

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

BRIAN MATTHEW MCCALL, and KYLE  
BIEDERMANN,  
Plaintiffs,

The STATE OF TEXAS,  
Herein joined as a necessary Party

v.

Nancy Pelosi Speaker of the United States  
House of Representatives, Kamala Harris  
President of the United States Senate,  
Patrick Leahy President pro tempore of the  
United States Senate, Senator Charles  
Schumer United States Senate Majority  
Leader,  
Defendants.

Case No. 5:22-cv-00093

**ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COME NOW BRIAN MATTHEW MCCALL, and KYLE BIEDERMANN, Plaintiffs herein, and file this their Original Complaint against Nancy Pelosi Speaker of the United States House of Representatives, Kamala Harris President of the United States Senate, Patrick Leahy President pro tempore of the United States Senate, Senator Charles Schumer United States Senate Majority Leader, Defendants herein, and for cause, state to the court as follows;

**Introduction**

1. This complaint comprises Article V. of the United States Constitution.

**Article V:**

*The Congress, whenever two thirds of both Houses shall deem it 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, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect*

*the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.*

To date, there are at least 36 states that have applications by their state legislative bodies to convene a Convention of States including Texas which filed an application ([\*Cong. Rec. Vol. 163, p. S4056, POM-65 \("Senate Joint Resolution No. 2"\)\*](#)). Some to these States in their applications have legislatively placed a sun-set provision which automatically withdraws its application after the expiration of a definite term. The State of Texas in its application sun-sets in the year 2025. Time, therefore, is of the essence for the Congress to act on its Article V obligation. The plaintiffs have successfully exhausted all political options and now turn to the court for redress. Attached is a list of all the States in the Union which have applied for and granted through their state legislators a resolution calling for a Convention of States that are currently in effect. \*(see Attachment)

2. This complaint seeks to compel the Congress of the United States to call a Convention of States under Article V of the United States Constitution within sixty days.

### **The Parties**

3. Plaintiff Brian Matthew McCall, is an individual, taxpayer, resident of Boerne, Kendall County Texas;

Plaintiff Kyle Biederman is an individual, taxpayer, resident of Fredericksburg, Gillespie County, Texas, as a duly elected State Representative to the Texas Legislature, Representative Kyle Biederman voted for Texas Convention of States resolution which passed both houses of the state legislature on May 17, 2017.

4. Plaintiffs find it necessary to join the State of Texas as a necessary party to this Complaint.

The State of Texas full legislature passed the Convention of States legislation and was signed by the Governor of the State on May 17, 2017. Service of process can be served on the Secretary of State of Texas.

5. Defendant, The Congress of the United States is Constitutionally composed of two chambers, the House of Representatives and the Senate. Nancy Pelosi is the Speaker of the United States House of Representatives, Kamala Harris is the President of the United States Senate, Patrick Leahy is the President pro tempore of the United States Senate, and Senator Charles Schumer is the United States Senate Majority Leader. They may be served with process by Serving the Secretary of the House of Representatives and the Secretary of the Senate.

### **JURISDICTION**

6. This Court has subject-matter jurisdiction over this action because this action arises under federal law, specifically, Article V of the Constitution of the United States of America.
7. This Court has jurisdiction over the Defendants because they are Article I chambers under the Constitution of the United States of America.
8. Venue is proper in this district under 28 U.S.C. §1391 because the Plaintiffs reside within the Western District of Texas.

### **FACTUAL BACKGROUND**

9. Article V states in part (with inapplicable portions stricken) :

***The Congress, whenever two thirds of both Houses shall deem it 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, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by***

*Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.*

It is therefore the duty of the Congress of the United States of America to call a Convention of States when the requisite number of States 2/3rds have through their legislative bodies called for a Convention of States.

10. More than 2/3rds of the States of the Federal Union have had their legislatures applied and called for a Convention for proposing Amendments. See attached Exhibit A.
11. Article V mandates that the Congress (House and Senate) shall call a Convention. Each of the 50 States may send a delegation. Article V defers all procedures and rules of the Convention to the States. The delegations shall set their rules of order and select a presiding officer or officers, and Parliamentarian as they see fit.
12. The Congress of the United States, must respect States Rights to Propose Amendments as prescribed in Article V of the U. S. Constitution. This method reinvigorates the function of each State relative to the Federal Government, as well as the Sovereignty of the Citizen vis a vis those that govern.

### **Prayer For Relief**

Wherefore, Plaintiffs pray this Court;

- a. Determine it has jurisdiction over this action;
- b. Declare that the State of Texas is a necessary party to this suit;
- c. Declare that the Congress of the United State is obligated to call for an Article V

Convention of States and Thus Order the Congress of the United State to so Call within 60 days.

- d. Award to Plaintiffs' reasonable attorneys' fees and litigation costs; and
- e. Grant any such other and further relief as this court may deem just and proper.

Date submitted February 2, 2022

Respectfully submitted,

/s/ Francisco R. Canseco  
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