



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.C.R. NO. 50, H.D. 1, URGING THE UNITED STATES CONGRESS TO RESTORE FREE AND FAIR ELECTIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, April 18, 2017

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Deirdre Marie-Iha, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General opposes this resolution. This resolution is potentially of great legal significance and operates in a highly uncertain area of law. This resolution would be the Hawaii Legislature's application for a constitutional convention under Article V of the United States Constitution. It would request that the convention propose an amendment to address Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010).

The Department submits this testimony both to advise the Legislature of the significance of this resolution and to identify some of the unresolved questions about federal constitutional conventions. Most significantly, we advise the Legislature that a federal constitutional convention called with this resolution could potentially open up *each and every* provision of the United States Constitution to amendment or repeal. In other words, a federal constitutional convention could propose amendments to eliminate the protections of free speech; the protections against racial discrimination; the protections of freedom of religion; or any of the other myriad provisions that presently provide the backbone of American law.

When this resolution was before the House, the Department expressed the same strong, fundamental concerns present in this testimony, but did not explicitly take a position to support or oppose. Given recent developments, however, the Department

now opposes this resolution. The unknowns that would surround a federal constitutional convention are significant. The reach of such a convention could extend to a complete re-drafting of the Constitution of the United States. That risk informs our position.

Under Article V of the federal constitution, amendments may be proposed by Congress or by constitutional convention. All twenty-seven of our current constitutional amendments were proposed by the first method. U.S. Const., Amend. I – XXVII; 2 Ronald D. Rotunda, *Treatise on Constitutional Law* § 10.10(b). Both methods require a ratification vote by three-quarters of the states. U.S. Const. art. V. The second method has never been used to propose a constitutional amendment and there is no controlling and relevant case law.

Proposing constitutional amendments using a convention was included to allow the states to act when Congress would not. See 2 Rotunda at § 10.10(b)(iii) ("The framers provided for the alternative route of allowing the state legislatures to call for amendments as a political check in case Congress was unresponsive to any felt need for change."); Alexander Hamilton, *The Federalist No. 85* (describing the convention mechanism as necessary to "erect barriers against encroachments of the national authority."). Because no federal constitutional convention has been held in more than two hundred years, how it would operate is largely unknown. It is not known, for example, how the states would be represented at a convention; how those representatives would be chosen; or whether Congress could enact legislation that would control the procedures at such a convention. 2 Rotunda at § 10.10(b)(iii). The federal constitution offers no guidance on these questions. U.S. Const. art. V.

Most importantly, it is not known whether an Article V convention can be limited to one topic or must be a general convention, which could hypothetically propose amendments for *any* provision of the federal constitution, or propose a totally novel amendment unrelated to existing constitutional provisions. See, e.g., 2 Rotunda at § 10.10(b)(iii) at n.10 and the authorities cited there; James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 Harv. J. L. & Pub. Pol'y 1005 (2007), and authority cited there;

Constitutional Convention—Limitation of Power to Propose Amendments to the Constitution, 3 U.S. Op. Off. Legal Counsel 390 (1979), 1979 WL 16606, and authority cited there. Because there has never been an Article V convention, these and many other questions remain unanswered. We also note that four other states have recently adopted resolutions calling for a federal constitutional convention on the same topic. Calif. Assem. Joint Res. No. 1, Res. Ch. 77 (2014); Ill. Sen. Joint Res. No. 42 (2014); N.J. Sen. Con. Res. No. 132 (2015); Vt. Joint Res. No. R-454 (2014). The Rhode Island House and Senate separately adopted similar resolutions, but not jointly. R.I. H. Reso. 7690 (2016); S. Reso. 2589 (2016). (All of these are identified in the resolution. Page 2, lines 10-13). All of these resolutions contain wording expressing each state's understanding that the convention would be limited to this specific topic. *Id.* This resolution would do the same. This is certainly advisable, but whether a constitutional convention could be effectively limited in this way is unknown. See Opinion: We're surprisingly close to our first constitutional convention since 1787. Bad idea. *Washington Post*, April 6, 2017 (attached.)

We note that concerns about the potential to open the entire federal constitution up for debate have prompted several States to recently *rescind* their calls for a convention. This includes Maryland and New Mexico. Md. Sen. J. Reso. 2 (2017); N.M. Hse. J. Reso. 10 (2017). In addition, in Vermont—one of the States listed in this resolution and the first State to adopt a resolution targeted at Citizens United—has taken significant steps to rescind its resolution. Vt. J.R.S. 17 (passed the Vermont Senate and crossed-over to the Vermont House on April 11, 2017). Much of this activity has taken place in just the last few weeks.

We respectfully urge this Committee to defer this resolution. Thank you for the opportunity to testify.

The Washington Post

The Post's View • Opinion

We're surprisingly close to our first constitutional convention since 1787. Bad idea.

By Editorial Board April 6

THE LAST time the United States held a constitutional convention was in 1787. That one turned out pretty well. The next one could have far more doleful results. And the nation is much closer to convening such a convention than many people realize.

It would take the votes of 34 state legislatures to call a constitutional convention to order. A majority of legislatures already have voted to do so. Such calls remain valid indefinitely — until 34 states have joined in a particular cause or the states rescind their appeals. Therefore we congratulate Maryland's House of Delegates, which on Tuesday rescinded its call for a federal constitutional convention decades after approving it. Same to Nevada's Senate, which voted, also Tuesday, to rescind a resolution in that state. But a number of states have recently passed or are close to passing measures calling for a convention.

The possibility was mostly dormant from the 1980s until a few years ago, when some blue states began calling for a convention to undo the Supreme Court's *Citizens United* ruling and conservative groups began pressing red-state legislatures to pass convention resolutions on a variety of pet causes, including a balanced-budget amendment. Though each state might have a single issue in mind, once a convention is convened its delegates would not be bound to any particular issue. Gun control could be banned entirely — or its constitutional limits loosened; gay marriage could be eliminated — or the Equal Rights Amendment could be passed. Though it seems unlikely that the required three- fourths of states would subsequently

approve major changes drawn up at a runaway convention, it is already amazing that so many states have taken the initial step of calling for one.

It is not even certain that three-fourths of the states would have to approve the convention's work for it to become the law of the land, as the Constitution currently prescribes. The 1787 constitutional convention ditched preexisting ratification rules; who is to say a 2018 convention could not? In fact, nearly everything about this powerful process would be uncertain. Convention rules, which would be written ad hoc, could be manipulated to favor one party, region or interest group over another. Minority protections, so central to the Constitution's guarantees, could be trampled upon. Sparsely populated states could impose their will on the majority of Americans who live in densely populated ones.

Many of us can point to one constitutional provision or another that we believe we could improve upon if given a chance. But a convention could do great damage to a charter that, on balance, has worked pretty well for a pretty long time. To take such a risk on behalf of a stupendously unworthy cause such as a balanced-budget amendment would be foolhardy in the extreme.

Read more:

[Robert Greenstein: A constitutional convention could be the single most dangerous way to 'fix' American government](#)

[Tom Toles: Might be time for that constitutional convention after all](#)

[Catherine Rampell: Tea partiers love the Constitution so much — they want to blow it up](#)

[Randy Barnett: Why don't we restore the Constitution so every election is not 'make or break'?](#)

[George F. Will: Gorsuch's chance to correct Scalia on the Constitution](#)



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, April 18, 2017, 9:30 a.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i in Opposition to H.C.R. 50, Urging the United States Congress to Restore Free and Fair Elections

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in opposition to H.C.R. 50, which petitions Congress to call for a constitutional convention to address the United States Supreme Court ruling in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

The ACLU of Hawai'i supports free and fair elections, and recognizes the right to amend the Constitution by convention under Article V of the U.S. Constitution. However, in the midst of a political climate in which the President of the United States has announced his intent to ban an entire religion from the country, and when Congress has recently voted to reverse FCC privacy protections, the lack of standards governing how a convention must be conducted renders the *unprecedented* step of convening a constitutional convention an extremely dangerous and risky move.¹ There is no mechanism to ensure that a constitutional convention would be limited in scope to address only the issues raised in *Citizens United*. Furthermore, there is no guarantee that a convention would be conducted in a fair way that does not further infringe on civil liberties.

For these reasons, the ACLU of Hawai'i urges the Committee to defer this measure.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
ACLU of Hawai'i

¹ Pursuant to Article V, the U.S. Constitution offers two vehicles for its amendment: either two-thirds of both Houses of Congress and three-fourths of the states must approve the amendment, or two-thirds of the States shall call for the convening of a constitutional convention for proposing amendments. Only the former method has been used.

Chair Keith-Agaran and Members of the Committee

April 18, 2017

Page 2 of 2

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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April 17, 2017

TO: Honorable Chairs Keith-Agaran and Members of the Judiciary & Labor Committee

RE: HCR 50 HD1
 Opposition for hearing on April 18

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We oppose HCR 50 HD1 as it would open us up to a free for all Convention. The Convention process is too ambiguous and states cannot limit the agenda of a Constitutional Convention. Convention procedures and delegate rules do not exist. Thus a Constitutional Convention would open the Constitution to whatever amendments its delegates chose to propose. We support the intent of this resolution to get fair elections into the Constitution; we do not think this is the means to do it.

Thank you for your consideration.

Sincerely,

John Bickel
President



Senate Judiciary and Labor Committee
Chair Gilbert Keith-Agaran and Vice Chair Karl Rhoads

04/18/2017 at 9:30 AM in Room 325

HR50 HD1– Urging the United States Congress to Restore Free and Fair Elections by Applying for a Convention to Propose Amendments to the United States Constitution

TESTIMONY / STRONG OPPOSITION
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Keith-Agaran, Vice Chair Rhoads and committee members:

Common Cause Hawaii strongly opposes HCR50 HD1 which calls for an Article V Constitutional Convention to propose an amendment to restore free and fair elections.

While we support free and fair elections and agree that we need to address the consequences of the 2010 Supreme Court case *Citizens United v. Federal Election Commission*, an Article V Constitutional Convention is not the solution.

The Convention process is too ambiguous and states cannot limit the agenda of a Constitutional Convention.

Convention procedures and delegate rules do not exist. Thus a Constitutional Convention would open the Constitution to whatever amendments its delegates chose to propose. According to one of the nation's most esteemed constitutional law scholars, Dean Erwin Chemerinsky, "no one knows how the convention would operate. Would it be limited to considering specific proposals for change offered by the states or could it propose a whole new Constitution? After all, the Constitutional Convention in 1787 began as an effort to amend the Articles of Confederation, and the choice was made to draft an entirely new document."¹

Some proponents of measures similar to HCR50 in other states have argued that a convention convened pursuant to Article V of the Constitution could be limited to a single topic, and that any proposed amendments will still need to be ratified by 38 states as a "check" on a runaway convention.

There are no guideposts or rules, however, to prevent delegates from lowering the threshold of 38 states currently necessary for ratification or going beyond the purpose for which it convenes. At the most recent Constitutional Convention in 1787, for example, attendees re-wrote the rules for ratification – indeed, they re-wrote the entire governing charter – and reduced the number of states needed to agree to the new Constitution.

Due to the ambiguity of an Article V Constitutional Convention, over 200 organizations across the country, working across party lines and issues, have banded together to strongly urge state legislatures to oppose efforts to pass a resolution to call for a constitutional convention (attached).

Simply put, a Constitutional Convention would create an unpredictable Pandora's Box. There is far too much at stake to risk putting the entire Constitution up for a wholesale re-write as part of a Constitutional Convention. We urge you to **defer HCR50 HD1**.

Thank you for the opportunity to testify in **strong opposition to HCR50 HD1**.

¹ Erwin Chemerinsky, "Is It a Good Time to Overhaul Constitution?," Orange County Register, Jan. 21, 2016, <http://www.ocregister.com/articles/constitutional-700670-convention-constitution.html>.

Constitutional Rights and Public Interest Groups Oppose Calls for an Article V Constitutional Convention

Calling a new constitutional convention under Article V of the U.S. Constitution is a threat to every American's constitutional rights and civil liberties.

Article V convention proponents and wealthy special interest groups are dangerously close to forcing the calling of a constitutional convention to enact a federal balanced budget amendment (BBA). This would be the first constitutional convention since the original convention in 1787 — all constitutional amendments since then have been passed first by Congress and then approved by three-fourths of the state legislatures. There are no rules and guidelines in the U.S. Constitution on how a convention would work, which creates an opportunity for a runaway convention that could rewrite any constitutional right or protection currently available to American citizens.

Under Article V of the U.S. Constitution, a convention can be called when two-thirds of the states (34) petition for a convention to enact amendments to the constitution. States can also rescind their calls by voting to rescind in the state legislature. Just a few states short of reaching the constitutionally-required 34 states to call a convention, Article V and BBA advocates have recently increased their efforts to call a new convention.

An Article V convention is a dangerous threat to the U.S. Constitution, our democracy, and our civil rights and liberties. There is no language in the U.S. Constitution to limit a convention to one issue and there is reason to fear that a convention once called will be able to consider any amendments to the constitution that the delegates want to consider. There are also no guidelines or rules to govern a convention. Due to the lack of provisions in the Constitution and lack of historical precedent, it is unknown how delegates to a convention would be picked, what rules would be in place, what would happen in the case of legal disputes, what issues would be raised, how the American people would be represented, and how to limit the influence of special interests in a convention.

Because there is no way to limit a convention's focus, any constitutional issue could be brought up for revision by a convention. This includes civil rights and civil liberties, including freedom of speech, freedom of religion, privacy rights, the guarantee of equal protection under law, the right to vote, immigration issues, and the right to counsel and a jury trial, among others. Basic separation of executive, legislative, and judicial powers would be subject to revision as well. A convention might not preserve the role of the courts in protecting our constitutional rights. Even the supremacy of federal law and the Constitution over state laws could be called into doubt.

A 2016 *USA Today* editorialⁱ correctly stated that calling for a constitutional convention is “an invitation to constitutional mayhem” and “could further poison our politics and hobble American leaders at moments of crisis.” Notable legal scholars across the political spectrum agree. One of the nation's most esteemed constitutional law scholars, Professor Laurence Tribe of Harvard Law School, has said a constitutional convention would put “the whole Constitution up for grabs.”ⁱⁱ

Georgetown University Law professor David Super wrote “a constitutional convention would circumvent one of the proudest democratic advances of the last century in America: one-person, one-

vote. Without a precedent, no one really knows how a convention would unfold, but proponents predict that each state would have an equal vote in whatever they got up to.”ⁱⁱⁱ

Former Supreme Court Chief Justice Warren Burger shared similar concerns, writing, “[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.”^{iv}

The late Supreme Court Justice Antonin Scalia also warned of the dangers of a constitutional convention. “I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?,” Scalia said in 2014.^v

The undersigned organizations strongly urge state legislatures to oppose efforts to pass a resolution to call for a constitutional convention. We also strongly urge state legislatures to rescind any application for an Article V constitutional convention in order to protect all Americans’ constitutional rights and privileges from being put at risk and up for grabs.

National organizations:

African American Health Alliance	Earthjustice
African American Ministers In Action	Eclectablog
AFSCME Retirees	Economic Policy Institute
Alliance for Justice	EMILY’s List
American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)	Every Voice
American Federation of State, County and Municipal Employees (AFSCME)	Fair Elections Legal Network
American-Arab Anti-Discrimination Committee	Faith in Public Life
Americans for Democratic Action (ADA)	Family Values at Work
Asian and Pacific Islander American Vote	Food Research & Action Center (FRAC)
Bend the Arc Jewish Action	Franciscan Action Network
Brennan Center for Justice	Greenpeace USA
Campaign Legal Center	International Association of Fire Fighters
Center for American Progress	Jobs With Justice
Center for Community Change	League of Women Voters of the United States
Center for Law and Social Policy (CLASP)	Main Street Alliance
Center for Media and Democracy	Mi Familia Vota
Center for Medicare Advocacy	NAACP
Center for Popular Democracy	National Asian Pacific American Families
Center on Budget and Policy Priorities	Against Substance Abuse
Children’s Defense Fund	National Association of Social Workers
Citizens for Responsibility and Ethics in Washington (CREW)	National Council of Asian Pacific Americans (NCAPA)
Coalition on Human Needs	National Council of Jewish Women
Common Cause	National Council of La Raza Action Fund
Communications Workers of America (CWA)	National Disability Institute
Community Advocates	National Disability Rights Network
Public Policy Institute	National Education Association (NEA)
Daily Kos	National Employment Law Project (NELP)
Democracy 21	National Fair Housing Alliance
Dream Defenders	National Korean American Service & Education Consortium (NAKASEC)

National Partnership for Women & Families
National WIC Association
National Women's Law
Center People Demanding
Action People For the
American Way ProgressNow
Service Employees International Union
(SEIU) Sierra Club
Sisters of Charity of Nazareth Congregational
Leadership
Social Security Works

State and local organizations:

Alabama

Fair Housing Center of Northern Alabama

Alaska

Alaska AFL-CIO

Arkansas

OMNI Center for Peace, Justice & Ecology

Arizona

AFSCME 2960
AFSCME Retirees Chapter 97
Arizona Advocacy Network
Phoenix Day
Southwest Fair Housing Council

California

California Common Cause
City of Chino Housing Division
Courage Campaign
Fair Housing Advocates of Northern California

Colorado

ACLU of Colorado
America Votes Colorado
Colorado AFL-CIO
Colorado Common Cause
Colorado Ethics Watch
Colorado Fiscal Institute
Colorado Sierra Club
Colorado WINS
New Era Colorado
League of Women Voters of Colorado
Progress Colorado
SEIU Colorado

Connecticut

Common Cause Connecticut

State Innovation Exchange
The Arc of the United States The
Forum for Youth Investment The
Public Interest
The Voting Rights Institute
UNITE HERE
United Food and Commercial Workers (UFCW)
Voice for Adoption
VoteVets Action Fund
Women's Voices Women Vote Action Fund
Working America

Connecticut Fair Housing Center, Inc.
Planned Parenthood of Southern New England
Holy Family Home and Shelter, Inc

Delaware

Common Cause Delaware

Florida

Common Cause Florida
Faith in Florida
Florida Consumer Action Network
Progress Florida

Georgia

Common Cause Georgia

Hawaii

Common Cause Hawaii

Idaho

Better Idaho
Idaho AFL-CIO

Illinois

Common Cause Illinois
Oak Park River Forest Food Pantry
Project IRENE

Indiana

Common Cause Indiana
Fair Housing Center of Central Indiana

Iowa

AFSCME Iowa Council 61
Congregation of the Humility of Mary
Iowa AFL-CIO

Kansas

Kansas AFL-CIO

Kentucky

Common Cause Kentucky
Kentucky AFL-CIO

Louisiana

Greater New Orleans Fair Housing Action Center

Maine

Disability Rights Maine
Maine AFL-CIO

Maryland

ACE-AFSCME Local 2250
AFSCME Council 3
AFSCME Council 67
Baltimore Neighborhoods, Inc.
Benedictine Sisters of Baltimore
Common Cause Maryland
Disability Rights Maryland
Maryland Center on Economic Policy
Public Justice Center
The Xaverian Brothers

Massachusetts

Massachusetts AFL-CIO

Michigan

Common Cause Michigan
Fair Housing Center of West Michigan
Progress Michigan

Minnesota

Common Cause Minnesota
League of Women Voters of Minnesota
Minnesota AFL-CIO
Minnesota Citizens for Clean Elections

Mississippi

Mississippi AFL-CIO

Missouri

Vision for Children at Risk

Montana

Montana AFL-CIO

Nebraska

Common Cause Nebraska

Nebraskans for Civic Reform

New Hampshire

New Hampshire AFL-CIO

New Jersey

CWA Local 1081
New Jersey Association of Mental Health and
Addiction Agencies, Inc.
Monarch Housing Associates

New Mexico

Common Cause New Mexico
League of Women Voters of New Mexico
New Mexico Hospital Workers Union (1199NM)

New York

CNY Fair Housing, Inc
Common Cause New York
Disabled in Action of Greater Syracuse Inc.
Long Island Housing Services, Inc.
Schenectady Inner City Ministry
Solidarity Committee of the Capital District

Nevada

AFSCME 4041
Culinary Union

North Carolina

Common Cause North Carolina
Disability Rights North Carolina
Independent Living Resources (Durham, NC)

North Dakota

North Dakota AFL-CIO

Ohio

Cleveland Nonviolence Network
Common Cause Ohio
Equality Ohio
Ohio Voice
ProgressOhio
Toledo Fair Housing Center
Toledo Area Jobs with Justice

Oklahoma

Oklahoma AFL-CIO

Oregon

Common Cause Oregon
Disability Rights Oregon

Pennsylvania

Bhutanese Community Association of Pittsburgh
Common Cause Pennsylvania
Community at Holy Family Manor (Pittsburgh, PA)
Just Harvest (Pittsburgh, PA)

Rhode Island

Common Cause Rhode Island

South Carolina

South Carolina AFL-CIO

South Dakota

South Dakota AFL-CIO

Tennessee

Nashville CARES

Texas

Clean Elections Texas
Common Cause Texas
Harlingen Community Development Corporation

Utah

Tabitha's Way

Vermont

Downstreet Housing & Community Development
P.S., A Partnership

Virginia

Virginia AFL-CIO
Virginia Civic Engagement Table

Washington

Conscious Talk Radio
Washington AFL-CIO
Washington Community Action Network
Fuse Washington

Wisconsin

Access to Independence, Inc. (Madison, WI)
AFSCME Council 32
AFSCME Retirees Chapter 32
Citizen Action of Wisconsin
Common Cause Wisconsin
End Domestic Abuse Wisconsin
Grandparents United for Madison Public Schools
Independence First
League of Women Voters of Wisconsin
Madison-area Urban Ministry
Metropolitan Milwaukee Fair Housing Council
Midstate Independent Living Consultants
One Wisconsin Now
Options for Independent Living Inc.(Green Bay, WI)
School Sisters of Saint Francis (Milwaukee, WI)
Survival Coalition of Disability Organization of
Wisconsin
The Arc Wisconsin
The Wisconsin Democracy Campaign
Wisconsin AFL-CIO
Wisconsin Aging Advocacy Network
Wisconsin Coalition of Independent Living Centers,
Wisconsin Community Action Program Association
(WISCAP)
Wisconsin Council on Children and Families
Wisconsin Democracy Campaign
Wisconsin Faith Voices for Justice
Wisconsin Voices
National Association of Social Workers, Wisconsin
Chapter
Dominicans of Sinsinawa - Leadership Council

West Virginia

West Virginia Citizen Action Group

Wyoming

Wyoming AFL-CIO

1. *USA Today*, "Marco Rubio's very bad idea: Our view," January 6, 2016, available at <http://www.usatoday.com/story/opinion/2016/01/06/marco-rubio-constitutional-convention-balanced-budget-editorials-debates/78328702/>

2. Michael Leachman & David A. Super, "States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment and Other Issues," Center for Budget and Policy Priorities, July 6, 2014, available at <http://www.cbpp.org/sites/default/files/atoms/files/7-16-14sfp.pdf>.

3. David Super in *The Chicago Tribune*, "Don't even think about 'updating' the Constitution," March 19, 2017, available at <http://www.chicagotribune.com/news/opinion/commentary/ct-constitutional-convention-amendments-20170319-story.html>

4. Letter from Chief Justice Warren Burger to Phyllis Schlafly, June 22, 1988, available at <http://constitution.i2i.org/files/2013/11/Burger-letter2.pdf>.

5. Marcia Coyle, "Scalia, Ginsberg Offer Amendments to the Constitution," *Legal Times*, April 17, 2014, available at <http://www.nationallawjournal.com/legaltimes/id=1202651605161/Scalia.-Ginsburg-Offer-Amendments-to-the-Constitution?slreturn=20140421101513>.

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Gil Keith-Agaran, Chair

Sen. Karl Rhoads, Vice Chair

Tuesday, April 18, 2017

9:30 am

Room 016

STRONG OPPOSITION TO HCR 50 HD1

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for two decades. This testimony is respectfully offered on behalf of the approximately 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HCR 50 urges the United States Congress to restore free and fair elections.

The 2010 US Supreme Court decision on *Citizens United* that grants corporations "personhood" has corrupted our political system, seriously eroded public confidence in government, and destroyed our representative democracy. What is happening in Washington D.C. right now is proof of what happens when dark money controls elections and policymaking:

- Monsanto writing pesticide laws and regulations;
- Big pharma writing drug laws and regulations; and
- Wall Street controlling the economy.

The website Demos¹ has a document: *Top 5 Ways Citizens United Harms Democracy & Top 5 Ways We're Fighting to Take Democracy Back*. *Citizens United* declared that it was unconstitutional to restrict a corporation from spending its treasury money to support or attack candidates in elections,² and led

¹ Demos, TOP 5 WAYS CITIZENS UNITED HARMS DEMOCRACY. <http://www.demos.org/publication/top-5-ways-citizens-united-harms-democracy-top-5-ways-we%E2%80%99re-fighting-take-democracy-back>

² *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010). Previously corporations that wanted to engage in political spending were required to establish a political action committee; corporations are still banned from making direct contributions to candidates. See *id.* at 320; 52 U.S.C.A. § 30118.

to unlimited contributions to outside groups such as Super PACs and tax-exempt non-profits.³ These decisions have allowed concentrated big money in politics to increase,⁴ further marginalizing those without vast wealth in our political system.⁵

There is no place for secrecy in a democracy. Government secrecy is at odds with basic democratic principles. As the U.S. Supreme Court recognized in 1936, “an informed public is the most potent of all restraints upon misgovernment.”⁶

Despite our support for overturning *Citizens United*, in these perilous times the thought of a constitutional convention to open the document that enshrines our rights is truly frightening. We are currently witnessing the destruction of many safeguards that have been constructed to protect personal, environmental, and civil rights. A constitutional convention at this time could have even more devastating effects than those to which we are currently being subjected.

Please continue to work for more transparency and disclosure of campaign contributions and open government. The people of Hawai`i are counting on our legislature to protect our hard-won gains to protect all that is precious to us.

We urge you to defer this resolution.

Mahalo for this opportunity to testify.

³ The Court’s holding that independent spending can’t corrupt as a matter of law because “access and influence aren’t corruption,” *id.* at 360, led to the *SpeechNow* decision. See *SpeechNow.org v. Fed. Election Comm’n*, 599 F.3d 686, 694 (D.C. Cir. 2010) (“In light of the Court’s holding as a matter of law that independent expenditures do not corrupt or create the appearance of quid pro quo corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption”).

⁴ The estimated \$3.6 billion spent in the 2014 federal elections broke records for the most expensive midterm in history, with \$689 million in outside spending including \$154 million in untraceable dark money. “Estimated Cost of Election 2014,” Center for Responsive Politics, <https://www.opensecrets.org/overview/cost.php>.

⁴ “The real story of the election’s campaign finance chapter was not which side had more resources, but that such a large chunk of the cost was paid for by a small group of ultra-wealthy donors using outside groups to bury voters with an avalanche of spending.” Russ Choma, “Money Won on Tuesday, But Rules of the Game Changed,” Center for Responsive Politics (Nov. 5, 2014), <http://www.opensecrets.org/news/2014/11/money-won-on-tuesday-but-rules-of-the-game-changed>.

⁶ ACLU <https://www.aclu.org/issues/national-security/secrecy>

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Thursday, April 13, 2017 4:28:53 PM

HCR50

Submitted on: 4/13/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mark White	Convention of States	Comments Only	No

Comments: The Convention of States Project Hawaii, the local chapter of the national Convention of States Project, organized under the non-profit, non-partisan Citizens for Self-Governance has no association or affiliation with the Citizen United effort or its affiliates supporting HCR50 or its companion resolution(s).

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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April 18, 2017

TIM VANDEVEER
Chair

MARGARET WILLE
SEAN SMITH
Legislation Affairs Committee Co-Chairs

COMMITTEE ON JUDICIARY AND LABOR
APRIL 18, 2017 9:30 AM ROOM 325

Gilbert Keith-Agaran, Chair
Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor
senkeithagaran@capitol.hawaii.gov
senrhoads@Capitol.hawaii.gov

Re: HCR50 “Urging Congress to Restore Free and Fair Elections”

TESTIMONY ON BEHALF OF THE DEMOCRATIC PARTY OF HAWAII

The Democratic Party of Hawaii reluctantly but firmly believes that HCR 50 may well cause far more damage than the good that it is intended to bring about.

There is much dispute about whether a Constitutional Convention can be limited in the scope of issues that it will consider. Scholars such as Harvard Law School professor Laurence Tribe and the late Chief Justice Warren Burger have stated that a Constitutional Convention cannot be constrained in the scope of the amendments that it can issue for consideration by the states.

And there's absolutely no guarantee that such a Constitutional Convention would ever adopt a proposed amendment to overturn the Citizens United decision – which is objective of many who are now supportive of a Con-Con. Moreover, even if by some miracle it did, the amendment would need ratification by both houses of 38 state legislatures, which is a political impossibility at the present time.

DEMOCRATIC PARTY OF HAWAII

PO Box 2041 Honolulu, HI 96805 ☐ (808) 596-2980 ☐ www.hawaiidemocrats.org ☐ info@hawaiidemocrats.org



Right now, more than 30 state legislatures have adopted resolutions similar to HCR 50 calling for a Constitutional Convention. Some of the resolutions are to try to overturn Citizens United. Some seek other goals, such as a balanced budget amendment to the US Constitution. Although a few states have tried to rescind those resolutions, it is legally questionable whether those rescissions are valid.

A Constitutional Convention at the present time would very likely be dominated by powerful right-wing, reactionary forces that will try to rewrite the Bill of Rights and undermine a century's worth of progressive legislation - labor, environmental, educational, voting rights, human and civil rights of all kinds will be endangered. There will almost certainly be proposals for national right to work laws, state nullification of federal laws, a federal balanced budget amendment, abolition of LGBT rights. Choose your most cherished civil right. It can virtually be guaranteed that it will come under attack at a Con Con.

"The abiding values of the Democratic Party are liberty, social justice, economic justice, and protection of the environment, and compassion and respect for the dignity and worth of the individual. At the heart of our party lies a fundamental conviction that Americans must not only be free, but they must live in a fair society." . . .

Through to the Platform's detailed provisions supporting labor, human and civil rights, government and political reform, housing, education, the environment, and others - they all will be subject to fundamental attack at such a Con Con.

Please at least DEFER this Resolution if you have any doubt whether it should be adopted.

Literally, the future of our entire country is at stake. If Hawaii joins in the call for a Con Con, this may be the irreversible step down a path that will cause us all no end of grief.

Thank you very much for considering our serious concerns about this Resolution.

Mahalo in advance for your consideration.



Respectfully,

Tim Vandever
Chair of the Democratic Party of Hawai'i

/s/ Margaret Wille

/s/ Sean Smith

Legislative Affairs Committee Co-chairs



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
April 18, 2017

H.C.R. 50 - URGING THE
UNITED STATES CONGRESS TO
RESTORE FREE AND FAIR ELECTIONS

The Hawaii State AFL-CIO supports free and fair elections and we wholeheartedly agree that the U.S. Supreme Court erred in its decision regarding the case Citizens United v. Federal Election Commission. However, with that said, the Hawaii State AFL-CIO strongly opposes the convening of a federal Constitutional Convention to seek changes to our election system.

In many ways, our elections are not fair and unfortunately allow big-money to dictate a number of races throughout the country. Recent Presidential elections have exceeded \$1 billion dollars with no end in sight. Clearly this needs to change. However, the convening of a federal Constitutional Convention is not the suitable answer to solving the issue of fair elections. A Constitutional Convention will no doubt open "Pandora's box" and could potentially be catastrophic to a number of issues that many of us have worked so hard on throughout our lives. Civil rights, workers rights and many other liberties we take for granted today would be at stake and the bizarre irony is considerable money from many different interests groups would be spent to protect or change the rights we have today.

With so much uncertainty and risk the Hawaii State AFL-CIO urges the Committee on Judiciary and Labor to defer H.C.R 50 indefinitely and seek other means to more free and fair elections.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808 543 0011 • Fax: 808 528 0922

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
April 18, 2017

**H.C.R. 50, H.D. 1 – URGING THE UNITED STATES
CONGRESS TO RESTORE
FREE AND FAIR ELECTIONS**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO conceptually supports the intent of H.C.R. 50, H.D. 1 which urges the United States Congress to restore free and fair elections in light of the Citizens United v. Federal Election Commission ruling in 2010, however we **strongly oppose** the convening of a federal Constitutional Convention as the apparatus to make these necessary changes.

As drafted, H.C.R. 50, H.D. 1 represents our state's formal application to convene a Constitutional Convention under Article V of the U.S. Constitution. A matter of this magnitude deserves much more robust discussion and conversation with all residents in Hawaii. Should the Legislature proceed in considering to file an application for a Constitutional Convention, it should not be done under the guise of addressing a singular component such as fair elections, but rather should be considered holistically.

Additionally, we raise grave concerns over the vast, unforeseen negative consequences of convening a national Constitutional Convention. While we can fully agree that the Citizens United ruling is contrary to a healthy democracy and citizen driven elections, wholly opening our Constitution for amendment and repeal is not in the best interests for citizens. Convening a Constitutional Convention does not guarantee resolution for fair elections, rather there is the potential for a Convention to be much more devastating than what this resolution seeks to accomplish.

Our country has not convened a Convention of this magnitude in its 200 year history and no one can predict how it would operate, who would be represented, and what the immediate and long term impacts will be. Due to this uncertainty and risk, we urge extreme caution and full vetting of the consequences of H.C.R. 50, H.D. 1 and respectfully request the Committee defer this measure.

Thank you for the opportunity to testify in opposition to H.C.R. 50, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



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COMMITTEE ON JUDICIARY AND LABOR
TUESDAY, April 18, 2017, 2:45 P.M., CONFERENCE ROOM 325

HCR 50, HD1, URGING THE UNITED STATES TO RESTORE FREE AND FAIR ELECTIONS

TESTIMONY

Janet Mason, Legislative Co-Chair, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice-Chair Rhoads and Committee Members:

The League of Women Voters of Hawaii opposes HCR 50, HD1.

To us, this is not a resolution about “free and fair elections.” Rather, this is a resolution calling for Congress to organize a Constitutional Convention to propose amendments to the United States Constitution and outlining procedures for calling such a Convention. Deliberately misnaming the resolution troubles us, since a Convention must be transparent from start to finish.

The League certainly supports free and fair elections but unfortunately, this title (and the contents of the resolution) are so broad that it could include many, many topics. In fact, the resolution specifically refers to Congress convening a Convention to propose more than one amendment to the Constitution.

We believe a U.S. Constitutional Convention must be limited to a specific topic. Likewise, only state resolutions on a single topic should count when determining if two-thirds of the states have applied to Congress for a Convention; this resolution is so broad it doesn’t provide a basis for a legitimate application.

It is true that the resolution refers to the U.S. Supreme Court decision in Citizens United v. Federal Election Commission. It is also true that the League of Women Voters is deeply committed to reforming our nation’s campaign finance system to combat corruption and undue influence, enable candidates to compete more equitably for public office and allow maximum citizen participation in the political process.

But before we head into any Convention allegedly called for this purpose, we need some procedural safeguards. League of Women Voters President Elizabeth MacNamara, explained last year: “The League believes that procedural safeguards must be put in place to protect democratic values and ensure that any proposed amendments reflect the concerns of citizens. Any calls for a constitutional convention must have built-in protections to ensure it is not hijacked by a small minority.”

The resolution refers to the Legislature “restricting or expanding the authority of *its* delegates,” which implies appointment of delegates by Hawaii’s legislature. However, we believe delegates should be elected rather than appointed.

Representation at the Convention should be based on population rather than one state, one vote. We do not support the provision in the resolution calling for Hawaii to have an equal number of delegates to the Convention as any other state.



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The resolution also calls for the Legislature to retain the ability to restrict or expand the authority of Hawaii delegates. Presumably this means the legislature can require Hawaii delegates to vote by state, not by delegate, and we do not support this.

The League of Women Voters does not support the basic rules for a Convention that are proposed in this bill. We urge you to defer the resolution. Thank you for the opportunity to submit testimony.



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COMMITTEE ON JUDICIARY AND LABOR
Sen. Gil Keith-Agaran, Chair
Sen. Karl Rhoads, Vice Chair

Tuesday, April 18, 2017
9:30 a.m.
Room 016

HCR 50 Free and Fair Elections

PLEASE HOLD

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The U.S. Supreme Court issued a terrible decision in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

Some who advocate overturning the decision have turned to a radical approach that has never been used before.

HCR50 proposes a federal constitutional convention "to restore balance and integrity to our elections by proposing a federal constitutional amendment to permanently protect free and fair elections in the United States by addressing issues raised by the decision of the Supreme Court of the United States in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), and related cases and events."

There is a maxim that must be reflected upon. Be careful what you wish for, since the desired outcome may not be as desirable, once it has been attained.

HCR 50 proposes a federal constitutional convention that is limited to a discussion on free and fair elections and overturning Citizens United. If the convention were limited to that topic, then the emerging legislation would propose either incorporating Citizens United into the Constitution, or overturning the U.S. Supreme Court position. Three quarters of the States would have to ratify the decision. Legislators, not people, would vote.

However, there is absolutely no guarantee that the constitutional convention could be restricted to one issue.

Common Cause testified before the House Judiciary Committee on April 4, 2017.

“A Constitutional Convention would create an unpredictable Pandora’s Box. There is far too much at stake to risking putting the entire Constitution up for a wholesale re-write as part of a Constitutional Convention. We urge you to defer HCR50.”

“While we support free and fair elections and agree that we need to address the consequences of the 2010 Supreme Court case, Citizens United v. Federal Election Commission, an Article V Constitutional Convention is not the solution. The Convention process is too ambiguous and states cannot limit the agenda of a Constitutional Convention. Convention procedures and delegate rules do not exist. Thus a Constitutional Convention would open the Constitution to whatever amendments its delegates chose to propose. According to one of the nation’s most esteemed constitutional law scholars, Dean Erwin Chemerinsky, ‘no one knows how the convention would operate. Would it be limited to considering specific proposals for change offered by the states or could it propose a whole new Constitution? After all, the Constitutional Convention in 1787 began as an effort to amend the Articles of Confederation, and the choice was made to draft an entirely new document’¹.”

The **Attorney General** testified before the House Judiciary Committee on April 4, 2017.

“It is not known, for example, how the states would be represented at a convention; how those representatives would be chosen; or whether Congress could enact legislation that would control the procedures at such a convention... Even more importantly, there has been academic debate for decades on whether an Article V convention can be limited to one topic or must be a general convention, which could hypothetically propose amendments for any provision of the federal constitution, or propose a totally novel amendment unrelated to existing constitutional provisions.”

Mahalo,
Henry Curtis,
Executive Director

¹ Erwin Chemerinsky, “Is It a Good Time to Overhaul Constitution?,” Orange County Register, Jan. 21, 2016, <http://www.ocregister.com/articles/constitutional-700670-convention-constitution.html>.



Progressive Democrats of Hawai‘i

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April 17, 2017

To: The Honorable Keith S.C. Agaran, Chair
The Honorable Karl Rhoads, Vice Chair, and Members
Senate Committee on Judiciary and Labor

Re: HCR 50 – calling for a Federal Constitutional Convention

Hearing: Tuesday, April 18, 2017, 9:30 a.m., Conference Room 325

Position: **Strong OPPOSITION**

This House Concurrent Resolution was introduced in an attempt to cause a national Constitutional Convention to convene for the first time in the modern history of the United States. The HCR seeks to have the Convention issue a proposed Constitutional Amendment to rid the United States of the illegitimate and pernicious decision of the U.S. Supreme Court in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), and related cases.

Citizens United abruptly overthrew well over a century of State and federal statutory law and judicial decisions that had previously made it clear that government could regulate financial contributions by corporations to political campaigns.

Progressive Democrats of Hawaii respects and appreciates the motivation behind this proposed Concurrent Resolution. We are strong supporters of the sponsors of this proposed Resolution. However, we believe that the proposed Resolution, if adopted, poses grave risks to the United States, and it will never actually accomplish its goal.

Regrettably, Article V of the U.S. Constitution does not provide for a limited-purpose constitutional convention. Any such convention would be free to propose rewriting every single provision in the Constitution - the good ones as well as the bad ones. The Bill of Rights and all of the progressive achievements of the past 100 years would be at risk – progress in labor, consumer, education, environmental protection; and all progress toward human and civil rights.

Virtually all commentary on proposals to hold an Article V Constitutional Convention has been very strongly against it. For example, Robert Greenstein, the president of the progressive Center on Budget and Policy Priorities, wrote:

The implications are enormous. **At stake, potentially, are the freedoms we take for granted under the Bill of Rights; the powers of the president, Congress and the courts; and the policies the government can or cannot pursue. Conventioneers could alter absolutely anything about the way the United States is governed.** . . .

Yet the processes for impaneling the convention, selecting the delegates, setting the convention's voting rules, and determining what issues the convention would consider and how much of the Constitution it would seek to rewrite are a mystery. That means that **under a convention, anything goes. There are no rules, guideposts or procedures in any of these areas.** . . .

. . . As constitutional experts from the late Chief Justice Warren Burger to Justice Antonin Scalia to Harvard Law School Professor Laurence Tribe have warned, a **constitutional convention would place the nation in uncharted territory, with very serious risks for our political system.** Convening a convention, as Tribe put it, would be "putting the whole Constitution up for grabs." And although I don't often agree with Scalia, he hit the nail on the head when he said recently: "I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?"

Some convention proponents, such as the American Legislative Exchange Council, blithely promise that Congress could limit the scope of the amendments that a convention could consider. But many prominent constitutional law experts disagree. The Constitution provides no authority above that of a constitutional convention itself; accordingly, the courts probably would decline to intervene here, as well, to limit a convention's scope. As Burger wrote, "**[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.**"

https://www.washingtonpost.com/posteverything/wp/2014/10/21/a-constitutional-convention-could-be-the-single-most-dangerous-way-to-fix-american-government/?utm_term=.d733275480ad. (Emphasis added.)

Other progressive voices have also strongly criticized trying to fix our political problems through a Constitutional Convention. In *States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment or Other Issues*, by Michael Leachman and David A. Super, updated Jan. 2017, <http://www.cbpp.org/research/states-likely-could-not-control-constitutional-convention-on-balanced-budget-amendment-or-other-issues>, the authors point out that:

- **A convention could write its own rules.** The Constitution provides *no guidance whatsoever* on the ground rules for a convention. . . .
- **A convention could set its own agenda, possibly influenced by powerful interest groups.** The only constitutional convention in U.S. history, in 1787, went far beyond its mandate. Charged with amending the Articles of

Confederation to promote trade among the states, the convention instead wrote an entirely new governing document. A convention held today could set its own agenda, too. There is no guarantee that a convention could be limited to a particular set of issues, such as those related to balancing the federal budget. As a result, powerful, well-funded interest groups would surely seek to influence the process and press for changes to the agenda, seeing a constitutional convention as an opportunity to enact major policy changes. As former Chief Justice Burger wrote, a **“Constitutional Convention today would be a free-for-all for special interest groups.”** Further, **the broad language contained in many of the resolutions that states have passed recently might increase the likelihood of a convention enacting changes that are far more sweeping than many legislators supporting these resolutions envision. . . .**

- **No other body, including the courts, has clear authority over a convention.** The Constitution provides for no authority above that of a constitutional convention, so it is not clear that the courts — or any other institution — could intervene if a convention did not limit itself to the language of the state resolutions calling for a convention. (Emphasis added.)

In response to efforts to overturn Citizens United through a Constitutional Convention, another strongly progressive organization, Common Cause, has argued:

At a [2011 panel](#) convened to examine constitutional convention proposals, Harvard Law Professor Laurence Tribe argued there is no need to debate the possibility of a runaway convention because there is no agreement or legal authority on what any constitutional convention would look like in the first place. Tribe, a renowned constitutional scholar, laid out numerous unanswered questions regarding the constitution convention process under Article V, including:

- How will Congress add up the Article V applications? Can Congress and the states constrain the convention’s mandate based on those applications?
- May the convention propose amendments other than those it was called to consider?
- May Congress prescribe rules for the convention, or limit its powers in any way?
- May the convention set its own rules, independent of Article V, for how amendments that it proposes may be ratified?
- Are the states to be equally represented, or does the one-person, one-vote principle apply? What about the District of Columbia? Do the citizens of the District have a role in a convention?
- Could delegates be bound in advance by legislation or referendum to propose particular amendments or vote in a particular way?
- Could the convention propose amendments by a simple majority, or require a supermajority of two-thirds?
- If each state gets one convention vote, must delegates representing a majority of the population nonetheless vote for an amendment in order for it to get proposed?
- Conversely, if the convention uses the one-person, one-vote formula, must the delegations of 26 states – perhaps including the District of Columbia – vote in favor of a proposed amendment?
- What role, if any, would the Supreme Court play in resolving conflicts among Congress, state legislatures, governors, referenda, and the convention itself? Can we rely on the Court to hold things in check?

Ultimately, Professor Tribe said a constitutional convention would essentially “put it [the Constitution] all up for grabs,” . . .

In sum, whatever one’s views on the merits of prospective amendments to force a balanced budget or solve the problem of big money in politics, there is ample reason to reject the use of an Article V convention.

<http://www.commoncause.org/issues/more-democracy-reforms/constitutional-convention/conclusion.html>.

These complex and unresolved issues are the subject of a huge, 1378-page US Senate Report, entitled “Constitutional Convention Procedures,” available at <https://www.scribd.com/document/211906341/Article-V-Constitutional-Convention-Procedures-1979-Senate-Committee-on-the-Constitution>. We recommend, for a starting analysis, the two Harvard Law Review articles and the article from the Harvard Journal of Legislation, included at numbered pages 620 through 699 of that report, and the Notre Dame symposium, starting at numbered page 825.

All of those articles reflect the uncertainties as to every one of the critical issues that surround a possible Article V Constitutional Convention. These include (1) whether state legislatures can rescind their resolutions calling for a convention; (2) what are the issues that a constitutional convention would be empowered to consider; (3) similarly, whether a call for a constitutional convention by some legislatures to deal with **Issue A** can be combined with a call for a convention to deal with **Issue B**; (4) whether the delegates to the constitutional convention should be, or may be, apportioned by population or by state equality; (5) whether there is a “contemporaneity” requirement for the calls for a convention – in other words, can Congress ignore resolutions that date back to 40 or 50 years ago, or must Congress include them in the count?

We have also reviewed more-recent commentary on these issues, including: (1) U.S. Department of Justice, Report to the Attorney General: Limited Constitutional Convention under Article V of the United States Constitution, Sept. 10, 1987; (2) The American Bar Association’s 1973 REPORT OF THE ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE RECOMMENDATION; (3) The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress, by Thomas H. Neale, Congressional Research Service, October 22, 2012; (4) The Article V Convention to Propose Constitutional Amendments: Current Developments, by Thomas H. Neale, Congressional Research Service, March 29, 2016; and (5) The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress, by Thomas H. Neale, Congressional Research Service, March 29, 2016.

The bottom line of all of this research is the same: Nothing is certain. Every issue mentioned above could be decided, one way or the opposite way, by our reactionary U.S. Supreme Court.

Do we want the U.S. Supreme Court, with its Republican majority newly strengthened with the appointment of right-wing extremist Neil M. Gorsuch, to be deciding these issues?

Please remember this: Before the Citizens United decision, “everyone” thought that government controls on corporate political contributions were part of “settled law,” but now that “settled law” has been rewritten by our Supreme Court.

So, if anyone contends that it is “settled law” that an Article V Constitutional Convention cannot go beyond the limitations that Congress might put on it, we respond in the same way: the same reactionary Supreme Court majority that gave us Citizens United could very well tell us that such potential Congressional limitations are invalid.

We are facing the prospect of a runaway Constitutional Convention if a proposal for an Article V Constitutional Convention reaches the critical threshold of 34 states. And, by some counts, we are only two States away from 34.

If HCR 50 passes, Hawaii will bring that number to 33!

We all agree that Citizens United is a serious misinterpretation of long-standing U.S. law, and that it is having pernicious effects on our political system. And the decision was adopted in what is probably the worst example of reactionary judicial activism since Dred Scott in 1857 stripped all blacks, including freemen, of citizenship:

[I]t was especially galling that the Court converted Citizens United from a narrow dispute about the application of a single provision in McCain-Feingold to **an assault on a century of federal laws and precedents**. To [US Supreme Court Associate Justice John Paul] Stevens, it was the purest kind of judicial activism.

Or, as he put it in his dissenting opinion, “Five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.” The case should have been resolved by simply ruling on whether McCain-Feingold applied to “Hillary: The Movie,” or at least to nonprofit corporations like Citizens United. . . .

Stevens’s conclusion was despairing. “At bottom, the Court’s opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt,” he wrote. “It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.” It was an impressive dissent, but that was all it was. Anthony Kennedy, on the other hand, was reshaping American politics.

Jeffrey Toobin, *Money Unlimited, How Chief Justice Roberts Orchestrated the Citizens United Decision*, New Yorker, May 21, 2012, <http://www.newyorker.com/magazine/2012/05/21/money-unlimited> (underscoring added).

The Citizens United decision is truly bad in every way – an act of judicial usurpation that purports to rewrite the Constitution. But **a Constitutional Convention is the most dangerous and mistaken possible way to try to overturn that decision.**

A Constitutional Convention would almost certainly report out a dozen truly horrible proposals that could be far worse than even Citizens United. All of those proposals would have to be fought against and knocked down, one-by-one. And the debates over those proposals would change the landscape of the American political conversation for years and years into the future. Doing that would further legitimate Donald Trump and reactionary political ideas for a generation to come.

Do we really want to spend the next decade debating whether the States should be able to nullify Supreme Court decisions or federal statutes, or whether the United States should adopt a balanced budget amendment? Or whether the United States should adopt a Constitutional amendment to nullify Roe v. Wade on women's reproductive rights, or to overturn any of the decisions on LGBT rights, or any aspect of voting rights, such as "one-man-one-vote" or voter ID, or our due process rights, or the scope of our free speech or freedom of religion protections under the First Amendment, or a national "right to work" rule? These are all subjects of the proposals that a new Constitutional Convention will probably actually propose.

Is this what we want? A national debate on these regressive issues, instead of issues such as Medicare for all, climate change, and Fight for \$15?

We need to be moving forward, not backward. Despite its good and honorable intentions, HCR 50 would lead us down a very dangerous path, possibly irreversibly.

Meanwhile, an amendment to overturn Citizens United, which is the whole idea here, almost certainly would not be reported out of such a Constitutional Convention. And even if it were, it would never be ratified in the present political climate, where Republicans control both houses of 32 State legislatures. Supporters of a Con-Con to overturn Citizens United either ignore or are unaware of this basic political reality.

For these critical reasons, Progressive Democrats of Hawaii strongly opposes HCR 50. We respectfully ask that it be DEFERRED. Thank you very much for the opportunity to testify on this very important matter.

Alan B. Burdick

Alan B. Burdick
Chair, Progressive Democrats of Hawaii
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SENATE COMMITTEE ON JUDICIARY AND LABOR

April 18, 2017 9:30 AM Room 325

In OPPOSITION HCR 50

Urging the United States Congress to restore free and fair elections

Aloha Chairman Keith-Agaran and members of the Judiciary and Labor Committee,

The Sierra Club of Hawai'i respectfully **opposes HCR 50** because it calls for an Article V constitutional convention in efforts to restore free and fair elections. Although we support the intent of HCR50 and believe that free and fair elections are necessary, the Sierra Club opposes all calls for a constitutional convention, regardless of the issue, for the following reasons:

- **Threat of a runaway convention:** There is nothing in the Constitution to prevent a constitutional convention from being expanded in scope to issues not raised in convention calls passed by the state legislatures, and therefore could lead to a runaway convention.
- **Influence of special interests:** An Article V convention would open up the Constitution to revisions at a time of unlimited political spending. It could allow special interests and the wealthiest to rewrite the rules governing our system of government.
- **No rules:** There are no rules governing constitutional conventions. The last one, in 1787, resulted in a brand new Constitution. There is a significant danger that opponents of certain civil liberties could change the scope of the convention and undermine basic rights long protected by the Constitution.
- **Uncertain ratification process:** A convention could redefine the ratification process (which currently requires 38 states to approve of any new amendments) to make it easier to pass new amendments, including those considered at the convention. This happened in 1787, when the convention changed the threshold necessary for ratification.
- **Threat of legal disputes:** No judicial, legislative, or executive body would have clear authority to settle disputes about a convention, opening the process up to drawn out legal

disputes.

- **Application process uncertainty:** There is no clear process on how Congress or any other governmental body would count and add up Article V applications, of if Congress and the states could restrain the convention's mandate based on those applications.
- **Possibility of unequal representation:** There are no rules for how states would choose delegates to a convention, how states and citizens will be represented within a constitutional convention, and who would ultimately vote on matters raised in a convention.

The Sierra Club is a progressive, non-profit environmental organization and we agree that free and fair elections should be included in the US Constitution. However, because of the issues articulated above, we oppose HCR 50.

Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,

Marti Townsend
Director

Aloha, Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members. My name is Alison Hartson and I'm a National Director with Wolf-PAC. We are a cross-partisan organization with the sole purpose of adding an amendment to the U.S. Constitution that will restore balance and integrity to our elections.

Wolf-PAC is opposed to HCR-50 due to the amendments made in the House Judiciary Committee that made this resolution what would be the third call to Congress on this issue from the state of Hawaii. We would support HCR-50, however, if those amendments were to be removed and the call for a limited Article V Convention is restored. Please see specific amendments below if it's helpful.

I used to be a school teacher and I loved those kids, but I came to the conclusion that unless we solve this issue and fix our representative government first, we're not going to fix any of the big issues of our time - Education, Health Care, the Environment. Our economy. So here I am.

I'm proud to work with so many amazing Hawaii citizens who are engaged in our democratic process, many for the first time. We're all here to take responsibility for fixing something that, frankly, should have been fixed a long time ago. The corruption taking place in Washington D.C. and the amount of money pouring into our federal elections is out of control and the hard truth is that it has only gotten worse year after year for decades.

Every generation of Americans has had their own issues to solve (some bigger than this), but this IS ours. It is our generation's greatest duty to solve this problem and leave our country and government in a better place than we found it, and to do every single thing in our power to make that happen. We must add an amendment to our U.S. Constitution that restores balance and integrity to our elections, and it must be an amendment because only an amendment can go above our runaway Supreme Court and solve this problem for the long run.

Most amendments to our Constitution have started with resolutions just like HCR-50. This is a vital check and balance in our Constitution, and is historically how you put the most amount of pressure on Congress to act. You have an incredible opportunity today with this legislation, as a state legislature, to send a strong message to Washington D.C. that you understand how serious this is and if they're not going to fix it, then you will.

So the real question is, do we want Congress, with their single digit approval rating over there in D.C., largely disconnected from the people, to be the only body of government capable of proposing amendments? The answer is obvious to me and it was obvious to the framers of our Constitution - of course the states should have a co-equal power to propose amendments.

You may hear from some people who talk about the unfounded theory of a "runaway convention." This is misleading because it implies that you can change the Constitution at a convention. It's simply not true - it's not theoretically true, not politically true, and not legally true. Article V is crystal clear that a convention can only propose amendments, the exact same way Congress can propose amendments, and either way we have the super high 38 state ratification threshold. If anyone is afraid of 38 states ratifying an amendment to our Constitution they're not afraid of a convention, they're afraid of democracy itself.

You can find both sides of any issue, especially today with the internet, but those who have studied this seriously and extensively have overwhelmingly concluded that the states can call a limited convention and that mechanisms are in place for it to be enforced. Very well respected Constitutional Scholars such as Harvard professor Lawrence Lessig and U.S. Congressman Jamie Raskin are among some of our biggest proponents.

The hard truth is that this problem has only gotten worse year after year for decades with no solution in sight. We're asking you to join us on this vital journey to restore a true representative government in America and It's not going to be easy. It's a long term vision and it won't happen overnight. No significant and important change ever does. But that is precisely why we must start now.

And to those who say that we shouldn't pursue this path because the current political climate may not be ideal, I'd like to leave you with this quote from one of our country's greatest champions for justice - Martin Luther King Jr., who said this four days before his death in 1968:

"It may well be that we will have to repent in this generation. Not merely for the vitriolic words and the violent actions of the bad people, but for the appalling silence and indifference of the good people who sit around and say, 'Wait on time.' Somewhere we must come to see that human progress never rolls in on the wheels of inevitability. It comes through the tireless efforts and the persistent work of dedicated individuals who are willing to be co-workers with God. And without this hard work, time itself becomes an ally of the primitive forces of social stagnation. So we must help time and realize that the time is always ripe to do right." The time is ALWAYS ripe to do what's right. Please support HCR-50. Thank you.

Requested Amendments

Amendment: URGING THE UNITED STATES CONGRESS TO RESTORE FREE AND FAIR ELECTIONS **BY APPLYING FOR A CONVENTION TO PROPOSE AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

Amendment: WHEREAS, the Twenty-ninth Legislature of the State of Hawaii ~~desires to restore~~ **perceives the need for a convention for the limited purpose of restoring** balance and integrity to our elections by proposing a federal constitutional amendment to permanently protect free and fair elections in the United States by addressing issues raised by the decision of the Supreme Court of the United States in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), and related cases and events; and

Amendment: WHEREAS, the Twenty-ninth Legislature desires that ~~Hawaii have an equal number of delegates to the Convention as any other state,~~ **currently elected state or local office holders shall be appointed in equal numbers as the delegates to the Convention, or alternatively, delegates shall be elected from each Congressional district;** provided that former or current federal office holders, whether elected or appointed, are not eligible to serve as delegates to the Convention; and

Amendment: WHEREAS, the Twenty-ninth Legislature intends that this continuing application shall be considered with the applications **for a convention** that have been adopted by the 2013-2014 Vermont Legislature, the 2013-2014 California Legislature, the Ninety-eighth Illinois General Assembly, the 2014-2015 New Jersey Legislature, and the 2015-2016 Rhode Island Legislature, as well as all applications that are subsequently adopted until two-thirds of the several states have applied for, and Congress has convened, a convention for proposing amendments to restore free and fair elections; now, therefore,

Amendment: BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017, the Senate concurring, that the people of the State of Hawaii speaking through its Legislature, **and pursuant to Article V of the Constitution of the United States,** hereby submit an application to the United States Congress to **call a convention for the sole purpose of proposing an amendment to the Constitution of the United States that will** restore free and fair elections as described herein; and **as soon as two-thirds of the several states have applied for a convention for a similar purpose; and**

Testimony opposing HCR-50.

Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members,

I am opposed to HCR-50 due to the amendments that were made in the House. The bill should be restored to its original version to support a limited Article V Convention for Free and Fair Elections.

I am a retired Univ. of Hawaii researcher. I have watched with dismay at the growing influence of wealthy individuals and political action groups on elections in our country and on policies of the federal government. This is extremely detrimental to the political process. If uncorrected I fear a breakdown of civil society as can be seen in many countries where power is concentrated only in the wealthy few.

We are spending billions upon billions of dollars to defend our country and to promote democracy abroad. How ironic that at the present time the wealthy can dictate what laws the Congress shall pass, who should be on the supreme court, what tax benefits they get, and even who can vote. Is this democracy? It is imperative that the power of the vote be in the hands of the people with an equal playing field whether rich or poor, and that is why I support a limited Article V convention for Free and Fair Elections.

Alan Tokunaga

Honolulu, HI 96813

HCR 50

Dear Chairman Keith-Agaran, Vice Chair Rhoads, and committee members,

I write to endorse the original HCR 50 warmly and strongly, but I oppose this current measure because of the amendments that were done in the house. I will support if it is returned to its original version as an application for a limited Article V Convention for Free and Fair Elections.

We urgently need to get special-interest, unaccounted for money out of Washington, and I want to express my gratitude Senator Gabbard for being a sponsor for the last several years.

This issue is of deep concern to me personally as it is to virtually all my friends and associates on Kaua'i and across Hawaii. We know that corporate money has filtered right down to the Country Council level, putting our health and welfare at risk. For instance, it has resulted in corporations spraying toxic chemicals almost daily on our island without disclosing to us exactly what is being sprayed and in what quantities. Without disclosure, we cannot measure the impact accurately. We know that there are good people who are trying to do what they were elected to do - to protect us and our children, and we want to support them. At present, this is very difficult. Free and fair elections will allow us all to experience the benefits of democracy that we were raised to value.

I want Hawaii to be in the top 10 states demanding this U.S. Amendment. This would make me immensely proud of Hawaii, and it would be a deep relief to me and to others. I hope so much that you will consider this idea favorably.

Thank you.

Yours sincerely,

Anne Thurston
3639 Keoniana Road
Princeville, Hawaii 96722

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Date: Monday, April 17, 2017 11:34:24 AM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Oppose	No

Comments: Aloha Chair and Committee Members, I urge you to vote no on the amendment HCR 50. This is not the time to push this forward due to the current administration and their reckless behavior. Mahalo, Ms. Barbara Barry Ha'iku, HI

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Date: Sunday, April 16, 2017 10:16:40 PM

HCR50

Submitted on: 4/16/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Oppose	No

Comments: I strongly oppose this resolution. Although I, too, want to reverse the Citizens United Supreme Court Decision, the political climate currently is such that a Constitutional Convention is very dangerous, since, contrary to the claims of some, it cannot be controlled to focus on only one topic. We are very close to there being enough calls for a national Con Con. Don't let Hawaii contribute to this dangerous project! Please defeat HCR 50.

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HCR50

Submitted on: 4/16/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Smith	Individual	Oppose	No

Comments:

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My name is Bryan Dorn. I can only support HCR-50 if it is amended to reflect its original intent of applying to congress for a limited Article V Convention for the purpose of establishing a Free and Fair Elections amendment to our U.S. Constitution.

This issue is very important to me, not just as a concerned citizen and voter, but as a father and a husband. I worry for my kids' future.

I grew up near the sugarcane plantation town of Paho. I miss the simple life of those old days, and I fear that the future might not be as simple as I watch this country becoming more and more complicated and twisted from big money special-interests trying to squeeze every last drop out of this great nation.

I look at the state of our government today and I see the path we are headed on and I am gravely concerned. So, I'm sitting before you today on behalf of my family and all of the families throughout this great nation, asking you to take this real step to fix representative democracy and join Vermont, California, Illinois, New Jersey, and Rhode Island.

In 2010, Hawaii became one of the first states in the nation asking Congress to propose an amendment to the U.S. Constitution to address the issue of how money is corrupting our political system. In 2016, Hawaii passed a second resolution asking Congress to do the same thing. Congress has yet to respond to our pleas, so I think that using every single thing in our power to correct the course of our nation is critical, and history in fact shows that it is through using all tools at our disposal that we get a non-responsive Congress to take action.

Whether you think Congress or the states should write this amendment, I think it is clear that HCR-50 is how you ensure that we get free and fair elections. Members of the committee, please make Hawaii a leader on the most important issue of our generation. Please vote yes on HCR 50. Mahalo.

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HCR50

Submitted on: 4/16/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Colette Faris	Individual	Oppose	No

Comments: Dear Chairman Keith-Agaron, Vice Chairman Rhoads and Committee members, I oppose HCR50 because of the amendments made to it in the House. I will however support it if those amendments are removed. I understand the reluctance in supporting the idea of an Article V Convention without this ever having been done in the past; however, many scholars point to the longstanding precedence of state level conventions over 200 in fact, that allow them to conclude that a limited convention can be enforced and that we know they operate. Congress has not listened and the convention path is a valid process written into our government for a reason, for this very reason. Please help us to protect our Constitution by using the very mechanism given to us in order to do so. Thank you.

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Date: Sunday, April 16, 2017 1:44:40 PM

HCR50

Submitted on: 4/16/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
David Dinner	Individual	Oppose	No

Comments: This move will open the door to too many unintended consequences considering how out of balance the House and Senate are. It is arguably the most ignorant thing we could ever pass. Please vote NO.

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HCR50

Submitted on: 4/16/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Oppose	No

Comments: strong opposition.

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Eric Schrager

State Senate District 19

Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and Committee Members,

I am writing to express my opposition to the house-amended version of H.C.R. 50, the Free and Fair Elections resolution.

In its original form, and as endorsed repeatedly by the resolution's sponsor Senator Mike Gabbard (big mahalos to him), H.C.R. 50 clearly reflected our state's long-standing position at the vanguard of progressive political action. Unfortunately, the current version of the resolution was stripped of the language that supports initiation of the Article V convention. This method of amending the constitution was clearly meant to be equivalent in all ways to the congressional method, as pointed out by the Department of Justice and by numerous other constitutional scholars. It has been demonstrated repeatedly in the past that this is also an effective way to apply pressure to Congress (prior to and in lieu of an actual convention of states). This process may compel congress to actually represent and enact the will of the people which, in this case, would mean ending the toxic, corrupting influence of big money on our political system.

I served our country as an officer in the U.S. Navy for over 30 years, during which time I proudly upheld an oath "to support and defend the constitution of the United States against all enemies, foreign and domestic." It is completely obvious now that a powerful domestic enemy has been identified - it is the influence of big money in our government. The despicable actions we are witnessing now from the Trump administration are ultimately perverse, destructive manifestations of that influence. Members of Congress are not able to effectively fulfill their most basic role of representing the will of their constituents because they must **first** represent the will of their important big-money campaign donors, the interests of whom are often in direct opposition to the will of the people.

Large donations to political campaigns, and the quid-pro-quo evidenced by government action (and inaction) means that our democracy is being subverted. Big money's influence on our government is the main reason that the U.S. now incarcerates more of its citizens (per capita) than any other country in the world (prison industry and big pharma), that we are doing little to address climate change (energy industry), that we spend an exorbitant and unnecessary amount of money on defense (military industrial complex) and that we subject many of our citizens to the devastating stress associated with the affordability of healthcare (Insurance industry and, again, big pharma).

I am aware that some have concerns about an Article V Convention. It is prudent to consider all questions and to be deliberate in this undertaking. That is why the Department of Justice, the American Bar Association, and the Congressional Research Service, having been

commissioned to conduct thorough examinations of Article V, **ALL** concluded that a limited convention **can** be enforced and that there is a wealth of information that provides precedence for how conventions work.

We must remember that the **catastrophic degradation of our democracy** that we are witnessing now is a direct result of big money's influence on our political system. It is exactly in times like these, when Congress has become unresponsive to us, the people, that we must fight with everything we have, and that we must specifically call on the states to hold Congress accountable by initiating a limited Article V Convention. That is the entire point of this critical check against a recalcitrant Congress. This domestic enemy is a clear and present danger that is **already destroying our country**.

As a veteran and an active member of my community, I respectfully request that you amend H.C.R. 50, the Free and Fair Elections resolution, to include all of its original language. If, as the result of decisive and principled action by your committee, H.C.R. 50 is returned back to its original version, initiating a limited Article V Convention of states for the sole purpose of ensuring Free and Fair Elections, then I will support it once again. Please do the right thing now and allow us to proudly join the five other states that have already taken this important step in restoring our democracy.

Very Respectfully,

Eric Schrager
CWO4 USN(ret.)

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HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Felicia Cowden	Individual	Oppose	No

Comments: I have RECONSIDERED my position and now wish to OPPOSE HCR 50. It is very important to remove money from politics by reversing Citizens United decision allowing unlimited campaign spending, but there may be too much risk in today's political climate to ask for a constitutional convention. Aloha Felicia Cowden 652-4363

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HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Frances K. (Frankie) Stapleton	Individual	Oppose	No

Comments: Aloha e Chair Keith-Agaran and members of the Committee on Judiciary and Labor. Thank you for this opportunity to urge you to vote in denial of this proposal for a Constitutional Convention. While well intended as a means of adding an Citizens United amendment to the U.S. Constitution to overturn the U.S. Supreme Court decision granting corporations the rights of public citizenry, in retrospect, it would be inadvisable given the current political climate, to authorize a U.S. Constitutional Convention. My name is Frances K. (Frankie) Stapleton, a 47-year-long resident of the State of Hawaii living at 14-803 Crystal Circle, Pahoia HI 96778 and Dist. 4 Chair of the Democratic Party of Hawaii. Mahalo nui for your attention to my viewpoint and voting in opposition to this bill. Malama pono, Frankie Stapleton

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HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
George Vierra	Individual	Support	No

Comments:

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Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members,

Please accept the following testimony in support HCR. No. 50, "The Free and Fair Elections resolution in Hawaii", which is currently be debated before the House Judiciary Committee. I believe that money is corrupting influence that impacts almost every political policy these days. Without the corrupting influence of money in politics I believe that our countries great political system would begin function productively again. This is why I offer my support for HCR50.

Thank you for considering my testimony.

Mahalo,

Greg Schuster

Dear Chairman Keith-Agaron, Vice Chairman Rhoads, and committee members,

My name is Ian Nishimura and I want to submit my testimony to OPPOSE HCR 50 in its current form. However I would support HCR 50 if the amendments that were made in the House were removed. If the original language was returned to HCR 50 I would be in strong support of the resolution. I also want to thank Senator Gabbard for being a sponsor of our original resolution for the last couple of years.

I want to also urge that this is an issue that cannot wait. We must correct this issue of big money in politics as soon as possible. I believe that it is important that we have free and fair elections in America and the only way that can be possible is if we get rid of big money in our politics. I think that the state of Hawaii should lead the charge on this issue and supporting HCR50 would be a big step in the right direction.

While I have faith in our leaders who represent us in Congress, I do not trust Congress as a body to fix this very urgent issue. I do believe that most members of Congress are caught in this web of bribery and that they are just too comfortable with the current system. I believe that going through the states is our only hope of restoring free and fair elections here in the United States of America.

I am a concerned constituent of Representative Sylvia Luke and Senator Brian Taniguchi. I live in House District 25 and Senate District 11. I want to thank the Chair Keith-Agaron Vice Chair Rhoads and the committee's time and consideration on this issue. I want to stress that it is a very urgent matter and we need to get rid of big money in politics. I strongly support HCR 50 and urge this committee to pass it.

Sincerely,

Ian Nishimura

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Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Monday, April 17, 2017 7:46:07 AM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jenifer Mantupar	Individual	Oppose	No

Comments: Aloha Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members, This testimony is written in opposition to HCR50. It is only opposed, however, because the amendments enacted by the House removed the option of an application for a limited Article V Convention. Should HCR50 be allowed in its original version, it would have my full support. As a lifelong resident of Hawaii Island, I haven't always paid much attention to politics; it's easy to feel out of touch with things that happen so far away. Similarly, I feel politicians have also been distanced from the voices of the people by the influence of big money. We need to allow politicians to regain their true purpose as representatives of 'we the people' by instituting a Free and Fair Elections resolution to amend our Constitution. A limited convention called by a consensus of states gives the power to the states to ratify the most important amendment of our time. My faith is in you, my state government, to move this issue forward and heed to the demands of your constituents. I have chosen to rally to this cause because I truly believe it can effect the change I know we desperately need, and have a ripple effect of positive growth in our democracy, in our states, and in our personal lives. Every issue of our time hinges on this crucial subject- whether we will allow big money interests to have all the power and make all the decisions. The big things that need to happen to ensure future generations have, at the very least, a planet that sustains human life, are not going to happen until we choose to build upon the foundation our founding fathers left us, by using the tools they embedded into the Constitution to enact these changes. This call for Free and Fair Elections is where we need to start. Thank you all for your time, for reading this testimony, and for choosing to be representatives of your community and state. Mahalo, Jenifer Mantupar PO BOX 7727 Hilo, HI 96720 House District 4 Senate District 2

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HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jill Yoshicedo	Individual	Support	No

Comments: I support HCR50 as a positive step toward overturning the Citizens United Supreme Court decision. I support banning the undisclosed influence of corporations and non-profits on United States elections, and creating a more fair election field at all levels of government.

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16 April 2017

Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members,

I am writing to testify in opposition of HCR-50 in its current form that includes amendments added by the House on April 4, 2017. I would, however, support HCR-50 if the amendments are removed and it is returned to its original version that requests a limited Article V convention for Free and Fair Elections.

I am a recent graduate, young technical professional, single mother, and concerned citizen who cares deeply about restoring democracy to our great nation. It is imperative that we get big money out of politics and put power back into the hands of the people. It is time for our federal representatives to be accountable to us instead of allowing those with the most money to control public policy.

I believe our Founding Fathers included Article V in the Constitution as a check and balance of power and that at a time such as this, where corporations and special interest groups can legally bribe our politicians, we must use the tools provided to us to return our country to the democracy it was intended to be. I urge you to take a stand against corrupting influences and make Hawaii a leader in this country in demanding Free and Fair Elections.

Thank you all for your time and a special mahalo nui loa to Senator Gabbard for his continued support in co-sponsoring this resolution for the last few years.

Sincerely,

Kehaulani Fanene

Laie, HI 96762

4/17/2017

Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members,

I am writing in regards to HCR-50, the Free and Fair Elections resolution that is before you.

I oppose this measure because of the amendments that were done in the House, but I will support it if those amendments are removed and HCR-50 is returned back to its original version as an application for a limited Article V Convention for Free and Fair Elections.

I feel it has to be through the states and not through Congress. I feel Congress is broken and no longer do things in my best interest. As Congress is I feel we as common citizen can no longer wait for Congress to do the right thing and pass any legislation for a free and fair elections. We the people need our voices heard.

For many years, I have felt I no longer had a voice in our government. I have felt a lot of frustration to the point of giving up on having a government that represented me. With this resolution I feel so much hope and finally feel like someone is listening to me. Please help make a positive change in our political system. Please fight for me and my voice. Please help take money out of politics so I can have a voice too.

I would like to thank Senator Gabbard for the support over the years on helping us get a free and fair elections.

Thank you for your time,

Kristi Doran

Hilo, HI
District 2 – Sen. Ruderman

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Monday, April 17, 2017 5:35:15 AM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Hallett	Individual	Oppose	No

Comments: Aloha, Thank you for taking my testimony today. I am writing to you to implore you to kill this Measure. There are no guarantees that rules will be binding to those that attend the convention. In other words there are no real limits that require only one case and be considered for amendment. The country's constitution would be left vulnerable and it is not worth the risk. We could lose everything that makes this country civilized and decent. Things that we take for granted could be taken from us like choice, like abolishing slavery, basic workers rights, etc. Mahalo nui loa, Lisa Hallett, Todd Andrews, Jessica Andrews

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Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Monday, April 17, 2017 1:38:10 PM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marcus Hoapili	Individual	Comments Only	No

Comments: I am currently opposed to this measure because of the amendments that were done in the House, but will support it if those amendments are removed and HCR-50 is returned back to its original version as an application for a limited Article V Convention for Free and Fair Elections.

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Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members,

My name is Maren Bonnet. I am a concerned citizen, born and raised on Oahu and a fourth generation descendant of hardworking immigrants from Japan. I was strongly in favor of HCR50 in its original state, but now I am in opposition due to the amendments that were added at the House Judiciary Committee hearing. I will be in strong support again if reinstated to call for an application for a limited Article V Convention for Free and Fair Elections.

I believe that the people and leaders of Hawaii have the power to do what is right for the people of our state and all citizens of the United States of America. When I was in elementary school, a Kupuna would come to our classroom every so often to teach us Hawaiian words, stories and folklore. One of the words we learned was Pono – to do what is right, moral, and for the well being of others. This has not escaped my mind after all of these years and I believe it is our time to bring this Hawaiian value to light.

Big money in politics, I believe, can never exist in the realm of ethics. Ethics, I believe, should always include caring for those who cannot care for themselves. My mother has volunteered at Meals on Wheels for many years. I have seen how this organization works to nourish someone's mother, grandmother, father, uncle. Cuts to purely charitable programs such as these are not supported by anyone I know, especially not by anyone who has served a meal to a 90 year old couple who is homebound and frail. Corporations don't see people; they see profit. Corporations cannot be the voice of the people in politics. Hawaii should be at the forefront of the fight to demand the removal of big money in politics and to restore a true, working representative democracy in America.

I would like to give a warm aloha to Senator Gabbard for his continued support over the last few years.

Mahalo,
Maren Bonnet

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Monday, April 17, 2017 8:50:19 AM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Pena	Individual	Support	No

Comments: Dear Chairman Keith-Agaran, Vice Chair Rhoades, and Committee Members, My name is Maria Peña and I stand in strong support of HCR-50 and ask that you vote in support of this resolution with its original wording. In addition, I respectfully request that the resolution be amended back to its original version. In 2014, my husband was getting ready to retire from 20 years of active duty military service and we were assigned on the mainland in San Antonio, Texas. At the time, we were in the midst of making one of the most profound decisions of our lives in determining where we would settle down as a family once and for all. We didn't take the decision lightly since we had no family on the islands and keenly understood how it would impact our two young daughters the most. My husband had been assigned to Hawaii for four years back in 2008, so we were familiar with the advantages and disadvantages of settling down in Hawaii. Most people move to Hawaii because of its beauty, which is undeniable; however, my husband and I chose Hawaii for very different reasons. As a military family, we had a unique perspective on local, state, and national politics because we moved around so much. We evaluated the state of democracy throughout the country and weighed things like state government, cost of living, quality of life, and opportunities as our top priorities when making our decision. We recognized that if we stayed on the mainland, specifically in Texas, our dollar would stretch much farther, with the trade off being local and state governments that were bought and paid for by the oil industry. Additionally, Texas is ranked one of the worst states to raise females and was completely unresponsive to their constituents. We didn't want this for our family and it was the key factor that weighed most heavily on our decision to move to Hawaii because all politics are local. During our deliberation, my husband and I recalled on our time living in Hawaii. We appreciated the fact that Hawaii legislators are responsive to its constituents and care deeply for its residents, which is why this resolution stands before this committee today. Government decisions affect our daily lives and HCR-50 is a resolution which ensures the voice of the people for generations to come. It calls for Free and Fair Elections so that the voters of this great state, including my two daughters, will continue to have a voice in the years to come. HCR-50 is not controversial for the voters of Hawaii. We understand the necessity to stand strong against the moneyed interests that drown out the voices of the average person; thus, I respectfully request this committee exercise their leadership and strength by voting in support of this

resolution. Just as with my decision as a parent to move to Hawaii, the members of this committee are being called upon to make an even larger decision that will have a positive impact on future generations by sending the loudest call for reform a state can make to the federal government - that we demand an equal voice in our Republic. As lawmakers, you are being entrusted by the people of Hawaii to make decisions that benefit and secure their futures. I urge this committee to be positive stewards of our futures by voting in favor of HCR-50 for the benefit of the people of Hawaii who deserve to have their voices heard in the generations to come through Free and Fair Elections. Please amend this resolution back to its original version and vote in support and solidarity with the people of Hawaii. Humbly, Maria Peña Kapolei Resident

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Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Monday, April 17, 2017 12:00:37 PM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mitsuko Hayakawa	Individual	Support	No

Comments: Aloha, I am in support of a constitutional amendment for free and fair elections. However, please consider that Congress could have overturned Citizen's United by now but has not. Our congressional representatives are deeply compromised and I find invoking Article V of the Constitution by a constitutional convention restores some power to the states and the people. Our founding fathers in their wisdom has included Article V in the Constitution for times such as this. Please consider passing a resolution in support of it's original intent and call for a limited constitutional convention. Mahalo for your consideration.

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Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members.

My name is Morgan Bonnet and I live on Oahu. I am a mechanical engineer for the NASA Telescope which is located on Mauna Kea.

At this point, I am in opposition of HCR-50 because of the amendments that were added at the House Judiciary Committee hearing. However, I will support it if HCR-50 is returned back to its original version as an application for a limited Article V Convention for Free and Fair Elections.

I am originally from France, but am a naturalized U.S. Citizen and have lived in Hawaii with my wife for 8 years. She was born and raised here in Oahu. Being raised in France but living here in the U.S. for much of my adult life, I am fascinated with studying and understanding the U.S. Constitution. As you may know, the U.S. Constitution was finalized the same year as the French Revolution, and the concept of Separation of Powers came from the French lawyer Montesquieu. His work had a powerful influence on the founding fathers, especially James Madison. Montesquieu is also notable for securing the word despotism in the political lexicon. And at this point, I believe that the corrupting influence of big money in politics is slowly bringing the U.S. in this direction in the form of an oligarchy.

In fact, In 2014, two professors of Princeton University conducted research using an exhaustive amount of data and concluded that "organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence."

(https://scholar.princeton.edu/sites/default/files/mgilens/files/gilens_and_page_2014_-testing_theories_of_american_politics.doc.pdf)

This isn't the way it's supposed to work, and now most of the money that flows within the political system comes from a ridiculously small amount of the population. Politicians in Congress end up spending more time raising money than reading the legislation they vote on and talking with their constituents. Money that can come with strings attached. But that's the reality of the corrupted system they have to work with if they want a career. And I still believe that most Congresswomen and men come into politics with the right intent – to be public servants who can make a difference in people's lives.

But at this point, our strongest and most logical option to change that corrupted system is to do it through the States. We deserve the right to be truly represented like the founding fathers intended so that the people will be able to get more involved and play a bigger role in their democratic Republic.

Aloha,
Morgan Bonnet

PS: Mahalo to Senator Gabbard for his continued support over the last few years.

April 17, 2017

RE: HCR50 HD1

Dear Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members:

Hello, my name is Randall Imada. I am from Pauoa Valley. I oppose this measure, because of the amendments made to it. I would like to see HCR50 restored to its original version, which allows a limited Article V Convention.

My current medical premium and dental insurance premium are almost \$650 a month. My insurance premiums have increased on average 7.50 percent for the last three years and this year. Using the Rule of 72, 72 divided by the interest rate of 7.50 percent, my premiums will double in 9.6 years.

I can't imagine paying \$1,300 a month for health insurance in 9.6 years. Health insurance premiums have been increasing throughout the nation for many years, so that is why my premiums have doubled in the past 10 years, and may double in the next 10 years.

Please restore HCR50 to its original version so that the consumers' interests are represented in health care. A restored HCR50 is our best hope to control run-away health care costs. Thank you Chairman Keith-Agaran, Vice Chairman Rhoads, and committee members for your time and consideration.

Sincerely,

Randall Imada

Honolulu, HI 96813-1120
House District 25 - Representative Sylvia Luke

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HCR50 on Apr 18, 2017 09:30AM*
Date: Saturday, April 15, 2017 12:14:53 AM

HCR50

Submitted on: 4/15/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Mizusawa	Individual	Support	No

Comments:

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Testimony presented by:
Ryan I. Sueoka

SENATE COMMITTEE ON JUDICIARY AND LABOR
Tuesday, April 18, 2017
9:30 am
Conference Room 325

OPPOSITION IN ITS CURRENT FORM FOR HCR 50 – URGING THE UNITED STATES CONGRESS TO RESTORE FREE AND FAIR ELECTIONS BY APPLYING FOR A CONVENTION TO PROPOSE AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Aloha nui mai kākou e Chair Keith-Agaran, Vice Chair Rhoads and Committee Members!

My name is Ryan I. Kaha'i'ōlelo Sueoka. I am a current resident of Kamō'ili'iili, with roots firmly planted in Pāhoa and Kāne'ōhe. Mahalo for the opportunity to share my OPPOSITION for HCR 50 in its current form. Original language relating to an application for a limited Article V Convention calling for Free and Fair Elections was removed in the House Committee on Judiciary; if that language is restored I would Strongly support HCR 50. I would like to mahalo Senator Gabbard for being a co-sponsor of similar resolutions the past few years.

The democratic process called for in HCR 50 to combat the influence of big money in politics gives me renewed hope in government. Frankly, I have become disenchanted with government as I see policy making controlled by big money interests. While disenchanted, I choose not to disengage. However, I fear the majority of maka'āinana, — my family, my friends, my neighbors and yours — no longer believe their voice matters.

We should all be embarrassed that in 2016 Hawai'i ranked dead last in voter turnout. But should we be surprised? Only when Hawai'i stands for Free and Fair Elections can we hope to re-engage voters and regain a true democracy.

Article V of the US Constitution makes it clear that the states can and should act when Congress does not. As State legislatures around the country listen to their constituents and pass parallel resolutions calling for the restoration of Free and Fair Elections, a strong message is being sent to the US Congress. Some in Congress may feel sheltered from their constituents by the big money interests that surround them; state resolutions like HCR 50 make it clear that there is no where to hide. Your constituents rely on you to send this message.

Hawai'i gained national attention in March 2015 with the passage of HCR 53. Now HCR 50 provides the opportunity to again demonstrate that Hawai'i is not only on the right side of history, we are a leader in the protection of democracy.

I strongly urge you to pass this resolution. Mahalo once again for the opportunity to submit testimony.

From: mailinglist@capitol.hawaii.gov
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Subject: Submitted testimony for HCR50 on Apr 18, 2017 09:30AM
Date: Saturday, April 15, 2017 3:21:02 PM

HCR50

Submitted on: 4/15/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Dursin	Individual	Oppose	No

Comments: Dear Chair Keith-Agaran and Vice-chair Rhoads and members of the committee: I heartily oppose passage of HCR50 on the basis of the risk to the present U.S. Constitution. Supporters of this bill are right to believe that corporate and large personal donations can undermine our election system. What they fail to consider fully is the terrible consequences a Constitutional Convention may have. Lack of clarity as to convention rules and variances from state-to-state could reek havoc with the present document. After seeing the results of manipulation in redistricting, in voter access, and in the success shown by promoters of Citizens United, it's naive to believe that those wanting to get rid of dark money can control a convention to their own ends. Please oppose HCR50. Thank you for considering my testimony. Susan Dursin Captain Cook, HI

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Date: Monday, April 17, 2017 9:59:39 AM

HCR50

Submitted on: 4/17/2017

Testimony for JDL on Apr 18, 2017 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Terez Amato Lindsey	Individual	Oppose	No

Comments:

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