



# GOVERNMENT OVERSIGHT AND REFORM COMMITTEE

## WITNESS FORM

TODAY'S DATE:

NAME:

ADDRESS:

TELEPHONE:

ORGANIZATION REPRESENTING:

TESTIFYING ON BILL NUMBER:

TESTIMONY TYPE:  VERBAL  WRITTEN  BOTH

TESTIFYING AS:  PROPONENT  OPPONENT  INTERESTED PARTY

ARE YOU A REGISTERED LOBBYIST?  YES  NO

SPECIAL REQUESTS:

## Testimony Against a “Convention of the States” (SJR1)

Ohio Senate Government Oversight and Reform Committee (Nov. 28, 2018)

**To Chairman William Coley and members of this Distinguished Committee:** My name is Mark Affleck and I am volunteer leader of the John Birch Society in Bucks County Pennsylvania.

This paper outlines why you should vote against all applications for an Article V convention.

## **WHO** has the power to do **WHAT** under **Article V** of the US Constitution?

### **Article V, United States Constitution, says:**

*“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 [**Mode #1**], or by Conventions in three fourths thereof [**Mode #2**], as the one or the other Mode of Ratification may be proposed by the Congress...”*

### **So, there are two ways to propose Amendments to the Constitution:**

1. Congress proposes them and sends them to the States for ratification or rejection; **or**
2. When 2/3 of the States (34) apply for it, Congress calls a convention.

All of our 27 existing amendments were proposed under the 1st method: Congress proposed them. We have never had a convention under Article V.

### **And there are two ratification methods in the Constitution:**

1. By the Legislatures of three fourths of the States
2. By conventions in three fourths of the States

Note: It is also possible that the convention itself could write a new mode of ratification as was done in 1787.

The Constitution grants powers to four different bodies regarding an Article V convention:

### **The State Legislatures**

The several State legislatures have the power to apply to congress for a convention and **if Congress chooses mode #1**, then they also ratify the amendments proposed by the convention. Regardless of what proponents tell you, the States cannot bypass Congress in the amendment process.

The States **do not set the rules** for a convention. The Constitution delegates to Congress the power to make the laws to organize and set up the Convention. But once the convention is convened, ***the Delegates are the Sovereign Representatives of the People and can make whatever rules they want.*** At the federal “amendments” convention of 1787, the Delegates made rules on **May 29, 1787** to make their proceedings secret.

### **The Congress**

The Congress has the power to call the convention (per Article V) and to make all laws necessary and proper for calling a convention. (Article I, §8, last clause). Congress also chooses between the two modes of ratification. Proponents say Congress will play only a ministerial role in setting the time and place of the convention, but according to the Congressional Research Service Report (4/11/14) Congress “has traditionally asserted broad and substantive authority over the full range of the Article V Convention’s procedural and institutional aspects from start to finish.”

(p.18). Proponents have also assured some legislators that each State would get one vote in convention. This will be up to Congress, and Congress has already demonstrated its intent to make those rules. In 1983, when we were 2 states away from a convention, 41 federal bills were introduced; and although none passed, **apportionment of delegates was generally set by population, like the Electoral College, not by one state, one vote.**

### **Delegates to an Article V Convention**

Delegates have the power to propose amendments. As representatives of the Sovereign will of the people they can also exercise their plenipotentiary power to write a new Constitution. This was done in 1787 and is supported by the Declaration of Independence when it states: "... Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is **the Right of the People to alter or to abolish it, and to institute new Government**, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Nothing in Article V or the Constitution limits a convention to a single topic(s). The convention is the deliberative body! Under the supremacy clause at Article VI, clause 2, US Constitution, any State law which contradicts the Constitution is void. Proposed limits are a political ploy designed to mislead Legislators into a false sense of security and control over a process which will be totally out of their control. It is a trick to gain votes. Those who think State Legislatures will control the delegates should consider that: State law cannot control delegates to a convention because a convention is the highest authority in our Republic. It emanates directly from "We the People" and if Delegates **choose to meet in secret as they did in 1787**, the State Legislatures wouldn't know what the Delegates were doing.

### **Ratifying Conventions**

If Congress chooses Mode #2, ratifying conventions in each state, the power to ratify proposed amendments lie entirely with them. Even if method #1 were chosen by congress, it would not guarantee protection against bad amendments. Consider that the 16<sup>th</sup> Amendment (Income Tax), the 17<sup>th</sup> Amendment (Direct Election of Senators) and the 18<sup>th</sup> Amendment (Prohibition) were ratified.

A precedent was set in 1787 when the "amendments" convention called "**for the sole and express purpose of revising the Articles of Confederation**" resulted in a new Constitution **with an easier mode of ratification**; this could happen today.

### **Conclusion:**

Once the State of Ohio applies for a convention, it is out of their hands. At that point, the rights of the citizens of your State are at the mercy of the remaining Legislatures. If enough follow course and apply for a convention, the entire federal system is in the hands of Congress and the Delegates. There is no guarantee that the results of a convention will be presented to the Legislature of Ohio for ratification. All applications for a convention pursuant to Article V of the United States Constitution should be rejected.

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**Attached:** (a) A Chart of the powers delegated by Article V

## A Chart of the Powers Delegated by Article V

BODY	POWER(s)
State Legislatures	<ul style="list-style-type: none"> <li>• Apply to Congress for a convention</li> <li>• Ratify proposed Amendments, <i>if Congress chooses mode #1</i></li> </ul>
Congress	<ul style="list-style-type: none"> <li>• Calls the convention</li> <li>• Makes all laws necessary and proper for calling a convention. (per Article I, §8, last clause)</li> <li>• Selects Ratification mode #1 or #2</li> </ul>
Delegates to Article V Convention	<ul style="list-style-type: none"> <li>• Propose Amendments [assuming they don't exercise their plenipotentiary powers and write a new Constitution.]</li> </ul>
State Ratifying Conventions	<ul style="list-style-type: none"> <li>• Ratify proposed Amendments, if Congress chooses mode #2</li> </ul>