

2/7/22

**Attention: State and Local Government Committee, Chairman Wiggam, Vice Chair John, Ranking Member Kelly, and members of the committee:**

**Opposition to HJR1, (call for an Article V convention), Dave Black, Aspenwood Lane, Willoughby, Ohio**

I am currently a Vice President of AssuredPartners, a national risk management and insurance firm. I have worked in the insurance and surety industry for 38 years handling commercial clients. In this role I have worked with contract interpretation in complex insurance policies. I am also a member of the Ohio Society of the Sons of the American Revolution. My testimony that follows is on behalf of myself as a citizen. I am not speaking on behalf of either organization mentioned above.

Regarding my testimony attached is the following:

- Congressional Research Service Report, April 11,2014: The Article V Convention to Propose Constitutional Amendments

**I. Article V will be controlled by Congress and not the States.**

Article V wording is simple:

- 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;

Congress calls the convention, thus makes the rules:

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."

The above opinion in the Congressional report regarding the broad powers of Congress over the convention is supported by the US Constitution. The last paragraph under Section 8 reads: "To make all

laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution”.

## **II. Claims that a runaway convention is not possible are 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.

The States were under the impression that the convention of 1787 would only amend the existing Articles of Confederation. However, the Convention delegates changed the plan and re-wrote the entire Constitution.

Page 21 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 22 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”

## **III. The Only Precedent shows that you cannot count on the safety net of ¾ ratification by States.**

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.”

The Convention delegates changes the rules from the required 13 states (Articles of Confederation) to 9 States. We can not guarantee that they don’t decide to change the number of states needing to ratify a new Constitution.

#### IV. **Colonel Mason's suggestion on an Amendment process was NOT followed:**

On 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 6th 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 published did not follow the June August draft that Mason favored. The final draft reads 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. "

Two days later Mason did not sign the Constitution at the close of the convention.

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

#### **Conclusion:**

#### **The Bill of Rights is all that is needed. We must enforce it:**

The original Constitution was perfected by the addition of The Bill of Rights. 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:**

"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."

Nullification may be necessary as employed in the past where the Federal Government writes laws that clearly violates the Constitution.

David Black, 2/7/22