Opponent Testimony for
Ohio House Government Oversight Committee
February 8, 2022

Chairman Peterson, Vice Chairman Thomas, 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. 3, Applies to Congress for a Convention of the States

Supporters of an Article V convention of states, or constitutional convention, and H.J.R. 3 correctly claim that the federal government is overreaching and needs to be reined in. However, rather than using the power of the states to ensure that the federal government obeys the Constitution, the focus of H.J.R. 3 is on changing the Constitution. This is a dangerous and unpredictable pathway that could have disastrous consequences. There has not been a convention since 1787. The first 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 an entirely new ratification process. Indeed, the 1787 convention was a runaway convention. What gain can we possibly anticipate by initiating another constitutional convention, or convention or states, with the propensity for and risk of creating another runaway convention? There are no stopgaps in the simple language of Article V to prevent such a disaster.

As former US Supreme Court Justice Arthur J. Goldberg stated 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."

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 interpret its power as far greater than envisioned by the states. History dictates that a convention cannot be limited to a single issue or several specified amendments. It must be understood that Article V does not grant the states the authority to limit the scope of the convention.

It is necessary and prudent to look back to these words from the father 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."

Today's Congress cannot and must not be trusted to follow the restrictions and limitations spelled out in H.J.R. 3 or similar resolutions from numerous states. The belief that a federal government that has invaded the legitimate roles of the states will respect and follow the limitations of power is unwise and has no historical legitimacy. The power vested in state delegates will inevitably become a political firestorm over how they are chosen and who will represent the various states. Could this fall to oversight by Congress? To believe that the well-monied political machine in Washington D.C. will submissively stand by as their power is sidestepped is a hazardous oversight. There is no reason to believe that the compromise and bargaining common to legislative bodies would not take place in a convention of states. Constitutional chaos is all but guaranteed, as James Madison so astutely envisioned. A convention of states would be an unmitigated disaster for the Republic.

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 long ignored and sidelined by all levels of government, and the people have failed to hold their representatives accountable. This must change if there is to be any hope for this great nation.

The Constitution must be enforced by those who have sworn oaths to do so. When unconstitutional, overreaching, unjust, or immoral powers are assumed by the federal government, it is the duty and the obligation of the states to use interposition to refuse obedience and to protect the people. Thus, federal power must be regulated with forethought at the state level. The power of nullification rests with the state legislatures and the lesser magistrates. This is the correct way to protect the Constitution and to keep the federal government in check.

While I believe that the sponsors of H.J.R. 3 and identical efforts in other states bring noble intentions, the possible pitfalls far outweigh the likelihood of gain. It is possible that unwise counsel has been exerted through a national movement based on false premises and false assurances. To that point, this movement toward a constitutional convention is decades old and has seen many attempts. What I find particularly troubling about the language of H.J.R. 3 and other recent efforts is the language, "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 a ticking time bomb that would extend into perpetuity or until further legislative action.

For these many reasons and more, I ask the honorable Members of the State and Local Government Committee to decline H.J.R. 3 expeditiously and unanimously for the benefit and continuance of this great Constitutional Republic. Further, I would ask that meaningful interpretation and defense of the Constitution begin this day and with this Committee. It is within the oath and duty of each Member here to exercise the powers of Amendment X of the Constitution and to stand in nullification of federal overreach. Hard decisions are in store for Ohio no matter the course. For instance, if crushing national debt and improper and imprudent spending are true concerns, then it will be necessary for Ohio to cease 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 constitutional convention is a course that could very well alter our form of government and do irreparable harm.