Testimony by Shawn Meehan - OPPOSED
Founder, Guard The Constitution
HCR 5005, Kansas House, February 8, 2023

Dear Kansas Legislature,

I am Shawn Meehan, a retired Air Force Master Sergeant, Operations Desert Storm and Iraqi Freedom Veteran. I founded Guard The Constitution in 2014 and have spent the nine years since focused on educating legislators and We The People on the documented facts of the Article V convention issue.

The Founders never said to change the Constitution to make the government obey it.
Such claims are distortions of the record of the 1787 Philadelphia Convention. In fact, Thomas Jefferson admonished the states to resist federal government usurpation of the Constitution and that amending the Constitution was not the way to do it. [1]

Convention of States misstates George Mason's words in convention, Sept. 15, 1787.
Article V advocates claim that on September 15, 1787 George Mason wanted the Article V convention option in case the states needed to rein in the federal government. No founder said this ever. They felt that it would be necessary for the states to be able to apply for necessary amendments and they were very clear that amendments address defects [2] and do not control the reach of government power.[3]

Amendments fix defects, not usurpation of the Constitution.
The Constitution is not the problem. The Constitution is the solution. September 10, 1787, during the constitutional convention, Alexander Hamilton testified that amendments remedy "defects" in the Constitution. He tells us in Federalist No. 85 that useful amendments would address the "organization of the government, not…the mass of its powers."

The convention option of Article V was designed to adjust the organization of the government when Congress refused to. It was not designed to adjust the abuse of power by one part of government over another. As shown above, the Founders knew it could not. A moral and involved "We The People" fighting with our state legislatures against federal usurpation, is clearly the restraining force the Founders had in mind. [4]

Article V was not put in The Constitution to change it when it is being ignored.
It was inserted to ensure the balance of power was proper based on experience. James Madison, known as the "Father of the Constitution," in Federalist No. 43 wrote, "[The Constitution] equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

An Article V convention is one state, one vote, except when it isn't.
Attorney, Dr. Rob Natelson, admitted [5] that a convention can change the "one state, one vote" rule, opposite of what many convention advocates claim. Should a convention call be made by Congress, they will attempt to define such a convention as they have previously asserted (41 times) is their right. [6][7]

In 1973, the U.S. Senate clearly acted to change a draft law from one state, one vote, to the Electoral College allocation. [6] With only 6 votes out of 538 possible, Kansas could simply be ignored. Congress is sure to pass legislation similar to the Federal Convention Act of 1973. [6] If an Article V convention gets called. Under such a law, states will not have one state one vote as promised, and

they will not be able to limit a convention topic by controlling delegates, as delegates will be protected from prosecution. [6]

Kansas requires 2/3 vote to pass HCR 5005 by your state constitution.
The Kansas Constitution was amended in 1974 when the Legislature put an amendment before voters and 68% said yes to requiring 2/3 vote of your Legislature before passing an Article V convention resolution. [8] In 2019, your attorney General opined, "is a federal power granted to the Kansas Legislature by the federal constitution which cannot be constrained by the people of Kansas through the text of their state constitution."

The Kansas Legislature needs to respect the will of the People of Kansas that took the time to ensure this supermajority requirement was inserted in your state constitution. Article V simply leaves it to 2/3 of the states passing a resolution to call for an Article V convention, "or, on the application of the legislatures of two thirds of the several states," per the plain text of Article V. Kansas can decide themselves how high that bar to apply is.

Is passing an Article V resolution a "federal function" or not?
Should Kansas maintain, as some in your state government have already postured, along with COS advocates, that Kansas may not put any restrictions on this "federal function" then that must also hold that any delegate limitation bills also are a state restricting the Article V "federal function." Supporters of Article V applications in states across the country only offered support based on delegate limitation bills being of law. Well Kansas cannot have it both ways. Which is it? Delegate limitation bills that have no hope of controlling delegates, and are used as a sales pitch to legislators, would be proven invalid. Ooops!

The COS Nebraska reveal suspends rules to prove COS won't follow rules, only their goals!
It is illogical and absurd that advocates promise a convention will follow the rules! On May 26, 2021, the Nebraska Senate voted to suspend its rules, [9] under extreme constituent and lobbyist pressure, in a striking illustration of how rules become guidelines, then eventually trash, crumpled under our feet.

As the 1787 Convention established their own rules, Congress, state legislatures, and political meetings, all establish their own rules and suspend them when they wish. A convention called under Article V has the same full power to suspend its rules. Once a convention suspends its rules, it is too late to stop it.

This is a huge, essential point: COS claims states control a convention and there is nothing to fear because the convention will follow all the rules placed on it, yet COS bullied the Nebraska Legislature to suspend their rules.

Congress controls an Article V call and is the sole arbiter of questions.
The proponents scream this is not true. Look at the notes and decide. Congress has asserted numerous times that they will define the convention no matter what the proponents say. It is further important to highlight that the courts have postured they will likely play no role so who will resolve the massive confusion? [10]

There can be no disputing that this issue will end up in voluminous state and federal litigation. Under the Political Question Doctrine, courts should refuse to hear Article V litigation. If in fact courts do not intervene, just who will have control? [10] An Article V convention is a recipe for constitutional chaos. Americans would likely tremble at the prospect of states further losing power during a constitutional convention defined by the Supreme Court.

All Petitions for Article V may be combined for an unrestricted convention.
Proponents are working to combine Article V petitions with different topics. Such indicates a lack of respect for limitations in specific state resolutions and signals a lack of ability to rein in subject matter at a convention if the groups planning for it promise adherence but exhibit clear disregard for it. The principal author of the source document for this information is a national director for Convention of States. [11] If Kansas adds just their one petition for a convention, you are adding to the fuel some groups will use to press for an unlimited convention. Please do not let Kansas pass HCR 5005 and be tricked into helping trigger that unlimited convention.

If the supreme law of the land is perpetually disobeyed, non-existent rules for an as-of-yet not called convention, can in no way possibly be hoped to be enforced.

Convention of States themselves have been caught stating the truth that an Article V convention will not achieve the goals they regularly claim they will. [12][13]

HCR5005 Advocate COS's Mark Meckler Shoots His Main Argument In The Foot!:
Not only did Nebraska's suspension of their rules clearly make the case against HCR 5005 but so did Mark Meckler himself. On September 23, 2021, Meckler published an article titled, "The Time Has Come For Civil Disobedience" [https://selfgovern.com/the-time-has-come-for-civil-disobedience/] where he wrote:

"Civil disobedience is the only way to save the Republic." He wrote this after years of attacking his opponents citing numerous writings of the Founders holding that no Founder ever said to amend the Constitution to enforce it, but rather taught us that the states and The People must rise up and push back to keep the federal government in the box it came in. In fact they said not to amend the Constitution to enforce it! [1].

Meckler elaborated: "The time is now for civil disobedience. I hope the legal challenges to this mandate succeed, but I don't trust the courts to protect liberty. That's our job. We're the final guardians of freedom and self-governance, and we must take a stand now before we lose what's made our nation great."

It seems the HCR 5005 proponent-in-chief, President of Convention of States, Mark Meckler himself has finally started listening to the Founders. He channels James Madison admirably in his article [14]. Maybe someone needs to ask Mark Meckler exactly what he believes or why he is pushing the gross misuse of the Article V convention option with HCR 5005?

In the great history of our nation nearly 1.4 million troops have given their lives after pledging an oath to defend the Constitution. Our Constitution is the supreme law of the land and the final firewall of freedom and must be preserved. We must defend it not amend it. Please use your power to deny these deceptive moves to amend our Constitution.

A convention call will lead to litigation. It can not be topic-limited
Under the Political Question Doctrine, Federal courts should refuse to hear a case if they find it presents a political question. If in fact courts do not intervene [10], just who will have control? An Article V convention is a recipe for constitutional chaos. There are numerous states that would litigate to protect their rights in what would become an international embarrassment, further diminishing our Constitution's illuminating light of Liberty. An Article V convention cannot be topic limited. [15]

The problem is not The Constitution. The problem is we do not follow The Constitution. We The People must get involved to guard, not amend our Constitution.

There is a great deal more of information available on topic. We are happy to answer your questions as needed.

<<Signed>>
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End Notes:

[1]. “Then it is important to strengthen the state governments: and as this CANNOT BE DONE BY ANY CHANGE IN THE FEDERAL CONSTITUTION, (for the preservation of that is all we need contend for,) it must be done by the states themselves, erecting such barriers at the constitutional line as cannot be surmounted either by themselves or by the general government. The only barrier in their power is a wise government….”
-- Thomas Jefferson To Archibald Stuart, December 23, 1791 [Emphasis mine]

[2]. Here is what Mason Actually Said!
“… As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind, would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.”
- Madison’s notes of the 1787 Convention

What is the proper kind of amendment? Our founders intended to propose amendments of errors
- Elbridge Gerry said on June 5, 1787, in the convention, the “novelty & difficulty of the experiment requires periodical revision.”
- Alexander Hamilton said on Sep. 10, 1787 in the convention, amendments remedy defects in the Constitution.
- Federalist 85: “useful amendments would address the “organization of the government, not … the mass of its powers”
- George Mason himself said on June 11, 1787 in the convention, The Constitution now being formed “will certainly be defective”, as the Articles of Confederation have been found to be. “Amendments therefore will be necessary….

[3]. "We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority."…"For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers”
-- Federalist 85

[4]. "If the interposition of the State legislatures be necessary to give effect to a measure of the Union, they have only NOT TO ACT, or to ACT EVASIVELY, and the measure is defeated"
-- Federalist 16

"The People are “the natural guardians of the Constitution” as against federal judges “embarked in a conspiracy with the legislature”; and the People are to become “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority.”
-- Federalist 16

"Either the mode in which the federal government is to be constructed will render it sufficiently dependent on the people...it will not possess the confidence of the people, and its schemes of usurpation will be easily defeated by the State governments, who will be supported by the people."
— Federalist 46

"The States are separate and independent sovereigns. Sometimes they have to act like it."
-- Chief Justice Roberts, National Federation of Independent Business v. Sebelius, 567 U.S. 519

"...Beside this security, there is a great probability that such a declaration in the federal system would be inforced; because the state legislatures will jealously and closely watch the operations of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty…."
-- James Madison Speech Introducing Bill of Rights to U.S. House of Representatives, June 8, 1789

"I know no safe depositary of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power."
--Thomas Jefferson to William C. Jarvis, 1820

"In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers."
-- James Madison in Federalist 44, January 25, 1788

"The truth is, that this ultimate redress may be more confided in against unconstitutional acts of the federal than of the State legislatures, for this plain reason, that as every such act of the former will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in effecting a change of federal representatives."
-- James Madison in Federalist 44, January 25, 1788

"On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter...."
-- Federalist 46, "The Influence of the State and Federal Governments Compared, New York Packet, Tuesday, January 29, 1788, Madison

"Now, more than ever before, the people are responsible for the character of their Congress. If that body be ignorant, reckless, and corrupt, it is because the people tolerate ignorance, recklessness and corruption. If it be intelligent, brave, and pure, it is because the people demand these high qualities to represent them...."
-- President James Garfield

[5]. An Article V convention has no "one state one vote" restriction and even Prof. Natelson admits such only when pressed: "Interstate conventions traditionally have determined issues according to a “one state/one vote,” although a convention is free to change the rule of suffrage."
-- Dr. Natelson writing in the ALEC Handbook, "Proposing Constitutional Amendments by a Convention of the States,” a Handbook for State Lawmakers, 2013 version, Section E, page 15.

[6]. The U.S. Senate passed Federal Convention Act of 1973 on July 9, 1973. Two key sections from that act are:

“SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress.”

“SEC. 7. (c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.”

When the Act was originally drafted and referred to the Judicial Committee, 7(a) called for one state, one vote, but was changed to this Electoral College model. As passed, it would handicap states.

7(c) makes it pretty clear that Congress intends to exempt all delegates from any potential prosecution upon their return to their state. Legislators also must consider that most parliamentary rules provide for “executive session” as was used for the entire 1787 Constitutional Convention. Delegates might not be able to be communicated with, controlled, or recalled. In executive session, the events within the convention would not be known so the states would have no knowledge of delegate performance and if a recall of delegates was necessary.

[7]. Congressional Research Service, 7-5700, R42589, Pg. 36, "Providing a Framework: The Precedent of Congressional Proposals to Shape an Article V Convention"
PDF Copy of report available here: http://fas.org/sgp/crs/misc/R42589.pdf

[8]. "Majority for passage of bills. A majority of the members then elected (or appointed) and qualified of each house, voting in the affirmative, shall be necessary to pass any bill. Two-thirds (2/3) of the members then elected (or appointed) and qualified in each house, voting in the affirmative, shall be necessary to ratify any amendment to the Constitution of the United States or to make any application for congress to call a convention for proposing amendments to the Constitution of the United States."

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 52; L. 1974, ch. 458, § 1; Nov. 5, 1974.
Section 13, Kansas Constitution: https://www.kssos.org/other/pubs/KS_Constitution.pdf

[9]. [https://www.nebraskalegislature.gov/bills/view_votes.php?KeyID=7317],

[10]. "And the few cases that have been asked to deal with issues comparable to the one now tendered to this Court have uniformly held questions as to compliance with Article V's requirements are within the sole province of Congress and not the courts -- in the language that has come to characterize such issues, they are political" (that is, nonjusticiable) questions.”
-- United States of America, Plaintiff, v. Wayne Wojtas, Defendant, No. 85 CR 48, United States District Court for the Northern District of Illinois, Eastern Division, 611 F. Supp. 118; 1985 U.S. District. Lexis 19914, May 10, 1985

"As a rule, the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require, and Article V is no exception to the rule."
-- Dillon v. Gloss 256 U.S. 368 (1921)

“Congress’s inability to limit the scope of a convention suggests that a limited convention, even if requested by the States is not permissible.”
-- James Kenneth Rogers, Harvard Journal of Law & Public Policy [Vol. 30]

"What about a runaway convention? Yes, it is true that once you assemble a convention that states have called, they can do anything they want."
-- Virginia Attorney General Ken Cuccinelli, on the steps of the Capitol in Richmond on Jan. 17, 2011

[11]. A New Strategy for the Article V Convention of States Movement // Recommendations. 1) The leaders of the different AV COS groups need to begin serious, realistic discussions concerning the future of the COS movement overall including the significance of the two aggregation studies described herein; the leaders need to begin cooperating and developing a unified approach toward convening a [GENERAL] COS by end of year 2022"

Principal author is Mr. Paul S Gardiner who served as Georgia Coalitions Director and National Veterans Coalitions Director for [COS PROJECT]. Source: https://huntforliberty.com/a-convention-strategy/
HCR 5005 could trigger an open Article V convention, according to the American Legislative Exchange Council (ALEC) attorney that testified in 2021 in the South Carolina Judiciary Committee. They announced their plan to file a lawsuit to mandate Congress call a convention without regard to subject limitations. HCR 5005 gives them what they claim they need. See the proof: [https://huntforliberty.com/a-convention-strategy/]

[12]. February 5, 2018 in Boise Idaho’s legislature I got to witness Feb. 5th, 2018, Boise, in the Idaho Legislature building, Robert Kelly, COS attorney gave a presentation on COS. An attendee asked, "What happens when you change the Constitution and they do not follow it?" Robert Kelly, the COS attorney teaching a class said, "Millions of activists will need to be involved in pressuring legislators and litigation will be required to enforce the changes." The same audience member wisely asked, "Why not skip amending the Constitution and enforce it now?" Kelly got agitated and had no answer.

[13]. On July 6, 2017, Mark Meckler was heard on Red Eye Radio:
Caller: "What happens, if say, we call a "convention of states" [and] we get some great reform amendments made to the Constitution to undo a lot of damage that has been done by activist judges and left-wing congressional majorities and presidents. What happens if we have future...laws...that violate the new amendments...and...new activist judges on the Supreme Court that then give rubber stamp approval [to the unconstitutional laws].... Is there a bullet-proof, really good way to stop the same process from cycling over and over again after we get new amendments [at a convention]?"

Meckler: "You know, I think that's one of the best questions there is. And I'm going to give you the short and blunt answer, which is NO!"

That's right, Mark Meckler asserts there is no way to stop the federal government from ignoring amendments proposed by a convention that later become ratified!

[14]. "On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The

disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter...."
-- Federalist 46

[15]. Perhaps the most assertive expression of the open or general convention argument centers on the doctrine of “conventional sovereignty:” According to this theory, a convention is, in effect, a premier assembly of the people, a representative body charged by the people with the duty of framing the basic law of the land, for which purpose there devolves upon it all the power which the people themselves possess.
In short, that for the particular business of amending and revising our Constitution, the convention is possessed of sovereign powers and therefore is supreme to all other Government branches or agencies.”
-- Brickfield, Problems Relating to a Federal Constitutional Convention, p. 16.

"In any event, even if Congress could specify that a convention was called to a single issue, that limitation would be unenforceable. I doubt that the Supreme Court would declare a ratified amendment void on the ground that the convention had gone beyond Congress' instructions. The original Philadelphia convention went well beyond the purposes for which it was called and no one has suggested that the Constitution is a nullity for that reason.
Accordingly, I do not see how a convention can be limited to one topic once it has been called.”
-- Robert Bork, a letter to Representative Reese Hunter, January 16, 1990

"Because no amending convention has ever occurred, an important question is whether a convention can be limited in scope, either to a particular proposal or within a particular subject. While most calls for amending conventions in the nineteenth century were general, the modern trend is to call for limited conventions. Some scholars maintain that such attempts violate Article V and are therefore void."
-- Spalding, Matthew; Edwin Meese; David F. Forte (2005-11-07). The Heritage Guide to the Constitution (p. 266). Regnery Publishing, Inc.

"Writing at the height of debate over the 1980s campaign for an Article V Convention to consider a balanced budget amendment, former Solicitor General Walter Dellinger asserted that the Framers deliberately sought to provide a means of amending the Constitution that is insulated from excessive influence by either the state legislatures, or by Congress."

His view of the convention’s authority is among the most expansive advanced by commentators on the Article V Convention: ...any new constitutional convention must have the authority to study, debate, and submit to the states for ratification whatever amendments it considers appropriate (emphasis added). According to his judgment, an Article V Convention must be free to pursue any issue it pleases, notwithstanding the limitations included in either state applications or the congressional summons by which it was called:
If the legislatures of thirty-four states request Congress to call a general constitutional convention, Congress has a constitutional duty to summon such a convention. If those thirty-four states recommend in their applications that the convention consider only a particular subject, Congress still must call a convention and leave to the convention the ultimate determination of the agenda and the nature of the amendments it may choose to propose."
-- Walter E. Dellinger, “The Recurring Question of the ‘Limited’ Constitutional Convention,” Yale Law Journal, volume 88, issue 8, July 1979, p. 1624.

More recently, Michael Stokes Paulsen invoked original intent and the founders' understanding of such a gathering. Asserting that they would have considered a "convention" to be a body that enjoyed broad powers, similar to the Constitutional Convention itself, he suggests: "Convention" had a familiar ... public meaning in 1787. It referred to a deliberative political body representing the people, as it were, "out of doors." Representatives or delegates to such a convention might well operate to some extent pursuant to "instructions" of the people thus represented, but a convention was not a pass-through or a cipher, but rather an agency — a deliberative political body."
-- Michael Stokes Paulsen, "How to Count to Thirty-Four: The Constitutional Case for a Constitutional Convention, "Harvard Journal of Law and Public Policy, volume 34, issue 3, 2011, p. 842.