At the conclusion of the very long Wisconsin committee hearing (3/28/17), Tim Dake offered this expert commentary in direct response to the comments from the numerous Article V detractors. Dozens of JBS spokespeople had expressed their falsehoods and fears about states utilizing an Article V Amendment Convention. At the end of over 7 hours of grueling testimony, Tim Dake, got-up to the podium and offered the following testimony, using a few quickly jotted notes. This is a summary of his presentation.

Testimony of Timothy Dake, representing the Wisconsin GrandSons of Liberty Before a Special Wisconsin Joint Committee, March 28, 2017 On the merits of states calling for an Article V Amendment Convention.

I am Timothy Dake of Franklin, Wisconsin and I represent the Wisconsin GrandSons of Liberty. We are a grassroots constitutionalist activist group. We work for constitutional adherence, promotion and defense. Article V is then clearly an issue within our scope.

> *Our organization first opposed the state's use of ARTICLE V to propose amendments, but after four years of research compiling nearly 900 pages on the subject, we now enthusiastically support it.*

When GrandSons of Liberty formed in 2009, we were adamantly and vehemently against an Article V convention believing in the hype that it would run-away, could not be limited and would create a parade of horribles.

Our initial position statement on Article V looked at both or all sides of the issue, the relevant court cases, laws and pending legislation as well as government actions taken. ***When we reviewed the data for Article V amendment conventions, we realized that the facts, the real evidence, did not support our initial position.*** We were forced to reconsider and change our position to support an "amendment convention".

After compiling four years of research on the subject, we decided to place everything into a single resource. Those documents, everything on Article V, became the recently published book, ***Far From Unworkable***. This 900 page expansive volume, is the first and only comprehensive reference work on the Article V convention with original historical documentation, relevant judicial actions and subsequent analytical reviews.

Our sources include over 500 academic law review and law journal articles, over 100 scholarly history articles, more than 150 academic books and more than 1,000 government documents. Books include such staples as The Federalist Papers, Farrand's Notes on the 1787 Convention and Eliot's Notes on the Ratification of the Constitution, among many others.

Let's begin with the most discussed question, whether an Article V "amendment convention" can be limited. Confusion on the various types of conventions is at the heart of the matter.

Plenary or Limited Conventions - A "constitutional convention", is a plenary, all powered convention empowered to draft a constitution by a legitimate government. It is NOT the same thing as an "amendatory convention", which is a limited-power convention called to do a very specific act, that is to draft and propose an amendment, and nothing more. An "amendatory convention" is restricted to the scope of the objective defined in the call to the

convention by their respective legislatures and is called under the authority of and subject to the superior constitution.

There are many types and categories of conventions. The first under consideration is the "constitutional convention". The "constitutional convention" is plenary, fully powered to do what is needed to form a government and draft a constitution. "Amendatory conventions" are not a category but a type of another category – the specialized convention. This category always non-plenary and authorized. They are a lower energy and limited purpose conventions called to do a particular task only. They are not endowed with the full sovereignty of the people and can do only what the call to convention permits. An "amendatory convention" is limited to the proposal, debate and referral of an amendment idea only. It cannot ratify or enact, it cannot change the Constitution or rewrite it, nor modify the ratification method. It can do nothing by make a recommendation.

Opponents usually ignore the subservient authority of an "amendatory convention" claim that an "amendatory convention" can do all of rouge actions and more. That there are no limits on such an "amendment convention" and that the convention answers to no one. The tell you that it can rewrite the Constitution, repeal the Bill of Rights, reinstate slavery, take away a woman's suffrage and force us to have roundabouts at every single intersection. That kind of power is actually describing a revolutionary convention by the legal description. It usually exists in the absence of government and has not occurred in this nation since 1861 in the Southern States.

The Late Supreme Court Justice Scalia was in Support of an Amendment Convention

Occasionally you might hear someone use a quote from the late Justice Scalia from a 2014 National Press Club show were he said "Whoa, we shouldn't have a 'constitutional convention' because who knows what would come out of it." Justice Scalia was a brilliant lawyer and he knew the value of words and used them precisely. He was talking specifically about a constitutional convention and not an amendatory convention. So let's look at a Scalia quote for an amendatory convention:

> *"The one remedy specifically provided for in the Constitution is the amendment process that bypasses the Congress.* ***I would like to see that amendment process used*** *just once. I do not much care what it is used for the first time, but using once will exert an enormous influence on both the Congress and the Supreme Court. It will establish the parameters of what can be done and how, and after that the Congress and the Court will behave much better."*

I love that quote as it goes to the heart of Article V's state-application-and-convention method. Justice Scalia clearly distinguished between the two types of multi-state conventions, favoring Amendment Conventions over the other.

The Real Facts about the Historic 1787 Convention of States

The next topic that I would like to address is the idea that the Grand Federal Convention of 1787 in Philadelphia – and that was its name – ran-away and assumed powers not given to it and that it is a precedent for a future amendatory convention to do the same. There are two parts to this matter, the events at Philadelphia and those that preceded the 1787 convention.

With regard to the Philadelphia convention, did the 1787 Grand Federal Convention exceed its mandate and 1) write a new constitution without authority, 2) change the ratification process, 3) defy the States and Confederation Congress?

The Sad State of our Early Nation under the Articles of Confederation

Let's consider the state of the nation in early 1787: The Articles of Confederation were not working out. Debt, national and personal were up and growing. The States were taxing each other. There was no hard money. Bankruptcies and foreclosures were up. Congress was wholly ineffective. The Articles of Confederation and Perpetual Union went into effect with Maryland's ratification in 1781. The first complaints for a revision were in August 1780 when 3 states met in Boston. Then Alexander Hamilton issued a convention call in September 1780. In November 1780 another meeting took place among several state in Hartford. In July 1782 NY called for a convention. In 1784, VA and MD concluded that a plenary convention is needed to reform the government. The Massachusetts General Court considered a convention call in 1785. In September of 1786 the "Meeting of Commissioners to Remedy Defects of the Federal Government" met in Annapolis with 5 states attending. The convention report pushed for a convention in Philadelphia in May 1787.

States Initiate the 1787 Gathering in Philadelphia

The delegates' commissions to Annapolis for New Jersey authorized them to take up not only commercial matters but also "other important matters necessary to the common interest and permanent harmony of the several States." The formal call to convention came not from Congress but from Virginia and was seconded by New Jersey. One by one the states began to answer and pledge to attend. When Congress finally got around to addressing the topic with a convention call of its own on 21 Feb 1787, six states were already committed to participating and had issued delegate commissions. Another, New York has voted to attend but did not issue the commissions until a few days after February 21st. By then Shays' Rebellion had occurred and the rest of the states saw the need for major changes. George Washington had been writing to anyone and everyone encouraging major changes in the Articles of Confederation. Discussion among the political leaders of the day focused on plenipotentiary power for the Philadelphia convention. Taking the wording from the New Jersey commissions, ten of the twelve attending states granted authority to their delegates "to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."

Four of the twelve attending states, fully one third, came prepared with proposals for the overhaul of the federal government. Virginia's Gov. Edmund Randolph proposed the Virginia, or large states, Plan; Charles Pinckney of South Carolina, Attorney General William Paterson introduced the New Jersey, or small states, Plan, and Alexander Hamilton produced the New York Plan.

To put this information in context, at least one quarter of the 8th Confederation Congress, that is 15 out of 60 congressmen, served in the Philadelphia Convention. Those congressmen debated and voted for the 21 February 1787 resolution to call a convention, then they served in the convention that they had themselves called where they, on behalf of their states and per the commissions issued to them by those states, drafted, debated and proposed a new

government and constitution, then they returned to Congress in New York and debated and agreed to send that same constitution to the States for consideration for ratification, and finally, they served in those ratification conventions where they voted to ratify the constitution that they had created themselves. If they ran-away, then they ran-away from themselves.

Are Delegates to an Amendment Convention compelled to follow the direction their State Legislatures?

One of the basic legislative question is whether an "amendatory convention" is plenary or whether the convention can declare (impute to itself) full sovereignty. Again, there are two issues at play.

Potential for a Second Plenary Convention – Was a second plenary convention being suggested in 1787? The Anti-Federalists worked hard within the Philadelphia Convention to obtain another plenary general convention for the purpose of reworking the Constitution, with the potential of making broad and unspecified changes. The Federalists resisted this effort as they knew that the result would be a splintering of the United States in several regional confederacies. No good would come of a second unlimited convention and with the failure of the nation imminent, the Federalists were seeking to preserve the Union during these hard economic times.

Never Again an Unlimited (Plenary) Convention - The second issue at play is potential for any future convention to be plenary – which would then have the power to act as the Philadelphia Convention did to write a new government. For the answers, we can turn to the Prof. Max Farrand's "The Records of the Federal Convention of 1787" published in 1911 and developed from the notes of delegates known to have kept notes during the convention.

The matter of holding a second plenary convention was brought up four times: Once as a suggestion, three times as a formal motion with one time having no seconding, one time being tabled and one time defeated unanimously.

Finally, also on 15 September 1787, Roger Sherman of CT made a motion to strike out words from Article V that would result in "leaving future Conventions to act in this matter, like present Conventions according to circumstances." That is, with plenary powers. The vote was 3 Ayes, 7 Noes, and 1 Divided. (Farrand, Vol. II, Madison, p.630)

There would be no future second plenary convention for the immediate consideration of the Constitution and no provision for any future plenary conventions. Any modern plenary convention would be unconstitutional, ultra vires and extra legem. We are left only with specialized conventions as legitimate conventions under the United States Constitution of 1787.

What are the Typical Objections Raised Concerning an Article V Amendment Convention?

Having covered these fundamental, foundational issues, I would like to turn to the usual three premises that underscore every objection to an Article V amendatory convention.

1. "There has never been an Article V Amendment Convention before."

If we take the wording as presented, that there has never been an officially called federal amendatory convention, then that is true. If we take the claim as it is written then it is anything but true. There were 39 Article V conventions held in 1933-34 for the ratification of the 21st Amendment to repeal Prohibition. There were 15 Article 7 conventions held in 1787-91 to ratify the Constitution. There was a New England states convention held in Hartford in 1814 that debated amendment proposals. The Nashville Conventions of 1850 gathered the southern states and debated an amendment. The closest that we have come to a federal Article V convention was the Washington Peace Conference of 1861 that actually prepared an amendment proposal and sent it to Congress. Three quarters of the states took part, northern and southern and they worked to stave off the Civil War. Unfortunately, it was too late to stop the war. Congress did not act on the proposed amendment.

Outside of Article V, the Locust Convention of 1876 saw 14 states work together. The 1889 convention looked at meat handling. Riparian and riverine conventions such as the Colorado River 1922 have been going on for approximately 200 years. We also have interstate compacts. The Council of State Governments estimates that over 200 compacts are operating. The average state belongs to 37 and Wisconsin belongs to 26. The most recent being the Great Lakes – St. Lawrence River Basin Water Resources Compact formed in 2008. There have been 236 state constitutional conventions, hundreds more planning and statehood conventions for territories, over 80 strictly limited amendatory conventions for the states and territories. Conventions are how we accomplish interstate goals.

2. ***"There are no rules for an Article V Amendment Convention:"***

Every convention mentioned had rules. Each follows generally the same process, they convene, name interim leaders, then select a Rules Committee and then wait for the committee to develop rules before going about their business. There are multiple organizations making and suggesting rules today for and Article V convention. Ultimately each convention will set its own rules. I looked at the proceedings of hundreds of conventions in preparing the book. Each was about the same in terms of process and rules. There are some variances but not many. This legislature has rules and carried over rules from the previous legislature until it developed its own rules. It operated under a continuity clause from the last set of rules and Congress might state in the call that a new convention was under the rules from the 1787 until the new convention adopted its own rules. Congress was not needed to make rules for Article 5 and Article 7 conventions. The Constitution provides the same amount of rules for each, that is, there are none specified in the Constitution. Yet, the 1933-34 conventions operated and did not runaway. Why are we comfortable with no rules for the Article V ratificatory conventions but not the Article V amendatory conventions?

3. ***"Because the rules are not finalized, no one knows what will happen in an Article V Amendment Convention, so that makes it dangerous:"***

The Constitution specifies the creation of many bodies and no rules to govern those bodies. There are no rules not just for: Article 5 and Article 7 ratification conventions but for the Electoral College – although it has worked since 1789, the Courts have no rules but continue to operate, the Executive departments, the Post Office and the Patent Office.

Why is there a Provision for States to Propose Amendments?

So the one question that remains, is how Article V and the state-application-and-convention method came to be in the Constitution and why it was there? Some have claimed that the "amendment convention" method was not supposed to be in the Constitution, that it was a last minute addition. Not true. For each of the four plans introduced at Philadelphia, an amendment process was included and in each the plan involved the States through their legislatures were to introduce amendments. The congressional method was not discussed until the last six weeks of the convention and then as a compromise.

The provision was important to the Framers. They had completed the Revolution just four years earlier and they were seeking to protect themselves and their rights from an out-of-control, oppressive government. That is how they had seen Parliament a decade earlier. They were unable to amend the unwritten English constitution to protect their rights as Englishmen. Only the British Parliament could do that. Their voice in Parliament was through the colonial legislatures and Parliament had shut that voice down. The Framers sought to protect their British constitutional rights and when they could not, they revolted. Now they worked to protect their new constitutional rights. On the last day of debate, September 15th, Col. George Mason urged the amendment process to go around an obstinate, obdurate government that would not heed the will of the people and respect their rights. He said that he "verily expected this government to one day become as oppressive as the one that they just threw off." The state-driven "amendment convention" method is there to make sure that the States and the people can go around Congress and the federal government. Congress will never willingly cede power – the "amendment convention" method of Article V is the only way that the States and the people can achieve ultimate control of the federal government. **It is unlikely that the states would have ratified the new constitution if this provision was absent**.

Conclusions:

One of the doctrines of government in our constitution is that of checks and balances. The Supreme Court can strike down a law. The legislature can impeach a president. The president can veto legislation. Each is a check by one branch of government on another. The amendatory convention is the ultimate in the system of checks and balances as it is the only check on the ENTIRE federal government by the people and the States. It is the ultimate weapon for preserving our constitutional rights short of revolution. The power of an amendatory convention is equivalent and identical to that of Congress in the amendment process.

Thank you for taking time to gather the correct information on this most important and powerful resource available to state legislatures.