

SUBJECT: Applying for an Article V convention to limit the federal government

COMMITTEE: State and Federal Power and Responsibility, Select — committee substitute recommended

VOTE: *After recommitted:*
5 ayes — Darby, Murr, Gonzales, K. King, Paddie

1 nay — Turner

3 absent — Anchia, E. Johnson, S. Thompson

SENATE VOTE: On final passage, February 28 — 20-11 (Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion, HJR 39:*
For — Robin Lennon, Kingwood Tea Party; Charles Adams, Joseph Arnold, Alan Arvello, Arthur Bedford, Jonah Blackmon, Richard Bohnert, Kimberly Burlington, Michael Cassidy, Ana Chapman-Wydrinski, Tamara Colbert, Sharon Correll, Sylvia Coulson, Thomas Dowdy, Johnny Duncan, Brent Dunklau, Stephenn Duvall, Cal Elliott, William Ely, Gary Goff, Sammi Hammers, Martin Harry, Neda Henery, Paul Hodson, Blaine Holt, Melanie Kriewaldt-Roth, Edna Krueger, Sandra Lapsley, Christopher Lewis, Timothy McShane, Natalie Miller, James Osteen, Robert Peery, Henry Perry, Donald Pollock, Corey Rapp, Jim Richardson, Christopher Rockett, Stephen Smith, Allison Tangeman, Bill Thoreson, Thomas Trigg, and Angie Turner, Convention of States Project-Texas; and 16 individuals; (*Registered, but did not testify:* Ray Allen, PublicData.com; Chip DeMoss, Paulette Rakestraw, and Greg Snowden, Compact for a Balanced Budget Amendment; James Lennon, Coalition for Public Responsibility PAC, Brendan Steinhauser, U.S. Term Limits; Michael Sullivan, Empower Texans; Larry Tarver, Clearfork Baptist Church; William Bailey, Esther Brant, John Brant, Suzon Bridges, David Brown, Robert Coffey, George Dawes, James Dettmann, Jan Elliott, Jan Fitzgerald, Keith Fitzgerald, Marian Freeland, Barbara Geerlings, PJ Geerlings, Thomas Henry, Karl Heubaum, Michelle Hodson, Audrey

Howard, Kirsten Jackson, Mary Jones, John Lapaglia, Darrell Lowrance, Robbie McDaniel, Peter McPhee, Bruce Melberg, Barbara Peters, Wendell Pool, Douglas Richter, Jim Sipiora, Linda Thoreson, Paula Trigg, Laraine Wahrmond, and James Young, Convention of States Project-Texas; and 28 individuals)

Against — Christy Callahan, Indivisible Galveston; Suzanne Carpenter and Nancy True, Texas Liberty Committee; Grace Chimene, League of Women Voters of Texas; Carolyn Galloway, Texas Eagle Forum; Barbara Harless, North Texas Citizens Lobby; Kurt Hyde, Denton County Republican Assembly; Michael Sullivan, Wimberley Indivisible; and seven individuals; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Kelli Cook, Texas Campaign for Liberty; Anthony Gutierrez, Common Cause Texas; Jim Reaves, Texas Farm Bureau; and 21 individuals)

On — Tom Glass, Texas Constitutional Enforcement; Trevor Dupuy

BACKGROUND: Article V of the U.S. Constitution requires Congress to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article V convention must be ratified by the legislatures of three-fourths of the states.

DIGEST: CSSJR 2 would apply to Congress to call a convention under Article V of the U.S. Constitution, for the limited purposes of proposing amendments to:

- impose fiscal restraints on the federal government;
- limit the power and jurisdiction of the federal government; and
- limit the terms of office of federal officials and members of Congress.

CSSJR 2 would require the secretary of state to forward official copies to the secretaries of state and presiding officers of the legislatures of each state requesting that they join Texas in applying to Congress for an Article

V convention. The secretary of state also would be required to forward official copies to various federal elected officials and offices, with the request that it be entered into the Congressional Record.

CSSJR 2 would be effective only if two other proposed measures took effect: SB 21 by Birdwell, which would establish procedures for delegate oversight at an Article V convention; and SJR 38 by Estes, which would rescind all previous applications for an Article V convention except one proposing a balanced budget amendment to the Constitution.

**SUPPORTERS
SAY:**

CSSJR 2 would attend to problems that can only be addressed through an Article V convention of the states. Congress and other federal branches simply do not have an incentive to resolve some of the most pressing issues facing the United States on matters of fiscal and governmental accountability. Texas, in conjunction with the other states, must act to restrict certain powers of the federal government which have become overly broad and harmful to the nation's future prospects.

Balanced budget amendment. Recent experience has shown that the temptation for out-of-control deficit spending is too strong for Congress to resist and must be addressed with a constitutional amendment. Excessive national debt and a large deficit burdens future generations and can be a drag on the economic health of the nation as a whole.

A balanced budget amendment could be drafted such that Congress would be able to respond to recessions and crises while being effectively limited. Such an application would clearly reflect the current intent of the Legislature and has been a consistent point of interest of the state for decades, as evidenced by the adoption of HCR 31 by Donaldson in 1977, requesting that Congress call a constitutional convention to propose a balanced budget amendment.

Limitations on federal authority. Federal regulators and lawmakers have created many restrictions on states' rights, affecting their sovereignty and ability to make laws governing their own citizens. Today, states are basically subcontractors subject to federal mandates, not the source and

derivation of the power and legitimacy of the federal government. Such a source is laid out already in the 10th Amendment, but states lack the ability to enforce this provision and protect their rights against federal overreach, which an Article V convention pursuant to CSSJR 2 could provide.

Term limits. CSSJR 2 would be the best avenue to propose an amendment limiting the terms of federal officials and elected representatives. A citizen legislature is key to both efficiency and matching the founders' vision on good government. Term limits would ensure that power was not concentrated in Washington and would create a sense of urgency among lawmakers to fix problems in the limited time available, rather than merely trying to maintain their seats in the next election.

Limits on convention. It takes only 13 states to reject the product of any Article V convention, so fears that a runaway convention would rewrite the Constitution or threaten the basic structure of government are unfounded. This constitutional requirement forces any outcome to be at least somewhat bipartisan and appeal to a large cross-section of states and voters. In short, the risk is minimal, and the problem-solving ability of an Article V convention is unmatched.

Other legislation. CSSJR 2 appropriately would depend on SJR 38 by Birdwell and SB 21 by Estes because both would be key to ensuring a convention was properly limited. As Texas has made more than a dozen applications for conventions on various topics that have not been rescinded, without the passage of SJR 38 there would be no way to bind the delegates to focus on a more specific set of issues. SB 21 would lay out procedures for the recall and oversight of delegates, which need to be set before a convention is called.

OPPONENTS
SAY:

CSSJR 2 would be an excessive approach to solving issues that can and should be addressed through the means already available under the Constitution. The foundation of government is not broken and the Constitution is not flawed — it is the government itself and its

application of the Constitution, which could be reformed through traditional means. Elections already exist to fix the problems laid out by supporters of this measure. If these were issues that a sizable bloc of voters desired and were willing to cast their votes on, more action would be taken.

Balanced budget amendment. A balanced budget amendment would eliminate the federal government's ability to respond appropriately to budget cycles when the economy needs a boost. For instance, some economists have concluded that had the amendment gone into effect in fiscal 2012, the effect on the economy would have doubled the unemployment rate. Analogies that suggest the federal government should balance budgets as families do ignore the fact that individuals often take out mortgages or loans for worthy investments.

Many specific programs would be at risk if a balanced budget were to pass. Social Security might have to cut benefits even if it could draw down reserves, as drawing down the reserves would affect the balance of the budget. The Federal Deposit Insurance Corporation and the Pension Benefit Guaranty Corporation also might not be able to respond to institutional failures because liquidating their assets would affect the balance of the budget

Term limits. CSSJR 2 would apply for a convention relating to the establishment of term limits, which would be counterproductive and reduce the democratic influence that voters have on their representatives. A large portion of the House and Senate at any given time would hit their term limits at once, meaning that a large portion of both chambers effectively could consist of lame-duck representatives with no incentive to consider the desires of the voters. Term limits should not be established, and especially should not be enshrined in the Constitution.

Limits on convention. Neither CSSJR 2, nor any accompanying legislation, could offer sound assurance that a limitation on the convention would be effective or valid. As no Article V convention has ever been called, this is uncharted legal ground. The most direct historical

comparison was the 1787 Constitutional Convention, which produced the U.S. Constitution and replaced the Articles of Confederation. In that convention, several delegates violated the commissions given to them by their state, and all rather directly discarded the stated purpose of the convention, which was to amend, rather than to replace, the Articles of Confederation. The state should not risk the foundation of American government for non-catastrophic issues that should be dealt with through established procedures.

OTHER
OPPONENTS
SAY:

Other legislation. CSSJR 2 should be amended so that it is not dependent on the passage of SJR 38 and SB 21. Considering the importance of reform, the state should call for a convention even if the Legislature does not approve procedures or rescind other calls, which it can always do in the future should it be necessary.

NOTES:

SJR 38 by Estes, which would rescind certain applications for an Article V convention, was adopted yesterday in the House. SB 21 by Birdwell, which would establish certain procedures for an Article V convention, is on today's Emergency Calendar for third-reading consideration.

CSSJR 2 differs from the joint resolution as received from the Senate in that the committee substitute would be dependent on the enactment of SB 21 by Birdwell and passage of SJR 38 by Estes.

The companion resolution, HJR 39 by Miller, was left pending April 13 following a public hearing in the House Select Committee on State and Federal Power and Responsibility.