

June 7, 2018

Dear Senator,

Common Cause Massachusetts, ACLU of Massachusetts, League of Women Voters of Massachusetts, AFSCME, Massachusetts Teachers Association, and the Massachusetts Chapter Sierra Club, along with a coalition of 240 national and local organizations from across the country, oppose S. 2243, a resolution to call a new constitutional convention under Article V of the U.S. Constitution and urge you to either amend it, study it further, or oppose it on the floor.

Under Article V of the U.S. Constitution, a convention can be called when two-thirds of the states (34) petition for a convention to enact amendments to the constitution. An Article V convention has never been called before in American history, and we should not try to have one at this extraordinarily politically factious time.

While the organizational signers below differ on how to deal with the corrosive influence of money in politics and the effects of the *Citizens United* decision, we all agree an Article V convention is the wrong way to address this problem. We strongly oppose S. 2243 because it calls for such a convention. A significant proportion of us would support similar legislation that does not involve an application for an Article V convention and would support amending the bill to remove the call.

An Article V convention would be a dangerous threat to the U.S. Constitution, our democracy, and our civil rights and liberties. There is no language in the U.S. Constitution to limit a convention to one issue, and it is widely understood that a convention once called will be able to consider any amendments to the constitution that the delegates want to consider. There are also no guidelines or rules to govern a convention. Due to the lack of provisions in the constitution and lack of historical precedent, it is unknown how delegates to a convention would be picked, what rules would be in place, what would happen in the case of legal disputes, what issues would be raised, how the American people would be represented, and how to limit the influence of special interests in a convention. Because there is no way to limit a convention's focus, any constitutional issue could be brought up and fundamental rights could be undermined, including marriage equality, civil rights and civil liberties, voting rights, and privacy rights, among others.

Former Supreme Court Chief Justice Warren Burger wrote on his concerns in a 1988 letter:

[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. The meeting in 1781 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

*With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation."*ⁱ

One of the nation's most esteemed constitutional law scholars, Professor Laurence Tribe of Harvard Law School, warned of similar dangers in a speech at 2011 symposium on the Article V convention issue, saying:

*“First of all, we have developed orderly procedures over the past couple of centuries for resolving [some of the many] ambiguities [in the Constitution], but no comparable procedures for resolving [questions surrounding a convention]. Second, difficult interpretive questions about the Bill of Rights or the scope of the taxing power or the commerce power tend to arise one at a time, while questions surrounding the convention process would more or less need to be resolved all at once. And third, the stakes in this case in this instance are vastly greater, because what you’re doing is putting the whole Constitution up for grabs.”*ⁱⁱ

S. 2243 calls for a convention to deal specifically with the issue of campaign finance. While our campaign finance system needs to be changed, a constitutional convention is not the right path to make that change, for all the reasons mentioned above, especially the fact that a subject matter restriction is not possible. We also note that, despite our opponents’ assurances to the contrary, there is no difference between an “Amendments” convention and a constitutional convention.

It should also be noted that there are other efforts led by wealthy conservative special interests to call an Article V convention. One of these convention campaigns focused on enacting a federal balanced budget amendment and has passed in 28 states, just six states away from the 34-state constitutional requirement to call a convention. Others include some very disturbing right-wing proposals to significantly rewrite the constitution.

In theory, convention applications on different subjects could even be counted toward one convention call. While we do not believe that Congress, or any other governmental or judicial body, should count convention applications in this way, the U.S. Constitution does not give any guidelines on how convention applications should be counted. And again, regardless of the process that ultimately leads to an Article V convention, these issues would surely be on the table.

We cannot – must not – roll the dice when it comes to preserving the fundamental rights in the U.S. constitution. For all the reasons stated above, the undersigned organizations strongly urge you to oppose S. 2243.

Sincerely,
Pam Wilmot, Common Cause Massachusetts
Gavi Wolfe, ACLU Massachusetts
Mary Ann Ashton, League of Women Voters of Massachusetts
Sean King, Massachusetts Teachers Association
James Durkin, AFSCME Council 93
Emily Norton, Sierra Club MA

ⁱ Letter from Chief Justice Warren Burger to Phyllis Schlafly, June 22, 1988, <http://constitution.i2i.org/files/2013/11/Burger-letter2.pdf>.

ⁱⁱ Remarks as part of the Conference on the Constitutional Convention, Harvard Law School, September 24-25, 2011, Legal Panel, recording available at <http://www.conconcon.org/archive.php>.