

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on March 30, 1994 in Room 531-N of the Capitol.

All members were present except: Senator Feleciano - Excused

Committee staff present:

Fred Carman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary
Mary Torrence, Revisor of Statutes Office
Mary Galligan, Principal Analyst, Legislative Research Dept.

Conferees appearing before the committee: The Honorable Joan Finney, Governor of Kansas
Don Cooper, Chairman, Shawnee County Commission
Representative Clyde Graeber
Representative Bob Krehbiel
Raymond Fowler, Kansas Farmers Union
Karen France, Kansas Association of Realtors
Jack Deines, United We Stand America-Kansas
Bob North, Legal Counsel, Dept. of Administration

Others attending: See attached list

HCR 5036--voters to initiate amendments to Kansas Constitution - Proponents

Chairman Ramirez welcomed Governor Finney and others present to the meeting.

The Honorable Joan Finney, Governor of Kansas, appeared first in support of the bill. She stated that she had testified on a similar issue in the 1970s so this is not a new issue for her or any legislators that were serving at that time. In 1861, the Wyandotte Convention, the Framers of the state constitution, gave the people of Kansas at that time and future generations a very fine document. It served the state well until the mid 1950s when significant changes were made in the document which lessened the control of government by the people of Kansas. This erosion of control continued in the early 1970s, when numerous state and county offices were removed from public accountability and the rights once lost, were lost at that time. Rights once lost are hard to regain. Today worldwide is seen the political pendulum swinging toward more public control of government. Kansas is the only state in this area that does not allow the people to initiate some form of legislation themselves. There are twenty-seven states in the nation that do this and they are all in this area and going to the Pacific ocean.

Governor Finney stated the resolution before the committee provides for a limited number of amendments to be on the ballot at each election. It will allow every person in each of the Senatorial districts a voice in deciding how to amend the constitution. It provides for a hundred and eighty days time for the people time to review and consider what they would be voting on.

The Governor stated she had no part in this process. The framers of the constitution deemed this to be a responsibility of the Legislature. Passage of this resolution would be a significant act by the members of this body on behalf of the people of Kansas. She asked legislators to give them and all future generations the opportunity to decide if they want to participate directly in the process of government. She ended by thanking the committee for consideration of the resolution.

The Chairman thanked the Governor for appearing before the Committee.

Mary Torrence, Revisor of Statutes Office, gave a briefing on the bill.

Don Cooper, Chairman, Shawnee Commission, was next to address the bill. The Shawnee County Commission, in February, took action in support of initiative by the public. He referred to the last sentence in the last paragraph of his testimony (Attachment 1) that stated, "Why not subject the State to the same standards you subject other governmental entities?"

Mr. Cooper stated there are a number of safeguards, checks, and balances, that have been put into the resolution that he thinks basically follow the bedrock principles that this government was founded upon in the Constitution and the Bill of Rights. The House has drafted a piece of legislation that, although somewhat restrict, addresses the need for initiative.

Representative Clyde Graeber appeared and gave his reasons for support of the resolution. He stated that most of the important points of the bill have already been pointed out. There is great unrest across this state and across the nation. Many times people feel that government has turned its back on them. This simply gives the people the opportunity to bring before the Legislature an issue of concern to them. The Legislature under this resolution has oversight, but it still gives the people of the state the opportunity to bring an issue before the Legislature they think is important.

Representative Graeber stated that, as he said on the House floor, to his way of thinking it is almost like creating an extra legislator because it gives the people of the state no more right than each one of us has to ask for a bill or piece of legislation to be introduced and go through the legislative process.

In response to a question, Representative Graeber stated that only three pieces of legislation can be approved by the people at a general election. Not all of these might pass. At most there would only be three pieces of additional legislation for the Legislature to consider if all issues passed.

In reply to the question of why an extra layer of bureaucracy is needed, Representative Graeber responded that he believes that people feel there are times when the Legislature as a body has turned its back on them. This simply gives them the opportunity of seeing that something they might want, and that the Legislature might not feel is worthy of consideration, could be brought before the Legislature for negotiation, consideration, and possible passage.

Representative Graeber was asked if some organizations or special interest groups that were well financed and well organized would be able to accomplish all the requirements to get their issues in first; wouldn't this leave others out. His response was that with an equal number of signatures from each Senate district; 1% from each county, a real effort to obtain signatures would have to be made when it is divided that way. In further response Representative Graeber stated that he did not think the citizens of Kansas could be hoodwinked in this way. He believes they will look at the questions being brought before them for their signature and weigh them.

Representative Bob Krehbiel appeared in support of the resolution. The resolution being addressed today is constitutional initiative alone. The 1991 subcommittee of which he was a member attempted to draft a bill that would enhance and promote democracy. He has received this privilege again under the Chairmanship of Representative Clyde Graeber. He has been very much involved in the details of putting together **HCR 5036**. When this issued was studied, the primary concern was the protection of the democratic form of government with the checks and balances which exist, and expand where possible within those boundaries, the ability of the people to initiate constitutional amendments and laws. The fundamental principal of a democracy is that the will of the majority must prevail. They were very careful not to craft the kind of initiative bill that would set a procedure where a minority view would somehow slide through the cracks, particularly with respect to the constitution since it is such an important document with respect to the protection of minority rights. What was done was to allow the people to initiate a constitutional amendment upon a 2/3 vote of the people. It would then have to be passed by a majority vote of both houses of the Legislature. Under current law it takes 2/3 vote of both houses and the majority of the people; under **HCR 5036** it takes a majority of both houses and 2/3 vote of the people. This is exactly the same level of support to change the constitution that present law requires. The reason for this being the protection and preservation of the constitution while at the same time allowing the people to initiate changes in the constitution.

Another issue focused on was the question of who protects the rights of the minority in a government where the majority rules. For this reason came the requirement of statewide support for any constitutional amendment that goes on the ballot. What has been done for the first time in the history of Kansas has been to allow the people to have the right to put an initiative on the ballot exclusive of any action by the Legislature. It would be very difficult for any Representative or Senator who has a mandate coming from his/her district by his/her people, to vote against that kind of mandate from the people. The people can initiate a constitutional amendment totally separate from any action of the Legislature and can vote on it totally separate from any action of the Legislature.. Hopefully what has been done is to expand the ability of democracy to work and give the people a voice in government that will be heard which otherwise may not be heard. Representative Krehbiel ended his testimony and stood for questions.

Representative Krehbiel was asked by one of the committee about the lottery issue. The Legislature thought it was voting on the lottery issue. Someone now determines that it is casino type gambling. The issue was referred to committee, passed without amendment and 2/3 of the people voted for it. The people thought they were voting on the lottery and yet Representative Krehbiel says this is a mandate.

Representative Krehbiel responded that the problem with the lottery was that it was initiated in the Legislature. It was less than perfect.

The reply from the committee member was that he would submit to the Representative that it would be less than perfect being initiated out in the state.

Representative Krehbiel stated the same thing was true with the classification amendment. Many legislators voted for it and wound up having to defend their position. The people voted for it as well. In his opinion, both the people and the Legislature made a mistake, and on the lottery question, both the people and the Legislature made a mistake as well. Representative Krehbiel does not feel this process would be used very often, but it would be put in place in a manner that the people could use it if the necessity arises.

Ray Fowler, Kansas Farmers Union, spoke to the resolution. The Kansas Farmers Union convention delegates voted on and passed support for this issue, not as part of their policy, but on the issue, itself. In this respect they are different from some of the other farm organizations. His organization feels it will have more voice in government with this issue passed.

(Attachment 2)

A committee member asked Mr. Fowler if he realized that **HCR 5036** could not allow people to change their legislative districts. Mr. Fowler responded he realized this as of today. The committee member stated that she had ten counties in her district, with some people being one hundred thirty miles away. She stated that she could assure Mr. Fowler that those that lived farthest away are just as well represented as those within a half-mile of her.

Karen France, Kansas Association of Realtors appeared to support the constitutional amendment. (Attachment 3) Her testimony stated that her organization does not see this initiative proposal as dangerous, but look at it as sharing control. The states which have initiative as part of their constitutions still have legislatures.

Ms. France responded that her organization would provide money and manpower on an issue if they felt it was necessary.

Jack Deines, State Secretary, United We Stand America, Kansas appeared on the resolution. Mr. Deines is a retired IBM employee, and operates a small farm in Meriden, Kansas. Mr. Deines stated the people of Kansas are very willing and wanting to get involved with legislation and the legislative process that goes on in the capitol. He understands that each one of the elected members represents his/her constituents, and he also understands that collectively, the majority of those elected members will vote on the passage of laws. However, he does not believe that the collective group of legislators understand what three quarters of the people want in Kansas. Mr. Deines went through the process of how the resolution would operate. The people would select what the changes would be; the people would let legislators know that three quarters of them want that change; and the Governor could not veto it. The fifteen thousand United We Stand America-Kansas voters in the state are requesting that legislators lay down their political motivations and send **HCR 5036** to the Senate floor with the recommendation for passage.

Mr. Deines was asked if the fifteen thousand people that belong to his organization have put forth proposals that they would like to see the Legislature address. His response was that they have not at this time. In response to a comment made by one of the committee about knowing what the people want in one's district, Mr. Deines said if three quarters of the people across the state want one particular item, the legislator may or may not know it. Mr. Deines stated he would personally like to see a petition for term limits. Mr. Deines' organization has not submitted any proposed legislation as yet, but it is a possibility it will be done in the very near future. The Chairman clarified that there are groups from all over the State of Kansas that send in their agendas stating the things that they want.

Bob North, Legal Counsel, Department of Administration, was the last conferee on the resolution. Mr. North appeared as an individual who was involved in the drafting of the resolution and not on behalf of the Department of Administration. Mr. North stated he would not comment on the specific provisions of the resolution as staff had already done so, but would make general comments on the legislation. It is extremely conservative in its breadth and application. It is vastly more restrictive and provides far more checks and balances on the initiative process than most states that utilize initiative. Mr. North elaborated on some of these checks and balances. In the states that do have initiative, less than one percent of their legislation is derived through this process. This will not supplant or replace the Legislature. It is simply another vehicle for the people to voice their concerns.

Testimony in support of **HCR 5036** was submitted by Debra Leib, Executive Director, Kansas Common Cause (Attachment 4), and Karl Peterjohn Executive Director, Kansas Taxpayers Network (Attachment 5). The Chairman stated the hearing for the proponents of **HCR 5036** was closed. Due to a scheduling change in the Senate the hearing for the opponents of the resolution was changed to 2:00 p.m. Notification will be made of the room number and the conferees will be called.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE: March 30, 1994

[illegible]

Testimony of
Donald J. Cooper
Chairman, Shawnee County Commission
March 30, 1994

The State of Kansas has, by statute, authorized the citizens of a county to utilize a referendum procedure to assist the functions of local government. K.S.A. 19-101(c) allows citizens of a county to petition action taken on a county charter resolution.

A charter resolution exempts a county from all or part of an act of this legislature. By allowing citizens the opportunity to initiate a referendum, the legislature has, in effect, stated it is good policy to allow direct participation in the functioning of their government.

Other areas of local government other than a county are subject to citizen referendum. Shawnee County school districts have been subject to recent referendums on the local option issue. The local option was protested by citizens of the school district by gathering the necessary number of signatures on petitions, resulting in the issue being placed on the ballot for a public vote.

The proposal before you only extends what you approved in 1974 to now apply to State issues. Referendum has worked well and has proven to be a positive force for local government. I urge you to consider making initiative and referendum a positive force for State lawmakers. Why not subject the State to the same standards you subject other governmental entities?

*Senate Gov. Org.
Attachment 1
3/30/94*

Kansas farmers Union
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Ray Fowler Dist 8 Director

Mr. Chairman and members of the committee:

I am Raymond Fowler, district 8 director for Kansas Farmers Union. I would like to thank you in advance for giving me the opportunity to speak to your committee in support of Initiative and Referendum. Kansas Farmers Union, at its' 1994 state convention, did take up this issue, Our convention delegates voted on this issue, not as a part of our policy, but on this issue by it's self. The policy on Initiative and Referendum was passed as follows:

"The Kansas Farmers Union believes in full participation in the democratic process by the citizens of Kansas. We support the concept of Initiative and Referendum, which allows our citizens to vote on major issues and to initiate ballot question by petition.

The number of issues on a ballot should be limited to three on a first come-first serve basis. Petitions should be signed by a percentage of those eligible voters in the last election of each county and certified by the Secretary of State".

I would guess that by now you are wondering why would Kansas Farmers Union would be different than some other farm organizations. It could be that not a single member of our organization serves on the board of The Farmers Union Insurance corporation. We are farmers that believe in making our living from

*Senate Gov. Org.
Attachment 2
3/30/94*

farming and think no different than other working farmers. We are not worried that our city neighbors will work their will on us any more than our city legislators will and with the one's carrying the petitions having to get the same percentage in the small counties as the large counties, we feel we might have more voice in our government with initiative and referendum than we now have.

One thing that quickly comes to mind, that Initiative and Referendums could help, would be to force a change in the laws so that the people could be better represented. Emporia and Lyon county representative districts have been cut up like a pie with Emporia being the center of that pie.

I live in representative district that is no more than three miles across in any direction. My neighbors, that live less than a block from me, have a representative that lives about one hundred miles from them. We live in the same County Commissioner district and the same grade school district. It boils down to the fact that my representative can actually represent me, but my neighbors have one in name only. The people that live a mile to the west of me have a representative that lives four counties to the west. The people that live one mile east of me have a representative that lives southeast of Topeka.

Senators, it might not be politically correct to change this arrangement but the people of Kansas might be better served. They see the inequities of some of this politically correctness jargon we have been hearing about.



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TO: SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: MARCH 30, 1994

SUBJECT: HCR 5036, CONSTITUTIONAL INITIATIVE

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to support the constitutional amendment presented to you.

As many of you may be aware, our association was heavily involved in trying to resolve the property tax problems caused by the Classification Amendment. We came to know first hand the frustration people experienced with the limitations on making changes to the Kansas constitution. Of the hundreds of people we talked to across the state about the property tax problem, one common thing we heard was that they were shocked to find out the people did not have the right to propose their own amendment to the constitution.

They found it hard to understand that the people had to first, convince the legislature that created the Classification Amendment to admit they had made a mistake. Then, they had to wait for the legislators to agree to some sort of alternative to the amendment by a 2/3 vote in each house. Then, they had to wait until either a primary or general election or perhaps a special election if the legislators would grant it.

Some may point to the Classification experience as an example of when the people voted on a constitutional amendment which they later found to be a mistake. However, if initiative were in place, the people could have proposed a solution to the problems, rather than having to blame the legislature.

The concept of the right of initiative is not a new one. But, perhaps it is an idea whose time has come in Kansas. The people are asking for more and more control over their government. While property taxes or term limits might have brought it to a head for some people, it is a feeling which has been brewing for a long time.

We supported the broader version of initiative which was initially introduced in the House and we support this one. This version is much narrower than the initial version. It will be very difficult to meet the petition requirements in order to get an amendment on the ballot. The voters have to approve it by a 2/3 majority and the legislature must approve the amendment before it can go into effect.

*Senate Gov. Org.
Attachment 3
3/30/94*

Some of you may feel that initiative is dangerous, that you, as legislators, will lose control of the lawmaking function of this state. We do not see that this initiative proposal is dangerous. We look at it as sharing control. If it is dangerous to let the people bring proposals to the ballot which the citizens feel have not been handled by their elected officials, if it is dangerous to let the people vote on issues brought to the ballot directly by the people, then perhaps the real danger is forgetting what a representative democracy is all about. The states which have initiative as part of their constitution still have legislatures.

We are willing to have the people share the government with the Legislature. We hope that you will be willing to share it also.

Testimony before the
Senate Committee on Governmental Organization

March 30, 1994

by

Debra Leib
Executive Director, Kansas Common Cause

Mr. Chairman and members of the Senate Committee on Governmental Organization, my name is Debra Leib and I am executive director of Common Cause in Kansas. I want to thank you for the opportunity to provide written testimony about House Concurrent Resolution No. 5036, which would amend Article 14 of the Kansas Constitution to provide for a constitutional initiative process.

Common Cause is a nonprofit, nonpartisan citizens' lobbying organization that works to make our government more open, accountable and accessible to ordinary men and women. We have about 2,100 members in Kansas and our state board includes members from Dodge City to Overland Park and from Marysville to Wichita.

The initiative is a tool which allows voters to establish public policy directly when the legislature is persistently unresponsive to public opinion. Kansas Common Cause supports the incorporation in our state constitution of well designed constitutional initiative provisions.

However, in its present form H.C.R. No. 5036 is extremely unworkable and very likely unconstitutional. To spread 80% of the required signatures equally among the forty senatorial districts would be virtually impossible. In addition, the requirement that one percent of the registered voters of each county have signed the petition is a geographic based requirement and probably would render the proposal unconstitutional under the federal constitution.

As it stands this proposal should be rejected. To offer something so blatantly deceptive to the Kansas voter is beneath the dignity of the Kansas Legislature. If the Legislature is serious about providing Kansans a way to directly amend their constitution then this committee should consider returning the resolution to its original form and adding two changes. First, lower to a simple majority the requirement that two-thirds of the voters approve a proposed amendment. Second, remove the provision that would prohibit initiative-generated amendments from addressing the manner in which legislative and other districts are reapportioned.

We would be happy to support such a revised proposal. Any reasonable person must oppose H.C.R. No. 5036 as it presently stands.

*Senate Gov. Org.
Attachment 4
3/30/94*

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Testimony on HCR 5036 to
House Federal & State Affairs Committee
Kansas Taxpayers Network
Karl Peterjohn, Executive Director

The Kansas Taxpayers Network supports voter empowerment through initiative and referendum elections. In 1993 in Wichita voter participation increased almost 50 percent in the April municipal election due to the presence of a citizen generated initiative and referendum on that election ballot. The Governor's eloquent discussions of this topic deserve praise.

However there are a number of significant problems with this amendment.

1) HCR 5036 requires 2/3 vote of approval to enact a constitutional amendment. This is much too high. I know of no other initiative states with this sort of restriction. Using this criteria the 1993 initiative election in Wichita would have failed, instead of passing by roughly 60%.

2) The distribution requirement is way too high (page 2, line 9) and should be reduced to 40 percent or less. A quick survey of initiative states indicates that most do not have this type of provision.

3) The single topic provision should be struck (page 1, line 28-9). In Florida the single topic provision has been used to prevent taxpayer initiatives from appearing on that state's ballot. Most initiative states do not have this provision.

4) Limiting the number of initiatives to three per election is excessively restrictive and should be increased (page 2, line 24). In the extremely unlikely event of a tie vote in favor of two separate ballot initiatives, both should not be thrown out by this tie. A provision enacting the initiative with the higher percentage should be added, if any provision is actually needed.

5) Referendum provisions, such as those contained in HCR 5017, should be added to this proposal. Referendum provisions are even more important than initiative since it provides voters with an immediate path for responding to new state statutes. Referendums are a key part of government in well governed countries like Switzerland.

Voter referendums should be automatic whenever there is any sort of revenue raising measure approved by any state or local legislative body.

*Senate Gov. Org.
Attachment 5
3/30/94*

Opponents of initiative will claim that voters can't decide questions which are excessively complicated or detailed. This is misleading at best and wildly incorrect. If the people are unable to decide initiative questions, why has there been and continue to be initiative provisions under municipal statutes in Kansas? Are municipal issues less complicated than state? I would answer that both municipal and state issues can be equally complicated or straightforward.

Opponents of initiative and referendum should be forced to answer this question, why are voters competent to elect state officials but supposedly incompetent to vote on initiatives or referendums? Opponents of initiative and referendum distrust the citizenry.

Initiative and referendum are two critical tools which every Kansan should be able to exercise as part of their role in this state's government. I urge this committee to improve the Governor's proposal by amending this proposal in the five areas outlined in this testimony.