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Hawaii News

U.S. ConCon resolution advances

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Hawaii is close to joining a growing number of states urging Congress to convene a national constitutional convention — an event that, other than the original 1787 convention, has never taken place in U.S. history.

The state's Senate Judiciary and Labor Committee advanced a resolution Tuesday calling for a convention to claw back the U.S. Supreme Court's controversial Citizens United decision, which has increased the influence of corporate money in political campaigns.

The resolution passed 3-1 despite an outpouring of opposition from groups including the Hawaii Attorney General's Office, Common Cause Hawaii, the American Civil Liberties Union of Hawaii and the Progressive Democrats of Hawaii, among others.

While many of the groups were critical of the Citizens United decision, they argued that convening a federal Constitutional Convention made up of state delegates could have dangerous consequences for the country's governing document that lays out essential liberties — a risk made all the greater given the political divisiveness and rancor that has grown out of the election of President Donald Trump.

While Hawaii's proposed resolution, like those passed in other states, focuses on amending the U.S. Constitution to address a specific issue, legal scholars have warned that a convention would be fraught with procedural ambiguity and could open up the entire document to revision.

Thirty-four states must petition Congress to convene a convention. Common Cause, a bipartisan organization focused on open and accountable government, estimates that as many as 32 states have passed such petitions, but pegs the current count at 27 because some states have rescinded theirs.

Hawaii's resolution has passed House and Senate committees and will now go to the full Senate for a vote.

Officials from the state Attorney General's Office warned in written testimony opposing Hawaii's resolution that a convention could "open up each and every provision of the United States Constitution to amendment or repeal."

"In other words, a federal constitutional convention could propose amendments to eliminate the protections of free speech; the protections against racial discrimination; the protections of freedom of religion; or any of the other myriad provisions that presently provide the backbone of American law," wrote Attorney General Doug Chin and Deputy Attorney General Deirdre Marie-Iha in testimony.

Common Cause Hawaii put it in starker terms: "Simply put, a Constitutional Convention would create an unpredictable Pandora's Box. There is far too much at stake to risk putting the entire Constitution up for a wholesale re-write as part of a Constitutional Convention."

State legislators organize

The U.S. Constitution has been amended 27 times since its inception, including the first 10 amendments, which comprise the Bill of Rights. Amendments to the Constitution had to pass by a two-thirds' majority in both houses of Congress and gain approval from at least three-fourths of state legislatures.

But there is an alternative path toward amending the Constitution laid out in Article V that has never been used. It requires Congress to convene a constitutional convention if two-thirds of state legislatures petition for one.

Conservative groups, in particular, have been effective in lobbying state legislatures to pass such petitions for the purpose of amending the Constitution to require a balanced federal budget. A smaller number of states have passed such petitions with the goal of securing campaign finance reform.

Legal and constitutional scholars have said it is not clear at all how a convention would work, such as how states would choose delegates and what the rules would be for passing amendments. But given how close states have come to calling for a convention, legislators have already convened a group called the the Assembly of State Legislatures, which has elected an executive committee and begun drafting rules.

In response, more than 200 organizations that represent diverse interests signed on to a letter last week opposing such a convention, including such groups as the the

National Association for the Advancement of Colored People, National Disability Rights Network, National Education Association, Citizens for Responsibility and Ethics in Washington, and Earthjustice.

Rep. Matt LoPresti (D, Ewa Villages-Ocean Pointe-Ewa Beach), who introduced the resolution, said he was aware of the controversy surrounding a convention. He also noted that ironically, a constitutional convention could be flooded with money from lobbying interests.

Still, he said it could be a way to move past congressional inertia.

"The founders wrote into the document that this is one of the ways that the people can change that document, and with Congress at historic gridlock, what we have left is the states and people who will then rise up to impact government if Congress will not," he said.

During Tuesday's Senate committee hearing, state lawmakers pushed back against critics who had shown up to testify against the resolution.

"There is just a sense of nothing ventured, nothing gained," said Rep. Karl Rhoads (D, Downtown-Nuuanu-Liliha). "If we don't do anything we take a risk; if we do something we take a risk. But I'm looking for the downside risk, and I don't know if I see it."

Sen. Mike Gabbard (D, Kapolei-Makakilo) suggested opponents of such a convention might not trust the country's democratic system.

"What is wrong with having this conversation, this national conversation?" he asked representatives from Hawaii's ACLU and Common Cause. "Is there a lack of faith in the democracy, this wonderful country that we live in, to have the conversation?"

Mandy Finlay, an advocacy coordinator for Hawaii's ACLU, reiterated concerns about the impact a convention could have on civil liberties, particularly for minorities.

"I think it is incredibly important to continue this conversation," said Finlay. "But again, there is a very big difference between a conversation and actually convening a convention."

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