

**TESTIMONY
OF
ROGER D. GIBB**

**GENERAL GOVERNMENT COMMITTEE
OHIO SENATE
COLUMBUS, OHIO**

LEGISLATIVE HEARING ON S.J.R. 3

Chair Roegner, Vice Chair Gavarone, Ranking Member Blackshear, and members of the committee, my name is Roger Gibb, and I live in Mason, Warren County, Ohio, Senate District 7. My remarks today will refute one of the false claims that is commonly repeated by those in opposition to Convention of States: "The Constitutional Convention of 1787 was a 'runaway convention'."¹ More specifically, the claim is that Congress called the Convention of 1787 "for the sole and express purpose of revising the Articles of Confederation." However, "the Convention departed from the mission that Congress had given it. The Convention did not simply draft amendments to the Articles of Confederation. Instead, it proposed an entirely new Constitution to replace the Articles of Confederation."²

You might wonder why this claim is relevant to our discussion of whether Ohio should request an Article V Convention through SJR3. It's germane because our opposition contends that if the Convention of 1787 was "runaway", then it's likely that an Article V Convention will also go off the rails. However, if it's false, then the "runaway" Article V Convention claim has no precedent and no legs to stand on.

In 2017 Michael Farris published an 86-page article in the Harvard Journal of Law and Public Policy³ wherein he refuted, using original source documents, the claim that the Convention of 1787 was runaway. Robert Natelson also published on the topic in the Tennessee Law Review⁴ in 2010 and came to the same conclusion. Their key points that refute the claim that the Philadelphia Convention of 1787 was a runaway are as follows:

1. Virginia called the Convention of 1787 in the fall of 1786, not Congress, as our opposition asserts. The Virginia legislature instructed their delegates to join with delegates of the other states to devise and discuss "all such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union." In 1786 the term "Federal Constitution" was understood to mean the "federal political system." So, in modern language, Virginia instructed its delegates to find a solution to the country's federal political problems. Importantly, Virginia did not instruct her delegates to only propose amendments to the Articles of Confederation or to not draft a new constitution.
2. Congress did not call the Convention of 1787. It couldn't because it had no authority to call conventions under the Articles of Confederation. Congress also had no authority under the Articles of Confederation to limit the scope of conventions called by the states.

¹ <https://jbs.org/video/concon/is-it-a-myth-that-the-constitutional-convention-of-1787-was-a-runaway/>

² Gregory E. Maggs, *A Concise Guide to the Records of the Federal Constitutional Convention of 1787 As A Source of the Original Meaning of the U.S. Constitution*, 80 Geo. Wash. L. Rev. 1707, 1711 (2012).

³ Farris, Michael. "Defying Conventional Wisdom: The Constitution Was Not the Product of a Runaway Convention." Harv. JL & Pub. Pol'y 40 (2017): 61.

⁴ Natelson, Robert G. "Proposing Constitutional Amendments by Convention: Rules Governing the Process." Tenn. L. Rev. 78 (2010): 693.

3. On Feb 21, 1787, after 7 states had committed to attend the Convention of 1787, Congress endorsed the Convention and issued its “opinion” that it should be held “for the sole and express purpose of revising the Articles of Confederation.” Congress explicitly said that this was only its “opinion”, i.e. not a directive. There is no evidence that Congress transmitted a letter to executive officers in any state to do anything.
4. Twelve of the 13 states attended the Convention of 1787. Ten of those 12 states followed Virginia’s lead and gave their delegates broad power to find a solution to the federal political problem the country was facing. They did not instruct their delegates to not draft a federal constitution. However, 2 states, New York and Massachusetts, did instruct their delegates to only propose amendments to the Articles of Confederation.
5. Delegates from the 12 states followed their respective legislature’s instructions pertaining to what they were and were not allowed to do at the Convention.

I close with a quotation from Michael Farris’ article in Harvard Journal of Law and Public Policy:

“When we raise our hands to swear allegiance to the Constitution and promise to defend it against all enemies foreign or domestic, we can do so with a clean conscience. The Constitutional Convention was called by the states. The delegates obeyed the instructions from their respective legislatures as to the scope of their authority. ... The Constitution of the United States was validly and legally adopted.”⁵

Please vote to support the resolution before you today, S.J.R. 3.
Thank you for your attention and for your service to the people of Ohio.