

Eli Baumwell
Testimony in Opposition to Constitutional Convention
February 19, 2019

Good morning and thank you to the Chair and Delegates for a discussion on this important issue. My name is Eli Baumwell, Policy Director for the ACLU of WV.

The ACLU is a 99 year old organization dedicated to protecting and expanding the rights guaranteed by the Constitution. Nationally, we have over 3 million dues-paying members and over 2000 in West Virginia. Over the last century, the ACLU has been involved in countless landmark Supreme Court cases. ACLU staff have included some of the top legal minds, including top litigators, law professors, and even people who went on to become Supreme Court Justices.

I don't say that to boast (well, maybe to boast a little). I say it because I want you to understand the full weight of the following statement : The ACLU opposes a Convention of the States under Article V because of the risk of a runaway convention.

Now, I've had the privilege (or maybe the punishment) of looking into this topic in a fair bit of detail. And I know the general form of the back-and-forth, the scholars, articles and opinions each side will cite. For me, it boils down to this question : What's your risk tolerance when what's at stake is the US Constitution? Because ultimately no matter what scholar has said what – the form, function and control of a convention, if we are ever unwise enough to actually call one, will be decided by the courts. And with virtually no precedent, they will be free to make their own interpretation. How confident are you that they'll make the right call ? 80 %? 90%? 99? Is the US Constitution worth a 20% risk? 10? Would you take a 1 in 100 chance that the Constitution could be radically changed? I know I wouldn't, and I know that many of the brightest legal minds wouldn't either. I urge you not to either.