

State of Kansas
House of Representatives

State Capitol
Topeka, Kansas 66612
(785) 296-7679
michael.houser@house.ks.gov



6891 SW 10th St.
Columbus, KS 66725
(620) 704-3817
mhouser_2010@yahoo.com

Mike Houser
Representative, 1st District

Thank you, Chairman Barker and fellow committee members, for allowing me to testify in opposition to HB 2722. HB 2722 would supposedly set the framework for delegates and their selection to an Article V convention should Congress call one. Although I understand the intent of this legislation, after reading Article V of the US constitution I see nothing giving the states the authority to do so. The language of article V only grants the states the power to petition Congress when two thirds of the states agree to do so. Nothing written therein gives the states the authority to draft legislation concerning convention delegates. The Constitution, however, gives Congress the authority in article 1 sec 8 "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.", which I assume would include those regarding a constitutional convention. So, the only powers granted to the states are to apply to Congress for a convention, and to ratify amendments proposed by Congress.

It has been suggested by proponents of a convention that the states will make up the rules. As previously stated, the Constitution delegates Congress the authority to make the laws which organize and set up the Convention. 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; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states. Congress has already demonstrated its intent to make those rules. In 1983, when we were 2 states away from a convention, 41 federal bills were introduced; and although none passed, apportionment of delegates was generally set by population, like the Electoral College, not by one state, one vote. What makes you think that Congress will act any differently today?

Let us suppose Congress calls a convention and gives the states the authority to select their delegates. The language of this bill suggests there will be a total of five delegates and five

alternates. Where does this number come from? It did not come from the Constitution. Do all the states have the same number? I assume it will be bipartisan, but the language of the bill is not clear on that. For the sake of discussion, we'll just pretend that five sounds good, with all parties and ideologies represented by the five, and go on. This bill attempts to bind the delegates to only the amendments being petitioned for by using "unfaithful delegates" clauses. While that sounds like a good idea, nothing in Article V or elsewhere in the Constitution limits a convention to a specific topic. Delegates to the convention have the inherent right as citizens of our Republic to alter or abolish our form of government as expressed in the Declaration of Independence, undoubtedly the most fundamental act of our founding. The 1787 constitutional convention is a case in point. The 1787 convention was called for the sole and express purpose of revising the Articles of Confederation. The delegates were given instructions by the states they represented. On May 29, 1787, the delegates voted to proceed with the convention in executive session and make the proceedings secret. They then proceeded to write a new Constitution. This is how we came about the one we have now. State Legislators who vote for "unfaithful delegate laws" assume they will be able to know what is going on every minute of every day of the convention. If delegates to a convention today vote to make the proceedings secret, the States won't know what is going on – and can't stop it. And if delegates vote by secret ballot, the States will NEVER know who did what. A convention will operate exactly like things under this dome. Rules can be overturned, ignored, or rewritten. The sky is the limit if there are enough votes to pass.

I do not believe HB 2722 will be able to control the delegates to a constitutional convention. Federal and State governments are the creation of Constitutions, which were written by The People. Since a government is the "creature" of its constitution, it cannot be superior to its Creator, The People. Congress "calls" the convention (sets it up); but when it assembles, the delegates, as Sovereign Representatives of the People, are not answerable to State Legislatures (which are "mere creatures" of the State Constitution) or to Congress (which is a "mere creature" of the federal Constitution). Keeping that principle firmly in mind, delegates to a federal convention called by the federal Congress, to perform the federal function of altering or replacing our federal Constitution, are performing a federal function, not a State function; therefore will not be bound to vote in a certain manner. Their votes will not be voidable.

The delegates to a Constitutional convention have the power to eliminate the federal and state governments as we know them and replace them with something totally different – which is precisely why I am opposed to one. I respectfully ask you to oppose any and all bills which call for an article V convention or their inner workings.