

Testimony of Robert Tuttle

Senate General Government Budget Committee

May 24, 2022

To Chairman Peterson, Vice Chairman Cirino, Ranking Member Craig and Members of the General Government Budget Committee:

Many of Ohio's citizens are fed up with our out-of-control Federal Government and believe that many of the laws and regulations they have given us are outside the scope of the enumerated powers given to them by the States. I am one of those citizens. I'm as upset as anyone about this overreach, corruption and out of control spending. I strongly support any effort to reign in our wayward Federal Government. The question before us is how best to achieve the goal.

In September 1786, delegates from five states met at the Annapolis Convention and invited all states to a larger convention to be held in Philadelphia in 1787. The Confederation Congress endorsed this convention on February 21, 1787 "for the sole and express purpose of revising the Articles of Confederation," which was a unanimously ratified and governing Constitution at the time. And what did we get, Mr. Franklin? On May 29, 1787, they voted to make their deliberations secret and the States lost control of the Convention. Other testimonies here today will explain why it is indeed so likely that this will happen again. Please do not dismiss this concern.

Those of us who oppose the Application are primarily concerned with the uncharted waters we would find ourselves in and the uncertainty around such an important event. The proponents of this Application say there is nothing to worry about, that the States will be able to control the Convention with little or no interference from the Federal Government. You'll be hearing a strong case today about why this is not the case.

Promoters of an Article V Convention trot out a pretty long list of journalists, pundits and TV personalities who have come out in favor of a Convention. Today, I don't know how many, if any, of these TV personalities are merely being swept up by the fervor of a Conservative cause that is fed up with government overreach and desperate for a silver bullet. I believe most proponents are in that camp. And just like the many people who argue about the Constitution but have not studied it, including the signers of various petitions, it begs the question if some of these proponents have taken the time to do the research themselves, or have relied on others for their arguments. This is all too common today.

Now let's take a look at who has warned us NOT to do this. Here is who you would have to ignore to support this Application:

1. Our Founders, the very ones who went through the process the first and only time it has been used, warned us:

- During April 1788, our 1st US Supreme Court Chief Justice John Jay warned that another convention would run an "extravagant risque." (pamphlet: A Citizen of New York)
- In Federalist No. 49, James Madison said a convention is neither proper nor effective to restrain government when it encroaches.
- In his Nov. 2, 1788 letter to his friend George Lee Turberville, Madison listed 4 reasons to resist another Convention, saying he "trembled" at the prospect of a 2nd convention; and 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. Do we not have violent partisans today?
- In Federalist No. 85 (last para), Alexander Hamilton said he "dreads" the consequences of another convention because the enemies of the Constitution want to get rid of it. And indeed, George Mason, the anti-Federalist who insisted on the very method of Amendment we are discussing today, was motivated by a desire to rewrite the Constitution again.

2. Numerous Supreme Court Justices have warned us:

- Justice Arthur Goldberg said in his 1986 editorial in the Miami Herald that "it cannot be denied that" the Philadelphia convention of 1787 "broke every restraint intended to limit its power and agenda," and "any attempt at limiting the agenda [at an Article V convention] would almost certainly be unenforceable."
- Chief Justice Warren Burger said in his June 1988 letter to Phyllis Schlafly: "... there is no effective way to limit or muzzle the actions of a Constitutional Convention ... 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 ..."
- Justice Antonin Scalia said during an interview in 2014: "I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?"

How can we dismiss warnings from these Founders and Supreme Court Justices? Who better to guide us? How can the proponents of this method say there is no risk?

3. Numerous scholars and legal experts have warned us:

From the Heritage Foundation to Harvard and Yale Law Professors like Professors Laurence Tribe and Bruce Ackerman, respectively, have warned of many unresolved questions around a Convention and the plenipotentiary power that rests in the delegates once the Convention has been convened. Other organizations who are opposed to the Convention include Organizations opposed to an Article V convention include the John Birch Society, the Center on Budget and Policy Priorities, Eagle Forum, Common Cause, Cato Institute, the Ron Paul Institute for Peace and Prosperity, and the Heritage Foundation.

4. Even Congress has warned us:

A Congressional Research Service Report from 2014, the first of a series of reports instigated to determine this very issue, says Congress has extensive authority over this process... and we can be sure that they will try to use it. According to the CRS:

“Congress will provide the method for delegate selection and the voting process. And they are also empowered in Article I Section 8 Clause 18 (the necessary and proper clause, to which the courts have given excessive latitude) to make laws enforcing these actions.”

5. And, our own LSC Analysis warns us:

In the last paragraph of their Detailed Analysis section, the LSC acknowledges the risk:

“The U.S. Constitution does not specify how a convention to propose amendments to the U.S. Constitution must be conducted or how its delegates are to be chosen. Further, the Constitution does not indicate whether the states that apply for a convention may limit the scope of amendments the convention is to propose.”

Let me summarize by acknowledging and applauding your efforts to limit Ohio’s participation in such a Convention to specific topics and rules, broad as they are, in the Application before us. However, as you will see, any assumptions or assurances that our State, or any other State, can control this process and the Convention once it is convened are simply wrong. These limits only address whether we agree to send our delegates. Once the Convention Convenes, there is doubt whether they are controllable by a State when they are participating as Federal delegates- just like we send 2 Senators, but they are not recallable by the State of Ohio.

And if our only recourse is to withdraw our delegates, thus not participating in a Convention that will determine the future of all Ohioans, then with all due respect, petitioning the Federal Government, whose thirst for power created this situation in the first place, to please stay out of the rules and processes of a Convention that will limit their own power (good luck) or we’ll get mad and go home is a pretty weak response to the abuse of power we are dealing with. There are other options that you will hear about today.

This Convention is fraught with risk and uncertainty, and the stakes are extremely high. The reasons that have prevented this method from being used in the past, despite repeated attempts over decades, have not changed or dissipated. It is just as dangerous and ill-advised today as it was then. Please do not open Pandora’s box by passing this Resolution for an Application for an Article V Convention.

Thank you for your time and attention and allowing me to testify today. I will be happy to try to answer any questions you may have.