

OCTOBER 22, 2109

Dear members of the House and Senate State Government Committee,

On behalf of Common Cause's more than 36,000 members and supporters in Pennsylvania, I am writing to urge to vote against HR 206 and SR 234. These resolutions would call a dangerous Article V constitutional convention that could put every American's fundamental constitutional rights and civil liberties at risk. Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. In the last few years, Common Cause has successfully helped rescind Article V convention applications in Delaware, New Mexico, Maryland, and Nevada and lobbied against passing Article V convention applications in states across the country, including Texas, Hawaii, Illinois, Colorado, Nebraska, Kentucky, Wisconsin, Connecticut, and Rhode Island.

Simply put, an Article V convention is a dangerous threat to all Americans' constitutional rights and civil liberties. Because there is no language in the U.S. Constitution to limit a convention, it is widely understood that a convention, once called, will be able to consider any amendments to the Constitution that the delegates want to consider. There are also no guidelines or rules to govern a convention. Due to the lack of provisions in the Constitution and lack of historical precedent, it is unknown how delegates to a convention would be picked, what rules would be in place, what would happen in the case of legal disputes, what issues would be raised, how the American people would be represented, and how to limit the influence of special interests in a convention. Because there is no way to limit a convention's focus, any constitutional issue could be brought up, including the freedom of speech, civil rights and civil liberties, marriage equality, voting rights, privacy rights, among others.

According to one of the nation's most esteemed constitutional law scholars, Professor Laurence Tribe of Harvard Law School, a constitutional convention would put "the whole Constitution up for grabs."¹ Another of our nation's foremost constitutional law scholars, Dean Erwin Chemerinsky, recently wrote that "no one knows how the convention would operate. Would it be limited to considering specific proposals for change offered by the states or could it propose a whole new Constitution? After all, the Constitutional Convention in 1787 began as an effort to amend the Articles of Confederation, and the choice was made to draft an entirely new document."²

Several Supreme Court justices have warned about the potential outcomes of constitutional conventions. Former Chief Justice Warren Burger wrote that a "Constitutional Convention today would be a free-for-all for special interest groups."³

¹ Michael Leachman & David A. Super, "States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment and Other Issues," Center for Budget and Policy Priorities, July 6, 2014, *available at* <http://www.cbpp.org/sites/default/files/atoms/files/7-16-14sfp.pdf>.

² Erwin Chemerinsky, "Is It a Good Time to Overhaul Constitution?," Orange County Register, Jan. 21, 2016, <http://www.ocregister.com/articles/constitutional-700670-convention-constitution.html>.

³ Robert Greenstein, "A Constitutional Convention Would be the Single Most Dangerous Way to 'Fix' American Government," Wash. Post, Oct. 21, 2014, <https://www.washingtonpost.com/posteverything/wp/2014/10/21/a-constitutional-convention-could-be-the-single-most-dangerous-way-to-fix-american-government/>.

Former Justice Arthur Goldberg wrote that “[t]here is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights.”⁴ The late Justice Antonin Scalia said that he “certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?”⁵

Prof. Tribe enumerated a number of questions about a constitutional convention that he says are “*beyond resolution by any generally agreed upon political or legal method.*”⁶

Specifically, Prof. Tribe explained the following questions have no agreed upon answer:

1. May a state application insist that Congress limit the convention’s mandate to a single topic, or a single amendment?
 - If Congress can call a convention independent of state applications (as Professor Sandy Levinson argues it may), then how could state applications possibly constrain a convention’s mandate?
 - If applications are constraining, then how are applications proposing related (but different) topics to be combined or separated?
 - Are they added up or not added up?
 - When do you hit the magic number 2/3 of the states submitting applications?
2. May the Convention propose amendments other than those it was called to consider?
3. May Congress prescribe rules for the convention or limit its powers in any way?
4. May the Convention set its own rules, independent of Article V, for how amendments that it proposes may be ratified – which is what the Philadelphia Convention did? The Philadelphia Convention was called under a scheme that said ratification required unanimity among the states – but they departed from that. What if ratification is decided by a national referendum?
5. Are the states to be equally represented, or does the one-person, one-vote rule apply? What about the District of Columbia? Do the citizens of the District have a role in a convention?
6. Could delegates be bound in advance by legislation or referendum to propose particular amendments or vote in a particular way? If delegates are chosen by lottery, it’s hard to imagine how they could be bound in advance.
7. Could the convention propose amendments by a simple majority, or a supermajority of 2/3?

⁴ *Id.*

⁵ *Id.*

⁶ Laurence Tribe, “Conference on the Constitutional Convention: Legal Panel,” Harvard Law School, Sept. 24, 2011, available at <https://www.youtube.com/watch?v=ZbJ7NOF3HRU&t=52m56s> (uploaded Oct. 6, 2011).

8. If each state gets one convention vote, must delegates representing a majority of the population nonetheless vote for an amendment in order for it to get proposed?
9. Conversely, if the convention uses the one-person, one-vote formula, must the delegations of 26 states – perhaps including the District of Columbia – vote in favor of a proposed amendment?
10. What role, if any, would the Supreme Court play in resolving conflicts among Congress, state legislatures, governors, referenda, and the convention itself? Can we rely on the Court to hold things in check? The Court has assumed that questions about the ratification process are non-justiciable political questions that it can't get involved in.

It risks too much to discover the answers to the above questions after-the-fact.

Common Cause is one of 240 organizations that is opposed to calling an Article V convention.⁷ There is far too much at stake to risking putting the entire Constitution up for a wholesale re-write as part of a constitutional convention – including all of the civil rights, protections, and liberties that we enjoy today. For these reasons, I urge you to vote against HR 206 and SR 234.

For more information, below is a list of quotes from legal scholars and law professors warning of the dangers of an Article V convention

Sincerely,

Micah Sims

Executive Director

Common Cause Pennsylvania

⁷ “Constitutional Rights and Public Interest Groups Oppose Calls for an Article V Constitutional Convention,” April 14, 2017, *available at* <http://www.commoncause.org/issues/more-democracy-reforms/constitutional-convention/constitutional-rights-and.pdf>

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)**

“Questions about such a convention have been debated for years by legal scholars and political commentators, without resolution. Who would serve as delegates? What authority would they be given? Who would establish the procedures under which the convention would be governed? What limits would prevent a “runaway” convention from proposing radical changes affecting basic liberties?...With these thorny issues unsettled, it should come as no surprise that warning flags are being raised about a constitutional convention.” – [Archibald Cox](#), **Solicitor General of the United States (1961-1965) and special prosecutor for the U.S. Department of Justice (1973)**

“Any new constitutional convention must have the authority to study, debate, and submit to the states for ratification whatever amendments it considers appropriate...If the legislatures of thirty-four states request Congress to call a general constitutional convention, Congress has a constitutional duty to summon such a convention. If those thirty -four states recommend in their applications that the convention consider only a particular subject, Congress still must call a convention and leave to the convention the ultimate determination of the agenda and the nature of the amendments it may choose to propose.” – [Walter E. Dellinger](#), **Solicitor General of the United States (1996-1997) and the Douglas B. Maggs Professor Emeritus of Law at Duke University**

“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**

“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 Marcossou](#), **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**

“A Constitutional Convention could be dangerous and destructive to our country, and citizens should approach the idea with the same wariness the founders did...Do we really want to tinker with this nation’s fundamental rights – especially at a time when our country is deeply divided politically? Let’s not risk opening what could be a Pandora’s box of chaos and an existential crisis for the country.” – [Dewey M. Clayton](#), **professor of political science at the University of Louisville**

“If a national constitutional convention were held, all of our rights under the current Constitution, and all of the government’s reciprocal obligations, would be up for grabs. Nothing in the Constitution constrains the process that would apply if a convention is actually called. Anything could go, including the process for ratification itself, and there would be no Constitution cop on the block to ensure that things don’t go seriously haywire.” – [Kim Wehle](#), **professor at the University of Baltimore School of Law and a former assistant U.S. attorney and associate independent counsel in the Whitewater investigation**



“Amendment by convention has never been attempted and little is certain about the powers and prerogatives of such a convention. The basic problem is that there appears to be no effective way to limit the convention’s scope once it is called.” – [Stephen H. Sach](#), **Attorney General of Maryland (1979-1987)**

“It is unclear, for instance, what the agenda of the convention that the states would call would be. Some people even think that the scope of the convention would be unlimited, and that makes a lot of very rational people wary of making the whole Constitution up for grabs.” – [John O. McGinnis](#), **the George C. Dix Professor in Constitutional Law at Northwestern University Pritzker School of Law**

“The dangers stem largely from the fact that it is an uncharted course... The alternative route in Article V is one that has never been taken. This route is obviously legitimate, but it is an unknown... Moreover, the convention would have a plausible case for taking an even broader view of its agenda. Convention delegates could claim that they represent the people who elected them, and that they are entitled to deal with any constitutional issue of major concern to their constituency. The states, quite unthinkingly and without consideration of the implications, have started a process that may eventually produce a shock to them and to the country. It is a process of undeliberate constitution making that would make James Madison turn over in his grave.” – [Gerald Gunther](#), **constitutional law scholar and professor of law at Stanford Law School**

“In these contentious times, democratic institutions, norms, and views are under unprecedented stress. When debating whether to adopt a resolution to apply to Congress to call for an Article V Convention, Maryland legislators should keep in mind the possibility that the call could add to a widespread perception of national disarray and push the American Republic closer to a breaking point. The perils of an Article V Convention running amok and altering the core framework of the American Republic are high. This method of reform should therefore be used only as a last resort.” – [Miguel González-Marcos](#), **professor of law at the University of Maryland**

“There is a risk of a runaway convention.” – [Michael Gerhardt](#), **constitutional law professor at the University of North Carolina School of Law**

“So the fear among some people is that if we were to have such a constitutional convention that the whole Constitution would be up in the air again. It might be possible that the whole thing would be undermined, and no one would know going in what might replace it.” – [Daniel Ortiz](#), **constitutional law professor at the University of Virginia**

“First, the national convention method may not result in any amendment, because it generates many uncertainties that can defeat the passage of an amendment. These uncertainties include what the legal rules are that govern the amendment process, what actions the other states will take, what role the Congress will play, and what amendment the convention will propose. Second, this method may result in a different amendment than the one that the state legislature desired through a runaway convention. Even if the state legislature specifically provided that the convention should only address a particular amendment, it is quite possible that the convention could propose an entirely different amendment and that amendment would then be ratified by the states.” – [Michael B. Rappaport](#), **professor of law at the University of San Diego**



“Given that Article V contains no safeguards to restrain delegates, or instructions for choosing delegates, no part of the Constitution would be off limits. While some advocating for a convention may claim to care only about one issue, invoking Article V in this way would put the most basic parts of our democracy at risk. Extremists would have free rein to everything from our systems of checks and balances, to our most cherished rights, such as freedom of speech and voting for our leaders.” – [Wilfred Codrington](#), **fellow and counsel at the Brennan Center for Justice**

“I want to raise the alarm on a dangerous and little-known campaign organized by a small, powerful group of wealthy special interests who seek to call an Article V convention to rewrite this foundational document. Such a convention poses a grave danger to the rights and freedoms we all hold dear, but it also puts at grave risk the body of national environmental laws and the expert institutions that implement them... There are no rules outlined in the Constitution for how the process of a convention would unfold. We must consider the agenda of those who are lobbying so hard for this convention and how they would seek to gain influence.” – [Patrick Parenteau](#), **professor of law at Vermont Law School**

“In this politically fractured time, some state legislatures have called for a convention to rewrite the U.S. Constitution. Article V of the Constitution provides for such a process, but a convention has never before been convened and, and if it occurred, would have no set rules, no predictable outcome.” – [Justin Pidot](#), **professor of law at the University of Arizona**

