



Ohio

*Holding Power Accountable*

Written Testimony on Senate Joint Resolution 4  
Before the Ohio Senate General Budget Committee  
By Catherine Turcer, Common Cause Ohio  
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Common Cause is a nonpartisan, grassroots organization dedicated to open, honest and accountable government that serves the public interest. I am writing to voice our opposition to Senate Joint Resolution 4 (SJR3).

While many agree that we have serious, systemic problems that need to be addressed, a Constitutional convention is simply not the answer. We are living in a highly polarized time and a convention could open the entire Constitution to revision.

**James Madison, Father of our Constitution**, said in his November 2, 1788 [letter to George Lee Turberville](#) that he “trembled” at the prospect of a second convention; and that if there were an Article V Convention:

*“...the most violent partizans,”, and “individuals of insidious views” would strive to be delegates and would have “a dangerous opportunity of sapping the very foundations of the fabric” of our Country.”<sup>i</sup>*

Despite the claims of Article V convention advocates, there is not sufficient legal evidence to support the claim that a constitutional convention could be limited to one subject or limited subjects.

Michael Leachman of the Center on Budget and Policy Priorities and Georgetown University Law Center Professor David Super explain that an Article V convention could not be controlled<sup>ii</sup> because, among other reasons:

- There are no guidelines or rules to govern an Article V convention in the Constitution, leaving the opportunity for the convention delegation to write its own rules;

- A convention could create a new ratification process, as occurred during the original 1787 convention; (This would render meaningless proponents' claim that only 13 legislative bodies are needed to reject any really bad idea); and
- No judicial, legislative, or executive body would have clear authority to settle disputes about a convention. In short, whatever one's views on the merits of prospective amendments like a balanced budget amendment, there is ample reason to reject the use of an Article V convention because it places our entire Constitution at risk.

And what makes SJR4 so problematic is that it almost makes the question of the "limited" Convention beside the point. That's because SJR4 does not propose a limited subject matter. The constitutional convention proposed by SJR4 claims, as state applications traditionally have, that the convention will be limited to considering amendments for its stated purposes. However, the stated purpose of SJR4 is, in addition to imposing fiscal restraints and term limits, to *"limit the power and jurisdiction of the federal government."*

**The Constitution already grants limited power to the federal government**, with all other powers reserved to the states or the people by the Tenth Amendment. Articles I through III of the Constitution set forth, respectively, the powers and jurisdiction of the legislative, executive, and judicial branches of the federal government. Article IV addresses the relative powers of federal government and the states. Article V addresses the amendment process and the relative role of Congress and the state legislatures in proposing amendments. Article VI contains the supremacy clause, which asserts that the Constitution and the laws of the United States made in pursuance of the Constitution are the supreme law of the land.

In short, every part of the Constitution is almost exclusively about the powers and jurisdiction of the federal government.

**An application for a convention that is "limited" to the powers and jurisdiction of the federal government is not limited at all. It would actually appear to encompass everything.**

Amendments to "limit" those powers are unlikely to work because the Constitution already limits the power and jurisdiction of the federal government. That's the purpose of the 10th Amendment.

**Constitutional scholars as varied as former U.S. Supreme Court Justices Warren Burger and Antonin Scalia have spoken out forcefully against an Article V convention.**

Former U.S. Supreme Court Justice Arthur Goldberg reminds us in [his September 14, 1986 op-ed in The Miami Herald](#)<sup>iii</sup> that at the convention of 1787, the delegates *ignored their instructions* from the Continental Congress and instead of proposing amendments to the Articles of Confederation, wrote a new Constitution; and **warns us that “...any attempt at limiting the agenda would almost certainly be unenforceable.”**

Former US Supreme Court Chief Justice Warren Burger said in [his June 1988 letter to Phyllis Schlafly](#)<sup>iv</sup>:

*“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...”*

While many, highlight the late U.S. Supreme Court Justice Antonin Scalia support for an Article V Convention when he was a professor, this is a mischaracterization.

After decades of experience on the Supreme Court, Scalia’s opinion had changed dramatically. [In a 2014 The Kalb Report panel discussion](#), Justice Antonin Scalia said: "I certainly would not want a Constitutional Convention. I mean, whoa. Who knows what would come of that?"<sup>v</sup>

In conclusion, I strongly urge this committee to avoid the chaos of an Article V Convention. Thank you for this opportunity to share our opposition to this amendment.

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<sup>i</sup> [http://oll.libertyfund.org/titles/1937#lf1356-05\\_mnt081](http://oll.libertyfund.org/titles/1937#lf1356-05_mnt081)

<sup>ii</sup> <http://www.commoncause.org/issues/more-democracyreforms/constitutional-convention/conclusion.html>

<sup>iii</sup> <https://publiushuldah.files.wordpress.com/2014/12/arthur-jgoldberg.pdf>

<sup>iv</sup> <https://eagleforum.org/topics/concon/pdf/WarrenBurger-letter.pdf>

<sup>v</sup> <http://www.thenewamerican.com/usnews/constitution/item/22625-justice-scalia-s-warning-of-a-constitutional-convention> (video of quote starts at 1 hour, six minutes, 20 seconds)