

## Testimony of Susan K. Dunn in Support of HJR 3

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

*Chairman Peterson, Vice Chairman Thomas, Ranking Member Humphrey, members of the Committee:*

My name is Susan K. Dunn. I am from West Chester, Ohio, House District 45. I am a supporter of Convention of States and HJR3. One of the frustrating things that I've experienced in my time with Convention of States is how opposition has stood up in hearings like this one and used only partial quotes to mislead the committee. Today I want to address one of the false claims they have made before and will probably make again. It is the claim that the late Supreme Court Justice Antonin Scalia was opposed to Article V Conventions.

To achieve their objective, our opposition has cherry picked a statement from Antonin Scalia, while ignoring other statements he made. During an interview with the Kalb Report in 2014<sup>1</sup>, Justice Scalia was asked the question, "If you could amend the Constitution in one way, what would it be and why?" He responded saying, "I certainly would not want a Constitutional Convention, I mean whoa, who knows what would come out of that." Then Scalia continued to speak, yet the opposition ends their quotation of his comments right there.

They want you to believe that when Antonin Scalia said he would not want a "Constitutional Convention," that he was referring to an Article V Convention for proposing amendments. At first blush it's not clear what he meant when he said "Constitutional Convention." Was he referring to an Article V Convention for proposing amendments? Or, a Constitutional Convention for writing a whole new constitution, like the one held in Philadelphia in 1787?

Perhaps we can gain a clue from the rest of his statement. Here's his entire statement:

"I certainly would not want a Constitutional Convention, I mean whoa, who knows what would come out of that. **But**, if there were a targeted amendment that were adopted by the States, I think the only provision I would amend is the amendment provision. I figured out at one time what percentage of the populace could prevent an amendment to the constitution and if you take a bare majority of the smallest states by population, I think something less than 2% of the people could prevent a constitutional amendment. It ought to be hard, but it shouldn't be that hard."

The full quotation makes it clear that Antonin Scalia supported amending the Constitution. In fact, he thought it should be easier to amend the Constitution by the states. This paints a very different picture. This suggests that when he said he was opposed to a "Constitutional Convention", he was actually referring to a convention like the one in Philadelphia in 1787 that drafted a new constitution, not an Article V Convention!

(Please note that our opposition will use the term "Con-Con" when they're actually referring to an Article V Convention for proposing amendments. There have only been two constitutional conventions

---

<sup>1</sup> [https://www.youtube.com/live/zOutJAu\\_iG4?si=TbSNGhMAlefr3gi4](https://www.youtube.com/live/zOutJAu_iG4?si=TbSNGhMAlefr3gi4)

in U.S. history—the one in 1787 and one in 1861 for the Confederate constitution. Our opposition’s use of “Con-Con” causes confusion and reinforces the mental image, or fear, of a junta that would not merely propose some amendments, but would re-write our entire Constitution. Don’t be fooled... This is intentionally and totally misleading!)

To gain additional clarity on Antonin Scalia’s true opinion, we can look to a 1979 panel discussion in which he participated<sup>2</sup>. This was at the time of the Balanced Budget Amendment drive. Regarding Article V Conventions specifically, he said the following:

“... the Congress is simply unwilling to give attention to many issues which it knows the people are concerned with, which issues involve restrictions upon the federal government’s own power. I think the founders foresaw that and they provided this method in order to enable a convention to remedy that. If the only way to get that convention is to take this minimal risk then I think it is a reasonable risk to be undergone. ... I suggest that if the only way to clarify the law, if the only way to remove us from utter bondage to the Congress is to take what I think to be a minimal risk on this limited convention, then let’s take it.”

A “minimal risk” and a “reasonable risk to be undergone” are Antonin Scalia’s own words.

This is only one example of our opposition partially quoting a historical figure or quoting them out of context in order to make it appear that they were opposed to Article V Conventions when, in fact, the opposite is true. We see that the opposition's claim is a lie—a lie by omission.

I hope that you have found my testimony informative and helpful. Thank you for your service to Ohio and for this opportunity to address the committee.

---

<sup>2</sup> <https://www.youtube.com/watch?v=1yKuLPkN-M>