

February 14, 2018
Senate Concurrent Resolution 1611
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Written Opposition Testimony

Chair Estes and Members of the Committee:

Please do not vote in favor of holding an Article V Constitutional Convention (SCR 1611). Having taught Constitutional Law for almost forty years, and having studied constitutions from around the globe, I have difficulty imagining anything worse. Those who think they "know" what would come out of such a convention are either misinformed or kidding themselves. What I do know, however, is that virtually all proposals I have seen would, at their core, transfer authority from the people of this nation and our elected representatives to a judicial branch charged with enforcing a new set of potentially rigid constraints.

A balanced-budget amendment to the constitution is a particularly bad idea. How would our government respond in a time of war? Would our military have been depleted because of extended budget constraints? Would the elderly would lose their Social Security if Congress and the President failed to meet a constitutional obligation to balance the budget? Would our children lose access to basic health care? More importantly, should judges rather than elected representatives make decisions about whether to protect the military, the elderly, or the children? **Some Kansans believe that our Supreme Court should not be making education funding decisions. Imagine how much more political power the judicial branch could wield with a revised constitution.**

A constitutional convention would not necessarily be tied to a single issue. What would happen if such a convention became captured by a well-financed special interest group? Should its views control our children and their children, regardless of the changes that take place in the world around us? Slave owners comprised the closest counterpart to a special interest group in 1787, and participants at that time correctly identified that influence as "the curse of heaven."

What rules would govern a new constitutional convention? Would each delegate have a vote based upon state population size, or would each state have an equal voice? Would a simple majority determine the outcome? Article V does not answer such questions. And although Article V requires ratification by three-quarters of the states, the Philadelphia convention in 1787 ignored such constraints when participants chose to promulgate a new constitution rather than just amend the Articles of Confederation. Is there an assurance that the same would not happen today?

What we do know is that a modern constitutional convention would look nothing like the convention of leaders who met in 1787; conversations related to calls for a new convention frequently identify specific targets for change that would replace the broad principles embodied by our current Constitution. Studies have shown that constitutions endure when they are either broad and flexible or detailed but easily amended. Our current constitution exemplifies the former, but nothing guarantees that an altered text would retain that vitality. I can only hope that Kansas legislators will have enough common sense to avoid that risk.

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Views expressed are personal, and institutional affiliation is provided solely for identification.