



Written by [Joe Wolverton, II, J.D.](#) on June 6, 2023

Mark Levin: Con-Con Is Only Way to Save America

Mark Levin has taken to the airwaves once again, and in his effort to “save this country” is demonstrating his ignorance of what created this country: the states.

Days ago, Levin made the [following statement](#) on a radio broadcast:

The reason why I support Convention of States is because I’m convinced that the only way to fundamentally alter the trajectory of this country is not watching TV and listening to the politicians or reading columns. It’s by taking the power out of Washington. And we’re already organized to fight this.



Gage Skidmore/flickr
Mark Levin

Now, the way Levin and his fellow con-con promoters plan to alter the trajectory of this country is by adding amendments to the Constitution. Amendments. Because, obviously, we know that Congress and the president and the federal courts always adhere to the restrictions placed on their power by amendments to the Constitution. There is nothing more apparent to any observer of our political climate than that the federal government never violates the rights that are protected by the many amendments to the Constitution.

Someone once said that the definition of insanity is repeating the same behavior but expecting a different result.

Why, then, would Levin and company keep pushing for a constitutional convention (or whichever moniker they’re using now) knowing that amendments that are already part of the Constitution do nothing to “alter the trajectory of this country?”

Just ask yourself the threshold and critical question: Has the federal government, since the Alien and Sedition Acts, ever demonstrated a habit of confining its ambition and avarice to the limits of its powers as established in the first ten amendments to the Constitution, or in the enumerated powers of the original Constitution?

So, why would they begin now, when so many in our country are much less educated and much less virtuous and much less vigilant and much less committed to the cause of liberty?

What, then, is the best way to force the federal beast back inside its constitutional cage? Or, as Levin said it: What is the best way to alter the trajectory of this country?

The answer is found in the question. Why does Washington, D.C., have so much power in the first place? Any power possessed by the federal government was granted to it by the states in the Constitution. If a power is not so granted, then that power is retained by the states and the people. That’s the Tenth Amendment. You know — one of the amendments the federal government so faithfully obeys!



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With that irrefutable fact of constitutional history stipulated, I think the obvious answer is to elect state legislators and governors who are committed to reasserting the sovereignty and superiority of the states and, as James Madison advised, “refus[ing] to cooperate with the officers of the union,” and in general to standing as the barricade between the people and a tyrannical federal government, as they are supposed to be doing.

At this point, some of you may be saying to yourselves: “Yes, Joey, but just as Levin is asking the federal government to do something it has never done, you’re asking the states to do something they’ve never done!” You’re right.

But there is a significant difference.

You know as well as I that draining the federal swamp is, to understate it, nearly impossible. Moneyed lobbyists, special interest groups, the military industrial complex, and the crony capitalists have such a tight stranglehold on the federal government that it would prove futile to try to break their grip.

The states, however, are a different issue. The state governments are smaller, and their members are typically more in touch with and accountable to their constituents than are their federal counterparts. I can go right now and drive over to the bank where my state representative works and talk to him about an issue that he’s about to consider in the state House of Representatives. I couldn’t tell you where my federal representative lives, although I do know what he does for a living: violate his oath of office.

The point is, while states haven’t shown a proclivity to put the feds in their place, the ability of us to change that trajectory is much greater than it would be to change that of the government in D.C.

The way we do that is the way it has always been done, the way the federal government was designed to be reined in should it ever exceed its constitutional authority: nullification.

Simply stated, nullification is a legal statutory construction that endows each state with the right to nullify, or invalidate, any federal measure that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold the ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

The states created the federal government, set the boundaries of its power, and reserved to themselves all other rights not specifically delegated to the new national authority. The contract containing the rights and responsibilities of the parties to this contract that created the federal government is called the Constitution. This act of collective consenting is called a *compact*.

This element of the creation of the union is precisely whence the states derive their power to negate (nullify) acts of the federal government that exceed its constitutional authority. It is a thread woven inextricably in every strand of sovereignty. It was the sovereign states that ceded the territory of authority that the federal government occupies.

Nullification, whether through active acts passed by the legislatures or the simple refusal to obey unconstitutional directives, is the “rightful remedy” for the ill of federal usurpation of authority. Americans committed to the Constitution must walk the fences separating the federal and state governments, and they must keep the former from crossing into the territory of the latter.

The Virginia and Kentucky Resolutions plainly set forth James Madison’s and Thomas Jefferson’s understanding of the source of all federal power. Those landmark documents clearly demonstrate what these two agile-minded champions of liberty considered the constitutional delegation of power.



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Jefferson summed it up very economically in the Kentucky Resolutions:

That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy....

Madison and Jefferson recognized that honest men could and would disagree about the proper interpretation of this or that constitutional provision. Not all of these men would be trying purposefully to enlarge the size and scope of the federal government; some would merely be applying their own set of principles to resolving issues of constitutional construction. In these cases, Madison and Jefferson recommended the Kentucky and Virginia Resolutions as an accurate lens through which adversaries should view the Constitution.

In sum, the states created the contract, the operation of which was the formation of a federal government. The federal government ignores that fact and acts under the assumption that citizens will do likewise. And so far, they've been right.

Despite the frequent violations of the terms of the contract by the federal government, states are not left only with the option of voiding the contract. In fact, those state lawmakers and governors committed to forcing the federal beast back into its constitutional cage are better served by simply nullifying each and every congressional act or presidential decree that violates the agreed-upon terms in the Constitution.

There are benefits of this attitude: It preserves the union, and demonstrates state allegiance to the principles of freedom that undergird the Constitution and, by extension, to our Founders.

Nullification is also preferable because it is a less radical reaction than secession. It is an ad hoc approach to ad hoc threats (acts that exceed the enumerated powers) that solves the sovereignty issue without dissolving the union.

That isn't to say that secession should be taken off the table. No sovereign entity can by definition be compelled to continue association with any league, confederacy, or union that goes from being advantageous to being despotic.

However, if done right, nullification is a surgical, sparing way to remove malignant tumors of tyranny, not a chainsaw brutally butchering healthy and diseased tissue indiscriminately.

So, no, Mr. Levin, we don't need a constitutional convention called to add amendments to the Constitution. Expecting that the federal government will obey new amendments when they so casually and continually disobey those that are already there seems an act of insanity.

However, the country may yet be saved.

Patriots must take advantage of their increased influence and access to their state governments, and go out and find and elect state legislators and governors who will refuse to cooperate with any unconstitutional act of the federal government. This will be an exercise of the Tenth Amendment — and we don't need another convention to get that one ratified.



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