

Ohio House Committee on State and Local Government  
Testimony of Melanie Elsey  
HJR 1  
February 9, 2022

Chairman Wiggam, Vice-Chair John, Ranking Member Kelly, and members of the Ohio House State and Local Government Committee, I appreciate the opportunity to express concerns with the submission of an application to the Congress of the United States for a Convention of the States under Article V of the U.S. Constitution.

The American Policy Roundtable has been involved with policy issues surrounding the current Article V debate for the past 42 years. We have engaged in legislative debates in multiple states, before state and federal courts, and have been engaged in the construction of statutes and constitutional amendments, including term limits amendments in 14 states, including Ohio.

Before addressing the implications of this proposal, it is important to clearly state that we are in agreement with the premise that over time the U.S. Congress and federal courts have expanded the size and scope of the federal government beyond Constitutional authority and constraints. We also acknowledge the Convention of the States is a mechanism granted in the U.S. Constitution in Article V. Our objection is simple. The Constitution also provides remedy to these problems in Article I and the proper functioning of the Representatives of the U.S. House and the U.S. Senate.

We have listened carefully to proponent testimony and have reviewed the referenced material, specifically *The Law of Article V: State Initiation of Constitutional Amendments*, by Robert G. Natelson. In his dissertation, there was not one example of a multi-state convention that has met for the purpose of proposing amendments which operated under the sanction of Article V. This was clearly stated in Senator Santorum's presentation to this committee when he described an Article V Convention as a package that has never been unwrapped.

As of today, 17 states have enrolled resolutions and submitted applications to the U.S. Congress requesting a Convention of the States under Article V. The applications from three states (Arkansas, Mississippi, and North Dakota) specify that any revision of the Bill of Rights shall not be authorized for consideration at any stage. Ohio would be the fourth state to include this provision.

However, the vast majority of the applicant states did not include this caveat and therein lies an unresolved concern. Article V does not specify that the states have any authority to limit the actions of the amendments convention once it convenes. This has been clearly confirmed in statements from former U.S. Supreme Court Chief Justice Warren Burger (see attached letter). In essence, the convention would be a political bargaining event with no pre-determined rules.

Additional questions / concerns:

- \* The resolved clause that expresses a purpose of limiting the power and jurisdiction of the federal government could be interpreted to changing the limitations and not expressly reducing the current limitations. This could affect federal constructs like the electoral college (a significant number of states have enacted national popular vote legislation with bipartisan support), other federal election laws, the number of justices that serve on the U.S. Supreme Court, adding voting representatives to both chambers of Congress for Washington DC and U.S. territories, etc. Only 1 of the 17 states that approved applications provided a clear definition to the phrase “limit the power and jurisdiction”.
- \* If 34 states submit Article V applications to the U.S. Congress, will these be the states that convene or will all 50 states participate? If all 50 states participate, will the 16 states that did not approve an application be constrained to the limited purposes set forth by the 34 states?
- \* The application approved by the State of Mississippi expressly prohibits consideration of term limits. It states, “...the commissioners from Mississippi to the Convention are expressly limited to consideration and support of amendments that impose fiscal restraints on the federal government, and amendments that limit the power and jurisdiction of the federal government, and no amendments on any other topic whatsoever. The Mississippi delegates are hereby instructed not to support term limits for members of Congress.” How will this affect the deliberations if the count is diminished to 33 states that called for a convention for this purpose?

We agree with each of the 3 prongs in the resolution. Remedies for each of these can be reached by electing Congressional members who will lead with a firm Constitutional mindset. At this time we are convinced that, if all of the effort poured into calling for a Convention of the States would be tactically deployed to this end, we would have enough members in Congress to address these core policies through the approval of statutes and constitutional amendments.

For these reasons we respectfully ask that you not give approval to HJR 1.

Melanie Elsey  
Legislative Director  
The American Policy Roundtable

Supreme Court of the United States  
Washington, D. C. 20543

June 22, 1988

CHAMBERS OF  
CHIEF JUSTICE BURGER  
RETIRED

Dear Phyllis:

I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly replied that such a convention would be a grand waste of time.

I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or 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. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Our 1787 Constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,



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