

## Testimony in Opposition to H 5385--A Resolution Respectfully Requesting a Convention of the States Under Article V of the United States Constitution

Common Cause Rhode Island opposes H 5385 that would add Rhode Island to the list of states calling for an Article V constitutional convention. Such a convention could put every American's fundamental constitutional rights and civil liberties at risk.

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, 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."<sup>[1]</sup>

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."<sup>[2]</sup>

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."

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."<sup>[3]</sup> The late Justice Antonin Scalia said that he "certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?"<sup>[4]</sup>

Common Cause is one of 240 organizations that is opposed to calling an Article V convention.<sup>[5]</sup> 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, we urge you to vote against H 5385.

<sup>[1]</sup> 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>.

<sup>20</sup> 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>.

<sup>21</sup> 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/>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 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).

<sup>25</sup> "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>