



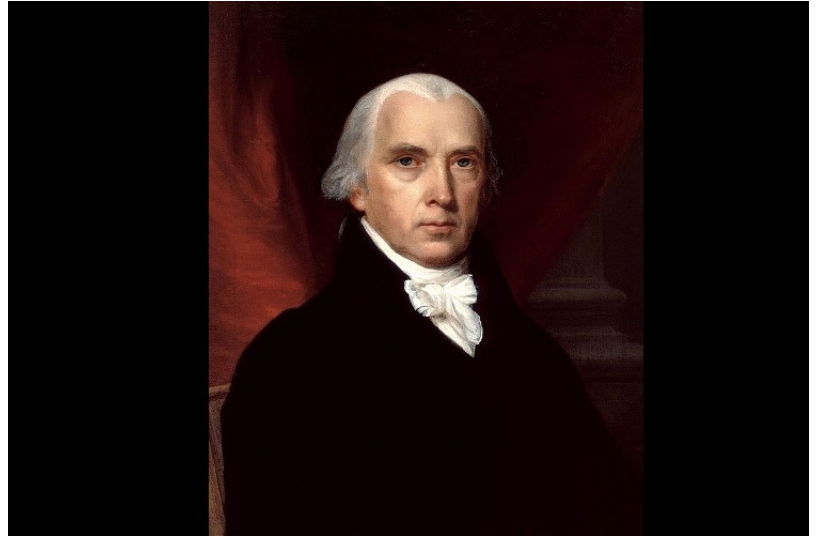
Written by [Joe Wolverton, II, J.D.](#) on February 7, 2023

James Madison on Joe Biden's Plan to Fix Philly's Water

"President Biden Announces \$500 Million for Philadelphia Water Upgrades and Lead Service Removal," the Biden administration declared on the official White House website.

While many might believe spending money to make water potable in one of the country's most historically important cities is a noble and good endeavor, James Madison would disagree.

"Charity is no part of the legislative duty of government. It would puzzle any gentleman to lay his finger on any part of the Constitution which would authorize the government to interpose in the relief of ... sufferers," Madison wrote.



James Madison

The Biden administration has not studied James Madison, apparently, because the expenditure of taxpayer money on arguably altruistic programs is something they are bragging about:

Through historic levels of funding from the Bipartisan Infrastructure Law, American Rescue Plan, and annual appropriations, and using regulatory tools across federal, state, and local government, the Administration is working to replace all lead service lines in America in the next decade. The Bipartisan Infrastructure Law invests nearly \$50 billion in clean water, with at least \$15 billion set aside at the Environmental Protection Agency (EPA) for loans and grants to states to remove lead service lines.

While it is inarguable that such improvements to the Philadelphia infrastructure are critical, it is likewise inarguable that carrying out such improvements is not among the powers granted by the states to the federal government.

In fact, the guidance given in *The Federalist*, No. 45, again by James Madison, would enlighten everyone — even Joe Biden — as to where the constitutional boundaries between the state and federal authorities are drawn:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.

The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.



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Could anyone argue convincingly that “upgrad[ing] water facilities and replac[ing] over 19 miles of water mains, and the lead service lines and connections along those mains,” “moderniz[ing] critical infrastructure by replacing approximately 160 lead service lines and 13 miles of watermain[s],” as well as “developing lead service line replacement plans [and] conducting inventories to identify lead pipes” is anything other than “internal order, improvement, and prosperity of the state?”

These things, then, fall within the authority of the state government and should not be funded by taxpayers across the country and administered by the federal executive department.

To put a finer point on it, there is no federal authority to undertake such a construction. Article II lists the powers granted to the executive department, and nowhere in there can you find the power to improve a city’s or a state’s water supply.

There was a time when presidents took the concept of constitutionally limited government and enumerated powers seriously; seriously enough to refuse to endorse a spending bill that sounded very much like the one Joe Biden is bragging about.

On March 3, 1817, President James Madison informed the House of Representatives that he had to return a bill unsigned. The measure called for Congress to pay “for constructing roads and canals, and improving the navigation of water courses.”

Such a project was not a power granted to Congress, Madison informed the Legislature.

Madison wrote:

The legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation within the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.

Next, the Father of the Constitution explained in his veto message that the bill could not be supported by the claim of promoting “the general welfare.”

Regarding that claim, Madison declared:

To refer the power in question to the clause “to provide for common defense and general welfare” would be contrary to the established and consistent rules of interpretation, as rendering the special and careful enumeration of powers which follow the clause nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them, the terms “common defense and general welfare” embracing every object and act within the purview of a legislative trust.

Madison warned that if such a bill were to be enacted, it “would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the General and the State Governments.”

Finally, President Madison admitted that the improvement of the nation’s nascent infrastructure was a



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very good idea, one that would improve the prosperity of the country, and one that Congress could likely handle.

But none of that mattered. Madison closed with constitutional clarity:

I am not unaware of the great importance of roads and canals and the improved navigation of water courses, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution, and believing that it can not be deduced from any part of it without an inadmissible latitude of construction and reliance on insufficient precedents; believing also that the permanent success of the Constitution depends on a definite partition of powers between the General and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill, I have no option but to withhold my signature from it.

Article II has not been amended to permit the executive branch to undertake the spending of taxpayer funds on the type of infrastructure project proposed by President Biden. To permit such an overhaul of Philadelphia's water infrastructure would be to nullify the concept of enumerated powers, creating a president with unlimited powers.

On January 20, 2021, Joe Biden swore an oath to God to "preserve, protect, and defend the Constitution of the United States." Presumably, that would include remaining faithfully within the scope of authority granted to the president in that document he swore to uphold.

Suggesting spending \$500 million on Philadelphia's water infrastructure may be charitable and politically advantageous, but it would also be a breaking of his oath of office.



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