

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH
LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1058

Introduced by Halloran, 33; Bostelman, 23; Brewer, 43; Briese, 41;
Clements, 2; Ebke, 32; Erdman, 47; Friesen, 34; Hilgers,
21; Kolterman, 24; Larson, 40; Lowe, 37; Stinner, 48;
Watermeier, 1; Wayne, 13; Williams, 36.

Read first time January 17, 2018

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to the Constitution of the United States; to
- 2 adopt the Faithful Delegate to Federal Article V Convention Act.
- 3 Be it enacted by the people of the State of Nebraska,

Comments below in red are by

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1 Section 1. This act shall be known and may be cited as the Faithful
2 Delegate to Federal Article V Convention Act.

3 Sec. 2. For purposes of the Faithful Delegate to Federal Article V
4 Convention Act:

5 (1) Alternate delegate means an individual elected by the
6 Legislature to represent this state as an alternate delegate at an
7 Article V convention;

8 (2) Article V convention means a convention called by the United
9 States Congress under Article V of the Constitution of the United States;

10 (3) Delegate means:

11 (a) An individual elected by the Legislature to represent this state
12 as a delegate at an Article V convention; and

No! Article V delegates to Congress the power to "call" the convention. Pursuant to Article I, §8, last clause, Congress has the power to make the laws necessary and proper to carry out its power to "call" the convention. So determining who will be at the convention and how they are selected are powers belonging to Congress alone. Congress has always seen that it has this power. The Congressional Research Service Report (CRS) dated April 11, 2014, is [HERE](#). It says:

"First, Article V delegates important and exclusive authority over the amendment process to Congress..." (page 4)

"Second . . . Congress has traditionally laid claim to broad responsibilities in connection with a convention, including . . . (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation

So Congress may or may not permit States to appoint Delegates. Congress has the power to appoint the Delegates - they could appoint themselves! Congress is under no obligation to permit the States to select Delegates.

And even if Congress were to permit States to select Delegates, Congress might dictate a different method of selecting Delegates than Nebraska wishes.

13 **(b) An alternate delegate who fills a vacancy created by the removal**

14 of a delegate or acts in place of the delegate in his or her absence;and

15 **(4) Unauthorized vote means a vote by a delegate at an Article V**

16 convention that:

17 **(a) Is contrary to the instructions adopted by the Legislature in**

18 effect at the time the vote is taken;

19 **(b) Exceeds the scope of the subject matter of the Article V**

20 convention authorized by the Legislature in the application to the United

21 States Congress to call the convention if the Legislature made an

22 application to call the convention; or

23 **(c) Exceeds the scope or subject matter of the Article V convention**

24 if the Legislature did not make an application to the United States

25 Congress to call the convention.

No! At Article V, The People granted to the Delegates to the convention the power to propose amendments. The Convention itself is the deliberative body. It is not a rubber stamp for State Legislatures. The States have no control over the Delegates.

COS acknowledges the danger of an Article V convention (A5C) when they say States should pass *unfaithful delegate* laws which they claim will enable State Legislatures to control Delegates. But State laws can't control Delegates because:

- The States have no Jurisdiction over the Delegates to an A5C. Delegates to a *federal* convention called by Congress, to perform the *federal function* of altering or replacing our *federal Constitution*, are performing a *federal function*, not a State function. The Delegates don't represent any government, federal or state. They are supposed to represent The People; but in our corrupt time, are more likely to represent the Koch Brothers (because they have the cash).**

- The 2nd para of the Declaration of Independence (DOI) says a People have the "self-evident right" to throw off their government and set up a new one. We invoked that Principle in 1776 to throw off the British Monarchy; and we invoked it in 1787 to throw off the Articles of Confederation (AOC) and the government it created and to write a new Constitution which created a new government. Just like the Delegates who signed the DOI, and the Delegates who signed the Constitution of 1787, Delegates to an A5C are *the Sovereign Representatives of the People*. They have the power to invoke that same Principle and write a new Constitution with a new mode of ratification which creates a new government. The "Brilliant Men" on the attachment understood this!
- State Legislatures are "creatures" of their State Constitutions, and have no "competent authority" to control the Representatives of *The People* at an A5C. The People create governments by means of constitutions. Since a government is the "creature" of its constitution, it can't be superior to its Creator, The People. This is why at the federal convention of 1787, where our present federal Constitution was drafted, our Framers understood that only The People were competent to ratify the new Constitution. George Mason said on July 23, 1787, "...The [State] Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators...."
- Article V provides that when two-thirds of the State Legislatures apply for it, Congress is to call a convention. At that point, it is out of the State Legislatures' hands - the bell has tolled, and State Legislatures can't un-ring it. 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). *The Delegates [whoever they may be] actually have the power to eliminate the federal and state governments - and that is precisely what the proposed Constitution for the Newstates of America does.*

For more information, see "Why states can't prevent a runaway convention".

26 Sec. 3. The purpose of the Faithful Delegate to Federal Article V
27 Convention Act is to provide the rules and procedures necessary to create
28 and guide a delegation to an Article V convention and provide legislative
29 direction relating to the election or recall of a delegate or an
30 alternate delegate, the filling of a vacancy of a delegate or an
31 alternate delegate, and the determination of an unauthorized vote.

Even if Congress permits the States to select Delegates, the States will have no control over the Delegates. Just as State Legislatures have no control over their congressional delegations (because they are performing a *federal function*); they will have no control over Delegates to an A5C because they too will be performing a *federal function*.

The Delegates to an A5C have the plenipotentiary power to ELIMINATE THE STATE GOVERNMENTS AND THE EXISTING FEDERAL GOVERNMENT. Under the proposed Constitution for the Newstates of America, the States are dissolved and replaced by regional governments answerable to the new national government. Delegates to an A5C have the power to ELIMINATE the State of Nebraska.

Article XII, §1 of the Newstates Constitution provides that it is ratified by a National Referendum. Any new Constitution proposed at an A5C will have its own new mode of ratification. It will be whatever mode the drafters want.

Sec. 4. (1) As soon as possible following the calling of an Article

1 V convention, the Legislature shall elect delegates and alternate
2 delegates to the convention. Except as provided in subsection (2) of this
3 section, the Legislature shall elect five delegates and five alternate
4 delegates from the membership of the Legislature at the time of the call.

If the States are sufficiently foolish to ask Congress to "call" an Article V convention, Congress will decide how the Delegates are selected.

5 (2) If the number of delegates allocated to represent this state at
6 the Article V convention is determined by the United States Congress or
7 by agreement among the states to be a number other than five, the
8 Legislature shall elect the appropriate number of delegates and alternate
9 delegates.

No, If Congress decides to permit States to select Delegates, Nebraska will select the Delegates in the manner dictated by Congress.

And Congress may decide to allocate Delegates from each State according to the Electoral College. If so, California will get 55 Delegates, and Nebraska will get 5.

10 (3) Service as a delegate or alternate delegate by a member of the
11 Legislature is an additional duty of the legislative office.

You would be wrong to assume that Congress will permit the States to appoint Delegates and that the State legislators will be able to appoint themselves.

12 (4) The Legislature shall pair each alternate delegate with a
13 delegate at the time of the election. The alternate delegate is
14 designated to automatically fill a vacancy in the position of the paired
15 delegate. If the positions of both the delegate and alternate delegate
16 are simultaneously vacated, the Legislature shall elect a new delegate
17 and paired alternate delegate to succeed the prior delegate and alternate
18 delegate.

Congress decides such matters - not the States, unless Congress permits the States to decide.

19 Sec. 5. (1) The delegates and alternate delegates shall not be
20 compensated for their service as delegates and alternate delegates.

21 (2) The delegates and alternate delegates may be reimbursed for

22 their actual and necessary expenses incurred in the performance of their
23 official duties as provided in sections 81-1174 to 81-1177.

An A5C is a federal function. Congress will determine compensation. Just as they do for Nebraska's congressional delegation.

24 (3) A delegate or an alternate delegate may not accept a gift, a
25 loan, food, beverages, entertainment, lodging, transportation, or any
26 other benefits from a person who is required to register as a lobbyist
27 under the Nebraska Political Accountability and Disclosure Act.

Are any Nebraska Legislators accepting money from Koch front organizations?

The Koch Brothers are literally buying an A5C. The BIG Money is behind the push for an A5C: See, e.g.,

- [Kochs Bankroll Move to Rewrite the Constitution](#)
- [A CMD special Report on ALEC's Funding and Spending](#)
- [Mega-rich conservative donors are behind Texas' obsession with amending the Constitution](#)
- [ALEC Exposed: the Koch Connection](#)
- [Disturbing Radical Agenda Behind Article V Amendment Convention \(Con-Con\)](#)

The globalists want the United States moved into the North American Union (NAU). At least since the early 1980s, the federal government has been moving us, step by step, into the NAU. To complete their goal, the globalists need a new Constitution which transforms us from a sovereign nation to a member state in the NAU. This is what the George Bush family wants; the Cruz family; the Council on Foreign Relations; and apparently the Koch Brothers of Texas. See "[How to use Article V of our Constitution to move us into the North American Union.](#)"

And from the Left - George Soros is spending millions of dollars ostensibly to push an Article V Convention to overturn Citizens

United, publically finance elections, and limit political free speech. In the third article below, Soros is given credit for the success of a similar bill to Nebraska's LR268 (WolfPAC). He wants a Marxist constitution in place by 2020:

- Socialists and Soros Fight for Article V Convention
- Working Together to Rewrite the Constitution
- Soros in Vermont: Leftist billionaire behind state's call to keep money out of politics

28 Sec. 6. (1) Each delegate and alternate delegate shall take the
29 following oath before voting or taking an action as a delegate or
30 alternate delegate of this state: I do solemnly swear (or affirm) that,

1 to the best of my abilities, I will, as a delegate (or alternate
2 delegate) to the Article V convention, act according to the limits of the
3 authority granted to me as a delegate or alternate delegate under the
4 Faithful Delegate to Federal Article V Convention Act, will not consider
5 or vote to approve an amendment to the Constitution of the United States
6 not authorized by the Legislature in its application to the United States
7 Congress to call this convention or an amendment outside of the scope of
8 this convention if the Legislature did not make an application to the
9 United States Congress to call this convention, and will faithfully abide
10 by and execute the instructions to the delegates and alternate delegates
11 adopted by the Legislature.
12 (2) Each delegate and alternate delegate shall file the executed
13 oath with the Secretary of State.

Are the Delegates to an A5C going to pay more attention to their oaths than government officials pay to their Oaths to support our federal Constitution? In our morally degenerate times, Oaths are a joke.

14 Sec. 7. (1) At the time delegates and alternate delegates are
15 elected under the Faithful Delegate to Federal Article V Convention Act,
16 the Legislature shall adopt instructions for the delegates and alternate
17 delegates to govern their actions at the Article V convention.

Why will the Delegates to an A5C today follow their instructions when the Delegates to the federal convention of 1787 ignored their instructions from the Continental Congress and from their States?

Our first Constitution was the Articles of Confederation (AOC). It had defects, so on February 21, 1787, the Continental Congress called a convention to be held in Philadelphia "for the sole and express purpose of revising the Articles of Confederation..."

And HERE are the instructions from the States. These instructions encompassed:

- "alterations to the Federal Constitution [the AOC] which, when agreed to by Congress and the several States, would become effective": Virginia, Pennsylvania, Delaware, Georgia, S. Carolina, Maryland, & New Hampshire.
- "for the purpose of revising the Federal Constitution" [the AOC]: Virginia, Pennsylvania, North Carolina, Delaware, and Georgia.
- "for the sole and express purpose of revising the Articles of Confederation": New York, Massachusetts, and Connecticut.
- "provisions to make the Constitution of the federal Government adequate": New Jersey

[Rhode Island boycotted the convention.]

But the Delegates IGNORED the instructions from Congress and their States and wrote a new constitution - with a new mode of ratification - which created a new government.

Furthermore, the new Constitution had an easier mode of ratification. Whereas Art. 13 of the AOC required Amendments to the AOC to be ratified by the Continental Congress and all of the then 13 States; the new Constitution [drafted at the federal "amendments" convention] provided at Article VII that it would be ratified when 9 States approved it.

In [Federalist No. 40](#) (15th para), James Madison invoked the Delegates' right to abolish our form of government, as recognized in the 2nd para of our Declaration of Independence (DOI), to justify ignoring their instructions from Congress and from their States and drafting a new Constitution which created a new government.

Even though Art. V speaks of a "convention for proposing amendments", the DOI is still in place and may be invoked by Delegates to an A5C today to justify imposing a new constitution (with a new mode of ratification) which creates a new government.

This is why [Brilliant Men](#) - including 4 US Supreme Court Justices - have warned that an A5C is very dangerous. Please ask yourself: Is it possible that those 4

Justices, along with James Madison & Alexander Hamilton, and other eminent Jurists, understood something about the plenipotentiary powers of Delegates which you have not yet grasped?

18 (2) The Legislature shall not adopt instructions for an Article V
19 convention called following the application by the Legislature to the
20 United States Congress for the convention that authorize a delegate or
21 alternate delegate to consider or vote to approve an amendment to the
22 Constitution of the United States that is not authorized by the
23 Legislature in its application for the convention.
24 (3) The Legislature may amend the instructions at any time.

States have no power to control an A5C. The Delegates have plenipotentiary powers. They have the power to introduce a new constitution with an easy mode of ratification which eliminates our present structure and transforms us from a sovereign nation to a member state of the North American Union. THIS is what the globalists want - and they need an Article V convention to get it.

Why is so much money being spent to get an A5C?

Why isn't that money being spent to educate Americans on the Constitution we already have - and which delegates only a tiny handful of powers to the federal government? Please see [this Chart](#) which lays out our federal structure and lists the enumerated powers delegated to the federal government.

25 Sec. 8. An alternate delegate shall act in the place of the
26 alternate delegate's paired delegate when the delegate is absent from the
27 convention. An alternate delegate acting under this section shall be
28 deemed the delegate for purposes of such action.

29 Sec. 9. (1) A delegate shall not cast an unauthorized vote. A vote
30 determined to be an unauthorized vote is invalid.

31 (2) The determination that a vote is an unauthorized vote shall only

1 be made by the Legislature or by the advisory committee created pursuant
2 to section 11 of this act when the Legislature is not in session.
3 (3) A delegate who casts a vote determined to be an unauthorized
4 vote is disqualified to continue to serve as a delegate or alternate
5 delegate, and the vacancy created by the disqualification shall be filled
6 as provided in section 4 of this act.
7 Sec. 10. When it is determined by the Legislature or the advisory
8 committee created pursuant to section 11 of this act that a delegate has
9 cast an unauthorized vote, the Speaker of the Legislature shall promptly
10 notify the head of the delegation of this state and the presiding officer
11 of the Article V convention that the delegate has cast an unauthorized
12 vote and is disqualified to serve as a delegate.

COS claims that State Legislators will be able to monitor the proceedings at an A5C.

But Madison's Journal of the Federal Convention of 1787 shows that on May 29, 1787, the Delegates voted to make the proceedings secret. What if Delegates to an A5C today make the proceedings secret? If so, State Legislatures won't know what is going on - and can't stop it. And if Delegates vote by secret ballot, the States would NEVER know who did what. One might think that with cell phones & cameras, it's impossible to have a secret meeting. But the American Legislative Exchange Council (ALEC), which induces State Legislators to push the COS application for an A5C, is experienced in conducting secret meetings with State Legislators. WATCH this 6.5 minute video of a Georgia TV crew which was prevented by armed guards from getting inside a meeting held at a Georgia hotel between ALEC and Georgia Legislators!

If you can't find out what's going on at the convention [and ask the Georgia TV crew if that's possible], then you won't be able to recall disobedient Delegates.

And you have no power over them anyway! They can make a new Constitution with a new mode of ratification which creates a completely new structure and system and form of government.

13 Sec. 11. (1) The Executive Board of the Legislative Council and the
14 Lieutenant Governor shall serve as the advisory committee for the
15 delegates and alternate delegates attending the Article V convention. The
16 chairperson of the executive board shall serve as the chairperson of the
17 advisory committee. If the chairperson or any other member of the
18 executive board is serving as a delegate or an alternate delegate, his or
19 her position on the advisory committee shall be deemed vacant and the
20 vacancy shall be filled in the same manner as a vacancy on the executive
21 board. The Lieutenant Governor may cast the deciding vote in the event of
22 a tie vote by the rest of the members of the advisory committee.

**Nebraska will have no power whatsoever over what goes on at an
A5C. Once the requisite number of States has applied, it's out of
your hands. See [this Chart](#).**

23 (2) If the Legislature is not in session at a regular or special
24 session while an Article V convention is convened, the members of the
25 advisory committee shall:

26 (a) Meet at the call of the chairperson at the State Capitol;

27 (b) Upon the request of a delegate or an alternate delegate, advise
28 the delegate or alternate delegate whether there is reason to believe
29 that an action or an attempt to take an action by a delegate or alternate
30 delegate could result in an unauthorized vote; and

31 (c) Determine whether a vote cast by a delegate is an unauthorized
1 vote as provided in subsection (3) of this section.

2 (3) If a vote cast by a delegate is challenged as an unauthorized
3 vote under the Faithful Delegate to Federal Article V Convention Act, the
4 advisory committee shall determine that the vote is an unauthorized vote
5 only if six or more members of the advisory committee vote that it was an
6 unauthorized vote.

7 (4) The advisory committee shall not take any action when the

8 Legislature is convened in regular or special session.

The Brilliant Men said you can't control the Delegates.

9 Sec. 12. It shall be a Class IV felony for a delegate or an
10 alternate delegate to knowingly cast an unauthorized vote.

As a former criminal defense attorney, I know that you can't successfully criminally prosecute a person for doing what the 2nd para of our Declaration of Independence says they have a "self-evident" right to do; and which "We the People" have already done twice: throw off one government and set up a new one.

Furthermore, the States have no criminal jurisdiction over Delegates to a *federal convention* who are performing a *federal function* provided for by *the federal Constitution!* You may just as well make it a crime for members of your congressional delegation to vote in ways that you don't like. You have no power over that!

Delegates to an A5C will have sovereign immunity for what they do - just as State and federal Legislators have sovereign immunity for their legislative Acts. Furthermore, in Congress's past preliminary preparations for an A5C, they have provided for immunity for the Delegates to an A5C. See the CRS Report on page 37.

This paper shows it's a piece of cake to circumvent "faithful delegate" laws: [Delegates to an Article V Convention Can't be Controlled by State Laws!](#)

Please contact me with your questions and comments.

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