

Opponent Testimony for S.J.R. 4  
Ohio Senate General Government Budget Committee  
May 24, 2022

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

Page | 1

My name is Kathy Johnson. Thank you for the opportunity to present my thoughts in opposition to S.J.R. 4, a resolution to apply for a limited constitutional convention. I am the daughter of a WWII U.S. Marine who fought hand-to-hand on the Pacific Front years before my birth. I am proud to have been taught from childhood to love America and to deeply respect and uphold the Constitution of the United States. To defend what I treasure is my foremost duty and responsibility to my father's memory and to my beloved nation.

Today, I must provide words of caution regarding this risky resolution that I believe has been promoted by a longstanding and well-funded national campaign that provides limiting language and procedural promises that are not ensured nor supported in the simple language of Article V. Even if the best-case scenario were to transpire as promoted, which is highly unlikely, there would be little to no positive gain from this effort. We must also realize that the problem of vast federal overreach does not rest with the language of the Constitution but with the fact that the Constitution is not followed. I will further address herein that the Constitution, as written, gives great power to the states through the Tenth Amendment. Finally, we must grasp the possibility that the amendments proposed in this resolution will not have the effect intended; specifically, I will cover the fact that a balanced budget clause may give constitutional legitimacy to what is currently unconstitutional spending.

Supporters of an Article V convention of states, or constitutional convention, and S.J.R. 4 quite 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 S.J.R. 4 is on changing the Constitution. This is a dangerous process that would follow an unpredictable pathway that could have disastrous consequences. There has not been a convention of states since 1787; therefore, the 1787 convention is the only historical precedent we have to examine.

The first convention, although respected and attended by honorable men, was called for the sole and express purpose to address limited amendments to the Articles of Confederation, but ultimately resulted in an entirely new Constitution and an entirely new ratification process. Prewritten limiting language and specified subject matter from the states did not restrain a complete dissolution of the Articles of Confederation and drastically reduced ratification requirements. Indeed, the 1787 convention was a runaway convention.

Article V grants that Congress. . . on the application of the legislatures of two-thirds of the several states shall call a convention for proposing amendments. It must be understood that Article V does not grant the states any mandated control over processes or procedures. States are not granted the constitutional authority to limit the subject matter of a convention to specified amendments, to define or restrain the powers of Congress, to name delegates, nor to assign control to the states as outlined by S.J.R. 4. Promises to the contrary must be examined and disregarded as hopeful, yet hazardous, speculation. What gain can we possibly anticipate by initiating another constitutional convention, or convention of 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.

While Article V specifies that Congress shall then call the convention, the specific process is left unstated. Congress will undoubtedly interpret its power as far greater than envisioned by the states and the unwise counsel that is being presented to the states in the form of procedural promises and limiting language. Partisan chaos would necessarily ensue in Congress and certainly into the convention itself. This was foreseen.

It is necessary and prudent to look back to these words from a 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 S.J.R. 4 or identical resolutions from the 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 outlined in S.J.R. 4 is unwise, unstated in Article V, and has no historical legitimacy. The power vested in state delegates will inevitably become a political firestorm over how these delegates are chosen and over who will ultimately be selected to represent the various states. Could this selection process fall to oversight by Congress in the absence of assignment responsibility in Article V? 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. Also, there is absolutely 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 could 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. States are granted great power by the Constitution that has been eroded and must be reclaimed. 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.” Again, the travesty before us today is that the Constitution has been long ignored and sidelined by all levels of government, the people have failed to hold their representatives accountable, and oaths of office have been repeated without conviction. Reclamation of power back to the states will require courage and commitment. But the recovery of state power must be accomplished if there is to be any hope for this great nation. In this situation it may provide inspiration and encouragement to visit the words of James Madison from Federalist No. 45:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be

exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

The Constitution must be enforced by those who have sworn oaths to do so. The Tenth Amendment provides and defines the constitutional authority that rests with the states. 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 or nullification 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 keep the federal government in check.

Changing the language of the Constitution via a convention could be meaningless at best but could also prove to be quite harmful. The proposed amendments may sound good on the surface, but will likely fail to provide the intended outcomes and could prove ruinous. For instance, fiscal restraints through a balanced budget clause would bypass constitutionally mandated enumerated powers and would look solely at revenue and spending. In such a scenario, Congress could spend for any purpose so long as there are resources to pay for it. This approach would constitutionally legitimize spending that was never envisioned and which has long ballooned into monumental overreach and national debt. Article I, Section 8, clearly defines and limits the enumerated powers of Congress and a review of the existing language shows that much to most of the federal spending that we have become accustomed to is absolutely unconstitutional. Congress has persisted on a binge of unconstitutional spending for many decades, much of which will be difficult to turn back. But we cannot and must not give today's Congress the constitutional authority to continue its addiction to spending and power beyond that which is enumerated by the Constitution.

While I believe that the sponsors of S.J.R. 4 and identical efforts in the Ohio House and in other states bring noble intentions, the possible pitfalls far outweigh the likelihood of gain. It is undeniable that unwise counsel has been exerted in the states through a money-rich national movement based on false promises and assurances. To that point, this movement toward a constitutional convention is decades old and has seen many attempts. A clause that is particularly troubling about the current proposed language of S.J.R. 4 and identical activist-led efforts instituted across the states is that which states, "this application constitutes a continuing application." Including the word "continuing" is a ticking time bomb that would extend into perpetuity or until further legislative action.

The overreaching and ever-expanding federal government is burdening the states and certainly the people. 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 the federal subsidies that comprise a significant portion of our state budget. If the federal government invading the legitimate roles of the states is a true concern, then we must detach Ohio from unconstitutional federal money that comes with strings attached and severely compromises state sovereignty. To reclaim the roles delegated to the states, it will be necessary to voluntarily refuse federal money and certain federal mandates; the two cannot be separated.

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 forever alter our form of government and do irreparable harm to the bedrock of our nation. Meaningful interpretation and defense of the Constitution can begin today and with this Committee. Ohio must defend what we treasure and must lead the nation with a firm rejection of an Article V convention.

For the many reasons covered here and more, I would urge the honorable Members of the Ohio Senate General Government Budget Committee to expeditiously and unanimously decline S.J.R. 4 for the benefit and continuance of this great Constitutional Republic.