

March 5, 2020

**Testimony on SJ 2 –
United States Constitution – Amendments Convention – Democracy Amendment
Education, Health, and Environmental Affairs**

Position: Unfavorable

Common Cause Maryland opposes SJ 2, which would call for a national constitutional convention. If successful, this effort would result in the nation's first constitutional convention since the 1787 convention which adopted the Constitution. Because there are no rules in place, it also would create the opportunity for wealthy interests to manipulate the process in the exact way proponents argue is unacceptable in our current politics and would place every constitutional right and protection currently available to American citizens in jeopardy.

The Constitution provides that Congress "on the Application of the Legislatures of two thirds of the several states, shall call a Convention for proposing Amendments." Regardless of any limits that are being placed in the state calls for a constitutional convention, it is widely believed that once a convention is called there is no way to limit the constitutional amendments that the convention can consider and on which they can act.

Several constitutional scholars, including scholars that proponents have cited supporting a Convention, have weighed in on the perils of a constitutional convention. We cite some of that language in an addendum to this testimony.

There are no rules on what would happen if and when a convention is called: no rules on how delegates are chosen, how voting occurs at the convention, how money can be spent to choose and influence delegates, or how the convention would operate.

This means that any existing constitutional right and protection could be up for consideration and revision by a convention. This includes constitutional protections for civil rights, civil liberties, voting rights, freedom of religion, freedom of speech and privacy, among others. The role of the courts in protecting the constitutional rights of individuals and minority interests would also be up for consideration and revision.

Furthermore, any actions taken at such a wholly unprecedented convention could create additional strain on the integrity of our union. Already at a precarious place in our history, the last thing the American people need is for our cohesion to be further destroyed by a process without rule or precedent.

A constitutional convention would put at risk the constitution our Founding Fathers created and the constitutional rights and protections that exist today. While we are sympathetic to the goals of this legislation and would support a traditional call for Congress to pass an amendment on the issue, we oppose the convention and strongly urge an unfavorable report on SJ 2.

Legal Scholars Warn of the Dangers of an Article V Convention

"[T]here is no way to effectively limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or one issue, but there is no way to assure that the Convention would obey." – [Warren Burger](#), Chief Justice of the U.S. Supreme Court (1969-1986)

"I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?" – [Antonin Scalia](#), Associate Justice of the U.S. Supreme Court (1986-2016)

"There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights." – [Arthur Goldberg](#), Associate Justice of the U.S. Supreme Court (1962-1965)

"First of all, we have developed orderly procedures over the past couple of centuries for resolving [some of the many] ambiguities [in the Constitution], but no comparable procedures for resolving [questions surrounding a convention]. Second, difficult interpretive questions about the Bill of Rights or the scope of the taxing power or the commerce power tend to arise one at a time, while questions surrounding the convention process would more or less need to be resolved all at once. And third, the stakes in this case in this instance are vastly greater, because what you're doing is putting the whole Constitution up for grabs." – [Laurence Tribe](#), professor of constitutional law at Harvard Law School

"The bigger threat is that a constitutional convention, once unleashed on the nation, would be free to rewrite or scrap any parts of the U.S. Constitution. Do we really want to open up our nation's core defining values to debate at a time when a serious candidate for the White House brags about his enthusiasm for torture and the surveillance state, wants to "open up" reporters to lawsuits, scoffs at the separation of powers and holds ideas about freedom of religion that are selective at best?" – [David Super](#), professor of law at Georgetown University

"Note what [Article V] does not say. It says not a word expressly authorizing the states, Congress, or some combination of the two to confine the subject matter of a convention. It says not a word about whether Congress, in calculating whether the requisite 34 states have called for a convention, must (or must not) aggregate calls for a convention on, say, a balanced budget, with differently worded calls arising from related or perhaps even unrelated topics. It says not a word prescribing that the make-up of a convention, as many conservatives imagine, will be one-state-one-vote (as Alaska and Wyoming might hope) or whether states with larger populations should be given larger delegations (as California and New York would surely argue)." – [Walter Olson](#), senior fellow at the Cato Institute's Center for Constitutional Studies

"Danger lies ahead. Setting aside the long odds, if California and 33 more states invoke Article V, there's a risk that we'd end up with a "runaway" convention, during which delegates would propose amendments on issues including abortion, gun rights and immigration." – [Rick Hasen](#), Chancellor's Professor of Law and Political Science at the University of California, Irvine

"Holding a Constitutional convention when the U.S. is embroiled in extremely toxic, uninformed and polarized politics is a really, really bad idea." – [Shelia Kennedy](#), professor of law and policy at Indiana University Purdue University Indianapolis

"But no rule or law limits the scope of a state-called constitutional convention. Without established legal procedures, the entire document would be laid bare for wholesale revision. Article V itself sheds no light on the most basic procedures for such a convention. How many delegates does each state get at the convention? Is it one state, one vote, or do states with larger populations, like California, get a larger share of the votes? The Supreme Court has made at least one thing clear — it will not intervene in the process or the result of a constitutional convention. The game has neither rules nor referees." – [McKay Cunningham](#), professor of law at Concordia University

"The result will be a disaster. I hate to think of the worst-case scenario. At best, the fight over every step along the way would consume our country's political oxygen for years." – [David Marcus](#), professor of law at the University of Arizona



"At present, there are no rules regarding who can participate, give money, lobby or have a voice in a constitutional convention. There are no rules about conflicts of interest, disclosure of who is giving or expending money. No rules exist that address political action committees, corporate or labor union involvement or how any other groups can or should participate. Not only might legitimate voices of the people be silenced by convention rules, but special interests may be given privilege to speak and affect the deliberations...there are no rules limiting what can be debated at a constitutional convention. Given the potential domination by special interests, who knows the result?" - [David Schultz](#), **political science and election law professor at Hamline University**

"An Article V convention might propose an amendment to restore or expand the liberties of the American people, but it also could propose an amendment that diminishes the liberties of the American people, or of some of the people. " – [John Malcolm](#), **director of the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies**

"But nothing in the Constitution limits such a convention to the issue or issues for which it was called. In other words, anything and everything could be on the table, including fundamental constitutional rights. Nor are there any guarantees about who would participate or under what rules. Indeed, for these reasons, no constitutional convention has been called since the first in 1787." - [Helen Norton](#), **professor and Ira C. Rothgerber, Jr. Chair in Constitutional Law at the University of Colorado**, and [David Super](#), **professor of law at Georgetown University**

"The lack of clear rules of the road, either in the text of the Constitution itself or in historical or legal precedent, makes the selection of the convention mechanism a choice whose risks dramatically outweigh any potential benefits." – [Richard Boldt](#), **professor of law at the University of Maryland**

"We live in deeply partisan times. There are no certainties about how a constitutional convention would play out, but the most likely outcome is that it would deepen our partisan divisions. Because there are no clear constitutional rules defining a convention's procedures, a convention's "losers" may deem illegitimate any resulting changes. Regardless of the ultimate outcome, the process itself would likely worsen our already vicious national politics." – [Eric Berger](#), **associate dean professor of law at the University of Nebraska College of Law**

"There are no such guarantees. This is uncharted territory...We should not now abandon the very document that has held us together as a nation for over two and one quarter centuries. Rewriting the Constitution is a dangerous errand that would not only unravel the legal ties that have kept us together for so long but would also undermine our sense of national identity and the way that view ourselves as a people." – [William Marshall](#), **professor of law at University of North Carolina**

"Terrible idea...Today's politicians don't have the timeless brilliance of our framers. If we were to rewrite our constitution today, we wouldn't get a particularly good one." – [Adam Winkler](#), **professor of constitutional law and history at the University of California, Los Angeles**

"I believe it's a time for constitutional sobriety. It's a time to keep our powder dry and not to move on an uncharted course. We are not the founding fathers. This would be disastrous." – [Toni Massaro](#), **constitutional law professor at the University of Arizona**

"Having taught constitutional law for almost 40 years, and having studied constitutions from around the globe, I have difficulty imagining anything worse." - [Bill Rich](#), **professor of law at Washburn University in Topeka, Kansas**

"There are no constitutional limits on what the convention could do, no matter what the states say going into it." - [David Schwartz](#), **professor of law at the University of Wisconsin Law School**

"The Constitution allows for the calling of conventions on a petition of enough states, but not limited conventions of enough states. If the delegates decide they don't want to be bound by the (state) resolution, they are right that they can't be bound." - [Richard H. Fallon Jr.](#), **constitutional law professor at Harvard University**

"Once you open the door to a constitutional convention, there are no sure guidelines left. This is the constitutional equivalent of opening a can of worms." - [Miguel Schor](#), **constitutional law professor at Drake University School of Law**



"Thus, neither the states nor Congress may limit the convention to specific subjects. While the goal to propose a balanced budget amendment may provide guidance to the convention, it would not have the force of law...Put simply, the rewards of any constitutional change is not worth the risks of a convention. " - [Sam Marcossan](#), professor of law at the University of Louisville

"Even more frightening is that the entire Constitution will be in play during a convention. The First Amendment could disappear, so could gun rights. There is no guarantee that any of our current constitutionally protected rights would be included in a new constitution. The only guarantee is that all of those rights would be imperiled." - [Mark Rush](#), the Waxberg Professor of Politics and Law at Washington and Lee University in Lexington

"Most significantly, we advise the Legislature that a federal constitutional convention called with this resolution could potentially open up each and every provision of the United States Constitution to amendment or repeal. In other words, a federal constitutional convention could propose amendments to eliminate the protections of free speech; the protections against racial discrimination; the protections of freedom of religion; or any of the other myriad provisions that presently provide the backbone of American law." – [March 2018 legislative testimony](#) of Russell Suzuki, Acting Attorney General, and Deirdre Marie-Iha, Deputy Attorney General, of the state of Hawaii

"Whatever one thinks about these proposed amendments, trying to pass them through an Article V convention is a risky business. The Constitution does not specify how the delegates for such a convention would be chosen, how many delegates each state would have, what rules would apply at the convention or whether there would be any limits on what amendments the convention could consider. A convention that was called to address a specific issue, such as budget deficits, might propose changes to freedom of speech, the right to keep and bear arms, the Electoral College or anything else in the Constitution. There is no rule or precedent saying what the proper scope of the convention's work would be." - [Allen Rostron](#), associate dean for students, the William R. Jacques Constitutional Law Scholar, and a professor at the University of Missouri

"Whether I like or dislike the specific proposal is not the point — the point is that a constitutional convention is a risky and potentially dangerous way to propose amendments." - [Hugh Spitzer](#), professor of law at the University of Washington School of Law

