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HCR 5008, Hearing in the House Federal and State Affairs Committee
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Opposing HCR 5008, 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 Carpenter and members of the House Federal and State Affairs Committee, I oppose HCR 5008 for several reasons.

Delegates to the Convention of 1787 acted beyond their authority. The convention was clearly “runaway”. We should expect the same of a modern constitutional convention.

(Note: I have great respect for the founders and the US Constitution they created, and this information is presented to firmly substantiate that the delegates acted beyond the authority granted in the charters.)

Some delegates to the convention **reported that they did not have the power to do what they were doing, and should not proceed.** These include the following:

- William Paterson (New Jersey delegate) **“We ought to keep within its limits, or we should be charged by our constituents with usurpation . . . let us return to our States, and obtain larger powers, not assume them of ourselves.”** - Madison’s notes of the 1787 convention, 16 June 1787.
- Charles Pinckney (South Carolina delegate) & Elbridge Gerry (Massachusetts delegate) "General PINCKNEY expressed a doubt whether the act of Congress recommending the Convention, or the commissions of the Deputies to it, would authorize a discussion of a system founded on different principles from the Federal Constitution. Mr. GERRY seemed to entertain the same doubt." - Madison’s notes of the 1787 convention, 30 May 1787
- John Lansing (New York delegate) "the power of the Convention was restrained to amendments of a Federal nature . . . The acts of Congress, the tenor of the acts of the States, the commissions produced by the several Deputations, all proved this. . . . it was unnecessary and improper to go further. " - Madison’s notes of the 1787 convention, 16 June, 1787, comments of Delegate John Lansing, Jr. from New York, who LEFT the Convention July 10th after realizing they exceeded their authority.
- Luther Martin (Maryland delegate) **“...we apprehended but one reason to prevent the states meeting again in convention; that, when they discovered the part this Convention had acted, and how much its members were abusing the trust reposed in them, the states would never trust another convention.”** - Letter by Luther Martin, opposing ratification of the 1787 Constitution, http://oll.libertyfund.org/titles/1905#Elliot_1314-01_3767

Others reported that they did not have the authority to proceed, but should do so any way:

- Edmund Randolph (Virginia delegate) "Mr. Randolph. was not scrupulous on the point of power. When the salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary." - Madison's notes of the 1787 convention, 16 June 1787.
- Edmund Randolph (again) **"There are great seasons when persons with limited powers are justified in exceeding them,** and a person would be contemptible not to risk it." - Farrand's Records of the 1787 convention, 16 June 1787.
- Alexander Hamilton (New York delegate) "The States sent us here to provide for the exigencies of the Union. **To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end.**" – Madison's notes of the 1787 convention, 18 June 1787.
- James Madison (Virginia delegate) "...it is therefore essential that such changes be instituted by some informal and unauthorized propositions...." – Madison, Federalist 40.
- George Mason (Virginia delegate) Mr. Mason justified exceeding their powers, "there were besides certain crises, in which all the ordinary cautions yielded to public necessity." - Madison's notes of the 1787 convention, 20 June 1787.
- James Wilson (Pennsylvania delegate) **"The Federal Convention did not act at all upon the powers given to them by the states, but they proceeded upon original principles,** and having framed a Constitution which they thought would promote the happiness of their country, they have submitted it to their consideration, who may either adopt or reject it, as they please." - Pennsylvania Ratifying Convention, 26 Nov. 1787.

No delegate said that they operated strictly within the bounds of their charters!

Judge Caleb Wallace, who favored the new Constitution, was so concerned about the convention exceeding its authority that he advocated for tossing out the new constitution, then obtaining the proper authority from the states, and then re-doing the entire convention: "I think the calling another continental Convention should not be delayed . . . for [the] single reason, if no other, that it was done by men who exceeded their Commission, and whatever may be pleaded in excuse from the necessity of the case, something certainly can be done to disclaim the dangerous president [i.e., precedent] which will otherwise be established." - Judge Caleb Wallace to William Fleming, 3 May 1788

“We the people” are the authority under which delegates acted beyond their delegated authority, citing first principles and the ideas in the Declaration of Independence. With the full sovereign authority of the people, the convention could act against the legislatures and the charters under which they were sent:

- Madison - **"The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased."** - Madison's notes of the 1787 convention, 31 Aug 1787.
- Madison - **"a rigid adherence in such cases to the former [limits of power imposed by the states], would render nominal and nugatory the transcendent and precious right of the people to 'abolish or alter their governments as to them shall seem most likely to effect their safety and happiness'"** - Madison, Federalist 40.

Delegates went beyond proposing amendments. They amended the Articles of Confederation by changing the ratification requirement without seeking ratification from the states.

Madison, in Federalist 40, openly admits to delegates violating their charters, **"In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation of all the states, they have reported a plan which is to be confirmed and may be carried into effect by nine states only."**

This is more than a mere change to rules.

The unanimous requirement for ratification is clearly stated in Article 13 of the Articles of Confederation. The change to require only nine states for ratification is essentially an amendment to the Articles, enacted by the delegates alone!

It is interesting that Madison argued for this change (in Federalist 40) saying that the new government should not be held hostage to the whims of Rhode Island, which refused to send delegates to the convention, since it comprised only 1/60 of the population of the federation. Yet the new ratification standard only required nine states to ratify, possibly leaving out as much as 48% of the population (according to the 1790 census, New York, Pennsylvania, Massachusetts, and Virginia totaled 48% of the population of the new federation).

A constitutional convention under Article V could be runaway, and likely will be.

Madison was clear that a second constitutional convention could also be runaway, even to the point of dissolving the union altogether. In a letter to Jefferson, as the ratification of the Constitution was nearing the nine state threshold, Madison warned of the opportunity for a new convention to be called, with the intention of dissolving the union: "...if a second Convention should be formed, it is as little to be expected that the same spirit of compromise will prevail in it as produced an amicable result to the first. It will be easy also for those who have latent views of disunion, to carry them on under the mask of contending for alterations..." – The Writings of James Madison, Volume V, pp. 121-122.

Constitutional Conventions invoke the authority of the people.

State constitutional conventions have been held where delegates refused to be bound by orders from the state government, and their right to do so has been upheld due to their authority coming directly from the people.

The Second Body of Law (Corpus Juris Secundum) includes case history of state constitutional conventions being runaway. In these cases, delegates to state constitutional conventions invoke the same sovereign authority of "We the People" as did the delegates to the Constitutional Convention of 1787:

Summary, from Corpus Juris Secundum 16 C.J.S 9: **"The members of a Constitutional Convention are the direct representatives of the people and, as such, they may exercise all sovereign powers that are vested in the people of the state. They derive their powers, not from the legislature, but from the people: and, hence, their power may not in any respect be limited or restrained by the legislature. Under this view, it is a Legislative Body of the Highest Order and may not only frame, but may also enact and promulgate, [a] Constitution."**

Delegates in numerous state conventions have declared they represent the power of the people, not the legislature, and cannot have any limits placed upon their power:

- "We have been told by the honorable gentleman from Albany (Mr. Van Vechten) that we were not sent here to deprive any portion of the community of their vested rights. **Sir, the people are here themselves. They are present by their delegates. No restriction limits our proceedings.** What are these vested rights? Sir, we are standing upon the foundations of society. The elements of government are scattered around us. All rights are buried; and from the shoots that spring from their grave we are to weave a bower that shall overshadow and protect our liberties." - Mr. Livingston, New York Convention of 1821
- "When the people, therefore, have elected delegates, ... and they have assembled and organized, then a peaceable revolution of the State government, so far as the same may be effected by amendments of the Constitution, has

been entered upon, limited only by the Federal Constitution. **All power incident to the great object of the Convention belongs to it. It is a virtual assemblage of the people of the State, sovereign within its boundaries, as to all matters connected with the happiness, prosperity and freedom of the citizens, and supreme in the exercise of all power necessary to the establishment of a free constitutional government, except as restrained by the Constitution of the United States.**" - Report, The Committee on Printing of the Illinois Convention of 1862

- "He had and would continue to vote against any and every proposition which would recognize any restriction of the powers of this Convention. **We are... the sovereignty of the State. We are what the people of the State would be, if they were congregated here in one mass meeting. We are what Louis XIV said he was, 'We are the State.' We can trample the Constitution under our feet as waste paper, and no one can call us to account save the people.**" - Onslow Peters, Illinois Convention of 1847
- "It is far more important that a constitutional convention should possess these safeguards of its independence than it is for an ordinary legislature; because the convention acts are of a more momentous and lasting consequence and because it has to pass upon the power, emoluments and the very existence of the judicial and legislative officers who might otherwise interfere with it. **The convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the convention would be wholly incompatible with the free exercise of that will.**" - Elihu Root, Proceedings of the New York Constitutional Convention, 1894, pages 79- 80.
- "We are told that we assume the power, and that we are merely the agents and attorneys, of the people. Sir, we are the delegates of the people, chosen to act in their stead. **We have the same power and the same right, within the scope of the business assigned to us, that they would have, were they all convened in this hall.**" - Benjamin F. Butler, Massachusetts Convention of 1853
- "**Sir, that this Convention of the people is sovereign, possessed of sovereign power, is as true as any proposition can be. If the State is sovereign the Convention is sovereign. If this Convention here does not represent the power of the people, where can you find its representative? If sovereign power does not reside in this body, there is no such thing as sovereignty.**" - General Singleton, speech, The Committee on Printing of the Illinois Convention of 1862.

Proponents' claims that the convention will be orderly are not based on historical fact.

Proponents of a convention present a list of 42 "conventions" between states that they claim have set a precedent showing that a Constitutional Convention under Article V will be orderly. **However, none of these conventions was called under Article V of the US Constitution.** 30 even occurred prior to the ratification of the Constitution, and could not possibly have been called under Article V. Of the 12 remaining "conventions", only

the one listed as “Washington, DC (1861) deals with the federal constitution in any way. **This failed “convention” is know as the “Peace Conference of 1861” and was called by the Virginia legislature, which threatened to “unite her destinies with her sister slaveholding states” if the negotiations failed.** (The quote is from “The Peace that Almost Was: The Forgotten Story of the 1861 Washington Peace Conference and the Final Attempt to Avert the Civil War” By Mark Tooley.)

The language of this resolution is not sufficiently precise, leaving the door open to horribly damaging interpretations of these words and the amendments that they would produce.

The resolution proposes to create amendments that would “Impose fiscal restraints”, yet the debt ceiling is a “fiscal restraint” that increases frequently.

This resolution proposes to create amendments that would “limit the power and jurisdiction” of the federal government, yet limits can go down OR up.

We have seen the US Supreme Court choose to call the ObamaCare fines a “tax”. Do we want to leave even more ambiguous language in this resolution, dangling this opportunity in front of those who would ruin this country by interpreting this resolution to serve their own purposes?

The proposed solutions do not solve the problem

“Fiscal restraints” - Proponents propose a balanced budget amendment as a means to apply “fiscal restraints” on the federal government. As I mentioned in my testimony against HCR 5005, while I balance my household budget and I expect the city, county, state, and federal governments to all balance theirs, a balanced budget amendment does not solve the problem. Budgets can be balanced by increasing both spending and taxes, or by decreasing both, and the Kansas legislature recently met the state’s balanced budget requirement by passing the biggest tax hike in the state’s history.

Term limits –

James Madison opposed term limits. Madison stated, in Federalist 53, that, “the greater the proportion of new members, and the less the information of the bulk of the members, the more apt will they be to fall into the snares that may be laid for them.”

While Constitutional Convention proponents tell us that we need term limits because bad politicians keep getting elected, they also insist that the Article V convention is safe because the people won’t let the bad amendments through. But they can’t have it both ways. Either “We the People” are trustworthy, and can **elect** good politicians and keep them honest, or else we certainly can’t constrain **appointed** delegates to a constitutional convention.

These “corrupt” elected officials, who must be regularly “cleansed” from Congress through term limits, are precisely the people who proponents believe will hold convention delegates accountable.

“Limit the power and jurisdiction” – Mark Levin’s proposed amendment to “limit” the DC bureaucracy **constitutionally establishes the unconstitutional federal agencies it intends to limit!** By stating, in the Constitution, that these agencies must abide by certain “limits”, these unconstitutional agencies immediately become constitutionally legitimate.

A Constitutional Convention, even if orderly, will not produce the desired results.

There is no chance of ratifying a good amendment under the Constitution’s current requirement. States have shown their true colors by their recent actions, and conservative amendments have no chance of passing. Consider:

- 49 states passed some type of lockdown
- 46 states have passed Common Core
- 38+ states have passed ObamaCare Expansion
- Over a century ago, 36 of 48 states passed the income tax amendment and 17th amendment

There is also significant risk of passing bad amendments, considering the overwhelming number of states that have embraced the unconservative issues mentioned above.

The plan by proponents to sue the people of Kansas in federal courts shows that this process of calling a convention “cannot be constrained by the people of Kansas”, and should not be trusted.

I have heard proponents lambast the federal courts year after year at these hearings, and I agree that the federal courts are a big part of the problem. Yet, these same proponents have set the stage to file suit against our Kansas Constitution in these same federal courts.

They rely on court decisions that declare that the constitutional convention process “cannot be constrained by the people of Kansas.”

These proponents want **federal courts** to decide if the Kansas Legislature must follow the Kansas Constitution, the will of the people of Kansas!

These Kansas legislators want to be told, by these federal courts, that they can violate their oath of office, sworn under God, to support the Kansas Constitution.

Is this the means by which the proponents “reign in” the federal government?

Did these proponents in the Kansas Legislature forget for whom they work?

And if these Kansas legislators can turn their backs on the Kansas Constitution, and can turn this question over to federal courts, we certainly cannot expect delegates to a constitutional convention to follow orders from a lesser authority, i.e. the Kansas Legislature.

This resolution does not include the language specifying the requirement for passage. The lack of an explicit two-thirds requirement in this resolution is evidence of the willingness of proponents to brazenly violate the Kansas constitution, in a desperate attempt to pass their resolution. It is proof that no rules – not even the Constitution itself – will be honored in an Article V constitutional convention.

This willingness to break the law is the problem. It is the cause of our nation's ills.

The people of Kansas deserve better.

The people of Kansas deserve better than being offered false promises of easy solutions to important problems. They deserve better than to see their precious liberties risked in a process that cannot be constrained by the people of Kansas.

I urge you to vote against HCR5008.