Thank you, Chairman Coley and to the Senate Government Oversight and Reform Committee members for the opportunity to testify today on Senate Joint Resolution (SJR) 1.

Chairman Coley, my name is Chuck Michaelis and I am Vice-chairman of the Institute For Principled Policy. We are an Ohio-based public policy think tank.

When I contemplate the specter of a new constitutional convention, especially in these times of a deeply divided body-politic, I have fears echoing those of James Madison as he contemplated the calling of a second constitutional convention to force the Bill of Rights into the new and as yet unratified Constitution in November of 1788. He wrote to George Lee Turberville

> "...If a general Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partizans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who, under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union, might have a dangerous opportunity of sapping the very foundations of the fabric. Under all of these circumstances, it seems scarcely to be presumable that the deliberations of this body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a second, meeting in the present temper of America, and under all the disadvantages I have mentioned..."

I come before you today to speak in opposition to SJR 1. But my main focus is on the major procedural issues associated with a convention call. This body has been told not to worry. It has been told that those who believe that there is any danger in the states not being in control of a convention or that there even is any such thing as a "constitutional convention" in the Constitution are "delusional." This comes from a line of argumentation that makes the wild claim that "everyone knew" that the Philadelphia convention was being called to re-write the Articles of Confederation.

When I testified on this same proposal in the past I distributed a booklet which contained the unedited text of the state resolutions and commentary. The booklet demonstrated unequivocally that not only did everyone not know about the plan to re-write the Articles but that some were expressly forbidden to do what was done at Philadelphia. The states had called for a limited convention and attempted to control it with strongly worded resolutions regarding what could and could not be done. The different state delegations also had strongly divergent views regarding what the "defects of the union" were. And yet, this "controlled and limited" body of delegates threw out the Articles of Confederation they were empowered only to amend and wrote the Constitution, a fundamental change in the governmental structure of the nation. This means that those who propose that a convention can be "called, limited, and controlled" by the states through "strongly worded" resolutions have no constitutional historical precedent to back their claims.

And because of this fact we can state unequivocally that those who argue for a "controlled and limited" convention, no matter if it's called a "convention of states" or an "amendments convention" or even

“Uncle Sam’s Limited Government Bar B Q And Constitutional Hoedown” is, in fact a plenipotentiary constitutional convention if it is called for by 2/3 of the states in application to Congress to alter the Constitution.

There is a second line of argumentation which is far less certain in its outlook on the controllability of a federally called convention. This line argues that a controlled and limited convention could probably be called (maybe) but that the controlling body would be the federal courts. This is based on the claim that federal jurisprudence has grown since 1789 and must certainly have a final arbiter’s role in determining the agenda and limits of any convention. This position can also cite exactly no precedents in constitutional history to back their claims. It also does not invoke warm and fuzzy thoughts and feelings regarding the safety of the procedure.

As I have testified previously on other iterations of constitutional convention calls, there is a third line of argumentation involving a government body who has weighed in and claims control over the agenda and delegates to any convention- Congress through their Congressional Research Service. This claim is based on the flaw in Article V which allows states to call for conventions through Congress but is silent on who appoints delegates, how they’re appointed, by what criteria they are appointed, how the convention will be assembled or structured, etc. There’s no reason for this state body to believe they’ll be in charge of the appointment of delegates under this scenario and there is every reason to believe that the controlling body, at least prior to the convention itself, will be Congress. This position can cite exactly no precedents in constitutional history to back their claims. What they can cite is a deeply flawed Article V which should but does not structure that authority explicitly.

There is yet another line of argumentation. This is our position. We believe we can prove, based on precedents in constitutional history, that a convention, properly called, is plenipotentiary and fully capable of abolishing, amending, or completely restructuring the form of government. We base this on the 6 conventions in Anglo-American history, all of which were plenipotentiary and all of which fundamentally altered the structure and function of the national government. It is simply undeniable that a convention is always the highest law-making body in any political entity. Roberts Rules of Order make that clear. Convention delegates and the delegates alone create the standing rules of the convention.

A court applies law that is made by a legislature. This makes the idea that a court controlling the delegates, the agenda, or the limits of a convention something of an absurdity. Courts interpret and apply written law. Legislatures make the law that courts apply. Control of a convention by a legislature is also not possible. Legislatures write law within the limits on power and authority as created by a constitution, either written or unwritten. All political organizations and, in fact, all organizations in general have a constitution whether or not it is written. It is the rule set under which they operate. And the only body which can create those rules in a political entity is a convention.

Under the model we propose to show is the correct one, delegates are controlled only by their own consciences, the rules of the convention, and their perceived fiduciary responsibility. And that’s a problem because this state body assumes that the delegates will feel a fiduciary responsibility to them. The real fiduciary responsibility of delegates is to the body-politic, or every member of society within the political boundaries of the entity appointing them.

Obviously, this makes the ability to select delegates of paramount importance to the direction of the convention. The legislators have been told that it is a near absolute certainty that they will be in charge of delegate selection. Based on what? The precedent of the Philadelphia convention? There is a major flaw in this thinking. In 1787 the states were virtually autonomous. The Articles of Confederation had no official convention procedure written into it. The ONLY bodies which could appoint delegations were the state governments. In 2013 the picture is much different. The Constitution has a convention procedure favoring Congress. State sovereignty has all but eroded to nothing and the convention procedure's silence combined with this erosion of sovereignty means that the Federal government sees itself as the primary controlling entity on any Article V convention. They understand that allowing states to select delegates might just mean losing a significant amount of the power that they have concentrated in Washington since 1789. And that means they will do whatever is necessary to prevent that.

If the Congress or the federal courts are allowed to set criteria or qualifications for delegates or reserves slots for special interest groups, you can probably kiss the idea of returning the balance of power to the states and the people goodbye.

As you can see there are many questions that must to be answered and many important concerns to be worked through before a Constitutional Convention can safely be petitioned for. I'm not sure that I'm convinced that a proper amount of contemplation of these questions and their broader consequences has been considered when I observe the speed which is being employed to push this measure through the legislative process.

Chairman Coley, I want to thank you and the members of the committee for your patience and indulgence in hearing my testimony. I would be more than happy to answer any questions you might have of me.

Charles Michaelis

Vice-Chair Institute for Principled Policy