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HB2722, Hearing in the House Federal and State Affairs Committee
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Opposing HB2722, with written and oral testimony
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I am John Axtell, from Wichita. I am the volunteer coordinator for Kansas Campaign for Liberty.

Honorable Chairman Barker and members of the House Federal and State Affairs Committee, I oppose HB2722 for several reasons.

This bill incorrectly presumes that this process can be controlled by the people or legislature of Kansas. It cannot be so constrained. History shows us that the Convention of 1787 was a runaway convention, and that the founders expected that a convention called under Article V would also be runaway.

The Constitutional Convention of 1787, at which our current constitution was written, was itself a runaway convention. One of the first things done at that convention was to relax the requirement for ratification of new amendments from 13 to 9 states. This effectively took away the voice of four states in this process. Also, while delegates were instructed to only amend the Articles of Confederation, these articles were clearly thrown out and replaced with an entirely new constitution.

The delegates **threw off all remaining control by the state legislatures when they handed the ratification process over to state conventions.**

Furthermore, at the convention of 1787, Col. George Mason expressed his severe hatred for the new constitution, and threatened another general convention so he could throw out this new constitution and start over. In the "Records of the Federal Convention", page 479, found in the Library of Congress, Colonel George Mason is noted as saying he "would sooner chop off his right hand than to put it to the Constitution as it now stands", and that, should his disagreements with the current Constitution not be addressed, "his wish would then be to bring the whole subject before another general Convention."

James Madison recognized these threats being made by Col. Mason, Patrick Henry, and others to hold another runaway convention and throw out the new constitution, writing, in a letter to Jefferson dated April 22, 1788 (from "Writings of James Madison", edited by Gaillard Hunt) "Mr. H—y is supposed to aim at disunion. Col.

M—n is growing every day more bitter ... I think the Constitution and the Union will be both endangered ... And if a second Convention should be formed ... [i]t will be easy also for those who have latent views of disunion, to carry them on under the mask of contending for alterations...”

Congress, not the states, will set the rules for a convention.

Article V says that, on the application of 2/3 of the states, “Congress... shall call a convention for proposing amendments”, and that Congress will determine whether ratification will be by the state legislatures or by state conventions.

The Constitution gives no authority to the states to set rules for the convention.

It does give authority for Congress to do so in Article 1, Section 8, the last clause, saying that Congress has authority “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

An article from the Congressional Research Service dated April 11, 2014, states that “Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states.”

So, the authority to set the rules for a convention has been delegated to Congress, and not retained by the States.

Our own Kansas AG has clearly stated that this process cannot be constrained by Kansans or the Kansas Constitution. If this is the case, why would we believe it can be constrained by Kansas statute?

The Kansas AG wrote a legal opinion that said it was ok with the federal government, which IS the problem, for our legislature to IGNORE their state constitution, because the Convention of States process “cannot be constrained by the people of Kansas”.

This opinion was written to “justify” violating the Kansas Constitution and declaring the Convention of States resolution “passed” with a simple majority in both

chambers of the Kansas legislature, in violation of the Kansas Constitution's requirement for a 2/3 supermajority for passage.

The AG's letter clearly made the point that a Constitutional Convention is a federal function, and not a state one. That is why the process "cannot be constrained by the people of Kansas." As a federal function, a convention cannot be constrained by the state legislatures.

And, if our state constitution cannot constrain the convention process, surely state statutes can have no greater effect.

Many components of this bill are unrealistic and impractical.

Section 4(b) says that delegates may not vote for "unauthorized amendments" and section 4(c) says that votes for unauthorized amendments are void.

Yet HCR 5027, one presumed resolution to which this bill might apply, contains such imprecise wording so as to make the determination of what constitutes an "unauthorized amendment" virtually impossible. HCR 5027 states that the topics or issues of the convention include to "*impose fiscal restraints*" and "*limit the power and jurisdiction of the federal government.*" One of the most foundational and adamant points that proponents make is that the convention can be restricted to specific issues. Even if true, this resolution most certainly does not accomplish this goal.

So long as a "fiscal restraint" or "limit" of power is included in a proposed amendment, even if it is mere window dressing, every part of the Constitution and every issue is on the table. Worse, the "limit" for such an amendment could actually *expand* the power of the federal government when compared to current limits and still be allowed under this resolution!

At the very least, we should ensure that we are careful and exact with our words when altering our Constitution is the goal. Such dangerous imprecision is a flaw too big and too significant to ignore, and this flaw makes Section 4 virtually impossible to enforce.

Section 5 describes a process which would interrupt the convention to allow for review of proposed rules and/or amendments by the state of Kansas.

So, according to Section 5, when the time comes for such a review, will Kansas delegates demand adjournment of the convention to follow Kansas law? Will they

presume that delegates from other states will want the convention to immediately recess, just to follow Kansas law?

Clearly, Section 5, too, is unenforceable.

The solution is not an Article V Convention.

The solution is to enforce the Constitution, as written.

We need not get bogged down with “trailer” bills, and a call for a dangerous Convention of States.

If we enforced our Constitution, we would not have an unconstitutional fiat currency that can be printed with abandon and handed out to special interests while growing our debt astronomically. We could not have the myriad bureaucracies that destroy our nation’s productivity and violate our rights.

Instead, if we enforced our Constitution, we would have the truly limited government we all desire.

I urge you to vote against HB2722.

Thank you for your consideration of my testimony.