

Why I Voted Against SJR 1

On Wednesday, February 23, the Texas Senate passed Senate Joint Resolution 1, which called on Congress to pass an amendment to the United States Constitution requiring the federal government to balance its budget every year. The resolution further provided that if Congress failed to pass the amendment by January 1, 2012, the State of Texas applied for an Article V constitutional convention to add a balanced budget amendment to the Constitution. I am a strong supporter of amending the Constitution to require Congress to balance its budget every year. However, I cast my vote against S.J.R. 1 because it calls for a constitutional convention if Congress fails to pass the amendment through the traditional process. I could not vote for a resolution calling for a constitutional convention because I think a constitutional convention risks far too much to justify the potential gains.

The resolution contains language purporting to constrain the Article V convention to drafting a balanced budget amendment. It also states that Texas's application is rescinded if the convention strays from this purpose. This language does not comfort me. All of the precedent for the conduct of a constitutional convention comes from the Philadelphia Convention of 1787. This convention was called to resolve a narrow issue, the conflicts between the states under the Articles of Confederation government. Under Article XIII of the Articles of Confederation, any change to the government of the United States required the unanimous approval of all the states. Rhode Island, which had implemented a tariff on goods crossing its borders from other states, boycotted the convention to prevent the other states from amending the Articles of Confederation to make its tariff illegal. At the Philadelphia Convention, the delegates went well beyond the narrow issue they had convened to address and wrote an entirely new government. Then, in order to avoid the unanimity requirement of Article XIII, they provided that the new Constitution would go into effect if only three-fourths of the states adopted it.

Thus, the only precedent we have on the matter clearly implies that neither the scope nor the ratification requirements of a constitutional convention can be limited by prior legislative action. It is also unclear whether or not a state can rescind an Article V application for a convention once the delegates have convened. For these reasons, I do not believe that the delegates to a constitutional convention can be restrained.

If these delegates were likely to be men like George Washington, James Madison, and Alexander Hamilton, I might rest easier. A runaway convention composed of men like these would result in a document that, like our current Constitution, reflected the principles of limited government, individual responsibility, and free enterprise that dominated the political theory of their time. But a modern convention would be attended by men and women of our time, some of whom would subscribe to branches of modern political thought, including theories of class warfare, the culture of victimization, and the belief that unlimited federal power is a desirable end. While a runaway convention might be unlikely, I fear that the potential harm from one is so great that I cannot in good conscience cast a vote that would make it possible.

I am not alone in my fears. My view is shared by many legal scholars, including the late Warren Burger, Chief Justice of the Supreme Court of the United States from 1969 to 1985. In 1988, Burger wrote that, "there is no way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. . . . Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved."

I continue to hope that Congress will pass a balanced budget amendment so that it can be ratified by the states. I will be first in line to vote for ratification when that happens. But, as much as I want a balanced budget amendment, I would not risk our current Constitution to win it.