

Maryland House Rules and Executive Nominations Committee Testimony in Support of HJ 0006

My name is Robert Kelly and I here as am General Counsel for Convention of States Action to speak in favor of HJ 0006.

Convention of States Action is a nationwide grassroots organization with over 4.8 million supporters across the country organized around this single issue: calling a convention of states to propose amendments to restrain the power of the federal government.

Our Article V application has passed in 15 states.¹ Right now, 14 of your sister states are actively considering this same piece of legislation.²

Restoring Federalism and the Balance of Power

HJ 0006 is not about this or that policy position. It is not about being a Republican or a Democrat. It is not about liberal policies or conservative policies. It is about a much more fundamental question—who decides? The answer is clearly established in the first three words of our Constitution: it is “We the People” who decide. And our Constitution was designed to protect that principle through the process of federalism—the idea that power should be divided between the state and federal governments to ensure that neither could tyrannize the American people.

Unfortunately, that process of Federalism is largely a dead letter in American law today. The federal government treats the states as its regional agencies, rather than the equal sovereigns they are under our system of government. You do not have the power to act as the people of Maryland would ask you to act.

But I take great comfort in the fact the spirit of Federalism is alive in the hearts and minds of the American people. Despite all of our political differences 72% of the American people believe that the government is too large.³ The American people

¹ Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, Utah, Tennessee

² Illinois, Iowa, Kentucky, Massachusetts, Nebraska, New Hampshire, New Jersey, North Carolina, South Carolina, Vermont, Washington, West Virginia, Wisconsin, Wyoming

³ *Record High in U.S. Say Big Government Greatest Threat*, GALLUP, <http://www.gallup.com/poll/166535/record-high-say-big-government-greatest-threat.aspx> (Dec. 18, 2013).

also believe their state governments do a better job than the federal government.⁴ This majority holds true across political and geographic boundaries. Federalism is alive and well in the hearts of the American people.

The simple truth is that the federal government will not check itself and our system of government which is designed around the principle of checks and balances, does not rely on the federal government limiting its own power. Instead that role is given to the states. According to the drafter, that is the purpose for the convention provision in Article V. It is up to the states, representing the people, to restore that proper balance of power in our system and to exercise a meaningful check on the federal government.

Convention Opponents Misrepresent the Nature of the Amendment Process

Most convention opponents seem to get hung up on the use of the term “Convention” and somehow infer that an Article V Convention would have the same authority as the Constitutional Convention of 1787. But an Article V Convention, by its very nature, is called under Article V of the Constitution and must abide by the procedures laid down in that Article. If you read the text of Article V what it essential establishes is an interstate drafting committee. The convention only has authority to “propose amendments.” Those proposals must be ratified by 38 states before a single letter of our Constitution can be changed. This incredibly high bar ensures that no amendments could ever be passed that do not enjoy the overwhelming support of the American people.

The runaway convention argument, which enjoyed a short time in vogue in the seventies and eighties, has been roundly rejected by numerous authorities including the American Bar Association,⁵ the U.S. Department of Justice Office of Legal Policy,⁶ and leading Article V Scholar Professor Robert G. Natelson.⁷

⁴ Frank Luntz, *Americans Trust Their Own States But Not Washington*, TIME, <http://time.com/4682090/frank-luntz-america-relationship/> (Feb. 25, 2017).

⁵ AMERICAN BAR ASSOCIATION, *AMENDMENT OF THE CONSTITUTION BY THE CONVENTION METHOD UNDER ARTICLE V* (1973)

⁶ U.S. DEPT. OF JUSTICE, OFFICE OF LEGAL POLICY, *LIMITED CONSTITUTIONAL CONVENTIONS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION* (1987)

⁷ E.g., Robert G. Natelson, *Founding-Era Conventions and the Constitution's "Convention for Proposing Amendments"*, 65 FLA. L. REV. 615 (2012).

The idea of a runaway convention is also completely belied by our country's historical practice of holding conventions. There have been at least 36 multi-state conventions in our history, and none of those convention has ever run away.⁸

In sum, the concerns about the Article V process pale in comparison to the threat posed by our unchecked federal government which continues to spend beyond its means and expand its power under both Republican and Democrat administrations.

⁸ Robert G. Natelson, *Founding-Era Conventions and the Constitution's "Convention for Proposing Amendments"*, 65 FLA. L. REV. 615, 620 (2012).