

# When the feds violate the Constitution, should we blame the Constitution?



By Publius Huldah

In Rob Natelson's paper [[link](#)], "The Solution is a Convention of the States", he makes claims about what our Framers said is the purpose of amendments to our Constitution which are not true. He also gives false assurances about the safety of a convention called by Congress under Article V of the Constitution.

At the outset, we should note that the title of Natelson's paper incorporates a stratagem which creates the false belief that the States control the convention. The belief is false because the convention provided for by Art. V of the Constitution is a *federal* convention called by the *federal* government to perform the *federal* function of addressing our *federal* Constitution. It is not a state function; accordingly, the term, "convention of States", does not appear in Article V. So the "Convention of States movement" (COS), of which Natelson is "senior advisor", *renamed* the convention provided for in Article V as a "convention of the States";[1] and *re-defined it* as "a convention controlled by State Legislatures".

Now let's examine various other claims on which COS builds its case.

## 1- The *fabricated* George Mason quote

COS claims that our Framers gave us the convention method of getting amendments *so that* when the federal government “violate[s] its constitutional limitations”, we can get a convention to “make adjustments to the constitutional text in order to rein in the abuse of power by the federal government.” Or, in plain English, when the feds *violate* the Constitution, the solution is a convention to *amend* the Constitution.

But our Framers didn’t say that. The falsity and absurdity of COS’s claim is exposed [here](#). What our Framers actually said is that *the purpose of amendments is to correct defects in the Constitution*. And they recognized that *the purpose of a convention is to get another Constitution*. James Madison warned that those who secretly want to get rid of our Constitution would push for a convention *under the pretext of getting amendments*.

## **2- Natelson’s claims re using amendments to “overrule bad Supreme Court decisions” & “restrain federal power”**

Natelson admits that the Framers said we can use amendments to correct defects in the Constitution; but then muddles up what the Framers actually said with what they never said, thereby seemingly legitimizing his misleading claim that the Framers envisioned that we could use amendments to “overrule bad Supreme Court decisions” and “restrain federal power”.

As an example of a “bad” Supreme Court decision, Natelson claims that “[i]n early 1795, the States ratified the 11<sup>th</sup> Amendment to reverse an overreaching Supreme Court decision”.

The decision he is referring to is *Chisholm v. Georgia*(1793)[\[link\]](#); and what he says about it isn’t true. What *Chisholm* actually stands for is this: Our Constitution originally delegated to federal courts the power to hear cases “between a State and Citizens of another State” (Art. III, §2, cl.1). But when a Citizen of South Carolina sued the State of

Georgia, States were outraged! Georgia sued. In *Chisholm*, the Supreme Court decided the case *in accordance with the Constitution* and held that Chisholm could maintain his suit.

But the States didn't want Citizens of other States suing them. So the States ratified the 11<sup>th</sup> Amendment *which took away from the federal courts* the constitutional authority to hear cases filed by a Citizen against another State. So the 11<sup>th</sup> Amendment illustrates what our Framers actually said is the purpose of amendments: to fix defects in the Constitution.

Natelson also claims that our Framers said we could use amendments to "restrain federal power" when the federal government "exceeded and abused its powers".

Again, Natelson muddles up the true and the false when he fails to distinguish between *usurpations of undelegated powers* and *abuses of delegated powers*.

No Framer said that amendments could be used to restrain *usurpations of powers not delegated*. And in [Federalist No. 49](#) (last para) James Madison says the opposite. He warns against another convention and says, "occasional appeals to the people [a convention] would be **neither a proper nor an effectual provision**" for restraining the federal government within its legal powers.

But when the federal government *abuses a delegated power*, an amendment could be appropriate. Here's an example: the Tariff Act of 1828 was constitutional since tariffs are authorized by Art. I, §8, cl. 1. But it was abusive because it benefited infant industries in the Northeast at the expense of the Southern States. So what's the remedy for such abuse of delegated power? Article I, §8, cl. 1 could be amended to say that Congress may impose tariffs only to raise revenue to carry out the enumerated powers; and may not impose tariffs in order to benefit one section of the Country at the expense of other sections.

### **3- Natelson's proposed "corrective reforms" to the Constitution**

Natelson says he wants a convention to get a balanced budget amendment (BBA); to curb "undemocratic and unfair" regulations; to reverse "liberal-activist Supreme Court decisions"; to impose term limits; and get other amendments "to restrain federal power".

But as anyone who has read it knows, *our Constitution already limits the federal government to a handful of enumerated powers*. The powers are listed [here](#). The categories of cases federal courts are authorized to hear are listed at Art. III, §2, clause 1. All the problems of which COS and Natelson complain *are the result of violations by the federal government of the existing constitutional limitations on their powers – and the States' acquiesce in such violations!*

**Balanced Budget Amendment:** *Our Constitution already limits federal spending to the enumerated powers*. But for 100 years, everyone has ignored the existing limits on federal spending. A BBA would *replace* the existing enumerated powers limitation on federal spending and create a new constitutional authority to spend on *whatever* the President or Congress put into the budget! *A BBA thus legalizes spending which is now unconstitutional as outside the scope of the enumerated powers, and transforms the federal government into one which has constitutional authority over whatever Congress decides to spend money on.*

**Federal Regulations:** Article I, §1 vests all lawmaking powers in Congress. So all regulations issued by federal executive agencies which purport to apply to the Country at Large are unconstitutional as in violation of Art. I, §1; and as outside the scope of the enumerated powers. *An amendment such as Natelson proposes is a grant of constitutional power to federal executive agencies to make Laws.*

**Supreme Court Opinions:** [This](#) shows why *Roe v. Wade* is unconstitutional. [This](#) shows why the opinions banning Christian speech in the public square are unconstitutional. The remedy our Framers advised for such usurpations is impeachment and removal from the Bench ([Federalist No. 81](#), 8<sup>th</sup> para), and nullification by the States of unconstitutional opinions [[Link](#)].

Natelson cannot produce any writing from a Framers which says that when the Supreme Court violates the Constitution, the remedy is to amend the Constitution. Our Framers were not silly men. And what would such an amendment as Natelson proposes say? That federal judges must obey the Constitution? Article VI already requires that. Does Natelson propose amendments which list the subjects on which federal courts may *not* act? But Art. III, §2, cl. 1 already lists the kinds of cases they may hear. But we ignore those existing limitations.

**Term limits amendment:** If we learned anything from the last election, it should be that we will not in the foreseeable future have an honest federal election. With H.R.1, Congress is likely to attempt to “legalize” the unconstitutional shenanigans which enabled the theft of the last election. So *your vote won't matter!*

But even if we had honest federal elections, consider this: As you decrease the powers of elected members of Congress by making them transient beings –you increase the powers of the “deep state”. With term limits, elected members of Congress would become like train cars passing in the night –the power would be solidified in the nameless, faceless, un-elected bureaucrats who infest the Executive Branch.

Anyone who analyzes the amendments proposed by COS and their allies can see that their amendments *increase the powers of the federal government* by delegating powers already usurped, granting new powers, or stripping States of their existing

powers. See: 'Mark Levin's "Liberty" Amendments: Legalizing Tyranny' [[Link](#)]; 'COS Project's "simulated convention" dog and pony show and what they did there' [[Link](#)], & 'The "Regulation Freedom" Amendment and Daniel Webster' [[Link](#)].

#### **4- Amendments to "prevent federal abuse" can backfire!**

When amendments correct *defects* in the Constitution, they are clearly a good thing. The 12<sup>th</sup> & 13<sup>th</sup> Amendments, like the 11<sup>th</sup> Amendment, corrected *defects* in the Constitution. Section 1 of the 14<sup>th</sup> Amendment extended Citizenship to the freed slaves and provided constitutional authority for the much needed federal Civil Rights Act of 1866.

But amendments added to prevent federal abuses backfired. In [Federalist No. 84](#) (10<sup>th</sup> para), Alexander Hamilton warned against adding a Bill of Rights to our Constitution. Under a Constitution of enumerated powers, the government may lawfully do only what the Constitution permits it to do. So

*"...why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? ... it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power..."* [emphasis mine]

But Hamilton's warnings were brushed aside.

Beginning in the 1920s, Justices on the Supreme Court – who were "disposed to usurp" – fabricated a doctrine under which *they* claimed that §1 of the 14<sup>th</sup> Amendment "incorporated" various parts of the first 8 Amendments so that those Amendments restricted the States! This how the Supreme Court usurped power to dictate how *the States* must apply the Bill of Rights. As shown [here](#) (at 12. & end note 4), this is the theory the Supreme Court used to ban Christian speech from the

public schools and County courthouse lawns.

Throughout the years, the Supreme Court has extended its “incorporation doctrine” to dictate to the States how they must apply the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Amendments [[link](#)].

Furthermore: Amendments usher in implementing federal statutes and executive agency regulations – ***and*** judicial power over the subject of the Amendment becomes vested in the federal courts. Article III, §2, cl.1, says, “The judicial Power shall extend to all Cases ... arising under this Constitution ...”

Beware of what you ask for.

**5- Natelson’s assurances that a convention would consist of “state delegations” sent “to propose pre-specified amendments” are false and reckless in the extreme[2]**

Natelson presents *nothing* to support his assurances. He can’t because his assurances are contradicted by the Constitution; and by the federal “amendments” convention of 1787, *which is our sole historical precedent for a federal convention called by a Congress to address our federal Constitution.*

**Article V, US Constit.,** says:

*“The Congress, whenever two thirds of both Houses shall deem 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...”* [italics added]

**Article I, §8, last clause, US Constit.,** says Congress shall have the Power...

*“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the government of the*



*United States*, or in any Department or Officer thereof.”  
[italics added].

So *Congress* calls the convention and makes the laws necessary and proper to organize the convention.

The [April 11, 2014 Report of the Congressional Research Service \[link\]](#) shows that Congress recognizes that Article V grants to Congress *exclusive authority* to set up a convention:

“Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including **(1) receiving, judging, and recording state applications;...(4) determining the number and selection process for its delegates...**” (page 4).

So *Congress* has the power to receive and judge the applications; how to count the applications, which ones to count, whether to aggregate the different forms of applications, etc.

*Nothing* in the Constitution permits State Legislatures to dictate amendments to be considered. *The convention is the deliberative body.*

*Nothing* in the Constitution requires Congress to permit States to select Delegates. *Congress*— the same Congress which Natelson tells us is “abusive”, “mendacious” and “revels in its power”— has the power to select the Delegates. Congress may appoint *themselves* as Delegates.[3]

## **6- The People have the power to take down and set up governments**

The push for an Article V convention is a hoax. The Globalists who stole the Election want a new Constitution. They are using “getting amendments to rein in the federal government” as a *pretext for* getting a convention where a new Constitution is



sure to be imposed. *Madison expressly warned of this stratagem* [[link](#)].

Our Declaration of Independence is part of the “**Organic Law**” of our Land. It recognizes that The People take down and create governments. When Delegates meet in convention to address a Constitution, they are the Sovereign Representatives of The People. They cannot be controlled by the “creatures” of Constitutions previously ratified by the People [[link](#)].

In [Federalist No. 40](#) (15<sup>th</sup> para) James Madison invoked the “transcendent and precious right” of a people to throw off one government and set up a new one as justification for the Delegates to the federal “amendments” convention of 1787 ignoring their instructions to propose amendments to the Articles of Confederation, and instead writing a new Constitution with its own easier mode of ratification.

Accordingly, even if the “abusive” and “mendacious” Congress doesn’t “revel in its power” to appoint Delegates, but graciously permits States to select Delegates, State Legislatures have no competent authority to control Delegates at a convention called by Congress pursuant to Article V. The Delegates, as Sovereign Representatives of The People, have the power to *eliminate* the federal & state governments![4]

Heed the warning of the great statesman Daniel Webster:

*“The politician that undertakes to improve a Constitution with as little thought as a farmer sets about mending his plow, is no master of his trade. If that Constitution be a systematic one, if it be a free one, its parts are so necessarily connected that an alteration in one will work an alteration in all; and this cobbler, however pure and honest his intentions, will, in the end, find that what came to his hands a fair and lovely fabric goes from them a miserable piece of patchwork.”*  
[Daniel Webster, 4th of July Oration, 1802.](#)

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**Endnotes:**

[1] In a speech Natelson gave on Sep. 16, 2010 [\[link\]](#) at top of p. 2], he said he would no longer call what he wanted a “constitutional convention”; but would ‘put our concepts on “reset” ’ and henceforth call it a “convention of states”.

[2] Noted conservative constitutional litigators and law professors William Olsen and Herb Titus have already recognized that COS’s “false assurances” are “reckless in the extreme” [\[link\]](#).

[3] Page 40 of the CRS Report says it’s been recognized that there doesn’t seem to be any “... constitutional prohibition against [U.S.] Senators and Representatives serving as delegates to an Article V Convention..”

[4] The proposed Constitution for the Newstates of America [\[link\]](#) does just that. Article XII, §1 provides for ratification by a referendum called by the President. Do YOU trust the voting machines?