constitution if you don't trouble yourself to learn it.

Since we never bothered to learn the Constitution, we elected politicians who also hadn't bothered to learn it. So they ignored the Constitution when they assumed office.



This is why, after more than 100 years of electing politicians who ignore the Constitution, we are now under tyranny and headed for disaster.



Do we now want a way out which allows us to avoid confronting our own *personal failures* as Guardians of the Constitution? When charlatans who “sound good” offer us a scapegoat, do we jump on it? Do we chant, “The Constitution is broken! Fix the Constitution!” And shall we pretend that we too know all about how to amend a Constitution most of us never bothered to read?

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Our Constitution depended on our knowing our Constitution and in electing representatives who would obey it - and getting rid of them when they didn't.

James Madison said on [June 20, 1788 at the Virginia Ratifying Convention](#):

“.... But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks—no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.”

We are in a “wretched situation” because we lost our virtue. Renounce handouts and pride in pretended “knowingness.” Learn the enumerated powers of Congress and the President. [This chart will get you started](#). Learn about [nullification](#). Form delegations and go to your State Legislators, educate them and demand they start nullifying unconstitutional acts of the federal government. [States should nullify obamacare!](#) If Legislators aren't willing to renounce federal funding, recall or defeat them!

#### Endnotes:

1. We must stop believing whatever we are told. We must **demand proof** by original source documents, **and think** for ourselves.
2. The President's Oath is set forth at Art. II, §1, last clause.
3. These are among the remedies our Framers advised when the federal government usurps power:

-In [Federalist No. 44](#) (12th para from end), Madison say **select more faithful representatives!**:

“... In the first instance, the success of the usurpation will depend

on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers..."

But we keep reelecting the same sorry people because *we know their names and they are in our party.*

-States should **nullify unconstitutional acts of the federal government!** This is proven with links to original sources in [James Madison Rebukes Nullification Deniers](#).

-In [Federalist No. 46](#) (last half), Madison shows how individual States or several States carry out various degrees of resistance to the federal government's unconstitutional encroachments. See also: [What Should States Do When The Federal Government Usurps Power?](#)

-In [Federalist No. 28](#) (last 5 paras), Hamilton says:

"If the representatives of the people betray their constituents, there is then no resource left but in the exertion of *that original right of self-defense* which is paramount to all positive forms of government, and which against the usurpations of the national rulers, may be exerted with infinitely better prospect of success ..." [italics mine]

"...The obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them..."

"It may safely be received as an axiom ...that the State governments will ... afford complete security against invasions of the public liberty by the national authority.... The legislatures ... can at once adopt a regular plan of opposition..."

"...When will the time arrive that the federal government can raise and maintain an army capable of erecting a despotism over the great body of the people ... who are in a situation, through the medium of their State governments, to take measures for their own defense..."

4. Thomas Jefferson, [The Kentucky Resolutions of 1798](#), 8th Resolution.

5. James Madison, [Notes on Nullification \(1834\)](#). The quote is near the end. Use "find" function.

6. Later, I will show why Levin's proposed amendments gut our Constitution. Meanwhile, you read the Constitution, learn the [enumerated powers of Congress](#), and see if you can figure out what is wrong with the proposed amendments. Use your own head and trust no one.

7. Alexander Hamilton said on [Sep. 10, 1787](#) that an easy mode should be established for fixing defects which will probably appear in the new system ... the National Legislature will be the first to perceive, and will be most sensible to, the necessity of amendments...

8. What happened at the Federal Convention of 1787 respecting Art. V is laid out in [this 4 page chart](#).

9. "Citizens for Self-Governance," [headed by the Michael Farris](#) who is pushing the "parental rights amendment, represents that the "Convention of the States" will soon:

[“...open the application process for leadership positions across the country. Consider applying to be a District Captain, Legislative Liaison, or State Director...”](#)

thereby making the gullible believe that they can be a “player” in this “Convention of the States.”

10. Phyllis [Schlafly](#), Kelleigh [Nelson](#), Henry [Lamb](#) and others have done such a magnificent job of warning The People of the dangers of a constitutional convention, that many now understand that such is likely to result in anew Constitution - with its own method of ratification - being forced on us.

So! Proponents now call it by another name: “Convention of the States” or “state convention process.” Is the purpose of the name change to deceive you? To make you think it is something “different” from **the Art. V convention Congress calls?**

11. [In Federalist No. 43](#), Madison comments on Art. V:

“8...That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other...”

12. We were fortunate (except for slavery) with the Constitution of 1787, even though the Federal Convention was a “runaway”. Look who was there!: George Washington, James Madison, Alexander Hamilton, and Benjamin Franklin; and they weren’t drowned out by subversives. They would be today.

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