

Further Statement on JBS Charges

Some participants in this exchange continue to question my honesty rather than to check the facts for themselves. For the benefit of those who might be uncertain, I will make one more effort to summarize the law in this area.

- * There are over 40 reported cases on Article V issues. There are others that, although not dealing with Article V explicitly, lay down principles and rules that apply to Article V.
- * Since the courts first started issuing these cases in 1798, the rule has emerged (which I think consistent with the Founders' understanding) that when legislatures, federal or state, undertake Article V functions they do not act as the legislatures of their respective governments. They act as assemblies deriving power directly from Article V.
- * I reported this rule on the radio show in question. I was asked for a case on the subject. I was not asked for EVERY case on the subject. I chose *Leser v. Garnett*. But I could have selected any number of others.
- * Some other cases pointing toward the same conclusion include *Hollingsworth v. Virginia*, 3 U.S. 381 (1798); *Hawke v. Smith*, 253 U.S. 221 (1920); *Prior v. Norland*, 188 P. 729 (Colo. 1920).; *State ex rel. Tate v. Sevier*, 62 S.W.2d 895 (Mo. 1933) and *United States v. Sprague*, 282 U.S. 716 (1931).
- * *Leser* and similar cases hold that when acting under Article V, an legislature or convention undertakes a "federal function." Mr. Brown and the authors of his video seem to think this means it then becomes a "Department" of government for purposes of the Necessary and Proper Clause. They obviously did not check the law before they jumped to this conclusion.
- * In fact, "federal function" means only that the power to act is derived from the U.S. Constitution. Exercising a federal function does NOT render the actor part of the federal government. See, e.g., *Ray v. Blair* 343 U.S. 214 (1952).

Again, for more information, I refer readers to my publications on the subject, nearly all of which are available at <http://constitution.i2i.org>.

The hard fact here is that Mr. Brown was caught on statewide Montana radio giving a misleading recitation of a section of our Constitution, and he is now trying to shift the blame. Admittedly, we all make mistakes. But his is a sorry way of trying to atone for one.

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