

# Madison's Final Resort For The States

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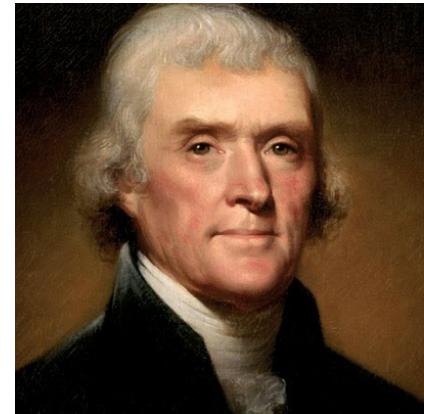
In early September of 2013, I took on the leadership role for the Convention of States Project in South Carolina. The Convention of States (COS) Project is a nationwide effort to bring about an amending convention under Article V of the United States Constitution. The historically accurate term for such a convention is a “Convention of States”. After over 15 years of teaching, speaking, and training people on the United States Constitution and the Rule of Law, I came to the conclusion about two years ago (as did many, many others around our nation) that our federal government is so systemically broken that those that hold federal office either cannot or simply will not take the steps necessary to return our government back inside the fence of limited government under the enumerated powers of the federal Constitution.

Because the framers of our great Constitution understood the nature of mankind, they knew there was a strong possibility that a day like this would come when the system that they entrusted to us would grow out of control. Because human nature has a tendency to stretch outside its boundaries, the framers put together a system using biblical principles of government designed to constrain the power hungry tendencies of mankind. The framers also had a keen understanding that the system they designed was not perfect and therefore it would need a process to make necessary changes as they arose. To this end they inserted a rigorous change process that included two methods to amend the Constitution. It is abundantly clear from their own words that they foresaw the need for changes to the document in the future.

Some today tell us that we need to “defend the Constitution as it is” rather than amend it, altogether ignoring the fact that our Constitution has been changed by amendment 27 times. With the exception of two amendments (16 & 17 in my opinion), all of these amendments made necessary changes. The Bill of Rights codified specific individual rights, human slavery was eradicated, women were given the vote, Presidents were limited to two terms in office, etc... So this idea that we never amend the Constitution has no historical or logical basis. An honest look at the historical record and the words of the framers paints a much different picture than the idea that we are somehow disrespecting the Constitution if we propose to amend it. It was precisely because the framers understood the tendency among men to want to stretch, pull, and twist on the limits of their powers; they specifically gave the states a process whereby the people under the principles of self government, and through their state legislatures could bypass Washington D.C. The states would be able to call a convention for the express purpose of proposing amendments to “reset” the text of the Constitution in response to the federal government (all three branches) perverting the original intent of the Constitution. I have spent many, many years teaching the brilliance of this document, indeed the God ordained blessing that we have the longest lasting nation under a single governing document in the history of the world. I have given my adult life to teaching respect for this document. That said, it is prudent for us to understand that the document is not perfect, it was drafted by human beings....and left in the hands of imperfect men, could be and would be twisted and perverted.

Thomas Jefferson made this point very straightforward in his letter to Samuel Kercheval dated June 12, 1816:

*"Some men look at constitutions with sanctimonious reverence, and deem them like the arc of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead."*



So in reality, the correct and Constitutional way to “defend” the Constitution when it is being abused is to amend it.

But let's dig deeper for a moment. A sober look back at recent history reveals that the twisting, pulling, and stretching of the text of the Constitution, away from its originally intended limited government, has been going on for well over a century. According to the founders/framers, what should have happened is that the very first time the Supreme Court twisted the original meaning of the Constitution in order to expand federal powers...the states should have responded with a call for an amending convention. For instance, it is a well established fact among Constitutionalists that the General Welfare clause and the Commerce clause in Article I, Section 8, are two of the most abused portions of text in the United States Constitution. It is very important to understand that this abuse did not happen all at one time. I often hear people saying that we just need to “enforce the Constitution as written” or “make our elected officials obey the Constitution”. No one has made that argument more strenuously than I have over the last 15 years that I have been passionately teaching and speaking on our great governing document.

If you were to ask any of the 535 members of the United States Congress and/or the President today why it is that they are not obeying their oaths, or why they are violating the Constitution, most of them would point across the street (from the capital) to the United States Supreme Court and tell you that the Supreme Court of The United States (SCOTUS) has told them that what they are doing is Constitutional. To understand how big the problem is we need to understand that this didn't start last night, it started with a little stretching of Constitutional meaning here, a little twisting of its meaning there...and today has totally become perverted from what we can clearly understand from the founding documents as its original purpose, scope, and intent. To go even further and give a concrete example of this...we can look at the 1942 United States Supreme Court ruling in the case of *Wickard v. Filburn*. This case was one of the very first times that the SCOTUS perverted the meaning of the Commerce Clause in order to uphold a federal law that grossly expanded the legislative powers of the United States Congress. It is imperative at this point that we be reminded that anytime the legislative powers of the United States Congress are expanded, the powers relegated to the states under the 10<sup>th</sup> Amendment will indeed contract. Ronald Reagan told us that “every time government expands, liberty contracts”.

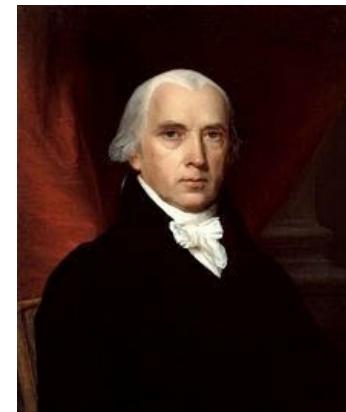
In effect...today, my friend Michael Farris makes the case that we have two Constitutions. We have the Constitution that was ratified in June of 1788 and its 27 amendments. This is the Constitution that I teach under the interpretive philosophy of “Original Intent”, the one that the founders drafted to create a federal government of limited and enumerated powers. The fact that our Constitution was designed to be interpreted according to Original Intent is indisputable when one honestly looks at the debates from the Philadelphia convention and the ratifying conventions. There was great tension and debate about vesting too much power in a central government.

The second Constitution in effect today is the Constitution that the Supreme Court uses....the one that has been twisted, contorted, abused, and perverted for over a century. I might add that all of that abuse in these past decades was met with little to no response by the states.

James Madison emphasized this point in his letter to Edward Everett dated August 28<sup>th</sup>, 1830. Madison by that time was 81 years old and had lived to see his incredible work to draft our governing document begin to bear the brunt of time. He had this to say when queried by Mr. Everett about the proper response by the states to a government that might grow abusive:

*"Should the provisions of the Constitution as here reviewed be found not to secure the Government and rights of the States against usurpations and abuses on the part of the United States the final resort within the purview of the Constitution lies in an amendment of the Constitution according to a process applicable by the States."*

So, according to Madison, the right response immediately following the Wickard v. Filburn decision that grossly expanded the meaning of the Commerce Clause...indeed the Constitutional response envisioned by the framers at Philadelphia in 1787 when they inserted the state initiated amendment power into the Constitution, should have been a call from the states for an amending convention (Convention of States) under the provision outlined in Article V.



So to those that say all we need to do is to "enforce" our Constitution, or "hold our elected officials feet to the fire" (which we surely need to do), I submit that it betrays a deep misunderstanding of where we are today and how we got here. Those simplistic responses sound good, indeed I must admit I use to use them myself...but they simply will not suffice for the HUGE problem that we face. Today, we have an enormous problem with a federal government that is completely and utterly out of control. Mark Levin rightly refers to our federal government today as the "federal leviathan".

It is also noteworthy to step back and realize that the United States Congress, according to the first section in Article V can propose amendments anytime they desire. In other words, for those that fear a congressional takeover of such a convention, the United States Congress for all practical purposes, is really in a perpetual "convention". They don't need anyone's permission to propose any amendments. The reason that they do not propose "rogue" amendments is because they know they could never get them through the 38 state gauntlet required by the Constitution. Those that fear a "runaway" convention from an Article V Convention of States seem to fail to realize that the "runaway convention" is happening every single day right in front of our eyes by fiat. In other words, they don't need a convention, they have become accustomed to perverted interpretations of the General Welfare and Commerce clauses. They are literally changing the Constitution by dictate (fiat)...at will through rogue interpretations that are devoid of historical original intent. The President is using "rogue" interpretations by the Supreme Court to direct unlawful actions via Executive Order. The Congress is using "rogue" interpretations of the Constitution by decades of twisted and perverted rulings by the SCOTUS. Indeed, the real "runaway" convention is happening right before our eyes if we are sober and honest with ourselves.

Some argue that since they are not following the Constitution today, why would they follow any new amendments. This too, like I described above in the section about understanding how they violate the

Constitution betrays a lack of understanding of why they can simply "not follow" it now. It sounds like a good question, but it doesn't hold up under scrutiny of the "modern" amendments to the Constitution (women's suffrage, presidential term limits, etc...). The fact is that the modern amendments with clear language today are followed to the letter. Amendments clarifying the General Welfare and Commerce clauses, congressional and SCOTUS term limits, a balanced budget coupled with clear spending restraints, would go a very long way to helping steer us back inside what Jefferson called the "chains of the Constitution". To get a better understanding of other amendments that would be monumental in that regard I encourage you to read Mark Levin's work "The Liberty Amendments".

Anyone that is awake and honest today....and understands any of what I have written above....understands that we are figuratively staring down the gun barrel of a rogue, out of control federal government that is staggering drunk on the intoxicating effects of years of bloated growth in federal power. We have an ENOURMOUS problem. Fears of what "might happen", PALE in comparison to what IS happening right now. Indeed it is such an enormous problem that many have become so discouraged that they have entirely given up. Many citizens today that would normally be engaged in the process have given up because they also believe that the federal government is so out of control that there is nothing they can do about it.

Herein lies the good news (from an earthly perspective), we do have a recourse written right into our Constitution in Article V. This recourse has never been used. It will not be easy. I have heard some say that we are doing this because we think it is an "easy fix". To the contrary, I believe that most of us understand that quite the opposite is true. We have such an enormous problem that we need an enormous solution. The founders gave us one, but it will not be easy. Amending the Constitution via the United States congress or via a Convention of States is extremely difficult. The threshold is very high. With the COS process, it takes 34 states to pass a resolution applying under the same subject matter in order for the United States Congress to call an amending convention for the states. Then any proposed amendments that come out of such a COS must be sent back to all of the states for ratification. The threshold required under our Constitution for ratification is even higher; it takes 38 states to ratify any proposed amendment coming out of a convention for that amendment to become part of the Constitution.

It is time to get past all of the misunderstandings about the Article V Convention of states. The framers gave us this provision. Madison himself referred to it as the "final resort within the purview of the Constitution". Finally, we must face the sobering thought that our federal government is so out of control, that Washington D.C. cannot fix itself. On June 11<sup>th</sup>, 1787, Anti Federalist George Mason while making the case to add the state convention provision to Article V made the following sobering statement:

*"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."*

Carefully consider what Mason was telling us....his words are sobering. He is telling us that if we wait too long, we might risk violence in our nation. He went on to say that it would be wrong to leave all amending of the Constitution up to Washington D.C. [Natl. Legislature] because once they start abusing their powers they will refuse to do what needs to be done to *put the beast of tyranny back inside the cage* (emphasis mine). *Think Congressional and Supreme*



*Court term limits, think balanced budget amendment, think curtailing executive order power, think regulatory agency sunset provisions, think spending limitations, etc...*

Right now we have Convention of States Project grassroots organizations active in over 40 states. Last night I had the privilege of participating in a nationwide conference call with all my other State Director colleagues...it was an incredible experience to hear the roll call with state after state reporting down the line. I realized at that moment that we have an incredible opportunity to save our nation right at our fingertips. A real opportunity to actually turn the tide back toward what the founders gave us. Hundreds of citizen patriots are answering the call by the national Convention of States Project to come to the front lines and take up their positions in all manner of form. Some have answered the call to take the leadership role in their state to get their state to pass the Article V Application/Resolution, some have answered the call to take up a position and man the ramparts in their individual legislative districts, others are joining as foot soldiers to help make calls and send messages to their state representatives. If we are successful, this effort will go down in history as the greatest historical event since the founding era.

The time for the states to act to defend themselves from the tyranny of the federal government is now. The Article V Convention of States is the lawful and orderly process by which we begin to turn this ship around.

An Article V Convention of States is not a silver bullet, but according to James Madison, it is the last bullet we have.

You can join this historic effort by visiting the [Convention of States Project](#) website.

Bob Menges now works full time as a Regional Legislative Director on the staff of the national Convention of States Project and still serves as the State Director for the effort in South Carolina. He can be reached at [rmenges@cosaction.com](mailto:rmenges@cosaction.com)