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HCR 5005, Hearing in the House Federal and State Affairs Committee
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Opposing HCR 5005, 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 5005 for several reasons.

The Convention of 1787 was runaway, and sets precedent for a modern constitutional convention.

The founders have left us with clear evidence that the **Constitutional Convention of 1787 violated the charters under which the delegates were sent**, and did so in many ways.

Some delegates to the convention **reported that the delegates 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 did 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 precedent [i.e., precedent] which will otherwise be established." - Judge Caleb Wallace to William Fleming, 3 May 1788

The delegates claimed that "The people" are the ultimate authority under which they acted. With the 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.

Violations against the charters were significant:

The standard for ratification was changed from unanimous, to nine of 13 states. This was argued for by Madison in Federalist 40 by saying that the new government should not be held hostage to the whims of Rhode Island, which refused to send delegates to the convention, especially since it comprised only 1/60 of the population of the federation. Yet the new 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).

The new ratification requirement had the power of an amendment to the Articles of Confederation! It was enacted within the convention itself, solely on the authority of the delegates! A new ratification **process** was also created, which bypassed the state legislatures and placed ratification in the hands of state conventions of the people.

The convention did not retain and amend the Articles of Confederation as instructed, but essentially started over and designed an entirely new federal government.

Madison's Federalist 40 admits to breaking the rules.

Madison essentially admits that the convention violated the charters under which the delegates were sent when he remarks, "Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of confederation should be disregarded, and an adequate government be provided, and the union preserved; or that an adequate government should be omitted, and the articles of confederation preserved."

Madison also openly admits, "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*." He argues for this change, essentially equal in power to an amendment to the Articles of Confederation, because Rhode Island is very small and should not hold hostage the other 12 states, as explained prior.

Madison's theme throughout letter 40, as mentioned above, is that the rules had to be broken in order to produce a constitution sufficient to the task.

Madison was clear that a constitutional convention called under Article V 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.

This historical information is not presented to call into question the quality of the US Constitution or the integrity of the delegates, but only to truthfully report the history of the Convention of 1787 and show, clearly, that this convention did not honor the rules or orders under which the delegates were sent.

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

Convention of States proponents 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.

Court opinion abounds saying that this process "cannot be constrained by the people of Kansas".

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

On the one hand, there is little or 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.

A term limits amendment will not "clean up" Washington.

Madison disliked term limits, reasonably believing 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.”

In other words, he believed that term limits can work against the proponents’ aims, creating a large population of new and vulnerable politicians every election cycle.

The problem in Washington is more than just the bad elected officials who have been in office far too long.

After all, when these bad elected officials leave office, they leave behind the lobbyists, the donors who grew politically powerful, office staff who want to keep their jobs and careers, political party leadership, and other participants in this bad legislator’s circle.

When the newly elected legislator arrives in Washington, these establishment players do not automatically change as well. They will be there, essentially just as powerful as before, and they will do all they can to teach the new legislator their ways.

We have all seen exactly how this works. New candidates swear to be one way when running for office, but quickly change after only a short time in office, being overtaken by this establishment influence. How many candidates have you seen who sign a petition or survey stating that they will only vote for balanced budgets, who get elected and then return to their district announcing that they voted for a budget that did not balance? These legislators are taught that they can vote for unbalanced budgets as long as they turn the volume up on the message that “it could have been a lot worse”.

The real solution is simple, but difficult, and is to create grassroots movements to hold elected officials accountable to every vote they make. These movements leave little room for the corrupt political forces working against the people, and keep elected officials true to their constituents. Again, building these movements is hard work!

Convention of States does not have the support in Kansan that it claims, especially recently.

At the Kansas GOP convention in March of 2022, the Kansas GOP grassroots soundly defeated the Convention of States resolution and thankfully kept it off of the GOP platform.

This vote came after the first attempts by some in the Kansas Legislature to violate the Kansas Constitution in order to pass a COS resolution with an unconstitutional simple majority. Kansans will not forget this scheme, in any of the past or present forms.

It has been reported to me that this defeat of the COS resolution, at the hands of the GOP grassroots, was by a factor of over two to one.

COS clearly does not have the support of the Kansas grassroots that they claim.

And past COS resolutions introduced in the Kansas legislature have typically included term limits.

The reason this is relevant is because the requirement for passing HCR 5005 is suspiciously absent from the resolution, yet must be included in its text. Does this mean that proponents will try to pass this resolution with less than the two-thirds supermajority required by Article 2, Section 13 of the Kansas Constitution?

While I admire many of the proponents, people who I have often worked with side-by-side, in the grassroots, and I agree with their concerns, the effort to pass this a Convention of States resolution at any cost has gone too far.

In 2021 I testified against a COS resolution in the Kansas Senate committee. At the hearing, whereas the Kansas Constitution requires a 2/3 vote of both chambers to pass this resolution, I heard the lead COS proponent at that hearing virtually DEMAND that the legislature VIOLATE this constitutional requirement, and instead “pass” his resolution with a simple majority. He demanded that they violate an oath sworn under God.

To justify his scheme, this proponent pointed to 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”.

So, this person proposed to “fix” the federal government, by ignoring our state constitution, because the feds say it is ok.

Is the lack of an explicit two-thirds requirement in this resolution evidence of the willingness of proponents to brazenly violate the Kansas constitution, in a desperate attempt to pass their resolution? If so, 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.

I urge you to vote against HCR 5005

Thank you for your consideration of my testimony.