

Testimony Against a “Convention of States” (SR133 and SR134)

Pennsylvania Senate State Government Committee (Oct. 17, 2018)

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

To Chairman Mike Folmer and members of this Distinguished Committee:

I respectfully submit this testimony against the so-called “Convention of States” resolutions, SR133 and SR134. I speak on behalf of Pennsylvania Eagle Forum, which has been active since at least 2000, and which has sponsored annual dinners for leading officials during the last nine consecutive years. Members of Pennsylvania Eagle Forum plan to attend this important hearing. I am an attorney who practices before the U.S. Court of Appeals for the 3rd Circuit in Philadelphia.

Pennsylvania Eagle Forum strongly opposes the Convention of States resolutions, SR133 and SR134, for multiple compelling reasons. In today’s contentious political climate, holding a national convention to modify the U.S. Constitution would be a disaster. ***Such a convention cannot be limited in scope.*** Our precious rights and liberties would be put at terrible risk by such a convention.

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.

Despite millions of dollars in funding by dark money sources, the Convention of States has been unable to win approval by a single State this entire year. Some estimate that ***the record is 18-0 in States defeating this bad idea this year.*** Billionaires have been bankrolling the egotistical notion that anyone today could do a better job than George Washington, James Madison, Benjamin Franklin, and Alexander Hamilton at the Constitutional Convention in 1787, but legislators properly reject it. ***Phyllis Schlafly would joke that she does not see any George Washingtons or James Madisons today, and it concerned her that some people think they are!***

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 overpowering pressures of the modern media, special interest groups, and hired political agitators. For the reasons explained further below, please reject a Convention of States (SR133 and SR134) to change our Constitution. ***Pennsylvania should lead in full defense of the Constitution as created in Philadelphia,*** and reject calls for a new constitutional convention.

1. A “Horrible Idea”

A “Convention of States” is a euphemism for an Article V convention, which the late Justice Antonin Scalia called a “horrible idea.” I was in attendance at the event where he said this in response to a question from the audience, and his words were published by a reporter. This was in 2015, less than a year before he unexpectedly passed away. The Convention of States project has misled people by ignoring this strong statement by Justice Scalia, and instead exaggerating something ambiguous that he said in 1979 long before he became a Supreme Court Justice.

As Justice Scalia recognized, an Article V convention would put our Constitution at enormous risk. Our Bill of Rights could be rewritten, or simply removed. Our Electoral College, which makes Pennsylvania so important in our presidential elections, could be repealed. Our Treaty Clause, which globalists dislike because it requires a 2/3rds vote in the Senate before giving away national sovereignty, could be deleted. There is no end to the harm that could be caused by a Convention of States.

Phyllis Schlafly always strongly opposed the idea of having an Article V convention. She would be here testifying today if she were still with us. She felt that her opposition to an Article V convention was among the most important work that she ever did. She was right.

Chief Justice of the United States Warren Burger agreed with her. He wrote her a famous letter that sounded the alarm bells against an Article V convention, and which is available on the internet. Chief Justice Burger [wrote in 1988](#) that:

I have also repeatedly given my opinion 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. ... A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

2. The Text of Article V Shows There Is No Limit to What a Convention Could Do.

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

No one should want to require Congress to call a convention to change the Constitution. That is what SR133 and SR134 would do: give Congress more power to pursue more mischief. This would not be good for our Nation.

The original Constitutional Convention was written free of modern pressures by the media. But today the media would be an active player in whatever is done at a constitutional convention. Do we want CNN and the *Washington Post* writing a new Constitution? Absolutely not!

Attempts to limit or control what delegates might do at an Article V Convention, such as a Convention of States, are completely unenforceable and even preempted by Article V itself. Moreover, a State could not possibly control what delegates from *other* States would do. Once the floodgate is opened to this horrible idea, there is no way to contain it.

The requirement that three-fourths of the States would still be necessary to ratify the amendments written by a Convention of States is not a meaningful safeguard. It would be a runaway train at that point, as the 17th Amendment was. States rushed to ratify the 17th Amendment despite how it took power away from them. Multiple state legislatures even ratified the 17th Amendment by nearly a unanimous vote, because the pressure for ratification was simply too strong to withstand. A century later, that pressure to ratify would be ten times greater with the powerful media and wealthy activists today.

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 take control of the process, and no one should favor giving them the keys to our Constitution.

3. The Republican National Platform Rejected an Article V Convention.

At the Republican National Convention in Cleveland in 2016, supporters of an Article V convention tried to get it into the national platform. The opposition by platform delegates was nearly unanimous to this. Comment after comment by platform committee members criticized and rejected the proposal to include an Article V convention in the platform. The proposal was resoundingly defeated.

4. The People Overwhelmingly Oppose a Convention of States.

Despite all the dark money behind it, the Convention of States is overwhelmingly opposed by the People. I attended the Phyllis Schlafly Collegians conference this past July in D.C., and Senator Rand Paul was asked a question by a student about an Article V convention. He then “polled the audience,” asking for a show of hands by students as to who supported and who opposed it. The college students were overwhelmingly against a Convention of States, by a margin of perhaps 9 to 1. Sen. Paul was taken aback by how strong the opposition to this is, but it is real.

The Convention of States is a sell-out and most voters know it. A few billionaires seek this, but nobody else does. It is a small group of unelected people who have gone for this bad idea. Elected officials are expected to safeguard our Constitution and our Nation against bad ideas like this.

The Convention of States has even harmed politicians who have been misled by it. Both Missouri and Texas have been harmed by passing the Convention of States and embracing the dark money behind it. The governor of Missouri had to resign in disgrace in order to prevent the disclosure of his dark money donors. The Texas Republican Party has been weakened by its acceptance of dark money and pushing the Convention of States there.

5. The Constitution Is Not the Problem.

Some say that the problems faced by our Nation are too immense to be handled by the current Constitution, and that changes are needed. Supposedly we need a solution as big as the problem. But it is obviously a mistake to bet the farm as a way to deal with a problem.

Tom Coburn exemplified the problem in D.C., and it is not the Constitution. Coburn left his Senate seat years before his term was to expire. His constituents sent him to Washington, D.C., to represent them and defend the Constitution. Instead, he quit early and became a highly paid lobbyist for the Convention of States project. He should have done what he was elected to do, instead of quitting early and becoming a lobbyist instead.

While Coburn was in the Senate, he voted to confirm Elena Kagan as Solicitor General, the office that controls the positions taken by the United States before the Supreme Court concerning the Constitution. The position is a stepping stone to the Supreme Court. Kagan believes in an evolving Constitution, and opposes adhering to the original meaning of the Constitution. Yet Coburn voted for her to become Solicitor General to represent the United States. The Constitution gave Coburn the power to block nominees who do not adhere to the Constitution. It was Coburn who failed, not the Constitution.

6. Reject the Secrecy Behind the Convention of States Project.

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 a year, 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 dark money behind a Convention of States includes mega-donors who are pro-amnesty, pro-marijuana, pro-globalist, and pro-gun control. ***The Second Amendment would be one of the first things that a Convention of States would repeal.***

The secret billionaires behind the Convention of States may think they are fooling legislators with vague language like “fiscal restraints on the Federal Government, limit the power and jurisdiction of the Federal Government and limit the terms of office for its officials and for members of Congress.” But that nebulous, sweeping language means almost anything. “Fiscal restraints” can mean not funding our military, or reducing the pensions of those in the armed forces. Limiting the “power” of the federal government can undermine national security, or ending drug enforcement. Term limits could be expanded to include term limits in the Pennsylvania legislature, which this State has rejected.

7. The Name “Convention of States” Is Itself Misleading.

Their name itself is misleading. An Article V convention is not a “convention of states.” States can merely apply to Congress, and it is Congress alone that calls 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.”

Their real name should be a “Convention called by Congress,” because that is what it would be. This is the only one type of national constitutional convention authorized by the Constitution, and it is an Article V convention called by Congress. Euphemistic semantics cannot change the fact that Congress alone makes the call, and any amendments could then be proposed at a constitutional convention.

8. A Fiscal Note Is Necessary.

Pennsylvania could lose billions of dollars in funds from the federal government if SR133 and SR134 were adopted, and a convention were held. There should be a proper fiscal note attached to the resolutions.

Thank you, Mr. Chairman, for allowing me to submit this testimony on behalf of Pennsylvania Eagle Forum.

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