

**Testimony on Call for Constitutional Convention  
HJR 54 and HCR13  
House Elections, Constitutional Amendments and Intergovernmental  
Affairs Committee  
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Thank you Mr. Chairman and members of the committee, my name is Jason Bailey and I am executive director of the Kentucky Center for Economic Policy.

The resolutions calling for a new constitutional convention, HJR 54 and HCR 13, would create a very risky and dangerous situation that would open the United States Constitution to potentially wide-ranging revisions of the freedoms and protections we all hold dear as a nation.

Experts say that a convention called under Article V cannot be controlled, and conventioners would have the power to alter anything and everything about the United States government.

There is precedent for that in the only constitutional convention that was ever called, in 1787. That original convention had a single mandate—to amend the Articles of Confederation to promote trade among the states. Instead, the convention ignored their state legislatures’ instructions and wrote an entirely new governing document.

Not only did they go beyond the specific call, they rewrote the rules for ratifying their changes to make them easier to go into effect. Rhode Island opposed the kinds of changes being proposed to the Articles of Confederation and so boycotted the original constitutional convention, apparently confident that the requirement for unanimous state approval in the Articles meant it could block any resulting proposals that harmed its interest. Instead, the other states’ delegates bypassed Rhode Island and created a new ratification process that made the new Constitution effective with the consent of only 9 states and cut Congress out of the amendment process entirely.

Similarly, there are no safeguards for a runaway convention today. Article V is dangerously vague, providing no guidance for the rules under which a convention

is called by Congress, raising huge questions—how will states' votes be weighed? One person, one vote? One state one vote? Who are the delegates and how are they chosen? Under what rules will amendments be recommended by the conventioners—majority vote? Two-thirds? Three-Quarters?

And even if Article V was clear on what rules a convention must follow, or if Congress did give specific instructions? Once called, a convention can could disregard those instructions and there is no enforcement mechanism. The constitution provides for no authority above that of a constitutional convention, as the courts themselves are a creature of the constitution. Even if the courts said they did have the authority to rule, they are unlikely to intervene because according to experts the Supreme Court would likely regard this as a political question inappropriate for judicial resolution. This also means that states cannot count on specific instructions or rules for their delegates—the courts would not step in to enforce any state disputes with their delegations.

And as mentioned, the conventioners' power extends not only to the rules they operate under but to the ratification process for any amendments that come out of it—they could put the amendments to a national vote, reduce the number of states required for ratification, or anything else they choose. They could also combine popular amendments with unpopular harmful ones to make them easier to pass.

The risk of a runaway convention is real. Former Chief Justice Warren Burger said:

“[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.”

This sentiment was agreed to by late Supreme Court Justice Antonin Scalia, who stated “I certainly would not want a constitutional convention. Whoa! Who knows what would come of it?”

These risks must be taken very seriously because the convention is dangerously close to happening. 29 of the necessary 34 states have passed resolutions, and a number of states are debating the issue this year.

As you all know, the country is very divided right now and Americans' faith in government and in institutions is at an all-time low. Now is not the time to throw open our founding document to a small group of people to make unforeseeable and potentially far-reaching changes to the constitution with huge unanswerable

questions about how such a process would even go. For the sake of the Bill of Rights and other fundamental protections in our Constitution—as well as the societal stability we need at this time—I urge you to reject this call.

Thank you for your consideration.