

**Testimony in opposition to HCR 5027 “COS” Application for an Article V Convention
For the Kansas House Federal and State Affairs Committee – Feb. 10, 2022
By Joanna Martin, J. D.**

Dear Representatives:

I am a retired litigation attorney, trial and appellate, and have spent the last ten or more years as a volunteer writing and speaking on our federal Constitution and all issues surrounding an Article V convention. I live in Tennessee.

Contrary to what the various organizations pushing for an Article V Convention assure you, State Legislatures have no control over the Delegates to an Article V convention.

Pursuant to Article V, US Constitution, *Congress* has the power to “call” an Article V Convention. Pursuant to Article I, Sec. 8, last clause, *Congress* has the power to make the laws necessary and proper to carry out its power to “call” the convention:

**I.
Constitutional provisions respecting an Article V Convention**

Article V, US Constit., says:

“The Congress, whenever two thirds of both Houses shall deem necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing amendments...” [italics added]

Article I, §8, last clause, US Constit., says Congress shall have the Power...

“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof.” [italics added].

The Constitution is clear: The States may “apply” for a Convention; but the power to “call” it is vested in Congress.

The April 11, 2014 Report of the Congressional Research Service

This Report shows that Congress understands that Article V grants to Congress *exclusive authority* to set up a convention. The Report exposes as *false* “COS’s” assurances that the States would be in control of a convention:

“Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including **(1) receiving, judging, and recording state applications;** (2) establishing procedures to summon a convention; ... **(4) determining the number and selection process for its delegates...**” (page 4).

Nothing in the Constitution or anywhere else requires Congress to permit States to select Delegates. *Congress alone* determines how delegates will be selected and how many there will be.

An illustration of how *Congress* understands its powers re “calling” the Convention

[HERE](#) is the Bill Summary of **S. 1272**, the **Federal Constitutional Convention Procedures Act**, which passed the US Senate during 1973. Though it didn't pass the House, it illustrates that Congress recognizes that it alone has the power to determine how Delegates to a convention are selected and how many Delegates there will be. **Senate Bill 1272** provided that *Delegates would be elected from each Congressional District; plus 2 additional Delegates for each State would be elected.*

So when those pushing for an Article V Convention assure you that State Legislatures will select the Delegates; and each State will have one vote, they are making stuff up. *We don't know what Congress will decide to do re selection of Delegates.* Congress may decide to appoint *themselves* as Delegates.¹

II.

The “Convention of States” organization² has promised for years that nothing can come out of an Article V Convention except proposed Amendments to our existing Constitution; and that these proposed amendments will "limit the power of the federal government."

¹ Page 40 of the CRS Report shows it's been recognized that there doesn't seem to be any “. . . constitutional prohibition against [U.S.] Senators and Representatives serving as delegates to an Article V Convention. . .”

² The very name of this organization incorporates a stratagem which creates the false belief that the States control the convention. The belief is false because the convention provided for by Article V is a *federal* convention called by the *federal* government to perform the *federal* function of addressing our *federal* Constitution. It is not a state function; accordingly, the term, “convention of States”, does not appear in Article V. So the “Convention of States movement” (COS), of which Rob Natelson is “senior advisor”, *renamed* the convention provided for in Article V as a “convention of states”; and *re-defined* it as “a convention controlled by State Legislatures”.

Previously, in a speech Natelson gave on Sep. 16, 2010 [[link](#) at top of p. 2], he said he would no longer call what he wanted a “constitutional convention”; but would ‘put our concepts on “reset” ’ and henceforth call it an “Article V convention” or a “convention of states”.

But Robert P. George, a Member of the “COS” Legal Advisory Board, has already co-authored a new Constitution which grants *massive new powers to a new federal government!* Please see this: [Mark Meckler’s “COS” Board member has drafted a new Constitution which imposes gun control.](#)

So HCR 5027 isn’t about getting a convention so we can get amendments to limit federal power.³ It’s about getting a convention where a new Constitution can be imposed. And since a new Constitution will have its own new mode of ratification, it’s sure to be approved.⁴

III.

The People have the power to set up or take down Governments

Our Declaration of Independence (2nd para) is the Fundamental Act of our Founding and part of the “*Organic Law*” of our Land [[link](#)]. It recognizes that The People take down and create governments. When Delegates meet in convention to address a Constitution, they are the Sovereign Representatives of The People. They cannot be controlled by the “creatures” of Constitutions previously ratified – the federal or state governments [[link](#)].

Accordingly, in the unlikely event that Congress permits States to select Delegates, State Legislatures have no competent authority to control Delegates at a convention called by Congress pursuant to Article V. The Delegates, as Sovereign Representatives of The People exercising plenipotentiary government-making or altering powers, have the power to *eliminate* the federal & state governments.⁵

³ Our Constitution *already limits* the federal gov’t to a small handful of enumerated powers [[link](#)]. But everyone ignores the existing constitutional limits on federal power.

⁴ Consider how easy it would be to impose a new Constitution which provides [as in the proposed Constitution for the Newstates of America] that it would be ratified by a referendum initiated by the President: (1) The President initiates the referendum; (2) the voting takes place; (3) massive cheating takes place [California is notorious for “ghost voters” & can decide the referendum for the entire Country]; and (4) the vote counters and the President declare the new Constitution ratified. *And there is not a thing we can do about it.*

⁵ The proposed [Constitution for the Newstates of America](#) does just that: The States are to be dissolved and replaced by regional governments answerable to the new national government. It sets up a totalitarian dictatorship. Chief Justice Warren Burger referred to this proposed Constitution in his letter of April 8, 1986 to Phyllis Schlafly [[LINK](#)]. Note that in his last paragraph, Justice Burger refers to the professors who “would like to abolish the states, and reorganize the federal structure along the lines of the division of circuits for the Federal Judicial system, or even on a more rigid regional basis.”

And note that Article XII, §1 of the Newstates Constitution provides for **ratification by a referendum initiated by the President**. The States would not be involved in the ratification. So “COS’s” often repeated assurances that “three-fourths of the States would have to approve whatever comes out of a convention”, is *false*. A new Constitution will have its own mode of ratification – whatever the Drafters want.

And in *Federalist No. 40*, James Madison, a Delegate to the federal “amendments” Convention of 1787, invoked the Declaration of Independence as justification for the Delegates’ ignoring their instructions to propose Amendments to the Articles of Confederation and writing a new Constitution which created a new Form of Government.⁶

And the new Constitution had an easier mode of ratification: it would be ratified when only 9 of the 13 States approved it [Article VII, US Constit.]; whereas amendments to the Articles of Confederation had to be approved by the Continental Congress & all of the 13 States.⁷ Today, ratification of a new Constitution could be by a national referendum initiated by the President, as in the proposed Constitution for the Newstates of America (Art. XII).

Now you see the real agenda behind the push for an Article V convention: As James Madison expressly warned, an Article V Convention provides the opportunity (*under the pretext of seeking amendments*) to replace our existing Constitution with a new Constitution which moves us into a new system of government. Will it be the new Constitution co-authored by COS Board Member Robert P. George? And since the new Constitution will have its own mode of ratification, it will be approved.

It’s a hollow promise that “ $\frac{3}{4}$ of the States have to ratify whatever comes out of a convention.”

Please see also this short Flyer, “[An Article V Convention Made Easy](#)”.

IV.

Between 1907-1978, Kansas submitted various applications to Congress for an Article V Convention. [HERE](#), from an unofficial & archived site, is a list of applications. Since Congress alone has the power to judge and count the applications, Congress may use the applications Kansas has already submitted, to get to the 34 States needed to call an Article V Convention.

And while the convention lobby has falsely assured State Legislators that Congress must get 34 applications on the same subject before it may call a Convention [!]; they are now aggregating applications on a variety of subjects [*some as old as 1789 & 1861*] & now claim 33 States. See [THIS!](#)

So please *promptly rescind* the applications for an Article V Convention Kansas has already sent to Congress; and don’t pass any more, such as HCR 5027.

⁶ In [Federalist No. 40](#) (15th para), Madison says the Delegates knew that reform such as was set forth in the new Constitution was necessary for our peace & prosperity. They knew that sometimes great & momentous changes in established gov’ts are necessary & a rigid adherence to the old gov’t takes away the “transcendent and precious right” of a people to “abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,” ... **“and it is therefore essential that such changes be instituted by some INFORMAL AND UNAUTHORIZED PROPOSITIONS, made by some patriotic and respectable citizen or number of citizens...”** [caps are Madison’s]

⁷ ART. 13 of [the Articles of Confederation](#).