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# CONVENTION of STATES ACTION

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TESTIMONY OF MARK MECKLER, J.D.

ON SCR 1611

KANSAS SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

2018

My name is Mark Meckler. I am an attorney residing in California, and I am the Co-Founder and President of Citizens for Self-Governance and the Convention of States Project.

Honorable committee members, the resolution before you offers a structural solution to a structural problem. It offers you the chance to restore the balance of powers in our federal system by using your constitutional authority under Article V.

Congress and administrative agencies have long usurped powers that rightfully belong to you-- the elected lawmakers of Kansas. The activities of Washington, D.C. today would have been unthinkable to our Founding Fathers. Federal laws and regulations now touch upon every aspect of our lives: What kind of light bulbs we can buy. Farming practices. School curriculum. School lunches. Health care and insurance.

Meanwhile, we live under the shadow of a crushing national debt that threatens to enslave our grandchildren and their children. All of this comes courtesy of an activist Supreme Court, which has vastly expanded federal power through its precedents. The Court has created loopholes to the Constitution's limits on federal powers, and those loopholes will remain there until someone closes them.

That "someone" has to be you. It's obvious that Congress is never going to curtail its own power—at least not definitively or permanently. It would take decades for the Supreme Court to reverse enough precedents to eliminate the constitutional loopholes it has created, and that is assuming that the right cases reached it in the right posture, and that we had decades of a solidly, consistently constitutionalist Supreme Court. The president could choose to act with some restraint during his term—maybe—but can do nothing to restrain future presidents.

Fortunately, in their wisdom, our Founding Fathers predicted that this very situation would arise. Toward the very end of the Constitutional Convention, George Mason specifically predicted that the federal government would one day overpower the states. And that is why he insisted that Article V include a way for states to propose constitutional amendments through a state-controlled convention.

Mason’s proposal was adopted without dissent. This final version of Article V gave the states the ultimate constitutional power—the power to unilaterally amend the Constitution of the United States, without the consent of Congress.

The way it works is that when 2/3s of the state legislatures (34) pass resolutions applying for a convention to propose amendments on the same topic (which serves as the meeting agenda), Congress has a constitutional duty to name the initial time and place for the meeting and then stand back and let it happen. Each state chooses and instructs its delegation of commissioners, who attend the meeting and work with the other state delegations to hammer out possible amendment proposals on the topic specified in the 34 state applications. Because they act as agents of their state legislatures, the commissioners only have legal authority to act pursuant to that specified agenda, and only to act in pursuance of their legislature’s instructions. Every state gets one vote.

Any proposals that are supported by a majority of the states at the convention stage then get submitted back to the states for ratification. Only when 38 states ratify a proposal can it become part of our Constitution.

Now some people will try to prey on fear by telling you that because some of these details are not explicitly stated in the text of Article V, we have no idea how an Article V convention would operate. But that simply is not true. We know what a convention of state is, and the basics of its operation, because we have a very rich history of interstate conventions in America. That history is the very reason this process was provided as an alternative in Article V. Just as we know what a trial by jury looks like without having every detail written into the Constitution, we know how an Article V convention would function.

By passing the resolution before you, Kansas will effectively be raising its hand to say, “Yes, we believe it is time for the states to gather to consider proposing amendments that will re-balance federal power with state power.” Specifically, the Article V convention called pursuant to the resolution before you would be limited to three topics for amendment proposals:

1. Amendments that impose fiscal restraints on the federal government;
2. Amendments that limit the power and jurisdiction of the federal government; and
3. Amendments that set term limits for federal officials—including or possibly limited to federal judges.

Now this does not mean that the convention must propose an amendment on each of these topics. Rather, these topics describe the outer limit on what would be germane for consideration at the convention.

With this approach, the convention could propose a balanced budget amendment accompanied by limitations on Congress' spending and taxation powers. It could propose limits on executive power, federal agencies, and impose real checks and balances on the Supreme Court.

Most American citizens, and the vast majority of state legislators I speak with as I travel the country, agree that our nation is in desperate need of a re-balancing of power between the federal government and the states. The Article V convention for proposing amendments is *the* constitutional process designed to address that problem.

In fact, in George Washington's farewell address to the American people, his final admonishment to us was this: "If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

I don't think our Founding Fathers would be surprised that the federal government has claimed more than its constitutional share of power. They *would* be surprised, I think, that we have not used the most effective tool they gave us for curbing it.

History will remember us, one way or another. We will either be remembered as the generation that finally succumbed, completely, to federal tyranny, or the generation who stood and defended the torch of liberty when it was flickering dangerously low.

As Ronald Reagan said, "You and I have a rendezvous with destiny. Will we preserve for our children, this, the last best hope of man on earth, or will we sentence them to take the first step into a thousand years of darkness? If we fail, at least let our children and our children's children say of us we justified our brief moment here. We did all that could be done."

I am out here on the road, away from my home and my family, raising and training a grassroots army of self-governing citizens in all 50 states and speaking to their state legislators because I believe I have no other choice. Let it never be said of our generation that we failed to do all that could be done.

Thank you for allowing me to testify today.