

This is submitted in support of the oral testimony of John Axtell in opposition to HCR 5010 and SCR 1603.

To the Honorable Chairman and Representatives of the House and Senate Federal and State Affairs Committees:

Logic, or reason, is a powerful tool. Used correctly, it guides us to favorable outcomes; used incorrectly, it can lead to disaster. Reason is as powerful, and as demanding, as the laws of physics.

In Isaiah 1:18, God admonishes his people, through the prophet, to “come, let us reason together.”

So, let’s look at the logic behind the argument for an Article V convention.

The premise, the starting point of the argument for an Article V, is the belief that the Constitution is not being followed. On this we all agree. Let’s elaborate on this a bit more, though, to get to the root of the issue. The truth is that the words of the Constitution alone are not sufficient to constrain the federal government. Just as laws are of no effect without law enforcement and the courts, the words in the Constitution alone cannot do the job. Jefferson is quoted as saying, “Eternal vigilance is the price of liberty”, and we must be willing to be so, or pay the price.

The next step, which says that we therefore need to change the Constitution, is where we first disagree. We certainly do not call for a change to the laws of physics whenever an engineer fails to follow them in designing a building, a bridge, or an airplane. Nor do we change our morals when we or others fail to follow them. The time to change the Constitution is when **the Constitution** is flawed, such as when our Constitution allowed slavery. In other words, the Constitution should be changed only when, **assuming it were followed**, it is still found to be deficient or morally wrong.

The next step in the argument for an Article V includes the belief that “our side” can control the changes made to the Constitution. Let’s look at this in a moment.

Finally, there is a belief that once these changes are made, they will somehow constrain the US Congress to write good laws and budgets, and will force the president to stop writing unconstitutional executive orders, and will force judges to make sound decisions. But wait, we started by saying that the problem was that the Constitution is not being followed. We also recognized that it is ridiculous to assume that the words of the Constitution will themselves enforce the law.

So, what do we do? I agree with all of you on one point. We must do something.

First, we must face one fact. It is not the words of the Constitution, but our will and resolve, which will constrain Washington.

Second, we must recognize reality as it is. The most powerful and effective solution is not in changing Washington, as much as I would love to see that happen, just like you.

That solution happens to be right here, in Topeka. You, the state legislature, are the means to protect Kansas from federal overreach.

The Kansas legislature is arguably among the most conservative in the nation, if not the most conservative. Yet there are many examples where this legislature failed to protect the most essential rights from federal overreach. Let me give just one.

The right to property is an essential right, and one which the state legislature would be expected to protect. Last year, a federal bureaucrat decided that the Lesser Prairie Chicken was threatened after a couple years of drought, and passed regulations that created large fines for driving, plowing, or grazing within several hundred yards or so of a lek. This obviously destroyed the property rights of many Kansas landowners. In response, the Kansas “Prairie Chicken Bill” was drafted, starting in the Kansas Senate, and included a provision prohibiting state and local law enforcement from helping federal bureaucrats enforce this law. This anti-commandeering provision has been upheld by the US Supreme Court multiple times, the latest time within the last few decades. **This provision was stripped from the bill before it left committee.**

And the bill just got weaker from there, in both chambers.

This is just one such bill. Many other important bills have met the same fate.

If we, in Kansas, don’t have the votes in this legislature to invoke powerful and proven legal principles to protect property rights from federal overreach, then we certainly are not ready to attempt to create or participate in a good Article V process. Passing solid legislation that protects the rights of Kansans is extremely challenging, it requires wisdom and courage, and I honor those who fight to introduce and pass such legislation. But, participating in an Article V will require the wisdom of the founders to do as well as they did, and the goal is to do even better. This is a much more difficult task than passing any legislation you have ever seen.

Come, let us reason together. I urge you to oppose the Article V convention.