TESTIMONY OF ELLEN HORTON

ON SJR 1

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132nd GENERAL ASSEMBLY OF OHIO 2017-2018

Chairman Coley, Vice Chairman Ueker, Ranking Member Schiavoni, and members of the Government Oversight and Reform Committee, I appreciate this opportunity to present my thoughts about SJB-1. Concerning Ohio’s involvement in the call for an Article V Convention.

Some COS supporters claim that a “proven history of Conventions of States” exists. However, to date, no convention has ever been called for the purpose of amending the Constitution. There is, therefore, no precedent--no history to indicate that amendment by convention will result in the smooth outcomes that convention advocates anticipate. The fact remains that the United States boasts a proven history of the effectual alternative to the convention method of proposing amendments, a method completely devoid of the risks that surround any potential and as-of-yet unidentified outcomes of an Article V convention

In 1787, delegates from the several states met, with the assent of both the Congress and the state legislatures, for the purpose of amending the *Articles of Confederation*. The very next day, the delegates began writing a new constitution, having abandoned the Articles, rather than revising them, as the state legislatures had expected. This, the only general convention ever called by the states, suggests that convention delegates have control, regardless of state intent. If such a move should repeat itself, our current process for ratification of amendments by convention could be among the changes put forth by the delegation. The states, then, would have no guarantee that their sovereignty would remain intact.

The Congressional Research Service Article V Analysis:

The Congressional Research Service is not a governing body, nor does it play an advisory role. This body of legal investigators study law and precedent as well the testimony of individuals that it considers trustworthy, right or wrong. It does not set policy, but simply presents its two-sided research analysis. The CRS resolves nothing. Therefore, CRS analyses do not establish a credible foundation for an opinion on possible convention outcomes.

* The CRS has quoted experts who tell us that Congress *is not limited* as to the number of topics to be considered for amendment; the CRS quotes other experts who say the opposite.
* The CRS cites prior indications that Congress should assume authority *to select the topics* to be considered; the CRS quotes other experts who say that the states carry that authority.
* The CRS cites experts who show evidence that Congress controls the convention. Testimony of equally-qualified experts place control in the hands of the states.

In order to guarantee that the states will not be trampled by Congress, our founders required that our U.S. Senate vote on proposed amendments that might come out of convention. Amendment XVII has negated that check on federal authority, and the habit of today's U.S. Senate represents federal overreach, not the state supremacy that our founders espoused.

Since Congress calls the convention, the suggestion that the amendment process would bypass Congress is nothing more than that—an unfounded suggestion.

Regardless of the rhetoric, the President is not bypassed, either. ***Article I, §7*** states, “Every Order, Resolution, of Vote to which the Concurrence of the Senate and House of Representatives may be necessary…shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives…” To by-pass the President is to abandon the rule of law.

Amendment by Convention has never been tested.  Anyone who seriously investigates *both* sides of the argument should have at least minimal concern that the unknowns present risks to the Constitution that has preserved our liberties up to this point.  Today’s problems do not lie within the *Constitution of the United States*, that it should be changed.  I have identified five problems that were created and evidenced by the truth that we have neglected to follow the Constitution, as intended by our founding fathers.

Federal overreach is the first of the five. In a letter to the U.S. House of Representatives, President James Madison explained that Congress’ extension of federal authority was his reason for having vetoed a public Works bill of 1817:

**"The power to regulate commerce among the several States" can not include a power to construct roads and canals, and to improve the navigation of water courses in order to facilitate, promote, and secure such commerce without a latitude of construction departing from the ordinary import of the terms** strengthened by the known inconveniences which doubtless led to the grant of this remedial power to Congress.

**To refer the power in question to the clause "to provide for common defense and general welfare" would be contrary to the established and consistent rules of interpretation, as rendering the special and careful enumeration of powers which follow the clause nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them, the terms "common defense and general welfare" embracing every object and act within the purview of a legislative trust.**

Thomas Jefferson gave a written affirmation of President Madison’s perspective in a letter to a friend:

Whereas, **our tenet ever was**, and, indeed, it is almost the only landmark which now divides the federalists from the republicans, **that** **Congress had not unlimited powers to provide for the general welfare, but were restrained to those specifically enumerated;** and that, as **it was never meant they should provide for that welfare but by the exercise of the enumerated powers**, so it could not have been meant they should raise money for purposes which the enumeration did not place under their action; consequently, that the **specification of powers is a limitation of the purposes for which they may raise money.** - Thomas Jefferson from his 1817 letter to Albert Gallatin (Emphasis mine)

Our Constitution gives us a balanced budget mandate by limiting federal authority to the enumerated powers identified in Article I, Section 8, as evidenced by the writings of these two founding statesmen, both of whom served as Presidents of the United States, both of whom were involved with the construction of the Constitution. Restating budget limitations as an amendment will no moreo motivate Congress to stop spending than the current wording of the Constitution has been able to do.

A second problem exists in that we have failed to be properly-equipped citizens, educated and involved in the preservation of our rights and our liberties.  Even law students in our U.S. universities cannot name the five freedoms that are identified in the First Amendment.

Thirdly, we have given up our states’ check on federal power. Our U.S. senators, by the founders’ design, were once answerable to the state legislatures. In passing the Seventeenth Amendment, we reshaped the U.S. Senate into a strong arm of the federal government. A convention will not mitigate the elected officials’ greed and thirst for power that cast an ominous shadow over the liberties of the U.S. citizen.

A fourth aggravating factor is that we have elected and re-elected state and federal legislators who have not only abandoned the rule of Constitutional law, but have abandoned the common good and the general welfare of the people as a whole, in favor of special interests.

The fifth, and perhaps the most grievous setback of all is the fact that our legislators have allowed the court system to dilute the authority of our Constitution by having accepted the opinions of the judiciary as established law. Right here in Ohio, our General Assembly kowtowed to the overreach of the courts when, in 2012, the Obama re-election campaign sued our state for expanded voting hours. Section 4 of Article I explicitly declares: “The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof…” Ohio had every legal right, as an independent, sovereign Republic (guaranteed by Article IV, Section 4) to follow state election laws. Furthermore, Article III, Section 2 of the *Constitution of the United States* declares, “In all Cases…in which a State shall be Party, the supreme Court shall have original Jurisdiction.” The state of Ohio allowed itself to be dragged through lower courts when we should have insisted that the case be opened in the U.S. Supreme Court, according to law. What’s more, instead of standing our legal ground, Ohio bowed to the appellate court’s ruling. Conclusion: individual states, ours included, are clueless as to our rights, as designated in our Constitution, rendering us powerless to exercise those rights.

It is not our Constitution, but our ignorance of it, that saps our authority as creators and controllers of government. We have a Constitution, an organic rule of law created by the people for their safety and for the protection of their rights and liberties; and it is being disregarded. A convention will not correct that problem. Instead of fighting over an untested means of altering the Constitution, we should learn what our authority is—by studying not just the document itself, but the founders’ writings that show their true intent in regard to the authority of the people and the authority of the individual states.

A convention will effect no change in our legislators’ determination to suit themselves rather than to serve the people.

James Madison’s letter to George Lee Turberville, 2 November 1788, clearly identifies this statesman’s apprehensions about a convention for the purpose of amending the Constitution. If there is any risk at all, and James Madison identified several potential risks, is it not unwise to enter uncharted territory when a tried and effective alternative is in place?