

Response of Rob Natelson to Certain JBS Accusations
Dec. 17, 2014

This incident derives from a radio appearance by John Birch Society spokesman Robert Brown. In that appearance, Mr. Brown argued that the Constitution's Necessary and Proper Clause would allow Congress to control a convention for proposing amendments. He read a portion of the Clause to his audience—but omitted the part of the Clause that disproved his case.

Sometime later, the radio show host invited me to an interview on Article V. I agreed, in part because I have historical connections with that radio program.

During the interview, I read for the audience the phrase Mr. Brown had omitted. It explicitly limits Congress's authority under the Necessary and Proper Clause to "the Government of the United States, or . . . any Department or Officer thereof." I also pointed out that, according to the courts, when Congress, state legislatures, and conventions operate under Article V, they act as individual assemblies—not as units of either the state or federal governments.

As a case example, I offered *Leser v. Garnett*, in which the Supreme Court held that a state legislature acting under Article V acts directly under the Constitution and not as a branch of state government. The Court explained that the legislature was exercising a "federal function."

Mr. Brown and his video interpret "federal function" to mean "part of the U.S. Government." This is an error.

The phrase "federal function" means only that authority derives from the U.S. Constitution. It does *not* mean that the entity exercising that function is part of the U.S. Government. On the contrary, the Constitution grants important enumerated powers to persons and entities acting in separate capacities. These include state governors, state legislatures, state and federal conventions—and, in the case of Article V, Congress. None of these are subject to the Necessary and Proper Clause.

Neither Mr. Brown nor, apparently, the makers of the video are constitutional scholars, so they cannot be blamed for not knowing this. But they can be blamed for impugning another's honesty without a prior attempt to uncover the truth. For example, they could have consulted my publications on the subject, nearly all of which are freely available at <http://constitution.i2i.org>. Or they could have contacted me for an explanation.

Taken as a whole, their conduct suggests that they understand the weakness of their own position.

One last point: My constitutional conclusions are not for sale. My basic research on Article V was conducted when I was on an academic salary, and I was not paid to reach or promote any particular conclusions. Each conclusion was compelled by the evidence, and several of them contradicted my publicly-expressed prior beliefs. I ask readers to compare that approach to those of paid political operatives who insist on promoting claims after they have been discredited.

Further discussion of the Necessary and Proper Clause and citations to additional cases are in my legal treatise, *State Initiation of Constitutional Amendments: A Guide for Lawyers and Legislative Drafters*, available at <http://constitution.i2i.org/files/2014/11/Compendium-3.01.pdf>.