

TESTIMONY OF MEAGAN SWAY, ESQ.

SP 705 – Ought Not to Pass

**JOINT RESOLUTION MAKING SEPARATE APPLICATIONS TO THE
CONGRESS OF THE UNITED STATES CALLING CONSTITUTIONAL
CONVENTIONS TO CONSIDER REPRESENTATIONAL INTEGRITY AND
PROPOSE AMENDMENTS ESTABLISHING TERM LIMITS FOR CONGRESS
AND ADDRESSING CAMPAIGN FINANCE REFORM**

Joint Standing Committee on
Veterans and Legal Affairs

January 22, 2024

Senator Hickman, Representative Supica, and members of the Joint Standing Committee on Veterans and Legal Affairs, greetings. My name is Meagan Sway, and I am Policy Director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we urge you to oppose SP 705.

Under Article V of the U.S. Constitution, there are two methods by which the Constitution can be changed. The first, which has been repeated 27 times, requires approval of a specific amendment by two-thirds of the United States House of Representatives and Senate. The measure would then need approval from three-fourths of state legislatures or state ratifying conventions. The other, never-before-used method, is the convening of a convention, which Congress “shall call” upon “the application of the legislatures of two thirds of the states.” Any changes to the Constitution passed by that constitutional convention must then be approved by three quarters of the states.

This Senate Paper proposes to support such a convention. The ACLU opposes the calling of a constitutional convention because it risks weakening the civil rights and civil liberties guaranteed by the Bill of Rights. While we appreciate that the sponsor has tried to limit the scope of a constitutional convention to term limits and campaign finance reform, the fact is that no standards exist to govern how a constitutional convention should be convened

and conducted, including whether the scope of a convention could truly be limited to only these issues. There is no language in Article V of the Constitution that sets limits or standards for a constitutional convention. In the absence of such standards, there are no ways to assure, among other things, that delegates represent the people fairly, that the rules governing conduct of the convention are fair, that the convention confine itself to the subject or subjects of the call, and that the convention does not infringe on civil liberties. Accordingly, once a convention is underway, other topics could enter the agenda. There is no way to ensure that the convention would confine itself to the topics identified in this Senate Paper. And unfortunately, such a convention could be used to advance a number of unknown proposals or procedures that would weaken Maine people's civil rights and liberties.

Supporters of these resolutions cite legal scholars who believe that such a convention could be limited in scope, but the truth is that since no such convention has ever happened in our history, we have no way to confirm that theory. And, indeed, there are just as many scholarly voices on the other side who come to the opposite conclusion.

Because, although well intentioned, this resolution would open the door to threats against the fundamental rights currently guaranteed by the Constitution, we urge you to vote ought not to pass.