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Testimony to the Senate Subcommittee on H. 3205 and S. 887

February 16, 2022

The League opposes H. 3205 and its accompanying bill, S. 887. The League supports the call of a convention under Article V of the U. S. Constitution only under specific conditions [Appendix 1], conditions that are not met in this resolution.

Further, although supporters of the Convention of States effort (CoS) like to portray the convention process as one in which state resolutions define both process and scope, many respected experts do not agree. Those who raise questions about this include the Congressional Research Service (CRS), which has produced multiple reports on questions surrounding Article V, especially those involving the role of Congress. These include:

- an important summary of the historical issues surrounding the Congressional role in a convention,¹
- a companion review addresses contemporary issues for Congress,² and
- a later CRS article describes the status of proposals as of November 15, 2017.³

These assessments by CRS and others by independent constitutional scholars (for example, the American Bar Association⁴ and the Center for Budget and Policy Priorities⁵) make it clear that the convention process is shrouded in legal and political uncertainties.

However, the potential of a “rogue convention” is not the center of our concerns. The scope of the convention as defined in this resolution is already far too broad. H. 3205 defines the subjects of a convention:

“limited to proposing amendments to the United States Constitution that impose 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.”

This is not “limited.” This is a call to completely reshape our nation’s government. The accompanying bill, S. 887, does not provide adequate reassurance of meaningful constraints. It would only guarantee that participants would adhere to the dangerously expansive terms of this resolution.

What would we have if this effort is successful? The areas suggested for amendment by supporters of this plan have included redefinition of the general welfare and commerce clauses of the Constitution, prohibition of application of international treaties and law to govern domestic law, limitations on presidential executive orders and federal

¹ “The Article V Convention for Proposing Constitutional Amendments: Historical Perspective for Congress,” Congressional Research Service. Updated October 22, 2012. <https://crsreports.congress.gov/product/pdf/R/R42592>. Accessed 20 Mar 2021.

² Thomas H. Neale, “The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress.” Congressional Research Service, March 29, 2016. <https://sgp.fas.org/crs/misc/R42589.pdf>.

³ Thomas H. Neale, “The Article V Convention to Propose Constitutional Amendments: Current Developments.” Congressional Research Service. November 15, 2017. <https://fas.org/sgp/crs/misc/R44435.pdf>

⁴ American Bar Association, Amendment of the Constitution by the Convention Method under Article V.

⁵ 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, <http://www.cbpp.org/sites/default/files/atoms/files/7-16-14sfp.pdf>.

regulations, terms limits for Congress and the Supreme Court, limits on federal taxation, and sunseting all existing federal taxes and requiring a super-majority vote to replace them.⁶ Some of the outcomes desired by backers are economically dangerous and not compatible with a healthy capitalist economy.⁷ Economist and former state League president Holley Ulbrich summarized in an op-ed last year how some of the desired changes in the Commerce Clause, restricting the role of the federal government in economic regulation, stabilization, and trade policy, would be very damaging to our economy.⁸

Those who support CoS resolutions argue that the need to submit amendments proposed by a convention to the states for approval is adequate protection against damaging changes in our Constitution. However, we are concerned that well-funded special interests would dominate the national conversation to drive public sentiment and push state legislative support. For example, greatly restricting the federal role in regulating business may sound very attractive to a businessman if the great economic dangers of states devising separate and different regulatory systems are not appreciated.

The League recognizes that many legislators and grass roots advocates who support these measures are motivated by genuine conservative concerns, especially fiscal responsibility. However, others are motivated by reactionary self-interest. Some support CoS because they wish to return to the America of a century ago when corporations and the wealthy could abuse workers, consumers, and our environment without meaningful federal constraints. Some reject federal protections and programs for workers when the “creative destruction” that is a hallmark of capitalism leaves them without jobs or resources. Others wish to dismantle federal protections for those who might suffer because of their race, age, ethnicity, gender, or disabilities. However, all of these things exist because a substantial part of the American people wanted them and will not easily give them up.

Our national and state politics today are very unstable and divided. The process of defining and conducting a constitutional convention would fuel even more dangerous anger and division. Many in our nation would be unwilling to accept the legitimacy of a process in which the legislatures of states would attempt to bypass governing institutions that have been accepted for more than two centuries in order to enact massive changes. The lack of a national consensus in support of those changes is precisely why supporters of this resolution are taking this route; much that would be done would be very unpopular. This would be the equivalent of throwing a lit match into a pile of gas-soaked rags. The prospect of further dividing our nation is the greatest danger of them all. That danger should not be underestimated.

The League of Women Voters of South Carolina asks this subcommittee not to forward H. 3205 and S.887 with a favorable report.

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⁶ Thomas H. Neale, “The Article V Convention to Propose Constitutional Amendments: Current Developments.” Congressional Research Service. November 15, 2017. <https://fas.org/sgp/crs/misc/R44435.pdf>, p. 10.

⁷ Jay Riestenberg and Dale Eisman “The Dangerous Path,” Common Cause Education, May 2016.

⁸ Holley Ulbrich. Opinion: Why proposed Convention of States is a bad idea. Greenville News. 13 Aug 2020. <https://www.greenvilleonline.com/story/opinion/2020/08/13/why-convention-states-bad-idea/3353570001/>

Appendix 1.

The following is the position of the League of Women Voters of the United States:⁹

Constitutional Conventions Under Article V of the U.S. Constitution

The League's Position

Statement of Position on Constitutional Conventions under Article V of the U.S. Constitution, as announced by the National Board, January 2016:

The League is concerned that there are many unresolved questions about the powers and processes of an Article V Constitutional Convention. The League believes such a convention should be called only if the following conditions are in place:

- A. The Constitutional Convention must be transparent and not conducted in secret. The public has a right to know what is being debated and voted on.
- B. Representation at the Constitutional Convention must be based on population rather than one-state, one-vote, and delegates should be elected rather than appointed. The delegates represent citizens, should be elected by them, and must be distributed by U.S. population.
- C. Voting at the Constitutional Convention must be by delegate, not by state. Delegates from one state can have varying views and should be able to express them by individual votes.
- D. The Constitutional Convention must be limited to a specific topic. It is important to guard against a "runaway convention" which considers multiple issues or topics that were not initiated by the states.
- E. Only state resolutions on a single topic count when determining if a Constitutional Convention should be called. Counting state requests by topic ensures that there is sufficient interest in a particular subject to call a Convention and enhances citizen interest and participation in the process.
- F. The validity of state calls for an Article V Constitutional Convention must be determined by the most recent action of the state. If a state has enacted a rescission of its call, that rescission must be respected by Congress.

⁹ *Impact on Issues 2020-2022, A Guide to Public Policy Positions*. League of Women Voters of the United States, June 2020, P 55. https://www.lwv.org/sites/default/files/2020-12/LWV-impact-2020.pdf?_gl=1*1kn4ca9*_ga*MTQwNjI1NzgzMi4xNjQyNjM4NTcy*_ga_DDCEP0D6KM*MTY0NDg1NDk2OC4xMi4wLjE2NDQ4NTQ5NjguMA..&_ga=2.185247209.1707179350.1644768174-1406257832.1642638572.