

TESTIMONY OF ANDREA R. YAGODA OPPOSING HJR1 HOUSE STATE AND LOCAL GOVERNMENT COMMITTEE

Chair Wiggam, Vice Chair John and Ranking Member Kelly my name is Andrea R. Yagoda. I have been a resident of Ohio for forty eight (48) years. I am here today as a private citizen to testify against HJR1 as I believe this Resolution is a pathway to oblivion and will open a can of worms that cannot be closed once opened, a Pandora's box, if you will.

HJR1 reads in pertinent part:

*The Ohio General Assembly hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a Convention of the States limited to proposing amendments **that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and Members of Congress of the United States;**(emphasis added)*

Let's address the Resolution and its vagueness. The Resolution does not specify the limitations on fiscal decisions of Congress, nor does it define "fiscal restraints". Does "fiscal restraint" mean a balanced budget? A balanced budget amendment would create powerful pressure to cut social programs such as Social Security, Medicaid, and nutrition assistance. Programs utilized by Ohioans. Could the imposition of fiscal restraints also require a cap on federal spending? And what detrimental effects would that have on the economy and ways to handle recessions, inflation etc. ?

What is intended by "limit the power and jurisdiction of the federal government"? Would limiting the power and jurisdiction of the federal government strip it of the power to pass civil rights, environmental, consumer protection, or other important legislation? Is this is what is intended by "protecting

the liberty of our people?”. The requirements that states provide equal protection and adhere to the Bill of Rights extend “the power and jurisdiction of the federal government”.

What should the term limits be?

The resolution provides “*it is the solemn duty of the States to protect the liberty of our people*” and further that the states not Congress will select the delegates to the Convention. The Resolution further states: “ *The power to name delegates remains exclusively within the authority of the legislatures of the several States*”. But the Resolution does not state how the Ohio state legislature will select the delegate to the Convention. Remember the Resolution states that the purpose is for the protection of “our” people. We must assume this means **all** Ohioans not just the base, not just the members of one political party since the United States Constitution is for the protection of **all** Americans not just those with views represented by organizations like ALEC. So, will the selection of a delegate require the approval of the minority party in the legislature? Will all states be held to the same procedure in selecting delegates or will only a minority of Americans be actually represented at the Convention? At a time, in large part, due to gerrymandering, state legislatures contain super majority and do not necessarily represent all of their constituents, a selection of a delegate by the mere majority seems unjust.

Further the Resolution provides that each state will have one delegate. Will a majority of states or a super majority be required to pass amendments? And will it be possible that states like Wyoming which has a population of

581,075, Vermont 623,251, Alaska 724,357, N. Dakota 770,026, S. Dakota 896,581, Delaware 990,334, Montana 1,085,004, Rhode Island 1,061,509; Maine; 1,354,522, New Hampshire 1,377,529; Hawaii 1,455,271, population of these states total 10,919,459 could dictate what is best for Ohio with a population of 11,799,448. As of spring 2021, the population of the United States is approximately 331,449,281 thus the least populous twenty six (26) states representing only a small fraction of the total US population could dictate the convention. Is this what this legislature believes is protecting Ohioans? States with a fraction of the population of our state dictating what is best for us?

Pursuant to the Resolution, Congress will not set the rules for the Convention but the Resolution is silent as to who will set the rules. Article V is similarly silent on how a convention would operate. Here again, neither Congress nor the courts have any authority to impose rules.

Will the rules be set before commencement of the Convention or at the Convention? Will the Rules require a majority vote or a super majority vote?

Pursuant to Article V of the US Constitution, once the number of states have been met, a convention shall be called so the following provisions of HJR1 are meaningless as once the convention is called and commenced these provisions have no effect.

A Convention of the States for proposing amendments to the Constitution of the United States convened pursuant to this application shall be limited to consideration of the topics specified herein and no other; This application is made with the express understanding that an amendment that in any way seeks to amend, modify, or repeal any provision of the Bill of Rights shall not be authorized for consideration at any stage;

This application shall be void ab initio if ever used at any stage to consider any change to any provision of the Bill of Rights

Justice Berger has opined that once a Constitutional Convention has been convened it would be difficult to end the convention if the agenda did not conform to that which was stated. <https://i2i.org/wp-content/uploads/2013/11/Burger-lettera.pdf>

Nothing in Article V or anywhere else in the Constitution limits the scope of the changes a convention could consider. And even if such a limit existed, nothing in Article V empowers any body to regulate or constrain a convention and the Supreme Court has held that efforts to amend the Constitution involve “political questions” beyond the jurisdiction of the federal courts. Even more importantly, no court or other body exists with the authority to enforce any such rules and to override the decisions of a constitutional convention.

The only prior convention empowered to start rewriting our Constitution was the Philadelphia Convention of 1787. It demonstrates how easily an Article V convention could disregard any purported limits and open up the entire Constitution. Unlike the proposed Article V convention, the Philadelphia Convention was subject to strict, binding limits on its jurisdiction. Article XIII of the Articles of Confederation prohibited any amendments not agreed to by every state; Article VI forbade agreements among states outside the Articles of Confederation. After being called to propose amendments to the Articles, the Philadelphia Convention quickly discarded those rules and began writing an

entirely new constitution. It also decreed that its new constitution would become effective upon ratification by nine states, not the unanimous approval Article XIII demanded.

Nor would the ratification process protect against a runaway convention. An Article V convention could follow the Philadelphia Convention's example and unilaterally redefine the ratification process. It could, for example, call for a national referendum to ratify its handiwork. Even if the current state-based ratification process remains, majorities in the thirty-eight smallest states – with just over 40% of the nation's population – would suffice to bind the country.

This is a dangerous Resolution. It is dangerous for our Constitution, dangerous for our rights, dangerous for our economy and programs Ohioans rely upon every day. I urge this committee to vote no on HJR1.

Andrea R. Yagoda