

Testimony of Robert Tuttle

Ohio House Government Oversight Committee

June 4, 2024

To Chairman Peterson, Vice Chairman Thomas, Ranking Member Humphrey and distinguished Members of the Government Oversight Committee:

Thank you for allowing us to testify today. This Committee has a very big responsibility with regard to evaluating this critical issue that could have a huge impact on our country. Every application for an Article V Convention could be the one that makes the difference.

I have been studying both sides of this COS issue for 3 years, and I am convinced beyond a reasonable doubt that it would be a very dangerous experiment. We are here today because we want to PROTECT OUR Constitution from an experimental Article V convention and the law of unintended consequences. We have no other motive. There is very good reason for concern.

The foundational premise and assumption that COS is asking you to make is that an Article V Convention would be a peaceful, respectful, productive event orchestrated and controlled by you, the State Legislatures- by selecting and controlling your delegates, and by providing instructions to those delegates, like those in this Resolution or newly introduced HB607. This assumption is simply invalid. And the results could be catastrophic. Please find more details and links to source documents included throughout this document as proof of the points below.

1. There has never been an Article V Convention and there are no documented, agreed upon rules for how it would be conducted.
 - a. The closest thing to an Article V Convention was the 1787 Convention, and we know that at least 10 state delegations violated one or more of the written instructions they received from their State Legislatures. You can find all of the State instructions to their delegates [HERE](#).
There were multiple instructions included in most of the State “commissions”, including things like scope of discussions, approval by Congress, delegate replacement rules, ratification requirements, etc. At least 10 State delegations ignored and violated at least one of their instructions.
 - i. At least 3 of 12 states instructed their delegates to limit their discussions solely to revising the Articles of Confederation (CT, MA, NY)- but they violated this instruction.
 - ii. 5 more states said “to revise the federal Constitution” in caps, which would indicate a proper noun- THE Constitution.

- iii. Nine states instructed their delegates to require ratification by all 13 states (MA, NY, PA, NH, DE, GA, MD, SC, VA, as did the original Annapolis Convention report)- but this was violated.
 - iv. MA and DE both said NOT to make any changes to Article V of the Articles of Confederation (which specified “one state one vote”), but they eliminated one state, one vote for our bi-cameral legislature in the House and Senate instead.
 - b. None of the so called “interstate conventions” or simulations that COS always brings up were federal functions or bear any resemblance to what an Article V Convention would actually be like.
 - i. Out of 42 such conventions, 31 took place before our Constitution was ratified, meaning that the States were independent, sovereign colonies- very different than now
 - ii. All of these Conventions since 1789 have required approval by the Congress, and several of them resulted in Congressional legislation
 - iii. All of them were limited to only a few states, usually 4-6 meeting on a specific topic, such as water conservation, cattle grazing between states, etc.
 - iv. Simple list of differences
 1. James Madison objected to the “vague” language about a Convention twice (Sep 10 and Sep 15) which shows he did not believe it was well understood.
 2. None were federal conventions called by Congress (the call is important) under the Constitution- no risk of a Constitutional crisis
 3. None had even 2/3 of the states attending, most were just half dozen or less
 4. None needed ratification from the states- but A1S10 required Congress to approve of any agreements that came out of them
 5. None were major spectacles, funded by billionaires and the obsession of major media and TV channels (like a convention today would be covered)

2. We have been warned by some very credible sources, including notable conservative voices, that an Article V Convention cannot be limited to specific topics by the States or anyone else.

- a. Who better to advise us than those that lived through the first one. Three of our Founders (Madison, Hamilton and Jay) warned us about the dangers of another convention, “under the mask” of merely proposing amendments.
 - i. In a November 1788 letter to George Lee Turberville, gave 4 compelling reasons why a Convention could turn disastrous. All of those reasons are even more valid today. Their greatest fear was that unruly partisans would hijack the convention. How much do you think Soros, Bezos, Zuckerberg and Gates would be willing to spend to influence the agenda or the delegates of such a convention?

1. And no, Madison did not change his mind. His original concerns are as valid today as they were then. Please find his comprehensive concerns in a letter to George Lee Turberville [HERE](#).
- b. At least three Supreme Court Justices, including Arthur Goldberg, Chief Justice Warren Burger, and Antonin Scalia, have also warned us that an Article V Convention could not be controlled.
 - i. Chief Justice Warren Burger: *"...there is no effective way to limit or muzzle the actions of a Constitutional Convention... After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda... A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn..."*
 - ii. Justice Antonin Scalia was asked specifically about what new Amendment he would like to see, and he responded referring to an Article V Convention as a "constitutional convention," which is consistent with Black's Law Dictionaryⁱ.
Justice Scalia said on April 17, 2014 [at the 1:06 mark of this video](#): *"I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?"*
- c. Preeminent legal scholars and law professors from Harvard, Stanford, Yale and many others have all warned us that an Article V Convention cannot be limited.
 - i. Even our own LSC has warned us against the assumption that a convention can be limited in their Analysis of this Resolution. Please find the current Analysis of HCR3 [HERE](#).
 - ii. Just one example of those legal scholars warning us against another convention is Professor Gerald Gunther ⁱⁱfrom Stanford Law School (one of the top 20 most cited legal scholars of the 20th century and the author of the most widely used constitutional law text in American law schools), who put it this way:
 1. *"In my opinion, a convention cannot be effectively limited. But whether or not I am right, it is entirely clear that we have never tried the convention route, that scholars are divided about what, if any, limitations can be imposed on a convention, and that the assurances about the ease with which a limited [single issue] convention can be had are unsupportable assurances."*

Please find some examples (not a complete list) of legal scholars [HERE](#).

Despite COS assertions to the contrary, there have been numerous Law Review and other publications written by distinguished legal scholars opposing an Article V Convention, among them:

- Paul Kauper (Professor of Law, Michigan) – Michigan Law Review 1968
- Walter Dellinger (Professor of Law, Duke)- Yale Law Journal 1979
- Charles Black (Professor of Law, Yale) – Oklahoma Law Review 1979, letter to Senator Edward Kennedy
- Judge Bruce van Sickle (US District Court)- Hamline Law Review 1990

- Michael Stokes Paulsen (Professor of Law, Minnesota) – Yale Law Review 1993
- David Super (Professor of Law, Georgetown) – American Constitutional Society Brief 2021 and Center for Budget and Policy Priorities Brief 2017
- Herb Titus (Dean of Law, Regent) – USJF Legal Policy Paper 2017

3. **In fact, it is more likely that Congress will determine the rules of a Convention.** According to a lengthy [CRS Report in 2014](#) (updated in 2016/17) which cited the Necessary and Proper Clause of the Constitution referenced as a basis for Congress appending instructions to its “call.” In 1984 legislation (pg 31). And based on more than 40 pieces of legislation that have already been introduced in Congress with such rules, Congress clearly believes it has this power- since it is a FEDERAL FUNCTION.

a. In this comprehensive report you will find that most bills called for the election of state delegates (not appointment by the Legislatures), voting was by delegate (like Congress, of course), not one state one vote. And ratification would also be by state conventions, **as is specified by HCR24, which is currently before the US Congress** to call an Article V Convention as we speak.

By the way, are you aware that [ORC 3523.12](#) defers to Congress for the rules of even a ratification convention in Ohio.

b. Harvard Professor Laurence Tribe ⁱⁱⁱcontinually warned about a potential Constitution crisis that could ensue regarding an Article V Convention. He spoke and wrote extensively about the impact on “checks and balances” when there would almost certainly be conflict between the States, the Congress and the Supreme Court due to all the unanswered questions about who determines the rules and processes for a Convention.

There are just too many risks. Many credible experts have warned us. Convening an Article V Convention would be like opening Pandora’s Box.

I urge you not just to block this Resolution, but to join with many other states who have realized the danger and rescinded all previous applications and urged more states to do the same. Some of the more recent rescissions include the following states:

- Delaware, Maryland, Montana, New Mexico, Oregon, South Dakota, Virginia and New York (earlier in 2024)- NH is on the verge of rescission now.

They now understand the risks of an Article V Convention and do not want to take the risk. They also understand that the States do not have any control over such a Convention- they can “request” a Convention and organize ratification according to the dictates of Congress- that is where their authority ends.

Convening an Article V Convention would be like opening Pandora’s Box, but...

- You can hope that the convention would stick exactly to what we ask them to do... and that California and New York won't try to insert their own agenda... reproductive freedom, gun registration, drug legalization
- You can hope for the reincarnation of our Founders as delegates, rather than the ravenous partisans that are bickering and stalemated in our current Congress...
- You can hope that Soros, Bezos and Zuckerberg sit back and watch, and don't try to buy off or influence the delegates or the proceedings with hundreds of millions of dollars of bribes and advertising...
- You can hope that Congress won't try to take control of the process and the rules... gladly bowing to the states, and will give their approval to whatever the convention does...
- **You can hope that our Founders, Supreme Court Justices, preeminent legal scholars, the Congressional Research Service and our own Ohio Legislative Service Commission ARE ALL WRONG and a retired law professor from Univ of Montana is right...**
- You can also hope that Congress will obey any new Amendments even though they don't obey the current ones and that the Supreme Court will stop legislating from the bench...

Hope is a dangerous strategy for something this important. There is indeed a very credible and serious risk associated with an Article V Convention.

Thank you for your time and attention to this important information.

Robert Tuttle
 Springboro, OH
 937-718-8464
rbtuttle56@gmail.com

ⁱ ***Black's Law Dictionary***, the definitive legal lexicon in American law, defines the term "constitutional convention" providing Article V of the Constitution as an example; the definition reads: (5th Edition)

Constitutional convention. A duly constituted assembly of delegates or representatives of the people of a state or nation for the purpose of framing, revising, or amending its constitution. Art. V of U.S. Const. provides that a Constitutional Convention may be called on application of the Legislatures of two-thirds of the states. [Emphasis added.]

ⁱⁱ **Gerald Gunther- Stanford**

<https://news.stanford.edu/pr/02/guntherobit87.html#:~:text=Perhaps%20Gunther's%20greatest%20contribution%20was,the%20field%20of%20constitutional%20law.>

- Top 20 most cited legal scholars of the 20th century

-
- Perhaps Gunther's greatest contribution was the casebook, *Constitutional Law*, which, beginning in the 1960s, became the most widely used constitutional law text in American law schools, greatly shaping the field of constitutional law.

Akhil Reed Amar

<https://politicalscience.yale.edu/people/akhil-reed-amar>

- Akhil Reed Amar is Sterling Professor of Law and Political Science at Yale University, where he teaches constitutional law in both Yale College and Yale Law School. His work has won awards from both the American Bar Association and the Federalist Society. He is Yale's only currently active professor to have won the University's unofficial triple crown—the Sterling Chair for scholarship, the DeVane Medal for teaching, and the Lamar Award for alumni service.

Walter Dellinger

Professor Dellinger of Duke Law School argues, for example, that constitutional conventions under Article V cannot constitutionally be limited to single issues or be controlled by Congress or prior mandates of state legislatures once convened. See Walter E. Dellinger, *The Recurring Question of the "Limited" Constitutional Convention*, 88 *Yale L.J.* 1623, 1624 (1979)

ⁱⁱⁱ Laurence Tribe- Harvard:

<https://hls.harvard.edu/faculty/laurence-h-tribe/#:~:text=Tribe%20has%20been%20the%20Nation's,the%20past%20half%2Dcentury.%E2%80%9D>

- His book, *American Constitutional Law*, has been cited more than any other legal text since 1950. Former Solicitor General Erwin Griswold wrote: “[N]o book, and no lawyer not on the [Supreme] Court, has ever had a greater influence on the development of American constitutional law,” and former U.S. Court of Appeals Judge J. Michael Luttig tweeted in January 2023, “Laurence H. Tribe has been the Nation’s preeminent constitutional scholar for the past half-century.” (Harvard website)