



**TESTIMONY OF COMMON CAUSE/PENNSYLVANIA
OPPOSING THE CALL FOR A
FEDERAL CONSTITUTIONAL CONVENTION
FOR A BALANCED BUDGET AMENDMENT**

April 13, 2015

**Joint Hearing Of
The Senate and House State Government Committees**

Good morning Chairmen Folmer and Metcalfe, and Minority Chairmen Williams and Cohen. I am Barry Kauffman, Executive Director of Common Cause/PA. For over forty years, Common Cause/PA, and its more than 4,000 members across the Keystone State, have been working to build a better democracy by reforming our government to make it more open, accountable and responsive to the citizens. Thank you for inviting us present our views on this important issue.

The purpose of today's hearing is to evaluate House Resolution 63 (HR-63) and its potential impacts. HR-63 reminds us of the wisdom in the warning "Be careful what you ask for." This two-page resolution, if adopted in PA and in similar form by two-thirds of the states, could revolutionize American government in a manner that would damage the ability of the federal government to effectively serve the people, and cripple the American economy in times of economic trouble. If the instructions to Congress that are proposed in HR-63 were to be implemented, it would launch a constitutional convention of potentially unlimited scope that could significantly rewrite our Constitution.

The goal of HR-63 is to mandate a Congressional call for a constitutional convention that would be charged with amending the U.S. Constitution to:

- Impose fiscal constraints on federal spending;
- Establish term limits for Congress and other federal officials; and
- Constrain other (unspecified) federal powers.

On its face, HR-63 probably is unnecessary, and would lead to a wasteful exercise – expending valuable legislative time and resources, because it is largely redundant with HR-236 which was passed on November 9, 1976 (ironically a week after that year's election, in a lame duck session, by a 109-82 House vote, and an apparent voice vote in the Senate). HR-236 of 1976 calls for a congressionally initiated constitutional amendment to address the cited fiscals concerns, or in the alternative a congressional call for a constitutional convention to address said problems (although this earlier

resolution did not call for term limits or other unspecified limits on “federal power and jurisdiction”). We could not find any record of HR-236 being rescinded over the past four decades, so it is our understanding that it maintains its status as a permanent continuing resolution. Finally, regarding the viability of HR-63, as a joint resolution it appears to require the signature of the governor (see Article III, Section 9 of the PA state constitution) which, in our view, is very unlikely to occur.

Another reason this initiative may be a wasteful endeavor is that even if a constitutional convention were to be called, and said convention did report out a recommendation that the U.S. Constitution be amended to include language to prevent federal expenditures from exceeding federal revenues, it is highly improbable that three-fourths of the states would ratify it. When examining state government budgets, one sees how dependent states are on federal funding. Most states already struggle to find the funds necessary to carry out their basic obligations. Thus, it is very unlikely states would ratify a measure that would severely cut their federal program funding.

Common Cause has had a longstanding position in opposition to a balanced budget amendment to the U.S. Constitution. Our open letter to Congress in 1997 stated that:

The United States Constitution is not the place for resolving the nation's economic and fiscal policies. Nor is the United States Supreme Court, which inevitably will be drawn into these policy matters if the amendment is adopted.

While Common Cause believes it is essential to reduce the federal deficit, we do not believe that amending the Constitution is either an appropriate or effective approach to deficit reduction. A constitutional amendment is no panacea -- it contains no specific proposal for the large spending cuts and the tax measures that must be enacted to deal seriously with the federal deficit problem.

Reducing the federal budget deficit is a painful process which requires leadership and political courage by the President and Members of Congress. . . . If Members of Congress are serious about deficit reduction, then they should get on with the business of enacting specific measures to accomplish this rather than spending time and energy on passing an unnecessary and potentially dangerous constitutional amendment.

<http://www.foreffectivegov.org/files/bba/cause.html>

Former Solicitor General and Common Cause Chair Archibald Cox, a distinguished scholar of constitutional law, voiced similar concerns as far back as 1986:

Characterized as a sign of fiscal responsibility, this proposal is in truth an act of constitutional irresponsibility. The original Constitution and the amendments heretofore adopted serve three basic functions: (a) They allocate the powers of government among the three branches and between the nation and the states; (b) they fix the machinery of the federal government; and (c) they protect the most fundamental individual rights. . . . The proposed balanced budget amendments serve none of these purposes. . . .

To use the Constitution for such a purpose would not only trivialize it by an irrelevancy but in the long run would reduce the respect for, and therefore the effectiveness of, our bulwark of liberty. (Philly.com, March 10, 1986)

A balanced budget amendment to the Constitution raises huge separation of powers issues. Who would enforce it and how? The courts? Do we want the Supreme Court suddenly making decisions about taxing and spending that are the essence of congressional authority and a democratic process? The type of constitutional amendments envisioned by HR-63 would set our co-equal branches on a collision course that make a mighty mess of our carefully balanced Constitution.

The most glaring danger in the current proposal, however, is the strong possibility of a runaway convention. There has not been a national constitutional convention in this country since 1787 when it was composed of 13 semi-autonomous states linked into a loose confederation to protect trade, provide for a common defense, and improve the ability of the national government to raise necessary revenues. When it became clear the confederation was not working, the states sent delegates to Philadelphia to tinker with the Articles of Confederation to make them work more effectively. In fact, only two of the twelve states that sent delegates to the 1787 convention set no limits on their delegates' range of activities. Some gave their delegates specific limits on what they were permitted to do at the convention. However, the delegates readily disregarded their states' charges to conduct a limited convention to amend to the Articles of Confederation. Even PA's delegates ignored their charge to require all 13 states to ratify any changes (the constitution only required ratification by three-fourths of the states). That is the precedent upon which a convention would be judged.

While HR-63 suggests three general amendment goals – a mandatory balanced federal budget, term limits for elected officials, and constraints on federal power and authority (which is not defined). History shows us, and most constitutional scholars agree, there is no way to guarantee the convention delegates won't open the agenda to wide-ranging amendments. Precedent determines, that once convened, there would be few roadblocks preventing delegates to a constitutional convention from altering or abolishing government as they see fit.

A convention would open up the Constitution to revisions at a time of extreme gerrymandering (with legislators probably choosing delegates), and in an environment of unlimited political spending. This would be a recipe for disaster. It would allow the wealthiest (many of whom generate their wealth through government contracts and regulation) to re-write the rules governing our system of government. Simply put, there are no rules governing constitutional conventions. A constitutional convention would be an unpredictable Pandora's Box.

Several Supreme Court justices have warned about the dangers 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." And current Justice Antonin Scalia has said that he "certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?"

In the mid-2000s, when there was a strong movement afoot to call a constitutional convention for Pennsylvania, Common Cause/PA and a few partner organizations conducted research and published the *Citizen's Guide to Modern Constitutional Convention*. Since there was little guidance on how to proceed with a convention, we thought it would be useful to identify key concerns and tasks that would confront such an undertaking. Our concerns included:

- What entity would be responsible for the pre-convention planning?
- How would delegates be selected – would they be elected or appointed (and in the case of HR-63 would all states have to utilize the same process)?
- If delegates were to be elected what would be the campaign rules? Would there be contribution limits to prevent special interests from buying victories for their preferred delegates who would feel obligated to carry out the will of their funding masters?
- How many delegates should there be, and how would they be allocated?
- How would convention officers be selected?
- How long would the convention last, and could the convention itself extend deadlines?
- How would the convention be funded – and what would it cost?
- Would the convention and all its meetings be Sunshined?
- What limits would be imposed on the media?
- Would a continuing and permanent record be available to the public, and would all documents used by the convention be immediately available to the public?
- Would on-going public input be permitted?
- What access would lobbyists have, and would they be governed by federal law?
- Would the recommendations of the convention have to be ratified as a single package, or could they be ratified individually, or in packaged sets?

These are just a few of the concerns about convention implementation that need to be answered prior to proceeding.

Then there are the concerns about ratification. The current constitution requires ratification of *congressionally initiated amendments* by three-quarters of the states. But as the 1787 constitutional convention teaches us, the convention could establish new rules for how amendments are to be ratified. Might the convention put the amendment to a vote with rules akin to the Electoral College? And if the current rule requiring the ratification by the legislatures of three-quarters of the states were to be maintained, what would be the impact of highly gerrymandered states (like PA) be on achieving the will of the people?

Common Cause has long-valued and supported the deliberative processes contained in the design of our national constitution. Therefore, we oppose the call for a constitutional convention in favor of the long tradition of requiring an amendment to proceed through the careful vetting of congressional hearings, debates, and media scrutiny that permits timely responses by the general public. And if an amendment should be approved by Congress, it would again be vetted by state legislatures and the citizens of each state.

Every concern raised by HR-63 can be addressed properly under the current standards and procedures of the existing federal constitution. We don't need to amend the constitution, we just need to engage in the hard work of democracy.

The most important thing Congress could do to reign in wasteful spending would be to curtail the influence of special interest money in elections and the legislative process. If members of Congress were not beholden to campaign funders seeking special financial rewards and the corporate welfare that bloats federal budgets, much of the dilemma cited HR-63 would disappear. Tight campaign funding rules along with comprehensive and timely disclosure rules might just liberate officials to allow them to make the fiscal decisions that are needed to properly serve the citizens.

Common Cause's entire history has been devoted to government accountability. We fully recognize the concerns raised by HR-63, but HR-63 is not an appropriate or effective approach for remedying the cited problems – it may, in fact, be a dangerous approach.

Thank you again for providing this opportunity to address HR-63. I would be happy to address any questions you may have.