

Opposition to HJR2, and SJR1 (call for an Article V convention), Dave Black, Willoughby, Ohio

3/15/17

I have worked in the property and casualty and surety business since 1982, working with commercial customers. I have worked with contract interpretation my entire career. I am currently a Vice President and shareholder of a national insurance agency.

Personally, I am actively involved in Lake County, Ohio advocating for constitutional government. I've debated with Law Professors, and presented to 912 groups, and AM radio on this subject. I am the organizer of an 81 member Meetup group: Ohio Citizens Defending the Constitution.

In regard to my testimony attached are the following:

- Congressional Research Service Report, April 11, 2014: The Article V Convention to Propose Constitutional Amendments (pages referenced below)
- Supreme Court Justice Burger letter
- Supreme Court Nominee Bork letter
- Associate Supreme Court Justice Arthur Goldberg letter

I. Claims that one can expect a convention to be limited: FALSE and MISLEADING

Article V wording is simple: Congress shall call a convention.....

Justice Burger: "there is no effective way to limit the actions of a constitutional convention. The convention can make its own rules and set its own agenda. The meeting of 1787 ignored the limits placed on it "for the sole and express purpose"

Robert Bork "it is my opinion that a convention cannot be limited to a single issue. Congress's only option based on the wording is to call a convention for proposing amendments (plural). The Philadelphia convention went way beyond the purpose for which it was called."

Associate Justice Goldberg: "Article V does not limit the agenda to specific amendments proposed by the states in their petitions to Congress. There is nothing in Article V that prevents the convention from making wholesale changes to our Constitution."

Page 19 of Congressional Service report: "Constitutional scholar Charles Black offered emphatic support of this (unlimited convention) viewpoint: "I believe that, in Article V, the words 'a Convention for proposing such amendments' mean 'a convention for proposing such amendments as that convention decides to propose.'" In fact, he went on to assert that limited conventions would be constitutionally impermissible for the reason that no language is found in Article V that authorizes them"

Page 20 of Congressional report: "Solicitor General Walter Dellinger states: any new constitutional convention must have the authority to study, debate, and submit to the states for ratification whatever amendments it considers appropriate (emphasis added). According to his judgment, an Article V Convention must be free to pursue any issue it pleases, notwithstanding the limitations included in either state applications or the congressional summons by which it was called"

II. Claims that a runaway convention is not possible. FALSE and MISLEADING

The only precedent was the convention of 1787. The convention was called "with the sole and express purpose of revising the Articles of Confederation" - Federalist 40, James Madison.

Associate Justice Goldberg: "The Convention of 1787 was called "for the sole and express purpose of revising the Article of Confederation." As we know, that convention discarded the Articles of Confederation and drafted a new Constitution despite the convention's limited mandate. "

III. Claims that the safeguard of requiring ¾ of states to ratify is solid. FALSE and MISLEADING

The only precedent was the convention of 1787. Article XIII under the Articles of Confederation required any changes to be confirmed by the legislatures of every state.

The convention changed the ratification to require only 9 states (Article VII).

On September 13, 1788 the Continental Congress proclaimed that the Constitution had been ratified by the necessary nine States. (Source: Library of Congress)

James Madison in Federalist 40: "Instead of reporting a plan requiring the confirmation of all the states, they have reported a plan which is to be confirmed and may be carried into effect by nine states only."

IV. The claim that the states will have full control of the convention. FALSE and MISLEADING

The wording of Article V is clear, "Congress" shall call the convention upon the application by 2/3 of the states, and "Congress" shall propose the form of ratification: legislatures or conventions.

Page 4 of the Congressional Service Report: "Second, while the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including: establishing procedures to summon a convention; determining the number and selection process for its delegates; setting internal convention procedures, including formula for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states.

V. **The claim that Mason's motion on Amendments was followed: FALSE and MISLEADING**

June 11, 1787, during Convention Mason proposed adding a provision for amending the Constitution by the States. The wording added to the draft on August 6h as follows:

- On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose.

In September the final draft was published as follows:

- The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;

On September 15, Two days before the close of the convention, "Col: MASON thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case. "

Mason did not sign the Constitution at the close of the convention.

(Source: Avalon project, James Madison Notes, Yale Law School)

Conclusion:

The above clearly shows that the basis that State Representatives use to justify this risky action is seriously flawed. You must question the true intention of organizations that will ignore these significant risks.

The original Constitution was perfected by the addition of The Bill of Right. The Anti Federalist patriots which included Patrick Henry, Col. Mason, and Richard Henry Lee, insisted on the Bill of Rights to clarify the intent of the Constitution. **No further clarification is needed.**

The preamble to the Bill of Rights states:

"THE Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution."

Solution: States should enforce the existing Constitution rather than risking it to irreversible changes.

Thank you. Dave Black