

**Opening Statement of
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**Joint Public Hearing of the House and Senate State Government Committees
Concerning House Resolution 63, an Application for Article V Convention**

Good morning. I'm Michael Bekesha, an attorney at Judicial Watch. Judicial Watch is a Washington, D.C.-based educational foundation dedicated to promoting transparency, integrity, and accountability in government and fidelity to the rule of law.

Thank you, Chairman Metcalfe, for inviting me here today. It is always an honor for me, on behalf of Judicial Watch, to appear before this Committee. Last time I was here, almost one year ago, I outlined for the Committee how a Pennsylvania official refused to uphold her constitutional and statutory duties. The time before that, about four years ago, I reported to this Committee that the federal government had decided – rather shockingly I must say – not to enforce federal immigration laws. At that time, you and your colleagues sought to protect the citizens of this Commonwealth even though the federal government refused to do so. It is, therefore, with mixed emotions that I return to this Committee to provide you and your colleagues with an overview of how the federal government has grown even more out of control over the past few years.

As the first witness to appear before this Committee today, I thought I would take this opportunity to define the problem at the heart of the movement for an Article V Convention: an out-of-control federal government. As the public well knows, the U.S. Constitution establishes a system of dual sovereignty between the states and the federal government. The founders created a federal system of government in order to protect the individual liberties of the people. Under this system, the authority of the federal government is limited to those powers specifically enumerated in the Constitution. The states, on the other hand, enjoy broad, plenary power to regulate activities within their borders and to protect the health, safety, morals, and general welfare of the people of their states.

As the U.S. Supreme Court has recognized:

The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals.

In addition, the Supreme Court has also described the system of federalism as one that

assures a decentralized government that will be more sensitive to the diverse needs of a heterogeneous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.

Although the Supreme Court, everyone on this committee, and the public fully understand the importance of this constitutional system, unfortunately those within the federal government apparently do not.

With that being said, there are two topics that Judicial Watch monitors on a routine basis that highlight the lack of understanding of a limited federal government: wasteful government spending and the abuse of federal power.

Judicial Watch has been reporting wasteful spending for years. On our website, judicialwatch.org, we have a tag designated specifically to report outrageous expenditures. A few highlights are:

- Since taking office in January 2009, President Obama, Vice President Biden and their families have spent more than \$56 million on travel for vacations and fundraisers;
- Since 2002, the U.S. Treasury has spent over \$110 million to educate the public about the redesign of dollar bills;
- The State Department spent \$18.5 million to renovate a prison in Afghanistan that remains unfinished and unused years later;
- At least \$684 million were spent publicizing, marketing, and advertising the Affordable Care Act; and
- Almost \$500 million were given to alternative energy companies that collapsed shortly thereafter. These companies include, but are not limited to, Solyndra, Fisker, ECOtality, and the Vehicle Production Group; and
- \$65 million provided to New York and New Jersey so that those states could buy television ads to promote tourism after Hurricane Sandy.

In addition to Judicial Watch's reporting, Senator Tom Coburn of Oklahoma publishes an annual list of the most wasteful government projects. In 2013, the Senator highlighted the spending of \$30 billion in taxpayer money on ridiculous and outright absurd projects. In 2014, Senator Coburn highlighted 100 outrageous federal government projects that totaled \$25 billion.

Also, in December 2014, the *Washington Examiner* reported, "Taxpayers could save as much as \$43 billion if officials running the biggest federal departments would do what their internal watchdogs recommended in 2014." The *Examiner* arrived at this number by reviewing the reports of inspectors general of 14 agencies. The inspectors general reported that they had returned almost \$11 billion to the U.S. Treasury as a direct result of their investigations and that \$32 billion additionally could be saved if the agencies implemented their management recommendations.

This is only a fraction of what Judicial Watch and others have exposed. But the examples and the numbers speak for themselves. Federal government officials are spending taxpayer money without much thought. As the Heritage Foundation has concluded, the federal government “spent nearly \$3.5 trillion in 2014 while collecting nearly \$3 trillion in revenues, resulting in a deficit of slightly less than half a trillion. In other words, 14 cents of every dollar that [the federal government] spent in 2014 was borrowed.” It appears that the federal government spends money as though it is not its own. Well, that is because the money is not that of the federal government. It is that of the people. And, right now, there is no self-restraint in the astronomical spending.

It is with great dismay that I must say that there is no end in sight to wasteful spending by the federal government. Similarly, there is no end in sight to the federal government acting outside its authority. As I mentioned earlier, about four years ago I appeared before this Committee concerning the federal government’s refusal to enforce federal immigration laws. At that time, I hoped that the federal government’s indifference to the rule of law was an aberration. Unfortunately, it is the norm. The federal government continues to disregard laws, violate state sovereignty, and ignore constitutional limits.

The list of abuses of federal power is long. I will therefore focus on two particular instances that highlight the problem.

First, the federal government continues to ignore immigration laws passed by Congress and signed by the president almost 30 years ago. In trying to grant lawful residence to at least five million individuals who are in the country unlawfully, the executive branch has ignored numerous statutes and obligations and provided individuals with not only promises that they will not be deported but also provided them with the opportunities to apply for benefits and services, such as the authority to work and driver’s licenses, that they otherwise would not be able to receive. I will not go into any more detail about these abuses, except to say that 21 states and five governors have sued the federal government to stop it. So far, one federal court has agreed that the federal government has gone too far.

Second, in passing the Affordable Care Act, the federal government sought to expand Medicaid coverage. After the passage of the law, 26 states, including Pennsylvania – sued to prevent the coercion of the states by the federal government. In *NFIB v. Sebelius*, the Supreme Court by a 7-2 vote found that the federal government overstepped its constitutional authority and sought to unconstitutionally coerce the states to provide Medicaid to additional individuals. Although the Supreme Court struck down the law, it will not be the last time that the federal government seeks to unconstitutionally violate the sovereignty of the states. Just recently, Lawrence Tribe, a highly regarded scholar of constitutional law at Harvard Law School and a reported mentor of President Obama, argued that the federal government’s requirement that states cut carbon emissions by changing energy supply from fossil fuels to renewable sources is an assertion of power far beyond its lawful and constitutional authority. In other words, there is no end in sight to unlawful coercion of the states by the federal government.

As is evident from these examples, the abuses of power are not solely a result of one branch of the federal government: both the executive and legislative branches are complicit in

overstepping constitutional boundaries. In addition, although the federal judiciary has at times stopped these abuses, the American people cannot rely on it to do so in every circumstance. However, what is clear from these two examples is that the majority of the states have come together to send a message to the federal government that they will not sit quietly as the federal government ignores the basic tenets of our constitutional system. Whether by litigation, constitutional convention, or other available tools, the public should be assured that states, like Pennsylvania, are doing everything in their power to protect the public from an out-of-control federal government. The framers would approve.

Thank you.