

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS—TOPEKA DIVISION**

MIKE THOMPSON, Member of the
Kansas Senate, in his official capacity,
and MICHAEL MURPHY, Member
of the Kansas House of
Representatives, in his official
capacity,

Plaintiffs,

v.

Civil Action No. 5:23-cv-4120

TY MASTERSON, President of the
Kansas Senate, in his official capacity,
and DANIEL HAWKINS, Speaker of
the Kansas House of Representatives,
in his official capacity,

Defendants.

COMPLAINT

Plaintiffs Senator Mike Thompson and Representative Michael Murphy
allege as follows:

Nature of the Action

1. On March 22, 2023, a simple majority in the Kansas Senate and a simple majority in the Kansas House of Representatives voted to pass concurrent resolutions applying to Congress to call a convention to propose amendments to the U.S. Constitution.

2. Article 2 Section 13 of the Kansas Constitution requires a two-thirds vote of elected legislators in both Chambers to pass a resolution to either call a convention to propose amendments to the U.S. Constitution or ratify an amendment to the U.S. Constitution.

3. Therefore, both the Speaker of the House and the President of the Senate ruled that the measures mentioned in ¶ 1, which did not receive super-majority votes, did not pass in their respective Chambers.

4. This super-majority requirement violates the federal Constitution. Article V of the U.S. Constitution sets forth exclusive procedures for Congress and state legislatures to amend the federal Constitution.

5. When state legislatures act pursuant to their authority under Article V, they exercise a federal function from federal law.

6. States cannot, whether through their constitutions or state law, impose limitations or additional procedural requirements on state legislatures acting pursuant to this federal authority.

7. Plaintiffs seek declaratory judgments that Article 2 Section 13 of the Kansas Constitution is unconstitutional and therefore cannot be a basis for denying passage of House Concurrent Resolution (HCR) 5008 and Senate Concurrent Resolution (SCR) 1607 by their respective Chambers, and that accordingly, these concurrent resolutions have been passed by their respective Chambers by majority votes and therefore have been adopted by each Chamber.

Jurisdiction and Venue

8. This action is brought under 42 U.S.C. § 1983. Accordingly, this Court has jurisdiction over this matter under 28 U.S.C. § 1331.

9. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201 and further relief under 28 U.S.C. § 2202 if it determines it is appropriate in this case.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District and all Plaintiffs and Defendants reside in this District.

11. The claim arose in Topeka. Plaintiffs thereby request Topeka as the place of trial.

Parties

12. Plaintiff Mike Thompson is a duly elected member of the Kansas Senate who voted in favor of the measure in question. He currently resides in Shawnee, Kansas.

13. Plaintiff Michael Murphy is a duly elected member of the Kansas House of Representatives who voted in favor of the measure in question. He currently resides in Sylvia, Kansas.

14. Defendant Ty Masterson is a duly elected member of the Kansas Senate and, at all relevant times, was the President of the Senate. He is sued in his official capacity only.

15. Defendant Daniel Hawkins is a duly elected member of the Kansas House of Representatives and, at all relevant times, was the Speaker of the House. He is sued in his official capacity only.

Factual Background

16. On March 22, 2023, the Kansas House of Representatives on final action voted on Kansas House Concurrent Resolution 5008.

17. It received 74 affirmative votes and 48 negative votes, resulting in a simple affirmative majority vote.

18. The title of said resolution provided:

A CONCURRENT RESOLUTION applying to the Congress of the United States to call a convention of the states for the purpose of proposing amendments to the Constitution of the United States that impose limits on the federal government.

19. The full text of HCR 5008 is attached hereto, labeled Exhibit A, and is incorporated in full by reference.

20. Plaintiff Murphy was one of the members of the House of Representatives to vote in favor of HCR 5008.

21. On March 22, 2023, the Kansas Senate voted on Senate Concurrent Resolution 1607.

22. It received 22 affirmative votes and 16 negative votes, resulting in a simple affirmative majority vote.

23. The title of said resolution provided:

A CONCURRENT RESOLUTION making application to the Congress of the United States to call a convention for the purpose of proposing amendments to the Constitution of the United States that impose limits on the federal government.

24. The full text of SCR 1607 is attached hereto, labeled Exhibit B, and is incorporated in full by reference.

25. Plaintiff Thompson was one of the members of the Senate to vote in favor of SCR 1607.

26. Article 2 Section 13 of the Kansas Constitution provides:

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.

27. The Rules of the Kansas House and Senate do not independently impose super-majority voting requirements on the House and Senate to make an application to Congress to call a convention or to ratify an amendment to the U.S. Constitution.

28. Defendant Masterson, President of the Senate, and Defendant Hawkins, Speaker of the House, ruled that SCR 1607 and HCR 5008 did not pass in their respective Chambers solely because they believed these resolutions failed to satisfy Article 2 Section 13 of the Kansas Constitution, which requires “[t]wo-thirds (2/3) of the members then elected (or appointed) and qualified in each house, voting in the affirmative, . . . to make any application for congress to call a convention for proposing amendments to the Constitution of the United States.”

29. The record of the vote in both Chambers states, “Not adopted by required 2/3 majority.”

30. Masterson and Hawkins did not personally rely on any other rule or provision of law in issuing these decisions.

31. To pass a bill or concurrent resolution in the House or Senate, Defendants Masterson and Hawkins, as presiding officers, must take a roll call vote in their respective Chambers.

32. After the roll call, the vote outcome alone determines whether the bill or resolution is adopted or not.

33. The Kansas legislature normally requires a simple majority vote to pass concurrent resolutions.

34. If Article 2 Section 13 of the Kansas Constitution did not impose a super-majority requirement on the legislature to call a constitutional convention, Hawkins would have issued a decision that HCR 5008 was adopted by the House based on the simple majority vote, and Masterson would have issued a decision that SCR 1607 was adopted by the Senate based on the simple majority vote.

Count I: Declaratory Judgment

35. The above paragraphs are hereby incorporated by reference as if set forth fully herein.

36. State legislatures do not derive their authority to propose amendments to the United States Constitution through the convention process from their state constitutions.

37. Rather, their authority to make application for a convention to propose amendments comes directly from Article V of the United States Constitution.

38. Neither state law nor state constitutions can enact processes or standards for the exercise of Article V authority in addition to or apart from those derived from federal law.

39. The Kansas Constitution cannot be applied to actions by the Kansas legislature on matters arising under Article V of the U.S. Constitution.

40. Defendants' decisions as the presiding officers of each Chamber to reject the passage of these concurrent resolutions pursuant to Article 2 Section 13 of the Kansas Constitution were incorrect as a matter of law.

41. Accordingly, these concurrent resolutions should be declared to have passed both Chambers by majority votes and thereby to have been adopted.

Prayer for Relief

WHEREFORE Plaintiffs pray that this Court issue declaratory judgments that Article 2 Section 13 of the Kansas Constitution is unconstitutional and therefore cannot be a basis for denying passage of HCR 5008 and SCR 1607 in each Chamber, and that accordingly, these concurrent resolutions have been passed in both Chambers by majority votes and have thereby been adopted. Plaintiffs pray for such other and further relief as allowed by law.

Dated: December 22, 2023

Respectfully submitted,

/s/ Edward D. Greim

Edward D. Greim, No. 21077

Katherine E. Graves, No. 79151

Graves Garrett LLC

1100 Main Street, Suite 2700

Kansas City, MO 64105

Tel: 816-256-3181

edgreim@gravesgarrett.com

kgraves@gravesgarrett.com

Attorneys for Plaintiffs

Exhibit A

As Amended by House Committee

Session of 2023

House Concurrent Resolution No. 5008

By Committee on Federal and State Affairs

2-7

1 A CONCURRENT RESOLUTION applying to the Congress of the
2 United States to call a convention of the states for the purpose of
3 proposing amendments to the Constitution of the United States that
4 impose limits on the federal government.
5

6 WHEREAS, The founders of the Constitution of the United States
7 empowered state legislators to be guardians of liberty against future
8 abuses of power by the federal government; and

9 WHEREAS, The federal government has created a crushing national
10 debt through improper and imprudent spending; and

11 WHEREAS, The federal government has invaded the legitimate role
12 of the states through the manipulative process of federal mandates, most
13 of which are unfunded and encroach on personal civil liberties through
14 coercion and punishment for non-compliance; and

15 WHEREAS, It is the solemn duty of the states to protect the liberty of
16 our people, particularly for generations to come, by proposing
17 amendments to the Constitution of the United States through a
18 convention of the states under Article V for the purpose of restraining
19 these and related abuses of power; and

20 **WHEREAS, Article V of the United States Constitution grants**
21 **equal authority to the legislatures of the several states to apply for a**
22 **convention for proposing amendments to the United States**
23 **Constitution; and**

24 WHEREAS, The people of Kansas, through a 1974 amendment to the
25 Constitution of the State of Kansas, imposed an additional requirement
26 upon the Kansas legislature requiring that any application to Congress for
27 a convention for the purpose of proposing amendments to the
28 Constitution of the United States, pursuant to Article V of the
29 Constitution of the United States, be passed by an affirmative vote of
30 two-thirds of the members of each house: Now, therefore,

31 *Be it resolved by the House of Representatives of the State of Kansas,*
32 *the Senate concurring therein:* The legislature of the state of Kansas
33 hereby applies to the Congress of the United States, under the provisions
34 of Article V of the Constitution of the United States, for the calling of a
35 convention of the states limited to proposing amendments to the
36 Constitution of the United States that impose fiscal restraints on the

1 federal government, limit the power and jurisdiction of the federal
2 government and limit the terms of office for officials of the federal
3 government and members of the Congress of the United States; and

4 *Be it further resolved:* This application constitutes a continuing
5 application in accordance with Article V of the Constitution of the United
6 States until the legislatures of at least two-thirds of the several states have
7 made applications on the same subject; and

8 *Be it further resolved:* That the Secretary of State shall send enrolled
9 copies of this resolution to the President and Secretary of the United
10 States Senate, the Speaker and Clerk of the United States House of
11 Representatives, to the members of the United States Senate and the
12 United States House of Representatives from this state and to the
13 presiding officers of each of the legislative chambers in the several states.

Exhibit B

Session of 2023

Senate Concurrent Resolution No. 1607

By Committee on Federal and State Affairs

2-15

1 A CONCURRENT RESOLUTION making application to the Congress
2 of the United States to call a convention for the purpose of proposing
3 amendments to the Constitution of the United States that impose limits
4 on the federal government.
5

6 WHEREAS, The founders of our Constitution empowered state
7 legislators to be guardians of liberty against future abuses of power by the
8 federal government; and

9 WHEREAS, The federal government has created a crushing national
10 debt through improper and imprudent spending; and

11 WHEREAS, The federal government has invaded the legitimate roles
12 of the states through the manipulative process of federal mandates, most
13 of which are unfunded and encroach on personal civil liberties through
14 coercion and punishment for noncompliance; and

15 WHEREAS, It is the solemn duty of the states to protect the liberty of
16 our people, particularly for the generations to come, by proposing
17 amendments to the Constitution of the United States through a convention
18 of the states under Article V for the purpose of restraining these and
19 related abuses of power; and

20 WHEREAS, Article V of the Constitution of the United States grants
21 equal authority to the legislatures of the several states to apply for a
22 convention for proposing amendments to the Constitution of the United
23 States; and

24 WHEREAS, The people of the state of Kansas, through a 1974
25 amendment to the Constitution of the state of Kansas, imposed an
26 additional requirement upon the Kansas Legislature in the form of a
27 requirement that any application to Congress for a convention for
28 proposing amendments pursuant to Article V of the Constitution of the
29 United States be passed by an affirmative vote of two-thirds of the
30 members of each house: Now, therefore,

31 *Be it resolved by the Senate of the State of Kansas, the House of*
32 *Representatives concurring therein:* The legislature of the state of Kansas
33 hereby applies to the Congress of the United States, under the provisions
34 of Article V of the Constitution of the United States, for the calling of a
35 convention of the states limited to proposing amendments to the
36 Constitution of the United States that impose fiscal restraints on the

SCR 1607

2

1 federal government, limit the power and jurisdiction of the federal
2 government and limit the terms of office for officials of the federal
3 government and members of the Congress of the United States; and

4 *Be it further resolved:* This application constitutes a continuing
5 application in accordance with Article V of the Constitution of the United
6 States until the legislatures of at least two-thirds of the several states have
7 made application on the same subject; and

8 *Be it further resolved:* That the Secretary of State shall send an
9 enrolled copy of this resolution to the President and Secretary of the
10 United States Senate and the Speaker and the Clerk of the United States
11 House of Representatives, to the members of the United States Senate and
12 the United States House of Representatives from this state and to the
13 presiding officers of each of the legislative chambers in the several states.