



Written by [C. Mitchell Shaw](#) on April 24, 2019

Judge James Buckley Echoes JBS: Demand Adherence to the Constitution

Judge James L. Buckley holds the rare distinction of having served in all three branches of the federal government. Even rarer among one who has spent nearly five decades in the federal government — and perhaps because of that time and experience — Buckley believes it is time to return to constitutional adherence if America wishes to preserve liberty.

Buckley served as a U.S. senator from New York from 1971 to 1977, then, in the first Reagan administration, as undersecretary of state for international security affairs from February 1981 to August 1982 and as president of Radio Free Europe/Radio Liberty from 1982 to 1985, before being appointed as a judge of the United States Court of Appeals for the District of Columbia Circuit in 1985. Since 1996, he has served as the senior judge of that court.

Judge Buckley recently gave an [address to the National Review Institute Ideas Summit on the case for federalism and “safeguarding the American experiment” by restraining the federal government](#). In that speech, Buckley — who is 96 years old — said, “In my view, the serious problems we face these days are in major part the result of our abandonment of the Constitution’s limits on federal authority.”

After citing his vast experience, dating back to 1970 (the year this writer was born), Buckley said, “Accordingly, I think it fair to say that I’ve had more than the average citizen’s opportunity to observe the impact on our lives and the radical changes that have been brought about in how we are governed.” Buckley then offered this example:

To illustrate the speed with which those changes have taken place, shortly after my election in 1970, I was handed a recent study of Congress that had concluded that the work of the average congressional office had doubled every five years since 1936.

Given the fact that in simpler times, Congress worked at a leisurely pace and was in session for five or six months a year, its members could take the initial increase in stride simply by devoting more hours per day and more months per year to their work. Over time, however, the available hours and months had been exhausted and the doubling could only be accommodated by squeezing deliberation out of the legislative process.

This pressure cooker existence has been the consequence of Congress’s compulsion — beginning in the 1930’s — to scratch every itch on the body politic, whether it was its constitutional business or





not. The result has been an explosion of federal laws and regulations.

Buckley is spot on in his assessment of the problem and his prescription for the cure. America was led from the path of liberty at exactly the same time she was led from adherence to the constitutional principle of federalism. A return to the latter is a prerequisite for a regaining of the former.

This has long been the goal of this magazine's parent organization, The John Birch Society. And while the prevailing political winds — stirred largely by those who are responsible for the problem — favor a risky modern-day constitutional convention (while usually refusing to admit that [that is exactly what it is](#)), the reality is that enforcing the Constitution is the answer. No changes to the document are necessary for that to happen.

As part of its efforts to create an informed electorate that will demand elected officials enforce the constitution, The John Birch Society has created a [new page](#) on its website featuring videos from elected officials at the federal, state, and local levels who hold the same sentiment as that expressed so eloquently by Judge Buckley: Enforcing the constitution is the key to solving most of America's problems.

In a series of short videos, one elected official after another explains why they support constitutional enforcement and oppose a constitutional convention.

U.S. Representative Thomas Massie (R-Ky) lists two reasons he is opposed to a constitutional convention. First, he observes, "My colleagues don't follow the constitution we have," and asks, "What makes people think they would follow a new one?" That idea is, of course, at the crux of the issue. Since, as Judge Buckley correctly asserted, "The serious problems we face these days are in major part the result of our abandonment of the Constitution's limits on federal authority," Massie's question hits the target dead center.

Massie goes on to explain, "Second of all, since the Bill of Rights (the first 10 Amendments) and the 11th Amendment, I can't think of a single amendment to the constitution that has limited the size and scope of [the federal] government." He clarifies that the repeal of prohibition may well be an exception to that rule and then states that amendments to the Constitution "expand the role of the federal government."

Massie also warns of the "people who are going to game the amendments" saying, "Four days after we passed a horrible omnibus bill in March, my colleagues put on the floor a bill to [propose] a constitutional amendment ... to require a balanced budget." After agreeing that a balanced budget amendment would be a popular idea, Massie pointed out the deliberate weaknesses of the proposed amendment: It "doesn't apply in times of war." Since, as Massie goes on to explain, "We've been at war in Afghanistan for 17 years," the amendment would have done nothing during the last 17 years to curtail the overspending for which Congress is infamous. Even in the slim chance that war is not the reason to "blow the budget," Massie said the proposed amendment would allow 60 percent of Congress to override the balanced budget requirement. That "horrible omnibus" Congress passed four days before the proposal of the balanced budget amendment was approved by 61 percent of Congress.

On the side of state legislators whose videos show that they understand that enforcing — and not changing — the Constitution is the key, Washington State Representative Matt Shea makes the salient point that there are two main problems with the idea of turning the problem of an out-of-bounds federal government over to an Article V convention. He says these two problems alone "make it fail from the outset."



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Those problems are: “If you can’t enforce an existing piece of paper, how are you going to enforce a piece of paper that has a little more writing to it — in other words, that’s been amended?” And, “There are no clear safeguards — there’s no boundaries — and nobody can say there is.” He then visits the idea of “constitutional enforcement” as a “better option,” saying, “because that’s what the Founding Fathers left us. It’s very, very simple. State legislatures around the country can take back a lot of control — everything from spending, from enforcement activities — in fact, the United States Supreme Court has correctly recognized several times that you cannot force a state to enact or enforce a federal regulatory scheme.”

The constitutional enforcement page at JBS.org has five videos from state legislators in Idaho alone.

One of those, Representative Dorothy Moon, points out that the Idaho Republican Party “platform states that the United States Constitution is the greatest and most inspired document to use in a republican form of government.” She goes on to say, “I don’t see the word ‘flawed’ or ‘we need to change this.’”

Since the document is not the problem, “We need to adhere to it.” She goes on to say, “The problem with coming up with these amendments” is that “we don’t know where they’re going to be coming from, we don’t know who’s behind it, and as conflicted right now as the United States is with our 50/50 vote on just about everything, I think we need to back off and just adhere to that Constitution — and save it for future generations.”

Barbara Ehardt — who is also an Idaho State Representative and describes herself as a “constitutionalist first, a conservative second, and a Republican so long as it fits the first two” says that her concern is “with the interpretation of the Constitution as it stands now” and points out that “everyone seems to be taking liberties in how they interpret the Constitution.”

With “this kind of environment” and “the kind of people we would be sending” to a constitutional convention, Ehardt asks, “Seriously, what kind of results are we going to expect?” She answers her own question with, “It’s not going to be the Constitution we have.”

Those same sentiments are echoed by Idaho State Representative Karey Hanks when she says of the Constitution, “We aren’t following it now, so why would we open up the Constitution” for change, instead of just following it the way it is currently written?

Hanks points out that Idaho “has participated in mock conventions” and says, “we have sent people to these [mock] conventions that are not statesmen, and I have no reason to believe that the other states” wouldn’t make the same mistake in the event of a real constitutional convention.

Another Idaho State Representative, Christy Zito, says, “The Constitution is not broken,” and asks, “How can we expect our elected officials to follow the Constitution” if we are willing to “break it up, amend it, change it, hold a constitutional convention, or whatever — if they won’t adhere to it now?”

She puts the blame where it belongs: “The problem is not with the Constitution; The problem is with elected officials that we send back year after year after year expecting a different result.”

Wrapping up the Idaho legislators who seem to understand both the problem and the real solution is State Representative Ron Nate. He lists among the “particular dangers” of an Article V Convention the fact that “our only experience with a constitutional convention has been a runaway convention” that produced an entirely new Constitution for the United States. Lest people think he is anti-Constitution, Nate says, “We were fortunate enough to get our [current] Constitution out of that,” and quickly adds.



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“But I don’t think we have statesmen the likes of [the Founding Fathers] today.”

He also points out that his experience with “the people I’ve seen who have been interested in an Article V Convention” is that they are “the typical, establishment, power-hungry types of politicians that we see all too often in Washington, D.C. and our state capitol.”

At the local level, Newberry, Florida City Commissioner Tim Marden and Laurens County, South Carolina Councilman Stewart Jones express many of the same concerns about the dangers of an Article V Convention and the importance of enforcing the Constitution as it already exists.

Marden says, “My biggest concern is with the unintended consequences. We have people on the Right that are talking about the term limits and balanced budgets while on the other side of the aisle they’re talking about getting rid of the electoral college, getting rid of the Second Amendment, so I think there are some real risks — some real dangers — of a convention going sideways. And who knows what we’ll really end up with in the end?”

Speaking outside the historic Laurens County courthouse, Stewart Jones says, “This year we celebrated the 803rd anniversary of the signing of the Magna Carta in 1215 — the document that laid the foundation for our U.S. Constitution and Bill of Rights.” He goes on to point out that nullification of unconstitutional federal laws is baked into the Constitution, thanks to Article VI.

He quotes Thomas Jefferson as saying that “nullification is the rightful remedy” for unconstitutional laws and says, “That’s why it’s so important” for “local officials” to “stand up and nullify laws that defy our constitution.” He makes the final point that “an unjust law is really no law at all.”

Given these sound, historical, truthful, and logical arguments in favor of preserving and enforcing the constitution as it is written instead of taking the risky move of opening it up to sweeping changes — if not an outright replacement — the only real questions on this subject anyone should be asking is, “What are the proponents of a constitutional convention really up to?” And, “Why should we trust them?”



What is needed is an informed electorate who will demand that elected officials at every level of government adhere to and defend the Constitution. If that informed electorate were in place and doing its job, there would be no danger of a constitutional convention — because the problems it pretends to solve would not exist.

For more information about what you can do to preserve and enforce the Constitution, visit the “[Stop a Con-Con](#)” and “[Rein in Big Government with Article VI, not V](#)” John Birch Society web pages, and get involved.

Image of James Buckley: [Screenshot of C-Span2 video](#)



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