

H.J.R. No. 1
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Good afternoon Chair Wiggam, Vice Chair John, Ranking Member Kelly and Members of the House, State and Local Government Committee.

My name is Mindy Hedges, and I am here to give testimony in strong opposition to H.J.R. No. 1.

I don't understand, and maybe you may not understand, what exactly a Constitutional Convention may mean for our Country, for Ohio and for its citizens.

A Constitutional Convention would likely be extremely contentious and highly politicized, and its results impossible to predict. A number of prominent jurists and legal scholars have warned that a Constitutional Convention could open up the Constitution to radical and harmful changes. The late Justice Scalia, in 2014, said, "I certainly would not want a Constitutional Convention. Whoa! Who knows what would come out of it?" Former Chief Justice of the United States Warren Burger wrote in 1988:

There is no way to effectively limit the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. The representatives might try to limit the Convention to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda.

Such concerns were justified then and are even more so today with our volatile political and social agendas. I have many concerns, but my top four are that:

1. **A convention could set its own agenda and become influenced by powerful interest groups.** The only constitutional convention in 1787

went far beyond its order. Charged with amending the Articles of Confederation to promote trade among the states, they instead wrote an entirely new governing document. A convention held today could set its own agenda, too. There is no guarantee that a convention could be limited to a particular set of issues, such as those related to balancing the federal budget.

- a. As a result, powerful, well-funded interest groups would surely seek to influence the process and press for changes to the agenda, seeing a constitutional convention as an opportunity to enact major policy changes.
 - b. Chief Justice Burger wrote, a “Constitutional Convention today would be a free-for-all for special interest groups.”
2. **A convention could choose a new ratification process.** The 1787 convention ignored the ratification process it was developed to produce and created a new process, lowering the number of states needed to approve the new Constitution and removing Congress from the approval process. The states then ignored the pre-existing ratification procedures and adopted the Constitution under the new ratification procedures that the convention proposed. Given these facts, it would be risky to assume that ratification of this convention’s proposals would necessarily require the approval of 38 states, as the Constitution currently specifies. For example, a Convention might remove the states from the approval process entirely and propose a national referendum instead. Or it could follow the example of the 1787 convention and lower the required fraction of the states needed to approve its proposals from three-quarters to two-thirds. This would be a free-for-all, with the possibility of destroying our democracy. But mostly, this removes any semblance of a voting public to have a say in their government!
3. **A Convention could write its own rules.** The Constitution provides *no* guidance on the ground rules for a Convention. This leaves it wide open to political considerations and pressures. There are such fundamental questions as how the delegates would be chosen, how many delegates each state would have, and whether a supermajority vote would be required to approve amendments. Consider that if every state had one vote in the Convention and the Convention could

approve amendments with a simple majority vote, the 26 least populous states, which contain less than 18 percent of the nation's people, could approve an amendment for ratification.

4. **No other body, including the courts, has clear authority over a Convention, including its attendees.** The Constitution provides for no authority above that of a Constitutional Convention, so it is not clear that the courts – or any other institution – could intervene if a Convention did not limit itself to the language of the state resolutions calling for a Convention.
 - a. Article V contains no restrictions on the scope of constitutional amendments (other than those denying states equal representation in the Senate), and the courts generally leave such political questions to the elected branches. In addition, delegates to the 1787 Convention ignored their State Legislatures' instructions. Therefore, the courts likely would not intervene in a dispute between a state and a delegate and, if they did, they likely would not back State efforts to constrain delegates given that delegates to the 1787 Convention ignored their State Legislatures' instructions. That means you, as State Legislatures, would not be able to control or even make suggestions to the representatives at this Convention, or to the person who is given the vote at that Convention for Ohio. They will have full power above any State Legislature, regardless of what you may put in place to avoid this conflict.

Checks and Balances:

There is no need to have a Constitutional Convention to reduce the power or amount of our Federal Government. Federalism limits government by creating two sovereign powers—the national government and state governments. Separation of powers imposes internal limits by dividing government against itself, giving different branches separate functions and forcing them to share power. If you take away power from one, it delivers undue and potentially slanted (and dangerous) power to the other, because it is unchecked.

In addition, this bill explains that “the federal government has created a crushing national debt through improper and imprudent spending”, and states that Congress has no oversight on any of these proceedings. In addition, the States names their delegates (no description of how or how many), and there is only one vote per State).

See arguments below for these proposed convention items:

Where are the checks and balances in this system you are proposing?

A democracy is built on this, so no one unit of government can deplete or overrun power. The system you are proposing is unjust and undemocratic. We voted for our Congress. We did not and cannot vote for this constitutional change.

This description takes any responsibility away from our elected officials in the U.S. House and Senate. No one gave you permission to do that, and our Federal and State election laws determine these positions.

Why should California, or Texas, only get one vote, the same as South Dakota, if they chose to attend?

This strategy slants any decisions to smaller, less racially diverse states. I question whether this was your intention. Many citizens and States will scream extreme prejudice and racism, and I support that supposition.

But most important, when this is all done, American citizens will have no say in what happens, and will have completely lost their vote!

Balanced Budget? Economic Disaster:

Even if a Constitutional Convention could be limited to proposing a single amendment requiring the federal government to spend no more than it receives each year, such an amendment alone would likely do substantial damage. It would threaten significant economic harm. It also would raise significant problems for the operation of Social Security and certain other key federal functions, like Medicare that covers over 62.6 million Americans and 1.2 million Ohioans.

By requiring a balanced budget every year, no matter the state of the economy, such an amendment would risk tipping weak economies into recession and making recessions longer and deeper, causing very large job losses. Rather than allowing the “automatic stabilizers” of lower tax collections and higher unemployment and other benefits to cushion a weak economy, as they now automatically do, it would force legislators to cut spending, raise taxes, or both, when the economy turns down. This is the exact opposite of what sound economic policy would suggest.

The private economic forecasting firm Macroeconomic Advisors (MA) found in 2011 that “recessions would be deeper and longer” under a Constitutional Balanced Budget Amendment. If such an Amendment had been ratified in 2011, during our last recession, and it were being enforced for fiscal year 2012, “the effect on the economy would be catastrophic,” MA concluded, and it would double the unemployment rate.

Requiring that federal spending in any year be offset by revenues collected in that same year would also cause other problems. Social Security would effectively be prevented from drawing down its reserves from previous years to pay benefits in a later year and, instead, could be forced to cut benefits even if it had ample balances in its trust funds, as it does today. The same would be true for Medicare Part A and for military retirement and civil service retirement programs. Nor could the Federal Deposit Insurance Corporation or the Pension Benefit Guaranty Corporation respond quickly to bank or pension fund failures by using its assets to pay deposit or pension insurance, unless it could do so without causing the budget to get out of balance.

This argument also doesn't hold true either - that families and States must balance their budgets each year and the federal government should do the same. It's false. While States must balance their operating budgets, they can and do borrow for capital projects for roads, schools, water treatment plants, etc. And families borrow for things like mortgages, businesses, cars, student loans, etc. The proposed Constitutional Convention would propose to ban the federal government from borrowing to make worthy investments even if they have substantial future payoffs. And, as with Social Security, the Amendment would prohibit using past savings for current purchases. If a family had to live under this type of structure, not

only would mortgages be banned, buying a house from years of prior savings would also be prohibited.

Don't believe the lies and conspiracy theories when you are deciding on the futures of Ohioans, your next-door neighbors and your families. Please rethink this horrible Bill and Vote NO!

Thank you for the time to speak today. I will take any questions you have now.

Side Note:

Ohio State lawmakers considering such a Bill should be skeptical of claims being made by groups promoting the resolutions (such as the American Legislative Exchange Council, or ALEC), that claims that States could control the actions or outcomes of a constitutional convention. The criticism among scholars, media and politicians was that ALEC was secretly subverting democratic institutions to further the aims of its corporate benefactors. In 2012, more than sixty corporations and foundations, including Coca-Cola, Wendy's, Kraft Foods, McDonald's, Amazon.com, General Electric, Apple, Procter & Gamble, Walmart, the Bill & Melinda Gates Foundation, and Blue Cross & Blue Shield dropped support of ALEC, while Google, Microsoft, Facebook, eBay, Yahoo!, Uber and Lyft dropped their memberships in 2014. Thirty-four legislative members also left ALEC. Be careful who you are getting in bed with.