TESTIMONY OF TED LEITHART
Mason, Ohio
Senate General Government Committee
OPPOSITION to SJR 3 and SB112 - June 2025

Chair Roegner, Vice Chair Gavarone, Ranking Member Blackshear and distinguished Members of the General Government Committee:

Good afternoon. My name is Theodore Leithart. I own a small business in the NE Cincinnati area near Kings Island. I am speaking in opposition to SJR3.

There has not been a Constitutional Convention since 1787. Some proponents calling for a convention of states, otherwise known as a Constitutional Convention, to amend the U.S. Constitution claim a well-worded resolution by state legislatures would keep such a convention from becoming a run-away one.

Nick Dranias of the Goldwater Institute published an on-line pamphlet called "10 Facts to Rebut the Mythology of a Runaway Convention." His leaflet insists:

> *"There is zero precedent that any convention of the states has ever 'runaway' from its assigned agenda. There have been 12 interstate conventions in the history of our country. All of them stayed within their stated agenda. Even the Constitutional Convention of 1787 was not convened to "amend" the Articles of Confederation, but to "revise" and "alter" the Articles to establish an effective national government. This was fully consistent with the Articles of Confederation because the Articles authorized alterations — a term that had revolutionary significance because it echoed the language of the Declaration of Independence."*

Does history agree with Mr. Dranias' statement? Not at all.

In fact, most of the 12 interstate conventions mentioned by Dranias were small regional assemblies of a handful or fewer states, or regional military conventions during the War for Independence from Britain. They involved only a few states and were convened at a time when the nation was less interested in new constitutional governance than military survival.

Additionally, the 1787 convention was clearly a "runaway convention" in the sense that eleven of the state delegations where restrictions had been imposed on its delegates by their state legislature violated those instructions.

In 1787, only two states, New Jersey and North Carolina, sent delegates to Philadelphia without any restrictions on how they could revise the national government.

New York and Massachusetts limited their delegates to "revising" the Articles of Confederation only, and both Massachusetts and Delaware restricted their delegates from amending the rule under Article V of the Confederation that guaranteed each state the right of vetoing constitutional changes and the right to recall congressmen.

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, and Georgia simply required that the new Constitution would have to be ratified by the "several states" before going into force, referring back to the Confederation Constitution requiring ratification by all 13 states where it stated:

> *'nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States and be afterwards confirmed by the legislatures of every State.'*

Of course, the Constitution that emerged from the convention of the states in 1787 respected none of these restrictions. In fact, the respecting of these restrictions lasted for a day – for the day after the rules of the Convention were established, the 'Virginia Plan' was introduced, suggesting the Articles be thrown out entirely and a New Constitution with a government consisting of three branches was proposed.

The Confederation was not "revised"; it was thrown in the historical dumpster. The Congress of the Confederation did not approve the 1787 Constitution, nor did all 13 states ratify our current U.S. Constitution before it was put into force. Rhode Island didn't ratify the U.S. Constitution until May 29, 1790, almost two years after the Constitution took effect. Prior to this, a congressional election, the election of President Washington, and passage of the Judiciary Act setting up the U.S. Supreme Court, the first tariff act, and other legislation had taken place.

The delegates in 1787 merely threw the rule of unanimity enshrined in America's first national Constitution into the dumpster and wrote new ratification rules in Article VII of the new Constitution (which said the ratifications of the conventions of nine states was sufficient).

A new convention would be empowered to do precisely the same thing in revising the ratification procedures enshrined in the current Constitution: Delegates could proclaim them ratified after adoption by a mere majority of state legislatures or even by a national popular vote.

the arduous procedures under the current U.S. Constitution, a convention can write the ratification procedures to fit what they expect will be approved. In other words, the convention could lower the bar to the point where proponents would be guaranteed to be able to jump over it.

Some proponents suggest imposing oaths upon delegates to follow their preferred restrictions would work. But the virtue of fastidious delegates who steadfastly hold to the restrictions imposed upon them by their states may actually help a convention veer off the tracks and become runaway. Consider that in 1787 New York delegates John Lansing and Robert Yates left the Philadelphia convention in protest when the convention exceeded the mandate of the New York legislature's resolution. But all their departure did was free up Alexander Hamilton — who had no such legalistic scruples — to adopt the Constitution for New York as the state's lone remaining delegate.

This is not to imply that the 1787 Constitution is "illegal" or that the American government today lacks legitimacy. To the contrary, the states have always held complete sovereignty — in the words of the Declaration of Independence — "to alter or abolish" government at a convention, whether that convention is the Continental Congress in 1776, the 1787 Philadelphia convention, or one convened under Article V of the U.S. Constitution today.

The real question before going to a constitutional convention under Article V today is this: Do Americans trust politicians nominated by Congress today to keep to their instructions more closely — or to draw up a better system of government — than those nominated by the state legislatures in 1787?

Please vote NO on SJR3 and SB112.

Thank you.

Ted Leithart.