

SCR 1603 – Oral Testimony – Opponent

Robert Wood

Dear Senator Ralph Ostmeyer , Chair, Senate Committee on Federal and State Affairs,

Ladies and Gentlemen, our nation is in a Constitutional crisis of monumental proportions. Our Constitution is on life support and failing fast. If your child was injured and had a major cut that was bleeding very badly would you apply a slow method to fix the problem or an immediate solution to save their life? I know which path I would take and it would be to save the child and then worry about making sure that it never happened again with a long term solution. That is what we have with our Constitutional crisis today. Everyone knows that the Constitution is being destroyed by the tyrants in Washington, DC who fail to follow the laws the states have made for them in the compact we created many years ago.

The immediate solution is to nullify all federal theft of state power. To support and defend the Constitution first and then worry about making amendments to fix any issues after we have successfully defended it. The original Convention of States created our current Constitution. It has failed! Not because it is the best written civil document in the world, but due to the states and the people that have neglected their solemn duty to support and defend it.

Nullification or Article V conventions

Article V Conventions and Nullification are NOT mutually exclusive, nor is one the magic pill for all our federal problems. Each is a legitimate Constitutional solution, but each has a different aim and application. Each plan is a tool for a specific job and for different ends. They can be used together in the defense of Liberty as long as we understand each in its own context and consider the pitfalls involved. It must be noted that we are having this discussion because of the very fact that we have stepped so far out of the Constitutional boundaries given to this government that we are operating practically in a post-Constitutional America.

Two different animals

Article V Convention is a long term fix aimed at making corrections at the federal level. Nullification is an immediate defense at the state level. Article V aims to make structural changes or further clarifications to the operations of the federal government and its relation to the states by amending the Constitution. Nullification aims to make no changes to the current Constitution, but is simply an assertion by the individual sovereign states of the authority they already possess and a declaration of the limitations to federal power already defined by the Constitution. Article V convention in the current

context seeks to fix what is assumed to be broken or lacking in the federal system and is to be used in the rarest of circumstances. Nullification, as intended by the framers, was to be a part of “republican maintenance,” whereby the central government was to be continually kept in check by its masters, the states. Let us take a look some problems that we should keep in mind so we can work to defeat the common enemy...TYRANNY.

Some of the problems with Article V:

WHO are the delegates and what is their motivation?

According to James Madison in Federalist 49, one significant problem with conventions is - WHO will be the delegates? Madison discusses two options for choosing delegates: either through the Legislators or through popular vote of the people. In each case he believed there was cause for concern. In modern terms, when delegates are chosen by the legislators, what we could see are appointments based upon party loyalty rather than upon Constitutional expertise and dedication to Liberty principles. When the delegates are chosen by popular vote, typical election dynamics could determine the outcome. Voters would vote based upon party popularity and perhaps even a “lesser of two evils” and the same corrupt politicians would now be “fixing” the very problems they created. The ultimate result of both options would be, as Madison states, “The same influence which had gained them an election into the legislature, would gain them a seat in the convention...

They would consequently be parties to the very question to be decided by them.” According to Madison, the real difficulty with delegates boils down to “motivation”. What will be the motivating force behind the delegates and their amendments? Madison recognized that the only reason we have our current Constitution is that the framers had just come from a bloody revolution that kept the delegates focused upon LIBERTY and that forced them to set aside their party politics and personal motivations: “We are to recollect that all the existing constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite forms, produced by a universal resentment and indignation against the antient government;” ~ James Madison Federalist 49 Madison seems to be telling us that without some overriding and unifying motivation, the convention would likely degrade into another Republican vs. Democrat drama. If we cannot get delegates that are properly constitutionally minded rather than driven by political gain and greed, this will never benefit us.

WHEN will it be done?

One big difference between nullification and convention is the time each takes to implement. Any advocate of Article V must admit that this is a LONG TERM goal and not a quick fix. To call convention, choose delegates, agree on amendments, an Article V convention could take several years, possibly 5 to 10 years. Adding to the time frame is the Article V requirement of 3/4 ratification by the States. That

means EVERY AMENDMENT must be agreed upon (debated), individually, by 3/4 of the States to ratify. During such a time frame, it would be prudent to use nullification puts the brakes on at the state level until corrections (if truly needed) can be made at the federal level.

What will be the scope and impact?

Probably the most debated aspect is the notion of a “runaway convention.” Some say the ¾ ratification is a check on a runaway convention, that ¾ of the states would never go along with a total rewrite of the Constitution or the addition of harmful amendments. Of course, ¾ of the states DID ratify the very harmful 16th and 17th amendments. Tinkering with the foundation is always risky business. SO at the end of the day it may well come back to the main issue of the motivation, focus and education of the people and their delegates.

Nullification:

First, Nullification is a constitutional solution not because it is enumerated, but because the Constitution is a contract (technically a compact) among the States that created the federal government. The States are the parties to the Constitutional Contract and the federal government is the PRODUCT of that contract. Inherent in EVERY contract is the right of the parties to that contract to control the product of the contract. The States are the representatives of the people in this contract and have a DUTY to maintain the federal government within its constitutional boundaries and thus protecting the rights of the people.

Nullification is that act of the PEOPLE through their States to maintain the federal government within in its “limited and defined” boundaries and should be as regularly carried out as an oil change in your car. Madison states this principle again in Federalist 49:

“As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived; it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government; but also whenever any one of the departments may commit encroachments on the chartered authorities of the others.”

This is not the forum for explanation of Nullification. If you are unfamiliar with this term or have in the past heard that it is not an option available to the States for a myriad of reasons, please take the time to read the FACTS about nullification before you give in to any one position.

Fear of Nullification

The first problem with nullification is fear and ignorance. For some, nullification’s association (rightly or wrongly) with the Civil War and slavery (despite the fact that it was used to resist slavery) throws a veil

of fear over the entire issue. Many mistruths and misconceptions regarding this Liberty solution must be overcome in order to even utilize this option. Retorts such as "the South lost the war," "SCOTUS says no," or "it's the law of the land" are common among those ignorant of the concepts of State sovereignty and nullification. Even as nullification happens all around us today with, States legalizing marijuana and same sex marriage; states denying the federal government power to enforce the indefinite detention provisions of NDAA 2012 and Obamacare; local and state governments refusing to enforce federal gun restrictions, some will still say that nullification is an obscure and outdated concept. With more than 100 years of distorted history, overcoming the ignorance and fear surrounding Nullification is no easy task.

Participation by the States:

Whereas Article V requires 3/4 of the States to ratify any amendment, Nullification can be achieved on a State by State basis. But again, education of the States in this liberty option is a problem to State participation. Many state legislators do not understand the true nature of the states' relationship to the federal government and they understand the states' right and duty to interposition even less.

Federal Enforcement of Unconstitutional Acts

One more roadblock to nullification is the federal government's attempt to bully the States into compliance with unconstitutional acts. The most obvious attempt at forced compliance will be through the withholding of federal funds. Any State who intends to maintain their supremacy over the federal government will have to be able to become self-sufficient in the face of federal funding withdrawal. In an arena where it's all about the money and in a political system where politician climb the ladder of power by giving and receiving favors this is a significant obstacle. However it is the role and duty of the state legislator to be the guardian of state sovereignty and they must interpose when the federal government works outside of their jurisdiction and attempts to continue to steal power and liberty from the states and the people.

Conclusion:

If you keep getting mugged every time you leave the house. Is the answer to call your City Commissioner to amend the local laws to really tell the criminals once again to stop mugging you? Or will you simply defend yourself from a violation of your rights because the laws on the books won't stop crime. The only things that stop crime are morality or force. They can mug you but they won't do it because it's wrong and immoral. They can mug you but they won't because you are a well armed citizen and that force will stop them if necessary.

An Article V won't stop the DC criminals from stealing our liberty. I don't blame the tyrants in Washington. I blame the state and the people for not supporting and defending the Constitution. We have violated our oath. Our state legislators have violated their oaths each time they take federal bribe money. Until that stops no more words on paper will do a thing to support and defend us or the

Constitution. It will make the tyrants laugh after they take over the Convention and codify all of their tyranny in law. I can also tell you that most of the amendments being proposed will do nothing to fix the damage done to our republic. Only fixing our morality will. Only defending our liberty will.

An Article V is great for one thing at this time. It is a great diversion from what is working. What is working all across this nation is the states standing up and interposing when the Feds get out of their jurisdiction and into the states. That is working well and someone in Washington wants a quick diversion to get legislators away from what is working to take away their power over us. We are in an immediate Constitutional crisis and the focus should be on Nullification because the path to an Article V is a very long one and even when it is ratified it will be even longer before it has any impact on defending our liberty.

Will an Article V keep the Feds from kicking down your door tomorrow and searching your house without a warrant or taking your guns? Will it keep the EPA from stealing your property next week? Will it stop the IRS from targeting you and your business next month? Will it keep the NSA from spying on you next year? The clear answer is NO! What will is the state passing strong bills to Nullify all these unconstitutional acts now! The bills like the Kansas 2nd Amendment Act will do more to protect the people now that an Article V will ever do in 20 years.

Please DO NOT pass the application for an Article V! Please stop being diverted from what is working all over this nation and start focusing on passing bills to nullify federal usurpation of the states power. It is time to stand up and support and defend the Constitution. Only after that is done will the Feds care about following the words or amendments of an Article V. It is time to leave the micro-adjusting screwdriver of the Article V in the Liberty toolbox and get out the Nullification hammer. It is time to fix the immediate problems to restore our republic now because if we don't, we may not have a Constitution left to amend.

Yours in Liberty,

Robert Wood