



CONVENTION *of* STATES ACTION

TESTIMONY OF MICHAEL FARRIS, J.D.¹

PROPONENT FOR HJR 2

OHIO HOUSE GOVERNMENT OVERSIGHT COMMITTEE

May 20, 2025

Chairman Hall and Members of the Committee,

The resolution before you offers a structural solution to a structural problem. It offers you the chance to restore the balance of powers in our federal system by using your constitutional authority under Article V.

Congress and administrative agencies have long usurped powers that rightfully belong to you-- the elected lawmakers of Ohio. The activities of Washington, D.C. today would have been unthinkable to our Founding Fathers. Federal laws and regulations now touch upon every aspect of our lives: What kind of light bulbs we can buy. Farming practices. School curriculum. School lunches. Health care and insurance.

Meanwhile, we live under the shadow of a crushing national debt that threatens to enslave our grandchildren and their children. All of this comes courtesy of decades of activist courts, which have vastly expanded federal power through their precedents. Over time, the Supreme Court has created loopholes to the Constitution's limits on federal powers, and those loopholes will remain there until someone closes them.

¹ Michael Farris is a Senior Advisor to Convention of States and co-founded the organization with Mark Meckler. He is largely known for his work in constitutional appellate litigation, religious freedom, and homeschool advocacy.

After years of success in the COS movement, God called Mike back to defending religious freedom, human life, and the family. In 2017, Mike left Convention of States for a time to serve as the President, CEO and General Counsel of Alliance Defending Freedom, the world's premiere defender of religious liberty.

Mike was the founding president of both the Home School Legal Defense Association and Patrick Henry College. He has served as lead counsel in the United States Supreme Court, eight federal circuit courts, and the appellate courts of 13 states.

Following five years of dedicated work with ADF, Mike returned to Convention of States to help push the Article V solution over the finish line. With his dignified commitment to liberty and preserving the fundamental rights of the Constitution, he joined the COS team again in 2023.

Mike and his wife Vickie have 10 children and many grandchildren.

That “someone” has to be you. It’s obvious that Congress is never going to curtail its own power—at least not definitively or permanently. It would take decades for the Supreme Court to reverse enough precedents to eliminate the constitutional loopholes it has created, and that is assuming that the right cases reached it in the right posture, and that we had decades of a solidly, consistently constitutionalist Supreme Court. A president could choose to act with some restraint during his term—maybe—but can do nothing to restrain future presidents.

Fortunately, in their wisdom, our Founding Fathers predicted that this very situation would arise. Toward the very end of the Constitutional Convention, George Mason specifically predicted that the federal government would one day overpower the states. And that is why he insisted that Article V include a way for states to propose constitutional amendments through a state-controlled convention.

Mason’s proposal was adopted without dissent. This final version of Article V gave the states the ultimate constitutional power—the power to unilaterally amend the Constitution of the United States, without the consent of Congress.

The way it works is that when 2/3s of the state legislatures (34) pass resolutions applying for a convention to propose amendments on the same topic (which serves as the meeting agenda), Congress has a constitutional duty to name the initial time and place for the meeting and then stand back and let it happen. Each state chooses and instructs its delegation of commissioners, who attend the meeting and work with the other state delegations to hammer out possible amendment proposals on the topic specified in the 34 state applications. Because they act as agents of their state legislatures, the commissioners only have legal authority to act pursuant to that specified agenda, and only to act in pursuance of their legislature’s instructions. Every state gets one vote.

Any proposals that are supported by a majority of the states at the convention stage then get submitted back to the states for ratification. Only when 38 states ratify a proposal can it become part of our Constitution.

Now some people will try to prey on fear by telling you that because some of these details are not explicitly stated in the text of Article V, we have no idea how an Article V convention would operate. But that simply is not true. We know what a convention of states is, and the basics of its operation, because we have a very rich history of interstate conventions in America. That history is the very reason this process was provided as an alternative in Article V. Just as we know what a trial by jury looks like without having every detail written into the Constitution, we know how an Article V convention would function.

By passing the resolution before you, Ohio will effectively be raising its hand to say, “Yes, we believe it is time for the states to gather to consider proposing amendments that will re-balance federal power with state power.” Specifically, the Article V convention called pursuant to the resolution before you would be limited to three topics for amendment proposals:

1. Amendments that impose fiscal restraints on the federal government;
2. Amendments that limit the power and jurisdiction of the federal government; and
3. Amendments that set term limits for federal officials—including or possibly limited to federal judges.

Now this does not mean that the convention must propose an amendment on each of these topics. Rather, these topics describe the outer limit on what would be germane for consideration at the convention. With this approach, the convention could propose a balanced budget amendment accompanied by limitations on Congress’ spending and taxation powers. It could propose limits on executive power, federal agencies, and impose real checks and balances on the Supreme Court.

Most American citizens, and the vast majority of state legislators I speak with as I travel the country, agree that our nation is in desperate need of a re-balancing of power between the federal government and the states. The Article V convention for proposing amendments is *the* constitutional process designed to address that problem.

In fact, in George Washington’s farewell address to the American people, his final admonishment to us was this: “If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.”

I don’t think our Founding Fathers would be surprised that the federal government has claimed more than its constitutional share of power. They *would* be surprised, I think, that we have not used the most effective tool they gave us for curbing it.

History will remember us, one way or another. We will either be remembered as the generation that finally succumbed, completely, to federal tyranny, or the generation who stood and defended the torch of liberty when it was flickering dangerously low. As Ronald Reagan said, “You and I have a rendezvous with destiny. Will we preserve for our children, this, the last best hope of man on earth, or will we sentence them to take the first step into a thousand years of darkness? If we fail, at least let our children and our children's children say of us we justified our brief moment here. We did all that could be done.”

I am out here on the road, away from my home and my family because I believe it is my duty. Let it never be said of our generation that we failed to do all that could be done.

Responses to Questions/Objections Raised at Sponsors' Hearing:

1. Could the Convention change the topic/agenda?

No. The state legislatures' power to apply for a convention includes the implied power to frame the scope of the convention. One way we know this is true, from a practical perspective, is the fact that while over 400 state applications for a convention have been made, we have never had an Article V convention because there have never been 34 applications for a convention on the same topic. If the topic matters during the application phase, it certainly matters at the convention phase.

Moreover, the commissioners (or delegates) the state legislatures send to represent them at the convention act as their legal agents. This means that all common law principles of agency, as well as any relevant statutory law on agency, applies to the commissioners. One of the most basic principles of agency law is that an agent is limited to the scope of authority stated in his or her commission. Any action taken outside the scope of his or her authority is legally void.

The applications for the convention, as supplemented by statute and any additional instructions given by the state legislature, define the scope of the delegates' or commissioners' authority at the convention.

The recent U.S. Supreme Court case of *Chiafalo v. Washington*, 591 U.S. 578 (2020) affirmed (in the context of presidential electors) that states can legally bind the agents that represent them in performing federal functions.

2. What historical precedents exist for an Article V convention?

All 27 amendments to our Constitution have been proposed by Congress. The nation has never had an Article V convention for proposing amendments. Some claim that this, combined with the text's silence as to procedural details, means we cannot know how such a convention would operate. But in fact, the states have frequently (at least 40 times) met in gatherings referred to as "conventions." These interstate conventions, which formed the model for the process referred to in Article V, always operated the same way in all significant regards:

- A state issued an "application" or "call" for a meeting or "convention" to address issues identified in the call,

- If a state decided to participate, it selected its representatives, most often referred to as “commissioners,” and defined the scope of their authority in their commissions,
- At the convention, the state delegations chose their officers, made their schedule, and set rules,
- The convention discussed the assigned subject matter (there is no precedent for any “runaway convention” in history),
- Voting was always by state (one state, one vote), and
- If a majority of the voting states opted for particular solutions, the convention would draft them in a formal report and send them back to the sponsoring states for consideration.

All ratification-era discussions and descriptions confirm this understanding of the nature and process of an Article V convention.

3. Where in Article V does it state that a convention would be limited to the topics stated in the applications?

Article V does not include the many procedural details of a convention for proposing amendments, just as the Constitution does not explain the procedural operation of a “trial by jury” or “habeas corpus.” As explained in the previous answer, we know that interstate conventions are limited to the topics stated in the states’ applications from the unbroken, uniform historical precedent of the more than 40 interstate conventions that formed the model for the convention process the Framers included in Article V. Moreover, as explained in the answer to the first question, common law and statutory principles of agency, along with the Supreme Court’s decision in *Chiafalo v. Washington*, *supra*, provide additional legal support for this fact.

4. Could the courts be used, if needed, to address improper actions of a convention?

Absolutely. There is a considerable body of existing case law on Article V questions. Article V questions are freely justiciable.

Thank you for allowing me to testify today.