Opponent Testimony for H.J.R. No. 2
Ohio House Government Oversight Committee

Chair Hall, Vice Chair Ferguson, Ranking Member Humphrey, and Honorable Members of the Ohio House Government Oversight Committee:

My name is Kathy Johnson. Thank you for the opportunity to present my thoughts in opposition to H.J.R. No. 2, which is titled, "Applies to Congress for a Convention of the States."

Supporters of a Convention of the States under Article V of the Constitution of the United States (Convention) and H.J.R. 2 correctly claim that the federal government is overreaching and has created a crushing national debt. However, rather than using the power of the states to ensure that the federal government follows the Constitution, the focus of H.J.R. 2 is on changing the Constitution with limited proposed amendments. H.J.R. 2 would create an unpredictable and dangerous pathway that could have disastrous consequences for our Republic and system of government.

Article V grants that two-thirds of the states may apply for a Convention for proposing amendments, but it is Congress that shall call the Convention. Congress will have more power in this process than envisioned by those who are recommending this course of action to the states. It must also be understood that Article V does not provide authority for a limited Convention.

History dictates that a Convention cannot be limited to a single issue or several specified amendments. There has not been a Convention since 1787. The 1787 Convention, although respected, was called for the sole and express purpose of addressing limited amendments to the Articles of Confederation but resulted in an entirely new Constitution and a new ratification process. Indeed, the 1787 Convention was a runaway convention. What gain can we anticipate by initiating another Convention in these divisive political times with the propensity for and risk of creating another runaway convention? There are no stopgaps in the simple language of Article V of the United States Constitution (Article V) to prevent such a disaster.

As former US Supreme Court Justice Arthur J. Goldberg warned in a Miami Herald editorial entitled, "Steer Clear of Constitutional Convention," on September 14, 1986:

> "Proponents for a convention offer assurances that it can be limited to a single issue by saying the state legislatures have called for a convention for the "sole and express purpose" of drafting a specific amendment, particularly the balanced budget amendment. In response, they should be reminded that the convention of 1787 was called "for the sole and express purpose" of revising the Articles of Confederation." As we know, that convention, in these special and unique circumstances, discarded the Articles and drafted the U.S. Constitution, despite its limited mandate."

It is also necessary and prudent to also look back to these words from an esteemed Framer of our Constitution, James Madison. In his letter to George Lee Turberville in 1788. Madison warned:

> "If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently

> give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America and under all the disadvantages I have mentioned." (Emphasis added.)

Today's Congress cannot be expected to automatically follow limitations or regulations spelled out in H.J.R. 2 or similar resolutions from other states when there is no constitutional provision or guidance. Congress would call the Convention, and important decisions would almost certainly fall to Congress. Partisan political skirmishes would inevitably ensue. To reiterate, state declared limitations carry no power as there is no constitutional authority or historical precedent for a limited Convention. Likewise, the Constitution does not provide for how rules would be established or enforced. Additionally, with significant power vested in state delegates, there would inevitably be a political firestorm surrounding delegate selection since no constitutional guidance exists for the method of choosing delegates, who would qualify as delegates, or how many delegates the individual states could send. Further, there are no rules governing ratification methods and no means for the states or the people to challenge any method of ratification that Congress might choose. Finally, there is no method for the states or the people to halt a Convention once it begins.

Constitutional chaos is all but guaranteed, just as James Madison so astutely envisioned. A Convention of the States could well be an unmitigated disaster for the Republic.

While I believe that the legislative sponsors of H.J.R. 2 and identical efforts in other states bring noble intentions, the possible pitfalls outweigh the likelihood of gain. It is possible that unwise counsel has been exerted through a national movement that brings false assurances. To that point, this movement toward a Convention is decades old and has seen many attempts. In Ohio, we now address this matter yearly, and it is promoted by a highly organized and activist proponent group. It is further troubling that the language of H.J.R. 2 and other recent efforts consistently states, "This application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several States have made applications on the same subject." Including the word "continuing" is an unacceptable time bomb that would extend into perpetuity or until corrective legislative action is taken at the state levels. These state resolutions could be forgotten for years after passage while similar battles are fought in other states. These continuing resolutions could eventually bushwhack future lawmakers in the various state legislatures.

These issues and others would be subject to court challenges that would take years to resolve.

A Convention is not the singular answer to federal overreach. The Constitution declares individual rights, creates a division of powers between branches of government, and limits the powers of Congress. The Tenth Amendment states: "The powers not delegated to the United States by the

Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The travesty before us today is that the Constitution has been sidelined by all levels of government, and the people have failed to hold their representatives accountable. This must change.

Meaningful interpretation and defense of the Constitution can begin with the state legislatures. It is within the oath and duty of the elected state representatives to exercise the powers of the Tenth Amendment of the Constitution and to stand in nullification where necessary. When unconstitutional overreach, as specifically mentioned in H.J.R. 2, is assumed by the federal government, it is the obligation of the states to use the power of interposition to protect the people. Thus, federal power can be regulated by the states. This is a way to keep the federal government in check on these issues.

I question the value of term limits that are constant in these resolutions, and many valid arguments come to mind. Suffice it to say that term limits could eliminate good constitutionally minded congressmen and create a lame-duck atmosphere that is even less responsive to the needs of the people. The Constitution provides for frequent elections which was intended by the Founders to limit the service of poor representatives. Term limits don't address the core issues of public knowledge and responsibility to elect good representatives.

For these reasons and more, I ask the honorable Members of the Ohio Senate General Government Committee to expeditiously and unanimously decline H.J.R. 2. To do otherwise might forever alter or completely change our Constitution. Hard decisions are in store for Ohio no matter what the course. For instance, if crushing national debt and imprudent spending are true concerns, then it will be necessary for Ohio to wean its dependence on federal funding. Whether this happens through a Convention demanding federal restraint, or through voluntary reduction, the results will be the same.

There is no easy way out of the challenges we face at the federal level. Following the pathway of a Convention of the States is a course that could very well alter our form of government by inflicting irreparable harm to our Constitution. I pray that this will not be allowed to happen.