

Testimony in Favor of SCR 4004 (Rescission of Con Con applications)

North Dakota Senate Government and Veterans Affairs Public Hearing
By Andy Schlafly, Esq., on behalf of Phyllis Schlafly Eagles
(Hearing on January 28, 2021)

Thank you for the opportunity for me to submit this testimony in favor of Senate Concurrent Resolution 4004, to rescind all pending applications for a Constitutional Convention or “Convention of States” (“Con Con”).

I submit this testimony on behalf of Phyllis Schlafly Eagles, a national group which defends the Constitution. I am an attorney who practices before the U.S. Court of Appeals for the Ninth Circuit, which presides over federal appeals from North Dakota and many western states.

Reasons to support SCR 4004 include the following:

1. *An Article V convention cannot be limited in scope.* The wording of Article V in the U.S. Constitution does not allow limiting the scope of a convention convened under it. The delegates themselves would propose amendments without any limitation under Article V. Many scholars, such as the former Chief Justice of the United States Warren Burger, have emphasized 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. The meeting in 1787 ignored the limit placed by the Confederation Congress “for the sole and express purpose.” ... A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Letter by Chief Justice Warren Burger (ret.) to Phyllis Schlafly, dated June 22, 1988.¹

Phyllis Schlafly opposed use of an Article V convention by anyone in the political spectrum, whether conservative or liberal. Her testimony three decades ago in Oregon against an Article V convention is available on YouTube, where she concluded with:

Frankly, I don't see any James Madisons, George Washingtons, Ben Franklins, or Alexander Hamiltons around today who could do as good a job as they did in 1787, and I am not willing to risk making our Constitution the political plaything

¹ http://www.pseagles.com/Warren_Burger_letter_1988 (viewed Jan. 27, 2021).

of those who think they are today's Madisons, Washingtons, Franklins, or Hamiltons.²

The attendees at the Constitutional Convention 1787 were not only brilliant, but they had also sacrificed their lives to establish freedom for the new United States. They were not influenced by special interests, social media, and so on. They were able to focus entirely on what was best for the future of our country.

Applications for a Con Con fail to impose effective limits on how delegates to a new Article V convention could be influenced. They could receive money directly from special interests, in order to push the self-serving agenda of those special interests. Moreover, North Dakota cannot limit what delegates from California and New York might do or how they might be influenced.

Our civil rights and liberties would be put at terrible risk by such an Article V convention, and calling for one is the wrong move at the wrong time, amid our current, highly politicized culture. Once the floodgate is opened to this horrible idea, there is no way to contain it.

2. An Article V Convention Would Not Be a "Convention of States," but a Convention Called by Congress.

An Article V convention is not a "convention of the states," as one of North Dakota's applications implies. Under Article V, ***it is Congress alone that would call an Article V convention***. California would have the most influence over a "convention of the States" because the Supreme Court requires that all representative bodies, other than the U.S. Senate, be based on population: "one man, one vote." Article V applications rely on a false hope by pretending that each state would have an equal vote.

The real name should be a "Convention called by Congress," because that is what it would be under Article V. Calling this a "convention of the states" is nothing more than a euphemism, and does not alter the fact that Congress alone makes the call.

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

Simply put, North Dakota's pending applications would grant Congress more power to pursue mischief. This would obviously not be good for our Nation. SCR 4004 would properly rescind these harmful applications to rewrite our beloved U.S. Constitution.

² https://www.youtube.com/watch?v=7spVo-61_fY (quotation begins at 17:13).

3. State legislatures cannot stop proposed amendments that would come out of a Convention of States. One of the biggest myths spread about the Convention of States is that the Constitution will be protected by the ordinary process requiring that 38 state legislatures must ratify any proposed amendments. But that is not true. State legislatures may not even be involved in the ratification process.

Article V of the Constitution permits a constitutional convention *to create its own ratification process*, using conventions in each state which bypass state legislatures. The 21st Amendment was ratified by conventions in each state, not by ratifying votes in state legislatures. In addition, once amendments are recommended by a constitutional convention, the media pressure will be overwhelming to ratify, as it was for the 17th Amendment which was against the interests of state legislatures.

An Article V convention could even change the 3/4th requirement to amend the Constitution. If an Article V convention can change other provisions of the Constitution, then it might revise the ratification requirements too. The original Constitutional Convention changed the rules in place then for revising the Articles of Confederation.

4. 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. Supporting such a concept is harmful because it undermines defense of our Constitution, which has produced the greatest freedom and prosperity ever.

Some argue that the problems faced by our Nation are too immense to be handled by the current Constitution, and that revisions are needed. But it would be a mistake to bet the family farm on a roulette wheel at a casino as a way to deal with any problem.

Several of the leading advocates for a Convention of States have been politicians who abandoned their offices early, without even completing the terms of office that they ran for. Why don't they simply finish the job they were elected to do?

The Constitution is not the problem. What is needed is to elect candidates who will do their job and defend the Constitution, rather than blaming the Constitution.

5. Dark money is pushing the Convention of States, and we do not want billionaires rewriting our Constitution. We have many laws against corruption of politics by money. But billionaires find ways around these laws, and would control a constitutional convention to write amendments that advantage themselves the most.

There is not bipartisan support for the Convention of States, but there is bipartisan opposition. Both the Republican and Democratic National Platforms have declined to endorse a Convention of States. Less than a year before he died, the late Justice Antonin Scalia called an Article V convention a "horrible idea," as I personally witnessed and

which was published by a reporter. But the Convention of States project has misled people by ignoring this strong statement by Justice Scalia, and instead has exaggerated an ambiguous comment he made in 1979 long before he became a Supreme Court Justice.

Our Bill of Rights could be rewritten, or simply removed. Our Electoral College could be eliminated. Civil rights could be terminated by a Con Con.

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 without the overwhelming pressures of the modern media, special interest groups, and hired political agitators.

Billions were spent on the last presidential election, and trillions would be at stake in rewriting the Constitution. Monied interests and the media would easily take control of the process, and no one should favor giving them the keys to our Constitution.

No one should entrust billionaire manipulators of politics with rewriting our Constitution. Even if the intentions behind an application for an Article V Convention were good, such a Con Con could quickly get taken over by radical Leftists and the liberal media.

Please support SCR 4004. Thank you for allowing me to submit this testimony.

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