

## Testimony Against a “Convention of States” (HR 206)

Pennsylvania House and Senate State Government Committees (Oct. 22, 2019)

By Andy Schlafly, Esq., on behalf of Pennsylvania Eagle Forum

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Thank you for the opportunity for me to submit this testimony against the so-called “Convention of States” resolution, HR 206.

I submit this testimony on behalf of Pennsylvania Eagle Forum, which has sponsored annual events over the last decade in the Keystone State, as attended by prominent officials. Leaders of Pennsylvania Eagle Forum will be attending this important hearing. I am an attorney who practices before the U.S. Court of Appeals for the 3<sup>rd</sup> Circuit in Philadelphia.

Pennsylvania is the birthplace of our Constitution and our liberty. Nearby Gettysburg is where so many sacrificed their lives in defense of our freedoms. Yet a new convention under Article V of the Constitution, as attempted HR 206, would put all this at risk. HR 206 should be defeated for many reasons, including the following:

**1. *An Article V convention cannot be limited in scope.*** HR 206 calls for an Article V convention, but the wording of Article V does not allow limiting the scope of it. The delegates themselves will propose amendments without any limitation under Article V. Many scholars, such as the former Chief Justice of the United States Warren Burger, have emphasized that:

there is no effective way to 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 to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress “for the sole and express purpose.” ... A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Letter by Chief Justice Warren Burger (ret.) to Phyllis Schlafly, dated June 22, 1988.<sup>1</sup>

Phyllis Schlafly opposed use of an Article V convention by anyone in the political spectrum, whether conservative or liberal. Her testimony three decades ago in Oregon against an Article V convention is available on YouTube, where she concluded with:

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<sup>1</sup> [http://www.pseagles.com/Warren\\_Burger\\_letter\\_1988](http://www.pseagles.com/Warren_Burger_letter_1988) (viewed 10/19/19).

Frankly, I don't see any James Madisons, George Washingtons, Ben Franklins, or Alexander Hamiltons around today who could do as good a job as they did in 1787, and I am not willing to risk making our Constitution the political plaything of those who think they are today's Madisons, Washingtons, Franklins, or Hamiltons.<sup>2</sup>

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No state can impose conditions on an Article V convention which are not in the Constitution. Much of HR 206 tries to limit what Pennsylvania delegates can do, but Pennsylvania cannot limit what delegates from other states would do. It does not help to try to tie the hands of Pennsylvania delegates when delegates from California and New York could do whatever they like. Moreover, no court would enforce attempts by a state to add limitations on its own delegates which are not in Article V. Without any enforceability of numerous provisions in HR 206, they are not a safeguard.

HR 206 seems to recognize that an Article V convention would put our Bill of Rights at risk, and says that the application will be void *ab initio* if the Bill of Rights is changed. But by then the horse would out of the barn, and it would be too late to try to pull back the application. Our civil rights and liberties would be put at terrible risk by such an Article V convention, and calling for one is the wrong move at the wrong time, amid our current, highly politicized culture. Once the floodgate is opened to this horrible idea, there is no way to contain it.

## ***2. It Would Not Be a "Convention of States," but a Convention Called by Congress.***

An Article V convention is not a "convention of states." Under Article V, ***it is Congress alone that would call an Article V convention.*** California will have the most influence over a Convention of States because the Supreme Court requires that all representative bodies, other than the U.S. Senate, be based on population: "one man, one vote." HR 206 relies on a false hope by pretending that each state would have an equal vote.

The real name should be a "Convention called by Congress," because that is what it would be under the Article V referenced by HR 206. Changing its name to call it a "convention of states" is nothing more than a euphemism, and does not alter the fact that Congress alone makes the call.

The role of the States is merely to apply to Congress to call the convention. The States cannot limit what Congress does, or what an Article V convention does. Article V itself states that a constitutional convention shall be "for proposing amendments," ***plural.***

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<sup>2</sup> [https://www.youtube.com/watch?v=7spVo-61\\_fY](https://www.youtube.com/watch?v=7spVo-61_fY) (quotation begins at 17:13).

Simply put, HR 206 would grant Congress more power to pursue mischief. This would not be good for our Nation.

**3. *State legislatures cannot stop proposed amendments that would come out of a Convention of States.*** One of the biggest myths spread about the Convention of States is that the Constitution will be protected by the ordinary process requiring that 38 state legislatures must ratify any proposed amendments. But this is not true. State Legislatures may not even be involved in the ratification process.

Article V of the Constitution permits a constitutional convention *to create its own ratification process*, using conventions in each state which bypass state legislatures. The 21<sup>st</sup> amendment was ratified by conventions in each state, not by ratifying votes in state legislatures. In addition, once amendments are recommended by a constitutional convention, the media pressure will be overwhelming to ratify, as it was for the 17<sup>th</sup> Amendment which was against the interests of state legislatures.

An Article V convention could even change the 3/4<sup>th</sup> requirement to change the Constitution. After all, if an Article V convention can change other provisions of the Constitution, then it might change the requirements for ratification too. The original Constitutional Convention changed the rules in place then for revising the Articles of Confederation.

**4. *Our Constitution is not the problem, and it needs to be defended rather than criticized.*** Opening the door to vague, sweeping changes of our Constitution is a recipe for disaster. Even supporting such a concept is harmful, because it undermines the need to strongly defend our Constitution, which has produced the greatest freedom and prosperity ever known to mankind.

Some argue that the problems faced by our Nation are too immense to be handled by the current Constitution, and that revisions are needed. Supposedly we need a solution as big as the problem. But it is obviously a mistake to bet the family farm on a roulette wheel at a casino as a way to deal with any problem.

Several of the leading advocates for a Convention of States are politicians who abandoned their offices early, without even completing the terms of office that they ran for. Did they tell voters prior to their elections that they were not going to complete their terms of office? Tom Coburn's constituents sent him to Washington, D.C., to represent them and defend the Constitution. Instead, he quit early and became a paid lobbyist to push the Convention of States. He should have done what he was elected to do, instead of abandoning his job and becoming a lobbyist instead.

While Coburn was in the Senate, he voted to confirm as Solicitor General someone who had no courtroom experience and who does not support adhering to the original

meaning of the Constitution. The Constitution gave Coburn, as senator, the power to block nominees who lack appropriate experience and do not defend the Constitution. It was Coburn who failed, not the Constitution.

Similarly, Jim DeMint left his Senate seat early, without completing his term of office. Why didn't he simply finish the job he was elected to do?

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The Constitution is not the problem. What is needed is to elect candidates who will do their job and defend the Constitution, rather than pretending it is the problem.

**5. *Dark money is pushing the Convention of States, and we do not want billionaires rewriting our Constitution.*** We have many laws against corruption of politics by money. But billionaires find ways around these laws, and would control a constitutional convention to write amendments that advantage them rather than ordinary Americans.

HR 206 has a provision that prohibits a Pennsylvania delegate from receiving any item of value, other than educational materials. But that does not prevent any non-Pennsylvania delegate from receiving money to influence them. That also does not prevent a family member of a delegate from receiving money to influence the delegate.

***There is not bipartisan support for the Convention of States, but there is bipartisan opposition.*** Both the Republican and Democratic National Platforms have declined to endorse a Convention of States. Less than a year before he died, the late Justice Antonin Scalia called an Article V convention a "horrible idea," as I personally witnessed and which was published by a reporter. But the Convention of States project has misled people by ignoring this strong statement by Justice Scalia, and instead has exaggerated an ambiguous comment he made in 1979 long before he became a Supreme Court Justice.

Our Bill of Rights could be rewritten, or simply removed. Our Electoral College, which makes Pennsylvania the most important state in the upcoming presidential election, could be eliminated. Civil rights could be terminated by a convention sought by HR 206, which purports to protect the Bill of Rights but does not even try to protect other provisions in the Constitution which safeguard civil liberties.

Our Constitution was a providential result of a unique time, written entirely by Framers who had sacrificed their own lives for our country. It was made possible in 1787 at Independence Hall in Philadelphia without the overwhelming pressures of the modern media, special interest groups, and hired political agitators.

Billions were spent on the last presidential election, but hundreds of billions would be at stake in rewriting the Constitution. Monied interests and the media would easily take control of the process, and no one should favor giving them the keys to our Constitution.

**6. Important Questions Convention of States Promoters Refuse to Answer.**

The Convention of States is being pushed by dark money, with a secret agenda. The recipients of that money conceal the identity of their billionaire donors, and hide their agenda. ***Ask their spokesmen who is bankrolling them to the tune of millions of dollars, and watch how they will not provide an honest and complete answer.*** No one should entrust billionaire manipulators of our political system with rewriting our Constitution.

The vague platitudes in HR 206 mean almost anything. “Fiscal restraints” can require defunding our military, or reducing the pensions of those in the armed forces. “Limit the power and jurisdiction” of the federal government can undermine our national security, or end drug enforcement. ***What is the real agenda behind the push for a Convention of States?*** Tough questions about this need to be asked of the Convention of States promoters.

The ambiguous wording in HR 206 can lead to mischief. HR 206 begins with this: “Petitioning the Congress of the United States to call a Convention for proposing amendments pursuant to Article V of the Constitution [to] ... limit the terms of office for its officials and for members of Congress.” Who is HR 206 referring to when it says “limit the terms of office for its officials”? That is separate in HR 206 from limiting the terms of office for members of Congress. An Article V convention could insist on limiting the terms of office for all state legislators, thereby overriding this legislature’s decision not to have term limits.

**7. A Fiscal Note Is Necessary.**

Pennsylvania could lose billions of dollars in funds from the federal government if HR 206 were adopted, and a convention were held. There should be a proper fiscal note attached to HR 206.

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Please reject a Convention of States (HR 206) to change our Constitution. ***Our Constitution was created in Pennsylvania and we count on you to defend it.*** Thank you for allowing me to submit this testimony on behalf of Pennsylvania Eagle Forum.

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