TESTIMONY OF

KIM STOLFER, President

Firearms Owners Against Crime

Public Hearing On:

HR 206 and SR 234

Before the

Pennsylvania House of Representatives

State Government Committee

on

Amending the US Constitution

through an

Article V Constitutional Convention

October 22, 2019

Chairman Evertt, Minority Chairman Boyle and Honorable Members of the House and Senate State Government Committees, I am Kim Stolfer, President of Firearms Owners Against Crime. I appreciate the opportunity to provide this testimony today regarding these critically important issues; adding Pennsylvania to the calls for amending the US Constitution through an Article V Constitutional Convention.

The purpose of my testimony at today's hearing is to discuss HR 206 and SR 234 and the general process of amending the US Constitution through the Article V process. Both of these bills call for a Convention of the States through the Article V Constitutional process to address identical concerns:

- HR 206: Fiscal restraints, limitations on jurisdiction and term limits
- SR 234: Fiscal restraints, limitations on jurisdiction and term limits

Many recognize that certain changes would be beneficial and, perhaps, are necessary. However, our concerns are to the unintended consequences for our Freedoms and the overly optimistic view that once this Article V process is started that it 'can' be limited effectively and that, once started, this Convention will be out of the control of the states thus endangering, most of all, our basic Freedoms.

The Federalist Papers and the Anti-Federalist Papers are collections of debates between the framers regarding the proposed United States Constitution. Both sides were intelligent educated and honorable people who wanted the best for this country.

Amongst the original framers, the Federalists argued accurately and persuasively that the powers to be granted to the Federal Government are so limited and so narrowly defined that we don't need a Bill of Rights.

The Anti-Federalists argued accurately and persuasively that while the powers to be granted to the Federal Government are narrow and defined, men are not saints and powers will be exceeded and grossly abused. They argued that it is absolutely essential that the powers to be delegated to the federal government must be further constrained and limited by a Bill of Rights.

Time and time again, history has proven that the Federalists were dangerously wrong: we definitely needed and need a Bill of Rights.

Imagine what our country would be like today without the Bill of Rights! Imagine a body of legal decisions with no references to the Bill of Rights. In a previous meeting, attended by myself, Mr. Mark Meckler and others, with Sen. Eichelberger and Rep. Bloom on this issue, Mr. Mark Meckler, an advocate for COS, stated that one of his goals was to remove all the legal annotations to the current US Constitution.

Every day we should all thank God that the Anti-Federalists prevailed in that argument.

It is a dangerous and possibly suicidal fantasy to expect that a majority of 21st Century American Legislatures will send delegates to a Constitutional Convention who are smarter and care more for freedom than the original framers. Both HR 206 and SR 234 speak at length to the limits these resolutions would put on delegates and Congress. So, is this 'really' the way this process

would really work? Considering the actions of Congress over the last few decades, is it not illusory to believe that the states will have 'any' control of a Convention once called and that adequate controls will be instituted and our Freedoms will be protected?

These claims of 'state control' were addressed in the Congressional Research Service that issued a report (4/11/2014) that shows that Congress has *exclusive authority* over setting up the convention. This CRS report shows that true control over an Article V Constitutional Convention rests with Congress and not the states, see quotes from page 4 of the report below:

- First, Article V delegates important and exclusive authority over the amendment process to Congress.
- "Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including **(1) receiving, judging, and recording state applications;** (2) establishing procedures to summon a convention; … **(4) determining the number and selection process for its delegates;** (5) setting internal convention procedures**, including formulae for allocation of votes among the states**;

Neither HR 206 or SR 234 address this issue adequately in our view. This report further illustrates that Congress will have true control of any Article V Convention and this undercuts our faith in the ability of 'any' state to adequately control their delegates 'or' to control the agenda/issues that these delegates will consider. In fact, on Page 2 & 3 of both resolutions ignore the fact that Congress, and 'not' the states, is in control of the Article V Convention and not the states. The CRS report confirms this and outlines how overly optimistic both resolutions are in believing that states can dictate to Congress this basic Constitutional function outside the states' sole power in calling for a Convention.

This legislature knows me because of my activism primarily in defense of the 2nd Amendment to the US Constitution and Article 1, Section 21 of the PA Constitution. My remarks are focused towards that area of my expertise.

However, my/our concerns with an Article V Constitutional Convention goes far beyond just the rights of gun owners and self-defense. Even those who wish to see the 2nd Amendment abolished, should fear altering our form of government because every enumerated and un-enumerated right is equally at risk.

The Bill of Rights and the 2nd Amendment:

The "First Law of Nature" is the human right and responsibility of self-defense. This law of nature predates all laws written by man.

Humans need tools to survive and it follows that the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States both codify the right of individual citizens to keep and carry the tools that are sometimes necessary for both individual and defense.

None of our rights are safe if we lack the ability to defend them. This is the original intent of Article 1; Section 21 of the Commonwealth's Constitution and it is the original intent of the 2nd

Amendment to the United States Constitution. Indeed, the Pennsylvania Right to Keep Bear Arms is the strongest worded protections in both constitutions.

The Second Amendment was ratified on December 15th, 1791. It is as necessary and valid today as it was during its confirmation. The very real protections that this Amendment affords cannot logically be interpreted as being antiquated. Its purpose remains sound and noble because the need is real and perpetual.

This is the right, the "teeth" if you will, that supports the other rights. This right is under vicious attack by powerful forces: Those forces include the United Nations, faithless politicians, and other debilitating influences of socialist and fascist activism.

A plan of rational reaction is in order. First, we need to recognize truth rather than what is fashionably politically correct.

Writing for the Clairmont Institute Dr. Angelo Codevilla informs us that "the notion of political correctness came into use among Communists in the 1930s as a semi-humorous reminder that *the Party's interest is to be treated as a reality that ranks above reality itself*."

"*Comrade, your statement is factually incorrect."*
"Yes, it is. But it is politically correct."

"Because all progressives, Communists included, claim to be about creating new human realities, they are perpetually at war against nature's laws and limits. But since reality does not yield, progressives end up pretending that they themselves *embody* those new realities. Hence, any progressive movement's nominal goal eventually ends up being subordinated to the urgent, all-important question of the movement's own power. Because that power is insecure as long as others are able to question the truth of what the progressives say about themselves and the world, progressive movements end up struggling not so much to create the promised new realities as to force people to speak and act as if these were real: as if what is correct politically—i.e., what thoughts serve the party's interest—were correct factually.

Communist states furnish only the most prominent examples of such attempted groupthink. Progressive parties everywhere have sought to monopolize educational and cultural institutions in order to force those under their thumbs to sing their tunes or to shut up." (end quote)

The Constitution must be accepted logically, with honesty and in its entirety.

The Second Amendment has been assailed on countless occasions. Disloyal legislators defile constitutional principles with blatant violations of the most fundamental commandment, "the right of the people (properly interpreted as individuals in the First, Fourth, Fifth, Ninth and Tenth Amendments of the Bill of Rights) to keep and bear arms shall not be infringed".

Our disingenuous Legislators, Attorney Generals and Supreme Court Justices belittle and dishonor the memory, intent and integrity of our Founding Fathers. These self-perceived ethical scholars of law have bastardized the Constitution with their convoluted and ambiguous interpretations of our unequivocal "Bill of Rights". Virtue by virtue, liberty by liberty, our

Constitutional Republic is being systematically eroded away. It is they who are the most corrupting of outlaws!

Unarmed, we are all vulnerable to tyranny. In truth, it is occurring to this day.

Supreme Court decision: 1803, Marbury vs. Madison, Supreme Court Chief Justice Marshall proclaimed that "any act of the legislature, repugnant to the Constitution, is void". Supported by his proclamation, any law or legislative act that attempts to deprive law-abiding citizens of their Constitutional rights is itself illegal and void form the moment of its enactment.

Lawmen, including prosecutors, are obliged to discern "Constitutional Law". The people must demand from their legislators that they cease their unconstitutional assaults on the American people. If elected officials refuse to obey the limits imposed by the Constitution of the United States then they must vote the traitors out of office, for they are nothing less.

Self-explanatory: In 1856, the U.S. Supreme Court ruled that local law enforcement had no duty to protect individuals but only a general duty to enforce the laws. South vs. Maryland, 59 US (HOW) 396, 15 L. Ed. 433 (1856).

A U.S. Federal Appeals Court declared in 1982, "There is no constitutional right to be protected by the state against being murdered by criminals or madmen." Bowers vs. Devot, U.S. Court of Appeals, 7th Circuit 686 F. 2d 616 (1982).

Preserving your life is a very personal endeavor requiring sound judgment.

Because of their ceaseless and malicious distortion of gun related facts, many members of the news media are morally responsible for these horrific crimes. Knowing full well that women are far more vulnerable, than men, to violent assault, elements of the feminist movement are quite negligent by denying reality.

Many bureaucrats defiantly, and unconstitutionally, prevent honest citizens from exercising the "First Law of Nature". Covertly, elements of government are aiding and abetting the most sadistic malcontents of humanity, the psychopaths and violent criminals within this nation.

The blood of innocents is on the hands of many officials, both elected and unelected.

Without question, many of our elected officials have illegally far exceeded the authority of their office.

> "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."
> ---**Benjamin Franklin**, Historical Review of Pennsylvania, 1759.

The United States Constitution does not need a makeover. This Commonwealth and the other States need new politicians -- governors, legislators and judges. A constitutional convention -- called for in the name of good government – could, and likely will, be a catastrophe.

Closing Thoughts

The U.S. Constitution may not be perfect, but a new constitutional convention will, most likely, make it worse. A Constitutional Convention would be an uncontrollable Pandora's Box that would allow the wealthiest (many of whom generate their wealth through the government) to re-write the rules governing our form of government.

Every concern raised by HR 206 and SR 234 can be addressed properly under the current Federal Constitution's standards and procedures.

Advocates of a Convention of the States (Constitutional Convention) are upset that the federal government has grown too large. This has happened, they correctly believe, because politicians have ignored the plain meaning of the current Constitution. Yet if that is the case, then rewriting the current Constitution with more or plainer language will only make matters worse.

If politicians can ignore the language of our current Constitution, then they can just as easily ignore the language of another. People who break rules **don't** start obeying them just because 'new' rules are written. **What is lacking is 'accountability'** for politicians who ignore or violate the current Constitution.

Respectfully,
Kim Stolfer, President

THE UNIVERSITY OF UTAH

COLLEGE OF LAW
SALT LAKE CITY, UTAH 84112

November 29, 1983

I here offer brief comments of my own. The proponents are trying to blend the two methods of constitutional change made available by Article Five. They are saying that they do not trust a convention, so they propose to resort to such a body. That is incongruous. They may not have it both ways.

It is to be noted that in the American tradition a constitutional convention is not a constituent assembly -- a body competent both to draft and to adopt a constitution. In such an assembly is reposed sovereignty. The state antecedents of the Federal Constitution of 1787 all contemplated voter ratification. In this context it is not unreasonable to conclude that the members of the 1787 federal convention perceived such a convention to be competent to have the widest range of action in proposing amendments. Of course the very text confirms this by use of the plural "amendments." A convention might propose a single amendment but it would clearly have a wider range.

If what proponents desire is a particular change, the state legislative initiation method is adapted to the purpose. If more general review and possible changes are contemplated the convention method is plainly indicated.

Jefferson B. Fordham

Notre Dame Law School
Notre Dame, Indiana 46556

Direct Dial Number
219-239-5667

December 7, 1987

Mr. Don Fotheringham
Save the Constitution Committee
Box 4582
Boise, ID 83704

Dear Mr. Fotheringham:

You have asked my opinion the effort to rescind the Idaho legislature's approval of the proposed constitutional amendment to require a balanced federal budget. It would be within the power of the legislature, in my opinion, to rescind its approval. The courts could possibly regard the efficacy of that rescission as a political question committed by the Constitution to the discretion of Congress. Nevertheless, even if it were not judicially enforceable, such a rescission would be within the power of the Idaho legislature and it ought to be regarded by Congress as binding.

On the merits of the rescission, I support it for the reasons stated in the enclosed article from the April 22, 1987, issue of The New American.

I hope this will be helpful. If there is any further information I can provide, please let me know.

Sincerely,

Charles E. Rice
Professor of Law

Enclosure

HARVARD UNIVERSITY
LAW SCHOOL

LAURENCE H. TRIBE
Tyler Professor of Constitutional Law

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(617) 495-4621

The primary threat posed by an Article V Convention is that of a confrontation between Congress and such a Convention. Upon Congress devolves the duty of calling a Convention on application of the legislatures of two-thirds of the states, and approving and transmitting to the states for ratification the text of any amendment or amendments agreed upon by the convention. The discretion with which Congress may discharge this duty is pregnant with danger even under the most salutary conditions.

In the event of a dispute between Congress and the Convention over the congressional role in permitting the Convention to proceed, the Supreme Court would almost certainly be asked to serve as referee. Because the Court might feel obliged to protect the interests of the states in the amendment process, it cannot be assumed that the Court would automatically decline to become involved on the ground that the dispute raised a nonjusticiable political question, even if Congress sought to delegate resolution of such a dispute to itself. Depending upon the political strength of the parties to the dispute, a decision to abstain would amount to a judgment for one side or the other. Like an official judgment on the merits, such a practical resolution of the controversy would leave the Court an enemy either of Congress or of the Convention and the states that brought it into being.

A decision upholding against challenge by one or more states an action taken by Congress under Article V would be poorly received by the states involved. Truly disastrous, however, would be any result of a confrontation between the Supreme Court and the states over the validity of an amendment proposed by their Convention. Yet the convention process could, quite imaginably, give rise to judicial challenges that would cast the states into just such a conflict with the Supreme Court -- despite congressional attempts to exclude such disputes from the Court's purview.

At a minimum, therefore, the federal judiciary, including the Supreme Court, will have to resolve the inevitable disputes over which branch and level of government may be entrusted to decide each of the many questions left open by Article V.

The only possible way to circumvent the problematic prospect of such judicial resolution is to avoid use of the Convention device altogether until its reach has been authoritatively clarified in the only manner that could yield definitive answers without embroiling the federal judiciary in the quest: through an amendment to Article V itself.

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727 East 26th Street · Austin, Texas 78705 · (512) 471-5151

April 16, 1987

The Honorable Clint Hackney
House of Representatives
Box 2910
Austin, Texas 78769

Dear Representative Hackney:

The Law Library has provided me with a copy of H.C.R. 69, which you introduced in the Legislature in order to have the Legislature rescind the petition by the 65th Legislature asking Congress either to adopt a balanced budget amendment or to call a constitutional convention for the purpose of proposing such an amendment. I enthusiastically support your resolution.

A balanced budget is something devoutly to be wished. I doubt very much, however, whether amending the Constitution is the way to get it. I feel quite certain that even opening the door to the possibility of a constitutional convention would be a tragedy for the country.

We celebrate this year the Bicentennial of the Constitution of the United States. For 200 years it has served us well. I start with a strong presumption against any amendment to it and with an absolutely conclusive belief that we should not have a constitutional convention. Your resolution correctly says that scholarly legal opinion is divided on the potential scope of a constitutional convention's deliberations. I think that is an accurate statement. My own belief, however, is that a constitutional convention cannot be confined to a particular subject, and that anything it adopts and that the states ratify will be valid and will take effect. We have only one precedent, the Convention in Philadelphia in 1787. It was summoned "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several Legislatures such alterations and provisions therein." From the very beginning it did not feel confined by the call and gave us a totally new Constitution that completely replaced the Articles of Confederation. I see no reason to believe that a constitutional convention 200 years later could be more narrowly circumscribed.

We will have a balanced budget when we have a President and Congress with the determination to adopt such a budget. I hope that day comes soon, but I hope even more that the day never comes when the country is exposed to the divisiveness and the possible untoward results of a constitutional convention.

I hope you are successful in persuading your colleagues in the House and Senate to adopt H.C.R. 69.

Sincerely,

Charles Alan Wright

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November 25, 1991

STATEMENT OF PROFESSOR CHRISTOPHER BROWN

The most alarming aspect of the fact that 32 of the necessary 34 states have called for a constitutional convention is the threat this development poses to a system that has worked so well for nearly 200 years. In spite of the fact that 3 states have rescinded their calls for a constitutional convention in recent years, convention supporters have clearly stated their intent to lull the final 2 states into passing convention requests, thereby forcing the U.S. Supreme Court into either upholding the state rescissions or mandating the first federal constitutional convention since 1787. We are on the brink of encountering the risks of radical surgery at a time when the patient is showing no unusual signs of difficulty. If this country were faced with an uncontrollable constitutional crisis, such risks might be necessary; but surely they have no place in the relatively placid state of present day constitutional affairs. Now is not the time for the intrusion of a fourth unknown power into our tripartite system of government.

After 34 states have issued their call, Congress must call "a convention for proposing amendments." In my view the plurality of "amendments" opens the door to constitutional change far beyond merely requiring a balanced federal budget. The appropriate scope of a convention's agenda is but one of numerous uncertainties now looming on the horizon: Need petitions be uniform, limited or general? By whom and in what proportion are the delegates to be chosen? Who will finance the convention? What role could the judiciary play in resolving these problems? The resolution of these issues would inevitably embroil the government in prolonged discord.

Assembling a convention and thereby encountering and attempting to resolve these questions would surely have a major effect upon the ongoing operations of our government. Unlike the threats posed by Richard Nixon's near impeachment, the convening of a convention could not necessarily be compromised to avoid disaster. It would surely create a major distraction to ordinary concerns, imposing a disabling effect on this country's domestic and foreign policies. Only the existence of an actual breakdown in our existing governing structure warrants such a risk-prone tinkering with out constitutional underpinnings. Now is not the time to take such chances.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
CHIEF JUSTICE BURGER
RETIRED

June 22, 1988

Dear Phyllis:

I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly replied that such a convention would be a grand waste of time.

I have also repeatedly given my opinion 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."

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.

Our 1787 Constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,

WEB

Mrs. Phyllis Schlafly
68 Fairmount
Alton, IL 62002

Statement of Professor Neil H. Cogan

I agree almost entirely with the foregoing memorandum.

My understanding of the Federal Convention is that it is a general convention; that neither the Congress nor the States may limit the amendments to be considered and proposed by the Convention; that the Convention may be controlled in subject matter only by itself and by the people, the latter through the ratification process. My understanding is further that the States and Congress may suggest amendments and the people give instructions, but that such suggestions and instructions are not binding. Thus, I believe that should the Congress receive thirty-four applications that clearly and convincingly are read as applications for a general convention (whether or not accompanied by suggested amendments), then Congress must call a Federal Convention.

While it is plainly appropriate to examine the traditional historical sources -- text, debates, papers and pamphlets, correspondence and diaries -- it is plain too that these sources must be examined, and other sources chosen, within the context of our evolving theory of government. As I understand that theory, the Federal Convention is the people by delegates assembled, convened to consider and possibly propose changes in our fundamental structures and relationships -- indeed, in our theory of government itself --, and controlled only by the people and certainly not by other bodies the tasks and views of which may disqualify them from fundamental change and which themselves may be the subjects and objects of fundamental change.

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