

## Testimony of Roger D. Gibb

### Government Oversight Committee Ohio House of Representatives Columbus, Ohio

#### Legislative Hearing on HJR-3

Chairman Peterson, Vice Chair Thomas, Ranking Member Humphrey, and members of the committee, my name is Roger Gibb and I live in Mason, Ohio, House District 56.

In 2022 The Trafalgar Group conducted a nationally representative survey of American adults. They found that 66% of Americans support an Article V convention of states for proposing amendments that rein in the federal government.<sup>1</sup> However, some people on both sides of the aisle are opposed to holding an Article V Convention because they think it would be dangerous. This fear stems from opposition claims that states cannot be trusted to amend the Constitution. They contend that states might try to entirely replace the Constitution or scrap some or all of The Bill of Rights.

To put this in perspective, imagine that you go skydiving with a friend. After freefalling for a couple of minutes, you both try to deploy your parachutes, but they fail to open. You initially panic, but then remember that you have a second parachute in your backpack in case the first chute fails. You reach to deploy your second parachute, but your friend stops you saying, “Don’t do it. It’s too dangerous!” Confused, you look down at the fast-approaching ground and back at your friend. “Are you kidding? It’s more dangerous than hitting the ground at 90 miles per hour? The second parachute is designed to save us in case the first chute fails. Do you have a better idea?” Your friend looks back and says, “No, but don’t try pull the second parachute! Trust me, it’s too dangerous!”

As absurd as this sounds, it’s effectively what our opposition says. We the American people, are the parachutists. We’re confronted with a dangerous situation, a federal government that’s bankrupting our country, among other things. Congress is the first parachute. If Congress were listening to We the People, it would propose amendments to correct the problem, such as a balanced budget amendment. But Congress refuses, because Congress is part of the problem. Our second parachute is for the states to propose amendments. It’s our last hope. Yet our opponents claim it’s too dangerous. Do they have a viable alternative? No, but they’re intent on stopping us from deploying our proverbial second parachute to save our country.

We know from previous experience that in upcoming committee hearings, our opposition will make provocative, false claims. They’re going to tell you that states amending the Constitution is “too dangerous.” At the end of the day, you will have to decide.

Convention of States and the people testifying before you today rely on a team of nationally acclaimed attorneys<sup>2</sup> to research and confirm the safety of the Article V process. In particular, we rely on two prominent constitutional experts: Michael Farris and Robert Natelson. Let’s briefly consider each.

First, **Michael Farris** is a constitutional appellate attorney who practiced law for about 40 years. He is one of the cofounders of Convention of States Action. He has argued cases before the appellate courts of 13 states, 8 federal circuit courts of appeals, and twice before The Supreme Court of the United States.

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<sup>1</sup> <https://conventionofstates.com/files/the-traffic-groun-full-report-july-2022>

<sup>2</sup> <https://conventionofstates.com/files/the-jefferson-statement>; Attorneys include Randy E. Barnett, Charles F. Cooper, John C. Eastman, C. Boyden Gray, Mark Levin, Nelson Lund, Andrew McCarthy and Mat Staver.

He's one of the few living attorneys who has successfully litigated an Article V constitutional case. He served as the president of Alliance for Defending Freedom which won 11 out of 12 supreme court cases under his leadership.

The second primary constitutional authority supporting Convention of States is **Robert G. Natelson**, a law professor of 25 years.<sup>3</sup> Natelson's research has been cited repeatedly at the U.S Supreme Court, Federal appeals courts and state Supreme Courts. He is widely acknowledged to be the nation's preeminent scholar on the Article V Convention process, having written the only legal treatise on the subject<sup>4</sup>. He is the author of no fewer than 40 articles on the Constitution in peer-reviewed legal journals<sup>5</sup>, 5 of which he published in the past 13 years that specifically deal with amending the Constitution.

Michael Farris and Professor Natelson have collectively written more than 300 pages in peer-reviewed legal journal articles in the past 13 years to debunk claims that following the legal and lawful process for states to amend the Constitution is dangerous. Because these writings were peer-reviewed, they were rigorously evaluated by other constitutional experts for historical accuracy, two centuries of Article V usage, governing principles of constitutional law, and a long line of Article V court decisions extending from 1798 into the 21st century.

In conclusion, when you hear and read opposition testimony in the upcoming committee hearings, we urge you to evaluate their claims that following Article V of the Constitution is dangerous against the following criteria:

1. Are their claims simply statements of opinion, or have they been vetted by real constitutional experts through the peer-review publication process of legal journals, like the writings of Michael Farris and Robert Natelson?
2. Are there sources contemporary, meaning are they from this century? Put more simply, is their material outdated? This is important because our opposition likes to cite sources from the 1950s – 1990s when activist judges and professors favoring big government made unfounded claims to stop states from amending the Constitution. If so, these claims have likely been debunked with the 21st century literature of Micheal Farris, Robert Natelson and others.

Putting it simply, if our opposition can't get their provocative claims peer-reviewed by real constitutional experts and published in reputable law-review journals, then they aren't credible, and you shouldn't believe them. If our opposition's claims are based on material from the last century, then it's almost certain that they've been debunked by Michael Farris or Robert Natelson.

If you hold our opposition to these high standards, you will discover that very few, if any, of their claims will be worthy of your serious consideration. Thank you.

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<sup>3</sup> <https://i2i.org/about/our-people/rob-natelson/>

<sup>4</sup> The Law of Article V: State Initiation of Constitutional Amendments (2d ed., Apis Books 2020)

<sup>5</sup> <https://i2i.org/constitution/articles-books-by-rob-natelson/>