



## Mark Levin's "liberty" amendments: legalizing tyranny

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For 100 years, the federal government has usurped powers not delegated to it in our Constitution.

*What should we do about it?* Should we **reclaim** our existing Constitution and put an end to the usurpations?

Or should we "modernize" the Constitution by delegating to the federal government the powers it has usurped – so as to legalize what is now unconstitutional?

Mark Levin begins "The Liberty Amendments" by saying he doesn't believe the Constitution requires "modernization through amendments." But he then proposes a series of amendments, six of which modernize our Constitution to delegate to the federal government **most of the powers it has usurped during the last 100 years.**

And each of his six amendments does the opposite of what its title promises. I'll show you. [1]

### **Levin's amendment to "limit the federal bureaucracy" [p 99-100 of his book]**

[George Washington's cabinet](#) had four members: Secretary of State, Secretary of War, Secretary of the Treasury, and Attorney General. Those functions are authorized by our Constitution. [2]

But today there are numerous agencies in the Executive Branch of the federal government. Where is the constitutional authority? What Article, Section, and Clause authorizes the Departments of Agriculture, Education, Energy, Labor, Transportation, HHS, HUD, DHS, EPA, SBA, etc., etc., etc.?

There is no constitutional authority! Accordingly, all these agencies are unconstitutional as outside the scope of the powers delegated in our Constitution.

Well then, a person who wanted to "limit the federal bureaucracy" would demand that these agencies be closed, and their functions returned to the States and The People, right?

But Mark Levin doesn't do this. Section 1 of his amendment **legalizes** all these agencies. It says:

"All federal departments and agencies shall expire if said departments and agencies are not individually reauthorized in stand-alone reauthorization bills every three years by a majority vote of the House of Representatives and the Senate."

As long as Congress periodically "reauthorizes" the agencies – they remain.

**Levin's amendment thus changes the constitutional standard for whether an executive agency lawfully exists from whether it carries out an enumerated power [as in Washington's Cabinet] to whatever the President wants and Congress agrees to. Do you see?**

Now look at Section 2 of Levin's amendment to "limit the federal bureaucracy." It says:

"All Executive Branch regulations exceeding an economic burden of \$100 million, as determined jointly by the Government Accountability Office and the Congressional Budget Office, shall be submitted to a permanent Joint Committee of Congress, hereafter the Congressional Delegation Oversight Committee, for review and approval prior to their implementation."

Article I, §1, of our Constitution says **only Congress may make laws.** <sup>[3]</sup> But since Woodrow Wilson, executive agencies in the federal government have been churning out regulations which govern all aspects of our lives. These comprise the now gigantic Code of Federal Regulations.

**All these regulations are unconstitutional as in violation of Art. I, §1!** <sup>[4]</sup>

Well then, one would expect that a person who wanted to "limit the federal bureaucracy" would demand the repeal of existing regulations and an end to all future rulemaking, right?

Not Levin! Section 2 of his amendment **legalizes** all existing regulations *and* the rule making process. Levin's "fix" is merely to form a congressional committee to review certain regulations before they are imposed on the American People.

And so, federal executive agencies will continue to churn out millions of pages of regulations – **but now, they will be constitutional because Levin's amendment makes it all lawful.**

Do you see? Levin's amendment **legalizes** the status quo and does the opposite of what he claims.

### **Levin's amendment "to limit federal spending" (p 73 -74)**

Our Constitution limits federal spending to **the enumerated powers.** If you go through the Constitution and highlight the powers delegated to Congress or the President, you will have a complete list of the objects on which Congress may lawfully spend money. **That is how our Framers controlled federal spending.** It is **the enumerated powers** which limit spending – not the amount of revenue the federal government generates or the size of the GDP. Do you see?

The reason we have a crushing debt is because for 100 years, the federal government has ignored the limits – already set forth in the Constitution – on its spending.

Well then, a person who wanted to "limit federal spending" would demand that Congress begin to downsize the federal government and restrict spending to the enumerated powers, right?

But Levin doesn't do this. Section 1 of his amendment **legalizes** all the spending which is now unconstitutional as outside the enumerated powers. It says:

"Congress shall adopt a preliminary fiscal year budget no later than the first Monday in May for the following fiscal year, and submit said budget to the President for consideration."

Levin's amendment thus legalizes the unconstitutional status quo where the President and Congress adopt a "budget" and spend money on *whatever they put in the budget!* Levin would permit Congress and the President to **lawfully** spend money on *whatever they want* – spending which is now unlawful because our Constitution doesn't authorize it.

Furthermore, Levin's amendment does **nothing** to control federal spending. While Sections 3 & 4 of his amendment *pretend* to limit spending to revenues or to a percentage of the GDP; Sections 6 & 7 permit Congress to suspend the spending limit and continue to raise the national debt. <sup>[5]</sup>

#### Levin's amendment "to limit federal taxing" (p 75)

Our Constitution doesn't permit the federal government to levy taxes so that Congress and the President will have the funds to spend on **whatever they want**.

Congress may **lawfully** levy taxes **only** to raise the funds to carry out the enumerated powers. Article I, §8, clauses 1 & 2 say:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common defense and general Welfare of the United States ..." [and] "To borrow Money on the credit of the United States;"

**Immediately after** clauses 1 & 2 follows the list of enumerated powers we delegated to Congress for the Country at Large. <sup>[6]</sup>

Add to this short list of **enumerated powers**, the "housekeeping powers" itemized elsewhere in the Constitution (e.g., the census); the salaries authorized by Art. I, §6, cl. 1; Art. II, §1, next to last clause; Art. III, §1, cl. 1, and others on the civil list; **and you see the purposes for which Congress is authorized to levy and collect taxes, borrow money, and spend money, for the Country at Large.** <sup>[7]</sup>

**So! Congress should not be levying taxes except to generate revenue for its constitutional functions.** If Congress restricted its spending to those few powers delegated in the Constitution, the federal government would need very little money from us.

One would expect that a person who wants to "limit federal taxation" would demand that the federal

government stop taxing to raise money to spend on unconstitutional purposes, right?

Not Levin! While his amendment limits the federal income tax to 15% of income – it institutionalizes the present practice where Congress lays & collects taxes for any purposes whatsoever. <sup>[8]</sup>

### **Levin's amendment "to protect private property" (p 137)**

**The federal government** *has no lawful authority* to own land for any purpose other than those enumerated in the Constitution: Article I, §8, next to last clause, permits the federal government to own the District of Columbia [which was not to exceed "ten Miles square"], and Places purchased with the Consent of the State legislatures for the erection of forts, dock-Yards, and other needful buildings (e.g., federal courthouses, post offices) to carry out the enumerated powers.

The federal government *has no lawful authority* to own national parks, grazing areas, forests, and such. <sup>[9]</sup>

And the federal government *has no lawful authority* to restrict peoples' use of their own land. Nowhere in our Constitution did we delegate that power to the federal government! Accordingly, all federal laws and regulations (EPA, etc.) which pretend to restrict an owner's use of his land are unconstitutional as outside the scope of powers delegated.

Furthermore, **the States' and local governments'** powers of eminent domain and other "takings" of private land are addressed in *their own* State Constitutions and laws. *This is NOT a federal issue!*

But Levin's amendment "to protect private property" changes all of the above. It says:

"When any governmental entity acts not to secure a private property right against actions that injure property owners, but to take property for a public use from a property owner by actual seizure or through regulation, which taking results in a market value reduction of the property, interference with the use of the property, or a financial loss to the property owner exceeding \$10,000, the government shall compensate fully said property owner for such losses."

Levin's amendment:

***Changes the constitutional standard for federal ownership of lands from carrying out an enumerated power to whatever someone in the federal government deems a "public use" [which can be anything];***

*Legalizes* what are now unconstitutional holdings of lands by the federal government – such as grazing lands;

*Legalizes* "takings" by regulation – restrictions via regulations on the use of private lands – by all levels of government;

*Takes* from the States and The People their retained powers over eminent domain and regulatory takings, and makes it a federal issue under the control of the federal government; <sup>[10]</sup> and

Provides that *as long as a taking does not reduce the value of the property by more than \$10,000, the governments don't have to pay the property owner one red cent*. So! If your local or State or federal government takes some of your land, or restrict its use by regulation, Levin's amendment requires compensation to be paid if the "taking" exceeds \$10,000. If the government decides that your loss is less than \$10,000, **you eat the loss. The amendment legalizes government theft of private property.**

### Levin's amendment "to protect the vote" (p 183-184)

Before our Constitution was ratified, the States qualified & registered voters. Qualifications were set forth in their State Constitutions, and requirements differed from State to State. **This power was expressly retained by the States with Art. I, §2, cl. 1, U.S. Constitution.** <sup>[11]</sup>

The four voting amendments reduced this retained power of the States, and delegated *to the federal government* power to stop States from denying suffrage to citizens *on account of race* (15th Amendment), **sex** (19th Amendment), **failure to pay a tax** (24th Amendment), or **age** for citizens eighteen years of age or older (26th Amendment).

Except as restricted by these four amendments, the States retain their pre-existing power to set qualifications for registering citizens to vote, *as long as they do not deny it on account of race, sex, failure to pay a tax, or age for those 18 years or more*. States remain free to deny registration **on other grounds** – such as conviction of a felony or illiteracy. And of course, States retained power to restrict voting to citizens!

But the retained powers of the States to set voter qualifications for registration were diminished far beyond the scope of the amendments, due to usurpations by the federal government, and **because the States forgot that they retained at Art. I, §2, cl. 1 most of their original power to qualify & register voters.**

In [Arizona's Proposition 200: What The Constitution Really Says About Voter Qualifications & Exposing The "Elections Clause" Argument](#), I show how the federal government infringed upon the States' retained powers over voter qualifications & registration; and how the two judges in that case **wrongly ruled** that Arizona could not require applicants for registration to provide proof of citizenship!

So! What should we do about non-citizens voting? Here is a novel idea: **The States should man up and reclaim their powers retained by Art. I, §2, cl. 1**; tell Eric Holder to take a hike; require all currently registered voters to provide proof of citizenship; and refuse to register new voters unless they provide proof of citizenship. Enforce the Constitution we have!

But Section 1 of Levin's amendment "to protect the vote" says:

"Citizens in every state, territory, and the District of Columbia shall produce valid photographic identification documents demonstrating evidence of their citizenship, issued by the state government for the state in which the voter resides, as a requirement for registering to vote and voting in any primary or general election for President, Vice President, and members of Congress."

Levin's amendment (it has 5 Sections) **rewards** the federal government for unlawfully forbidding States from requiring applicants to prove they are citizens, by transferring more power over voter qualifications &

registration to the federal government. <sup>[10]</sup>

But Levin's amendment does even more harm than vesting in the federal government a power it already usurped – it ushers in a **national ID card. Who thinks the feds won't dictate the contents of the card and keep copies?** [Do you really think a national ID card is a great idea?]

To add insult to injury, Levin's amendment doesn't even prohibit non-citizens from voting – it merely requires **citizens** to get an ID card before **they** can register to vote. Non-citizens are not required to get ID cards. The supreme Court (which will now *lawfully* have judicial power over this issue) will decide whether aliens can vote.

### Levin's amendment "to promote free enterprise" (p 117)

In [Federalist No. 22](#) (4th para) and [Federalist No. 42](#) (11th & 12th paras), Hamilton & Madison explain the original intent of the "interstate commerce" clause: It is to prohibit States from imposing tolls & tariffs on articles of merchandize as they are transported through the States for purposes of buying and selling. Until the mid-1930's, this was widely understood. Here is [a full proof](#) of the original intent of that clause and the story of how the supreme Court usurped power over interstate commerce.

**The original intent of that clause is still the supreme Law of the Land!** <sup>[12]</sup> So the States must *man up* and enforce that original intent. They must ignore – nullify – all pretended federal laws, regulations, and judicial opinions which are contrary to that original intent.

Levin's amendment "to promote free enterprise" says:

"SECTION 1: Congress' power to regulate Commerce is not a plenary grant of power to the federal government to regulate and control economic activity but a specific grant of power limited to preventing states from impeding commerce and trade between and among the several states."

"SECTION 2: Congress's power to regulate Commerce does not extend to activity within a state, whether or not it affects interstate commerce; nor does it extend to compelling an individual or entity to participate in commerce or trade."

Section 1 broadens the powers of the federal government **from** prohibiting States from imposing tolls & tariffs on articles of merchandize as they are transported through the States for purposes of buying and selling, **to** prohibiting the States from doing **anything** which "impedes" commerce and trade between and among the States.

Many things can be said to "impede" commerce and trade. And who will decide what "impedes" and what doesn't "impede"? Five judges on the supreme Court.

Section 2 mentions two instances where Congress' power to regulate Commerce does **not** extend. This is dangerous because of the legal maxim, [Expressio Unius Est Exclusio Alterius](#) (the expression of one thing is the exclusion of the other).

Accordingly, Congress' power to regulate commerce would extend to other instances. Which ones? We don't know – the supreme Court will decide – on a case by case basis.

### Conclusion

Levin's amendments legalize – make constitutional – the very abuses they purport to correct, nullify the natural rights of the people, and **fundamentally change the constitutional design**.

Even though our Constitution is not being enforced, it still declares this federal government **lawless!** The true rule of law is still on our side, but not for much longer if we foolishly allow our Constitution to be re-written.

### NOTES:

[1] Telling the Truth about a person's proposals isn't "demonizing" him. People *angrily* reject valid criticism of Levin's proposals *because* they have made an idol of him. If their loyalty were to Truth – instead of to their idol – they would want to be set straight.

[2] Article II, §2, and:

Secretary of State: Art. I, §8, cl. 3

Secretary of Treasury: Art. I, §2, cl. 3; Art. I, §8, cl. 1; Art. I, §9, cl. 4-7; Art. VI, cl. 1

Secretary of War: Art. I, §8, clauses 11-14

Attorney General: Art. I, §8, cl. 6, 10 & 17; Art. III, §§2 & 3; Art. IV, §2, cl.2

[3] Article I, §1, says: "**All legislative Powers herein granted shall be vested in a Congress** of the United States..." [emphasis mine]

[4] They are also unconstitutional as outside the scope of powers delegated to the federal government.

[5] I explain the problems with "[balanced budget](#)" amendments [here](#).

[6] These are the enumerated powers over the Country at Large listed at Art. I, §8:

- Clause 3: regulate "commerce" [For [the Truth about the "commerce clause," go here](#)];
- Clause 4: uniform laws on naturalization and bankruptcies;
- Clause 5: coin money & regulate its value, and fix standard of weights & measures;
- Clause 6: punish counterfeiting;
- Clause 7: establish post offices & post roads;

- Clause 8: issue patents & copyrights;
- Clause 9: set up federal courts inferior to the supreme court;
- Clause 10: punish piracies & felonies on the high seas and offenses against the Law of Nations;
- Clauses 11-14: war, letters of marque & reprisal, Army & Navy, and rules for the military
- Clause 15-16: the Militia.

[7] The anti-federalists objected to Art. I, §8, cl. 1 & 2. They claimed:

"...the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,' amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare."

James Madison answered in [Federalist No. 41](#) (last 4 paras) that clauses 1 & 2 permit Congress to levy taxes & borrow money **only** to carry out the enumerated powers! Madison said:

"Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color for it... But what color can the objection have, when **a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon? ... Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars.** But the idea of an enumeration of particulars which neither explain nor qualify the general meaning ... is an absurdity..." [boldface mine]

So! Article I, §8, cl.1 is merely a "general expression," the meaning of which is "ascertained and limited" by the clauses which "immediately follow" it. In other words, clauses 1 & 2 grant to Congress the power to raise money; and clauses 3-16 enumerate the objects on which Congress may appropriate the money so raised, thus limiting clauses 1 & 2. Do you see?

[8] Levin's amendment also corrects – on behalf of the feds – the following: When the 16th Amendment was ratified, "[income](#)" apparently didn't include "wages". Accordingly, it would be unconstitutional to force people to pay "income" taxes on "wages" – and such would thus be a proper object of nullification by States. But Levin's amendment legalizes the status quo and rips this remedy from the States.

[9] When our Constitution was ratified, the new federal government acquired (from its predecessor) the Western Territory ([Federalist No. 7](#), 2nd & 3rd paras, and [Federalist No. 43](#) at 5.) over which the new federal government was delegated, by Art. IV, §3, general legislative powers. As the Territory was broken up into new States, the general legislative powers would expire and sovereignty [except as to the few powers delegated exclusively to the new federal government] would be transferred to the new State.



[10] **Amendments to the Constitution generally increase the powers of the federal government:** They usher in implementing federal statutes & executive agency regulations, and judicial power over the issue is transferred to the federal courts. Art. III, §2, cl.1, says, "The judicial Power shall extend to all Cases ... arising under this Constitution ..." Do you really not see?

[11] Article I, §2, cl. 1, says:

"The House of Representatives shall be composed of members chosen every second Year by the People of the several States, and **the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.**" [boldface mine]

So! Whoever votes in elections for their State House, is eligible to vote for members of the federal House of Representatives. See also [Federalist No. 57](#) (5th para) & [Federalist No. 52](#) (2nd para).

[12] Article VI, cl. 2, the "supremacy clause," states that only our Constitution, federal laws made "[in Pursuance](#)" of [the Constitution](#), and Treaties made "[under the Authority of the United States](#)", shall be the supreme Law of the Land. **Supreme Court opinions are NEVER part of the supreme Law of the Land!** But we have wrongly made them *the only* Law of our Land. PH

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