




One Legislator's Warning: Beware the Conference of the States

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On January 16, 1995, the Utah legislature became the first in the nation to pass a Resolution of Participation in the Conference of the States proposed by Utah Governor Mike Leavitt. Representative J. Reese Hunter, a fifth-term Republican, voted for the resolution, but is now urging lawmakers in other states to oppose it. Dr. Hunter was interviewed for *The New American* by Robert W. Lee.

The New American: *Representative Hunter, what led you to support the Conference of the States resolution in the first place ?*

Rep. J. Reese Hunter: I was enthused when I first heard about the Conference. It was publicized as a gathering to strengthen state authority under the Tenth Amendment and pressure the federal government to obey the Constitution. I favor those goals, so I let Governor Leavitt know that I supported his call for the Conference. I visualized the states uniting to send Washington a firm message that the time had come to put an end to unconstitutional federal mandates, whether funded or unfunded. But as the proposal began to unfold, a number of warning signs appeared. For example, there seemed to be a disturbing number of similarities between the governor's plan and the first Conference of the States in 1787 that became the constitutional convention.

TNA: *Then why did you vote for it?*

Hunter: For a number of years now, I have been the chief sponsor of legislation to repeal Utah's call for a constitutional convention to consider a balanced budget amendment. Prior to the vote on the Conference of the States resolution, I was concerned that the Conference could itself be turned into a con-con. I asked for assurances that this would not be the case, and was told that while it was not "intended" to be a con-con, it was something new, so there was no 100 percent assurance. On the first day of our legislative session, the Conference resolution was brought up on a "fast track," well-oiled for immediate passage without hearings or significant debate. The argument for such haste was that Governor Leavitt, as instigator of the movement, should be first to sign a Resolution of Participation into law. It was in that rash of the moment that I voted for the resolution, as did all other members of the House and all but one senator.

Subsequently, I was able to study the issue in greater detail. I would not vote for it today. From hindsight, I would have insisted that the Conference goals be read before the vote was taken, and demanded unambiguous answers regarding the "broad, fundamental, structural" changes envisioned by the proponents of this movement. Such wholesale revision of the Constitution is the very thing many of us have feared under an Article V constitutional convention.

TNA: *What, in your opinion, are the motives of those promoting the Conference of the States?*

Hunter: I do not think two or three hundred legislators, along with the governors, have any desire to damage our republic. I think for the most part they really want less federal intervention. But I know some who think that that means they should receive federal funding without federal strings. But if the Constitution were amended to permit federal taxes to pay for state welfare, educational, environmental,



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and health care programs, then such an amendment would authorize that which is now unconstitutional. This is not a problem of state-federal balance — it is a moral problem. It does not require innovative thinking to solve it, but requires obedience to the best thinking ever given to mankind, the thinking of Madison, Hamilton, and Washington as embodied in the original Constitution. It depends wholly on the courage of state leaders to hold the federal government to its enumerated powers and to enforce the Tenth Amendment, the wording of which is crystal clear. Personally, I can think of no way to add to the United States Constitution without weakening it.

TNA: *What are some of your other concerns about the Conference?*

Hunter: Well, for one thing, I could not accept the proposal that has been discussed to allow the federal courts to make the decision whether a power is reserved to the states, or to the people, instead of to the federal government. That is one of the most treacherous proposals I have ever heard of.

TNA: *Did the promoters of the Conference actually suggest that?*

Hunter: The Council of State Governments is one of the convening organizations for the Conference. Back in 1989, one of its reports proposed that the Tenth Amendment be changed to add the words: “Whether a power is one reserved to the States, or to the people, shall be decided by the Courts.” Federal powers are clearly delineated in the Constitution. Authorizing the federal judiciary to make such determinations would simply tip the scales further in favor of federal usurpation of power contrary to the Tenth Amendment’s clear intent.

TNA: *What else?*

Hunter: I do not quite understand why proponents of the Conference believe that there is a need for resolution-empowered delegates. Why can’t the states simply appropriate the expenses of governors and legislators who may desire to meet with other states and propose solutions to the problem of federal usurpation? Why the need for legislation? Why an appointed delegation? That is the crux of this whole controversy. A majority of states, acting in unison by simply agreeing to accomplish a goal, would gain Washington’s attention. I would not only favor, but would be delighted to attend, a conference devoted to reaching agreement on refusing, for example, to enforce unconstitutional federal edicts.

It bothers me that advocates of the Conference seem to think that our problem is a flawed Constitution that needs repair. Such is not the case. I am convinced that there are no structural flaws in the Constitution that are precluding the states from taking effective collective action if most truly wish to do so. Rather than a step toward constitutional government, I fear that the Conference movement as presently planned could result in changes in our form of government that would merely give states much of the unconstitutional power now being wielded by Washington. We need less government at all levels, not simply big government spread around. Yet the structural changes advocated by the Council of State Governments and other Conference supporters would not, so far as I have been able to determine, diminish federal power or reduce the overall size or expense of government.

I also wonder why the Conference proponents are so intent on the need for 26 states before convening the Conference. Would a message from half the states be so inadequate that they would drop the entire program for lack of one state’s participation? The historical precedent is that 51 percent of the original 13 states formed the constitutional majority that met to simply amend the Articles of Confederation, but eventually replaced the Articles with a new Constitution. Similarly, the Constitution could be drastically changed or replaced by the actions of another conference, or convention, composed of delegates officially empowered to represent “We the people.”



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The position papers that underpin the Conference movement indicate that they are pursuing a process that circumvents the normal procedures of an Article V convention. They state that the “power is in the process,” which is exactly the problem. It is the process that consolidates and focuses state power at the federal level, and it is the same power that created our existing government, no matter what name it is given.

TNA: *What advice do you have for legislators in states which have not yet acted on the Conference resolution?*

Hunter: It is important to keep the pressure on, since advocates of the Conference will be making every attempt next year to win back the states where it lost, and gain approval in those states that took no action in 1995. I would urge my colleagues in other states to do their homework thoroughly, so they do not make the mistake of voting for something that is likely to do far more harm than good to our Constitution, and therefore to our country.

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