

February 14, 2018
Senate Concurrent Resolution 1611
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Written Opposition Testimony

Chair Estes and Members of the Committee:

Thank you for the opportunity to submit written testimony on Senate Concurrent Resolution 1611.

Supporters of the calls for an Article V convention initiated by the Convention of States have been insisting that what they propose is “not a constitutional convention.” This is absurd.

The Convention of States are proposing to call a convention that would have the power to propose amendments to the Constitution. This is, in simple English, a constitutional convention. Just as a meeting to select, or interact with, an emperor is an imperial convention, a meeting to make changes in a constitution is a constitutional convention. Claims to the contrary are sophistry at best and deliberately deceptive at worst.

The Convention of States appear to have adopted a specialized language in which the term “constitutional convention” is reserved for conventions that write constitutions from scratch, not conventions that amend existing constitutions. There is no authoritative support for this definition. But even if one accepts this peculiarly narrow terminology, what the Convention of States propose is, in fact, a constitutional convention. Once convened under Article V of the Constitution, this convention could propose any amendments it pleased, including the wholesale replacement of our existing Constitution. The Philadelphia constitutional convention in 1787 was called for the purposes of amending the Articles of Confederation but rapidly shifted to writing an entirely new constitution. Nothing in Article V prevents a new convention from doing exactly the same thing.

The point of this odd linguistic exercise appears to be to obscure the fundamental danger that an Article V convention holds: it would have the power to rewrite any and all parts of the U.S. Constitution. Even if an Article V convention stayed within the bounds of the resolutions that the Convention of States organization has been promoting – and nothing in Article V so constrains a convention – one of the goals identified in those resolutions is to “limit the power and jurisdiction of the federal government”. The powers of the federal government include enforcing the Bill of Rights, the Fourteenth Amendment’s Due Process and Equal Protection Clauses, and the other provisions of the Constitution that authorize Congress and the federal courts to secure civil rights, protect consumers and the environment, address workplace safety, and perform other vital functions for Americans. All of these would be vulnerable should the Convention of the States organization secure the necessary 34 state resolutions. Moreover, and Article V convention could lower the bar for ratification of its proposed amendments just as the Philadelphia Convention of 1787 disregarded the ratification procedures in the Articles of Confederation.

If the Convention of the States organization wished to call a convention that was not a constitutional convention, it would have no need to invoke Article V. Congress could call a convention of the states at any time and for any reason. Such conventions have been held occasionally, and if the well-funded Convention of the States asked, the current Congress likely would agree to call one. A convention called in this manner could discuss and debate whatever issues Congress designated and could even make proposals to Congress for constitutional amendments that Congress might promulgate to the states. (Under Article V, Congress may propose constitutional amendments by a two-thirds vote in both houses.)

The Convention of the States organization has not, however, asked Congress to call such a convention. Instead, it has spent millions of dollars lobbying states to pass resolutions calling for a convention

under Article V. The reason is simple: the Convention of the States organization wants a constitutional convention, with all the vast powers Article V provides. It should not be permitted to trick the unwary into overlooking the dangers such a convention poses to our constitutional democracy by playing dishonest word games.

For these reasons, I respectfully ask that you oppose this mischaracterized call for a convention.

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