

Testimony by Shawn Meehan - OPPOSED
Founder, Guard The Constitution
SB 92, Kansas Senate, February 9, 2023

Dear Kansas Legislature,

I am Shawn Meehan, a retired Air Force Master Sergeant, Operations Desert Storm and Iraqi Freedom Veteran. I founded Guard The Constitution in 2014 and have spent the nine years since focused on educating legislators and We The People on the documented facts of the Article V convention issue.

SB 92 purports to be a delegate appointment and limitation bill.

These bills are typically used as a deceptive sales tactic for associated Article V convention resolutions to give legislators and the public a false sense of security for passage of the Article V resolution.

Historically these delegate bills are sold by advocates telling legislatures that an Article V convention call might happen, and their state would be left out or not prepared without such a bill, even if their state does not participate in the call to a convention.

Once these bills are passed, the argument is shifted telling legislatures that now that a delegate selection and restriction process is in place, it is safe to pass the Article V convention call from their state. Yes, this is a bait and switch.

We all agree that rules should be enforced at an Article V convention. Can they be enforced?

The potential for chaos is great. The very situation of claiming to need an Article V convention because the Constitution is not being followed, makes a strong argument that mere transient draft rules for a one-time convention have little practical force behind them.

The US Constitution is the Supreme Law of the Land (Supremacy Clause). [1] We find ourselves here because many agree it is not being followed. Yet in this Article V debate stream, proponents swear up and down, citing all sorts of paid spokespersons, claiming rules will be followed. One must suspend reality to believe such.

Kansas requires 2/3 vote to pass Article V by your state constitution.

The Kansas Constitution was amended in 1974 when the Legislature put an amendment before voters and 68% said yes to requiring 2/3 vote of your Legislature before passing an Article V convention resolution. [2] In 2019, your attorney General opined, "is a federal power granted to the Kansas Legislature by the federal constitution which cannot be constrained by the people of Kansas through the text of their state constitution." He also issued an opinion claiming the 2/3 requirement in your state constitution was simply "precatory" (advisory) upon the Legislature, in an exercise of such hubris and twisting the rules. Is this why he is no longer your AG?

In Nebraska last year, their Legislature suspended committee rules designed to facilitate transparency, to force a COS bill out of committee, all while making their sales pitch claim that rules will be followed. [8]

Some legislators reference a "Phoenix convention" where they assert rules were drafted for a COS Article V convention. Such was NOT a convention of states, it was handpicked delegates, not approved by all state legislatures and sponsored / operated by Balanced Budget Amendment Task Force, not COS

In Montana, a COS PAC was found guilty of improperly reporting campaign contributions. [10] A second complaint was filed in September 2022. [11]

Congress has asserted many times that they will issue the rules for a convention [3] and such will supersede any rules or limits you intend to put on delegates here. The Supremacy Clause of the Constitution says (Congress') federal laws are superior to any state laws on topic [1]

In 1973 the US Senate passed the Federal Constitutional Convention Procedures Act. Such did not pass the House due to pressure of states calling for a convention pulling back. This act though is a clear indication that Congress fully believes they, not states, will define the conditions and limits of a convention. [4] Courts also have a clear precedent that when Congress is seen carrying out a legitimate political duty, the courts will not interfere. [5]

All the above "rules" events directly relate to COS claiming that rules of a convention and state delegate rules will be followed.

An Article V convention is one state, one vote, except when it isn't.

Attorney, Dr. Rob Natelson, admitted [6] that a convention can change the "one state, one vote" rule, opposite of what many convention advocates claim. Should a convention call be made by Congress, they will attempt to define such a convention as they have previously asserted is their right. [3][7]

In 1973, the U.S. Senate clearly acted to change a draft law from one state, one vote, to the Electoral College allocation. [4] With only 6 votes out of 538 electoral votes nationally, Kansas could simply be ignored at a convention. Congress is sure to pass legislation similar to the Federal Convention Act of 1973 [4] If an Article V convention gets called. Under such a law, states will not have one state one vote as promised, and they will not be able to limit a convention topic by controlling delegates, as delegates will be protected from prosecution or recall. [4]

Is passing an Article V resolution a "federal function" or not?

Should Kansas maintain, as some in your state government have already postured, along with COS advocates, that Kansas may not put any restrictions on this "federal function" then that must also hold that any delegate limitation bills (such as SB92) also are a state restricting the Article V "federal function." Supporters of Article V applications in states across the country only offered support based on delegate limitation bills being of law. Well, Kansas cannot have it both ways. Which is it? Delegate limitation bills that have no hope of controlling delegates, and are used as a sales pitch to legislators, would be proven invalid. Ooops!

Congress controls an Article V call and is the sole arbiter of questions.

The proponents scream this is not true. Look at the notes and decide. Congress has asserted numerous times that they will define the convention no matter what the proponents say. It is further important to highlight that the courts have postured they will likely play no role so who will resolve the massive confusion? [5]

There can be no disputing that this issue will end up in voluminous state and federal litigation. Under the Political Question Doctrine, courts should refuse to hear Article V litigation. If in fact courts do not intervene, just who will have control? [5] An Article V convention is a recipe for constitutional chaos. Americans would likely tremble at the prospect of states further losing power during a constitutional convention defined by the Supreme Court.

A convention call will lead to litigation. It can not be topic-limited [9]

Under the Political Question Doctrine, Federal courts should refuse to hear a case if they find it presents a political question. If in fact courts do not intervene [5], just who will have control? An Article

V convention is a recipe for constitutional chaos. There are numerous states that would litigate to protect their rights in what would become an international embarrassment, further diminishing our Constitution's illuminating light of Liberty. An Article V convention cannot be topic limited. [9]

The problem is not The Constitution. The problem is we do not follow The Constitution. We The People must get involved to guard, not amend our Constitution. Claimed rules likely cannot be enforced based on likely federal laws and historical precedents.

There is a great deal more of information available on topic. We are happy to answer your questions as needed.

<<Signed>>

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End Notes:

[1]. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

-- Article VI, Clause 2, US Constitution [<https://constitution.congress.gov/constitution/article-6/>]

[2]. "Majority for passage of bills. A majority of the members then elected (or appointed) and qualified of each house, voting in the affirmative, shall be necessary to pass any bill. Two-thirds (2/3) of the members then elected (or appointed) and qualified in each house, voting in the affirmative, shall be necessary to ratify any amendment to the Constitution of the United States or to make any application for congress to call a convention for proposing amendments to the Constitution of the United States."

-- History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 52; L. 1974, ch. 458, § 1; Nov. 5, 1974. Section 13, Kansas Constitution:

[https://www.kssos.org/other/pubs/KS_Constitution.pdf]

[3]. The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress, Congressional Research Service 7-5700 www.crs.gov R42589

"Providing a Framework: The Precedent of Congressional Proposals to Shape an Article V Convention" on Page 36:

[https://digital.library.unt.edu/ark:/67531/metadc332904/m1/1/high_res_d/R42589_2014Apr11.pdf]

[4]. 1973 Convention act will override: S.1272 - Federal Constitutional Convention Procedures Act | [<https://www.congress.gov/bill/93rd-congress/senate-bill/1272>]

SEC. 7.

(a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of each state.

c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.

[5]. **Courts likely will not touch the issue so then we have chaos**

"And the few cases that have been asked to deal with issues comparable to the one now tendered to this Court have uniformly held questions as to compliance with Article V's requirements are within the sole province of Congress and not the courts -- in the language that has come to characterize such issues, they are political" (that is, nonjusticiable) questions."

-- United States of America, Plaintiff, v. Wayne Wojtas, Defendant, No. 85 CR 48, United States District Court for the Northern District of Illinois, Eastern Division, 611 F. Supp. 118; 1985 U.S. District. Lexis 19914, May 10, 1985

"As a rule, the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require, and Article V is no exception to the rule."

-- Dillon v. Gloss 256 U.S. 368 (1921)

[6]. An Article V convention has no "one state one vote" restriction and even Prof. Natelson admits such only when pressed: "Interstate conventions traditionally have determined issues according to a "one state/one vote," although a convention is free to change the rule of suffrage."

-- Dr. Natelson writing in the ALEC Handbook, "Proposing Constitutional Amendments by a Convention of the States," a Handbook for State Lawmakers, 2013 version, Section E, page 15.

[7]. "Congress, however, has historically interpreted the language authorizing it to "call" an Article V Convention as providing a broad mandate to establish standards and procedures for such an assembly. In its 1984 report on S. 119, 98th Congress, the Senate Judiciary Committee expressed its judgment that [a]s a necessary incident of its responsibility to "call" the convention, Congress must have the authority to determine that the constitutional preconditions exist for such a convention...The Congress, as well, clearly possesses the authority to set forth the necessary and attendant details of the convention."

-- Constitutional Convention Implementation Act of 1984, 98th Cong., 2nd sess. S.Rept. 98-594, p. 21.

[8]. [https://www.nebraskalegislature.gov/bills/view_votes.php?KeyID=7317]

[9]. "Congress's inability to limit the scope of a convention suggests that a limited convention, even if requested by the States is not permissible."

-- James Kenneth Rogers, Harvard Journal of Law & Public Policy [Vol. 30]

"What about a runaway convention? Yes, it is true that once you assemble a convention that states have called, they can do anything they want."

-- Virginia Attorney General Ken Cuccinelli, on the steps of the Capitol in Richmond on Jan. 17, 2011

[10]. [<https://montanafreepress.org/2022/06/20/convention-states-campaign-violation-in-montana/>]

[11]. [<https://montanafreepress.org/2022/09/09/super-pac-faces-new-allegations-in-montana/>]