

Testimony In Opposition to LD 1417, LD 1418, and LD 1419

Senator Whittemore, Representative Martin, and distinguished members of the Joint Standing Committee on State and Local Government, I am Joel Johnson, an economist with the Maine Center for Economic Policy (MECEP).

MECEP strongly opposes three bills before you today that would ask Congress to call a constitutional convention to propose various changes to the U.S. Constitution. These three proposals endanger the U.S. Constitution and the stability of the nation.

If Congress called a constitutional convention or attempted to do so, our nation would be thrown into great turmoil, and likely find itself mired in lengthy legal and political battles of great consequence to the nation's future. Many legal authorities and experts oppose a convention for these reasons (see the appendix to this testimony).

The United States has survived a civil war, two world wars, and the Great Depression without a constitutional convention. For more than 225 years, we've successfully amended the constitution by having our elected representatives in Congress propose amendments to the states for ratification.

Congress and states cannot limit the agenda of a constitutional convention, which would open up the Constitution to whatever amendments its delegates chose to propose, just as the 1787 convention that produced the current Constitution ignored its original charge, to amend the Articles of Confederation, and instead wrote an entirely new governing document. The 1787 convention—the only one we've ever had—was a “runaway” convention where delegates threw away their instructions and drafted a new document from scratch.

While the resolutions before you today seek to control the actions of the delegates to the proposed convention, these limitations would carry no weight within a convention, where delegates can set their own agenda. Delegates to the 1787 convention ignored the instructions of their state legislatures, and the Constitution provides for no authority above a constitutional convention.

We also cannot depend on the state ratification process to protect the Constitution from radical changes that come out of the convention. While the Constitution requires approval of 38 states for adoption of proposed amendments by the convention, a convention could create a completely different method of ratification.

The language in Article V that allows states to call for a convention does not limit the convention and leaves unanswered a host of other crucial questions. How would the delegates be chosen? Can people spend money lobbying to become a delegate? How

many votes will it take at the convention to approve a proposed amendment? Nobody knows the answers to these questions.

MECEP strongly encourages you to reject all three of these of these dangerous proposals. If Maine were to pass any of these resolutions, the nation would be one step closer to a constitutional convention that would destabilize the republic and threaten many of the liberties and protections enshrined in the Constitution.

Appendix: Former U.S. Supreme Court Justices and prominent legal scholars warn that states cannot control a convention:

- “I certainly would not want a constitutional convention. Whoa! Who knows what would come out of that?” –*Supreme Court Justice Antonin Scalia*
- “[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. After a Convention is convened, it will be too late to stop the Convention if we don’t like its agenda.” - *Former Supreme Court Chief Justice Warren Burger*
- “There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights.” -*Former Supreme Court Justice Arthur Goldberg*
- “What you’re doing is putting the whole Constitution up for grabs.” -*Professor Laurence Tribe, Harvard Law School*
- “[S]tate legislators do not have the right to dictate the terms of constitutional debate. On the contrary, they may be eliminated entirely if Congress decides that state conventions would be more appropriate vehicles for ratification. The states have the last say on amendments, but the Constitution permits them to consider only those proposals that emerge from a national institution free to consider all possible responses to an alleged constitutional deficiency. . . Nobody thinks we are now in the midst of constitutional crisis. Why, then, should we put the work of the first convention in jeopardy?” -*Professor Bruce Ackerman, Yale Law School*