

Testimony of
Richard D. Fry, Esq.
for the
Standing Committee on Federal and State Affairs
of the
Kansas Senate

Sen. Ralph Ostmeyer, Chair

Regarding
Senate Concurrent Resolution 1603

(Application for an Article V amendments convention using the "Convention of States" model application)
(Companion to HCR-5010)

Hearing:

Thursday, March 12, 2015, 10:30 a.m. 144-S

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Note:

Each member of this committee has been emailed a complete copy of this testimony.
The printed edition delivered to the committee is abbreviated for efficiency considerations.

The "*Grand Bargain in the Works to Amend Constitution*" is available here:

<http://patriotcoalition.com/docs/Grand-Bargain-2015.pdf>

Download here: <http://patriotcoalition.com/docs/RDFry-SCR-1603-Testimony.pdf>

Position Statement

I strongly oppose HCR-5010 as:

1. It offers the wrong solution for the wrong problem,
2. The resolution's language is flawed and deceptive as to the scope of the amendments it seeks.
3. Amending the Constitution will not convert oath-breakers into oath-keepers.
4. State legislatures already have the necessary constitutional authority to rein in a rogue federal government without amending the U.S. Constitution.

I strongly urge you to vote against this resolution.

Executive Summary

The sponsors¹ of HCR-5010, have been prompted by special interest non-governmental organizations (NGOs), some of which were created specifically to lobby state legislators to apply for an Article V "*Convention for proposing Amendments*."² Many of these groups, funded by the billionaire boys clubs³, are promoting the idea that we can stop corrupt federal politicians from violating their oath to support the Constitution by rewriting the Constitution.

The language of the "operative [clause]"⁴ used in HCR-5010 was that created by Citizens for Self-Governance's "Convention of States Project," an NGO created for the purpose of carrying on the current campaign of a fifty year old project to rewrite the Constitution through an Article V convention.

According to Convention of States Project's "*A Handbook for Legislators and Citizens*," Eric O'Keefe, a member of the Citizens for Self-Governance Board of Directors, "*helped found U.S. Term Limits in 1991*,"⁵ an effort which resulted in amending the Arkansas State Constitution that was struck down by the U.S. Supreme Court in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) as unconstitutional.⁶

The current promoters of this Constitutional revision say that an Article V "*Convention for proposing Amendments*" can be limited to specific topics or subjects, and suggest that a "limited" convention is what they intend. The reality is quite different. The language of the "Convention of States" model Article V application, which is used verbatim in HCR-5010, actually requests an open convention which could address **all parts of the Constitution** and could propose **increases or decreases** in the "power and authority" not only of the "federal government" but of the states as well.

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This deception is enabled by the use of the term "limit" in a fashion to suggest it means reduce. However, Black's Law Dictionary defines "limit" to mean, "*In General, [limit] is a boundary of scope, be it authority, power, privilege, or right. Prescribed bounds.*"⁷

COS, and by proxy, HCR-5010 also uses the synonymous term "restraint" in a similar fashion. In essence, the terms "limit" and "restrain" do not mean reduce.

In a March 15, 2014 Article V debate in Yorktown, Virginia, Convention of States staff counsel Robert Kelly admitted the COS Article V application opens up the entire Constitution, with the exception of Article VII, which addressed the "*Establishment of this Constitution,*" not the amendment thereof.⁸

Their solution, a Constitution rewrite, will not logically solve what they have identified as the problem with the Republic, i.e., corrupt "federal" politicians who are violating the Constitution. They do not explain how a "change in structure" to our form of government will turn corrupt politicians, a "personnel" issue, into statesmen.⁹

In identifying the "problem" they have neglected to take note of the fact that state politicians have been collaborating and complicit with the federal government in violating the Constitution. The extent of such collaboration is revealed in part by the fact that all states are taking "federal dollars" and that over a third of the budgets of over half the states is "federal dollars". This amount has been increasing over the last decade.

Thus, the solution to the "problem", these constitutional rewriters propose, will not solve the partial "problem" they have identified, let alone the real problem.

The real root problem in our Republic is that "We the People" are not holding our public servants accountable when they violate their oath of office or their oath to support the Constitution. Part of the underlying cause of this is that "We the People" and our "public servants" no longer understand the principles of the Republic and our duty to enforce them.

Rewriting the Constitution will not address the root problem.

When one acts in ignorance they invite disaster. Or, said another way, "*For fools rush in where angels fear to tread.*"¹⁰

Conclusion

HCR-5010 is the poor execution of a bad idea. It is the wrong solution to the wrong problem. Amending the Constitution, whether those amendments are proposed by an amendments convention or by Congress, will not resolve the root problem in the Republic. The root problem is that "We the People," the sovereigns of this Republic, are no longer fulfilling our moral and patriotic duty to hold you "public servants" accountable, including to insist you uphold your oath to support the federal Constitution.

HCR-5010 calls for a convention to consider all parts of the Constitution for a rewrite and to change, increase or decrease, the "power and authority" of the "federal government" i.e. that in Washington D.C., as well as that of the states under the Constitution. It is not an application for a convention to reduce, contract or lessen the power and authority of the government in Washington, D.C.

Rewriting the Constitution will not turn corrupt politicians into statesmen, anymore than revising *The Ten Commandments* will turn sinners into saints.

State governments have all the Constitutional authority necessary to rein in an out-of-control federal government without any amendments.

For more information on the background on this ongoing half-century push to trigger an Article V "Convention for proposing Amendments," and the diabolical collusion of the socio-fascist and neo-fascist, read: "Grand Bargain" in the Works to Amend Constitution.¹¹

For the sake of Liberty, the Kansas Legislature should resoundingly reject HCR-5010, SCR-1603, and all other efforts to trigger an Article V "Convention for proposing Amendments."

I welcome any questions, and am willing work with my fellow Kansans and legislators to develop and implement real solutions to reining in out-of-control government.

Respectfully,

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Basis for my Assessment / Witness background

I am an attorney of twenty plus years. And, I have been studying and researching the Article V convention issue since 2009. I have spent over 1,500 hours dealing with this issue. I have a solid foundation from which to speak on this issue.

I debated numerous top leadership on the Article V issue across the country, including, but not limited to: Mike Farris, head of COS Project, in Chantilly, Virginia on (12/06/14); Nick Dranias, with Goldwater Institute/Compact for America, in Arizona (11/13/14); the COS Executive Director, Jim Kinney, in North Carolina (04/12/14); COS national staff counsel, Robert Kelly and its State Director for Alaska (02/18/14); and its State Director for Kansas, David Schneider (01/14/14); conducted briefings in state legislatures and in Congress. I have also provided dozens of presentations on this issue around the country.

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¹ DeGraaf, Anthimides, Barton, Bradford, Brunk, Campbell, B. Carpenter, Dannebohm, Dove, Esau, Estes, Ewy, Garber, Gonzalez, Hawkins, Hedke, Hibbard, Hildabrand, Hoffman, Huebert, Hutchins, Johnson, K. Jones, Kahrs,

Kelley, Kiegerl, Macheers, Mason, O'Brien, L. Osterman, Peck, Powell, Read, Rhoades, Rubin, Scapa, Seiwert, Sutton, Waymaster, Whitmer and Williams

² U.S. Constitution, See Article V. <http://www.patriotcoalition.com/u-s-constitution/>

³ The "conservative" billionaire boys' club network of special interest propaganda and governmental influence: According to Muckety (<http://www.muckety.com/>) and other sources the **State Policy Network (SPN)** is funded by the **Charles Koch Foundation** and the **Castile Rock Foundation** (Adolf Coors family). SPN is a "hub organization" which other organization join in order to better coordinate their resources and activities.

Virtually every "conservative" think tank in the **SPN** is also funded by Koch and Coors and they are all pushing for an Article V: **Heritage Foundation** (Funding Koch and Coors), **Freedom Watch**, **CATO Institute** (Funding Koch and Coors), **Independence Institute** (Funding Koch and Coors) (This is where the legal "grugru" for the Article V movement resides, **Prof. Robert Natelson**), **Goldwater Institute** (Funded Koch and Walton family).

ALEC (Funded by Koch) is and has been a major player in the Constitution Revisionist movement for decades, it used to fund the SPN annual meetings and is now an associate member of the **SPN**.

Major "**Talking Heads**" supporters have been receiving millions in sponsorship money from the "conservative" billionaire boys club network since this most recent campaign for a Constitution rewrite began in 2008: Sean Hannity - 2008 (**Heritage**), Rush Limbaugh - 2009 (**Heritage**), Glenn Beck - 2010 (**Freedom Works**), Mark Levin - 2010 (**Americans for Prosperity (AFP)**).

AFP was founded by Koch (Richard Fink - Koch Exec. VP) and is funded by David Koch, **Americans for Prosperity Foundation** (ran by David Koch) and **Freedom Partners** (Richard H. Fink is a board member). **Freedom Partners** also funds the national **Tea Party Patriots** which supports a Constitution rewrite. **Tea Party Patriots** is also funded by an organization ran by Leo Linbeck III and **Eric O'Keefe**. O'Keefe is a long time operative of the Koch's / Billionaires Boys Club network having set up and ran several Koch non-governmental organizations.

Some sources:

Kenneth P. Vogel, Lucy Calmont, **Rush Limbaugh, Sean Hannity, Glenn Beck sell endorsements to conservative groups**, Politico (06/15/2011)

<http://www.politico.com/news/stories/0611/56997.html>

Exposing the Convention of the States (COS) as an Article V Constitutional Convention ... and Who's Behind It All, including Soros & Levin, Secure the Republic (12/08/2013)

<http://securetherepublic.com/main/exposing-the-convention-of-the-states-cos-as-an-article-v-constitutional-convention/>

Muckety- **David H. Koch**, <http://www.muckety.com/David-H-Koch/2226.muckety>

Muckety- **Heritage Foundation** - <http://www.muckety.com/16176FD6360AC1CF98F0065AC544BDC1.map>

Muckety- **Freedom Works** - <http://www.muckety.com/DDD76C12D4B56448BBB1DCD84E9B5B788.map>

⁴ "Operative words" definition: The precise words that achieve the objective of an instrument.

Black's Law Dictionary, <http://thelawdictionary.org/operative-words-2/>

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⁵ Eric O'Keefe, Citizens for Self-Governance Board of Directors, "Convention of States Handbook for Legislators and Citizens," (page 14) <http://patriotcoalition.com/docs/COS-Handbook.pdf>

⁶ In 1995, the U.S. Supreme Court struck down the "U.S. Term Limits, Inc." amendment to the Arkansas Constitution, holding that, "Section 3 of Amendment 73 to the Arkansas Constitution violates the Federal Constitution." The Court also held that, "...Amendment 73 must fall because it is an indirect attempt to evade the Qualifications Clauses' requirements and trivializes the basic democratic principles underlying those Clauses." U.S. Term Limits, Inc. v. Thornton 514 U.S. 779 (1995)
<https://supreme.justia.com/cases/federal/us/514/779/case.html>

⁷ "Limit" definition: *"In General, this is a boundary of scope, be it authority, power, privilege, or right. Prescribed bounds."* Black's Law Dictionary, <http://thelawdictionary.org/limit/>

⁸ "Convention of States Admit Article V Application not Limited," Robert Kelly, staff counsel for Convention of States, in public Article V Debate, Yorktown, Virginia, March 15, 2014
<https://youtu.be/kCApyUYvuRE>

⁹ "The Convention of States Project is Here!" (October 11, 2013) <https://youtu.be/kCApyUYvuRE>

¹⁰ "For fools rush in where angels fear to tread." – An Essay on Criticism, Alexander Pope, 1709
<http://poetry.eserver.org/essay-on-criticism.html>

¹¹ "Grand Bargain" in the Works to Amend Constitution," Richard D. Fry, (03-12-15)
<http://patriotcoalition.com/docs/Grand-Bargain-2015.pdf>