

OPPOSE

Senate Concurrent Resolution 1611



Senate Concurrent Resolution 1611, which passed out of Senate Federal and State Affairs on February 19, calls for a Convention of States, a dangerous and misguided effort to alter the United States Constitution.

What does this mean?

Article V of the U.S. Constitution lays out two methods for amendments. The first is ratification through three-quarters of the states,ⁱ which is how the existing 27 amendments to the Constitution were passed. The second is through a little-known provision that would force Congress to authorize a convention of states, the first since 1787.

Scholars, economists, lawmakers, policy experts, and advocates across the ideological spectrum rightly oppose a convention of states because it could have the unintended consequence of unraveling our nation's fundamental freedoms.

The Constitution is a living document that has withstood the test of time -- through wars, economic tumult, and social change. Lawmakers have taken an oath to uphold the U.S. Constitution, not rewrite it. Kansas lawmakers should oppose efforts to call a convention of states.

Just the facts.

Kansas lawmakers can't limit the process, scope, or outcome of a constitutional convention. The Constitution provides no guidance on even the most basic format of a convention, such as the delegate selection procedure or the required number of votes to adopt amendments. A convention could set its own agenda and adopt a new ratification process, without any other body – like the courts – able to check radical developments.

A federal balanced-budget requirement to the U.S. Constitution risks significant economic damage to Kansas. During economic downturns, the amount of federal revenue collected falls as jobs are lost and consumer spending declines. However, “automatic stabilizers” such as unemployment insurance cushion economic fallout while creating short-term deficits. Requiring a balanced federal budget, no matter the state of the national economy, risks triggering recessions during weak economic times and making economic downturns longer and more painful for Kansans. Such an amendment would force policymakers to cut spending, raise taxes, or both when the economy is weakest.

The nation's leading economists agree that such a **balanced-budget requirement would lead to dire consequences for our national economy.** In 1997, more than 1,000 economists – including 11 Nobel laureates – issued a joint statement condemning the proposed balanced-budget amendment as “unsound and unnecessary.”ⁱⁱ Macroeconomic Advisors (MA), one of the nation's most prominent private economic forecasting firms, concluded that such an amendment would have had “catastrophic” consequences if it had been in effect for fiscal year 2012. MA found that balancing the 2012 federal budget through spending cuts alone would have doubled the unemployment rate from 9 percent to 18 percent and caused the national economy to shrink by 17 percent instead of growing by 2 percent.ⁱⁱⁱ

Rather than threaten our constitutional and economic stability, policymakers should focus on opportunities to strengthen Kansas' fiscal health.

Oppose SCR 1611? You're in good company.

From Supreme Court justices to law professors to ordinary Kansans, people across the political spectrum agree that a convention of states is a dangerous possibility.

- "I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?" - *Supreme Court Justice Antonin Scalia*
- "[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." - *Former Supreme Court Chief Justice Warren Burger*
- "There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights." - *Former Supreme Court Justice Arthur Goldberg*

Testimony submitted in opposition to SCR 1611

"[An Article V convention] would have the power to rewrite any and all parts of the U.S. Constitution. Even if an Article V convention stayed within the bounds of the resolutions that the Convention of States organization has been promoting – and nothing in Article V so constrains a convention – one of the goals identified in those resolutions is to "limit the power and jurisdiction of the federal government". The powers of the federal government include enforcing the Bill of Rights, the Fourteenth Amendment's Due Process and Equal Protection Clauses, and the other provisions of the Constitution that authorize Congress and the federal courts to secure civil rights, protect consumers and the environment, address workplace safety, and perform other vital functions for Americans. All of these would be vulnerable should the Convention of the States organization secure the necessary 34 state resolutions."

- *David A. Super, Professor, Georgetown University Law Center*

"What we do know is that a modern constitutional convention would look nothing like the convention of leaders who met in 1787; conversations related to calls for a new convention frequently identify specific targets for change that would replace the broad principles embodied by our current Constitution. Studies have shown that constitutions endure when they are either broad and flexible or detailed but easily amended. Our current constitution exemplifies the former, but nothing guarantees that an altered text would retain that vitality. I can only hope that Kansas legislators will have enough common sense to avoid that risk."

- *Bill Rich, James R. Ahrens Chair in Torts and Constitutional Law, Professor of Law, Washburn University*

ⁱ United States Constitution, Article V, states, "The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress..."

ⁱⁱ This statement was issued on January 30, 1997. In 2011, five winners of the Nobel Prize for Economics issued a statement opposing a constitutional balanced budget amendment: <http://www.cbpp.org/cms/index.cfm?fa=view&id=3543>. That warning was repeated on March 16, 2016. See <http://www.epi.org/publication/economist-statement-constitutional-balanced-budget-amendment/>. ⁱⁱⁱ Kogan, Richard. Economic Forecasting Firm Harshly Criticizes Proposed Constitutional Balanced Budget Amendment. Center on Budget and Policy Priorities. November 2011. <http://www.cbpp.org/cms/?fa=view&id=3611>