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HB 2807, Hearing in the House Federal and State Affairs Committee
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Opposing HB 2807, 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 HB 2807 for several reasons.

The delegates themselves cannot be constrained

Once the delegates meet, they are meeting under another authority, separate from that of the State of Kansas.

The Kansas House recently passed rules to facilitate a lawsuit against the Kansas Constitution. The justification for this position was found in the 1975 Dyer vs. Blair case, where the Illinois legislature wanted to ratify a new amendment to the US Constitution, but did not have the 60% supermajority required by the Illinois constitution for passage.

The FEDERAL court found that the Illinois constitution was not binding on the Illinois Legislature when voting to ratify a new amendment to the US Constitution under the provisions of Article V. They stated that “the Illinois constitutional provision may only be precatory in its effect on the federal process, and [the legislative houses] are free to accept or reject the three-fifths requirement” imposed by the Illinois constitution.

The FEDERAL court decided that the Illinois constitution was merely precatory on the Illinois legislature. There are two important points to be made here:

- The Illinois CONSTITUTION was merely precatory upon the legislature. Therefore, all Illinois statutes and regulations are also merely precatory upon the legislature when working under Article V of the Constitution. Therefore, in FEDERAL court, these same Illinois statutes, rules, and constitutions will only be precatory on delegates to a convention called under Article V.
- The FEDERAL court did NOT call the Illinois state constitution unconstitutional! In fact, the court said that the legislature is “free to accept or reject the three-fifths requirement” imposed by the Illinois constitution. Therefore, there was no compelling requirement for the Illinois legislature to violate their constitution. They merely chose to do so.

Therefore, federal courts will find that any Kansas laws, rules, or constitutional provisions, including this bill, will also be only precatory, only a suggestion, to the delegates while they are assembled at the convention. Federal courts will rule that delegates will be free to accept or reject the constraints of this bill and any other statutes while at the convention, just as the legislature was free to accept or reject the constraints of the Kansas Constitution when calling for a convention under Article V.

Voiding a delegate vote

In Section 4, paragraph D of this bill, it says that an unauthorized vote by a delegate shall be void. This presumes that the entire convention will allow the Kansas legislature to void the Kansas vote well after the convention has closed the vote on a rule or amendment. That would be problematic for the convention, as such a procedure would effectively shut down the progress of the convention for a time after each and every vote, until the time for voiding votes had elapsed. After all, if a vote can be voided, and any such vote can be at risk for hours, or days, until the time window for voiding votes has elapsed, then there is no sense in building further progress based on that vote while it is still at risk.

So, voiding a vote does not seem to offer a realistic means for correcting a delegate's errant vote. There seems to be no realistic means to correct bad behavior by a delegate.

Punishment for errant delegates

Section 8, paragraph C makes violation of Section 4 a severity level 6 nonperson felony. According to the Kansas Sentencing Guidelines, this is punishable by an 18 month sentence, but with 100% of this sentence generally being served on probation. Only at level 4 and worse does the sentence generally result in prison time. This seems to be very weak punishment for this offense.

This is important mainly because there seems to be no way for the legislature to void an errant vote, as discussed above, and this punishment may not provide sufficient deterrent to prevent errant votes.

No constraints on the delegates votes regarding the rules of the convention

One common way US Senators avoid being tagged for a bad vote is by voting for cloture for a bill, which is often the most important vote, and then voting against that same bill once the cloture vote passes. This is a way by which the senator can help a bill to overcome the most difficult hurdle, and yet still claim that they were against the bill as evidenced by their final vote against it.

By the same token, the rules in a constitutional convention could be extremely important, and could be constructed to allow delegates to present themselves to their states as complying with the state orders, while those delegates were truly acting against their state.

In other words, a delegate could support rules that essentially violate the conditions of their appointment without legally violating their orders, and it will be extremely difficult for the state to recognize the damage done by such a delegate, and almost impossible for the state to punish this delegate for their actions.

In conclusion, I urge this committee to vote against HB 2807.

Respectfully submitted,

John Axtell