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Bill Number: HCR 5009

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In Opposition Testimony: Written Only

Dear Chairman Barker and the members of the Committee on Federal and State Affairs:

I am writing to voice my opposition HCR 5009: Making application to the U.S. congress to call a convention of the states.

We have not had a constitutional convention before. Therefore, the rules that govern one are unclear because they have not been exercised before. Due to the unchecked power that could be exercised in such a convention, it would be negligent to support a convention that puts Kansans and all Americans at risk. Michael Leachman and David A. Super, writing for the Center on Budget and Policy Priorities, state, "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." [1] Additionally, as Chief Justice Warren Burger wrote in 1988, "There 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. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda." [2]

Under the current rules, such a convention would require three-fourths of the states to approve of any amendments that they propose. However, as Leachman and Super point out, "The 1787 convention ignored the ratification process under which it was established and created a new process, lowering the number of states needed to approve the new Constitution and removing Congress from the approval process." A new convention could potentially follow a similar path, creating a new ratification process that could change the number of states needed for ratification or eliminate the states' role in the process entirely, and propose a Brexit style national referendum instead. [1]

In addition to this, due to the evidence that many elected officials have been found guilty of sexual harassment, violence against women, as well as acts of racism and heterosexism, I believe that the individuals tasked with responsibility of being a delegate at such a convention would not always act in ways that safeguard rights and protections for marginalized groups in this country. Implicit and explicit biases are wide-spread in all aspects of American life, and even individuals acting in good faith can harbor such biases. [3] In addition, certain groups calling for a Constitutional Convention would like to see 150 years of social progress, from the 13th amendment on, undone in the name of "originalism"; potentially fundamentally altering the Constitution and Bill of Rights in the process. [4] Indeed, one group is already proposing, among other radical changes, an extremely narrow redefinition General Welfare and Commerce clauses of the Constitution. [5] There would be no controls to prevent these groups from spending large amounts to lobby the delegates to get such proposals introduced as amendments. [1] While the current federal governmental system and constitution may not be perfect, it at least has a system checks and balances that can serve protect the rights and interests of minorities.

I ask that you oppose HCR 5009. The way we amend the US Constitution has worked well for over 200 years and we should keep amending it in the same way.

Thank you for your consideration,

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Footnotes

[1] <https://www.cbpp.org/research/states-likely-could-not-control-constitutional-convention-on-balanced-budget-amendment-or>

[2] <https://i2i.org/wp-content/uploads/2013/11/Burger-letter2.pdf>

[3] https://gspp.berkeley.edu/assets/uploads/research/pdf/GlaserSpencerCharbonneau_for_PIBBS_2014.pdf

[4] 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=.b1dac9f2191e&tid=a_inl_manual

[5] <https://conventionofstates.com/strategy>