



**Testimony in Opposition to LR 6
Nebraskans for Civic Reform
February 1, 2017**

Members of the Government, Military and Veterans Affairs Committee,

In my official capacity as Director of Voting Rights with Nebraskans for Civic Reform, I am testifying in opposition to LR 6, a resolution directing the Nebraska Legislature to officially submit a request with Congress to call for a convention of states under Article V of the U.S. Constitution. Nebraskans for Civic Reform (NCR) is a non-partisan, nonprofit organization, dedicated to creating a more modern and robust democracy. As part of our work, NCR seeks policies that promote and facilitate voting and opposes policies that have the potential to limit accessibility or restrict a voter's rights. We believe LR 6 has the potential to negatively impact the right to vote in Nebraska.

We submit our testimony in opposition on two key points: the potential for a runaway convention and the limited scope of federal jurisdiction. First, after reviewing legal arguments from constitutional scholars¹, NCR is not convinced the scope of the constitutional convention cannot be limited once convened. Here Nebraska a special session can be limited to the reason for which it is called, however Nebraska law provides more rules and guidelines for how a special session is called and conducted than what is provided in Article V.

Furthermore, once convened, the governing body can amend or suspend the rules to expand the business of the convention beyond those listed in LR 6 as allowed under *Mason's Manual of Legislative Procedure*², the rules adopted by the body of the Convention of States simulation, and also under Robert's Rules of Order³. Because the affirmative right to vote is enshrined in four constitutional amendments⁴, NCR is not comfortable

¹ Leachman, Michael and David A. Super, "States Likely Coult Not Control Constitutional Convention on Balanced Budget Amendment or Other Issues", *Center on Budget Policy and Priorities*. July 16, 2014.

² *Mason's Manual of Legislative Procedure*, Sections 279 to 286, Section 713-1

³ *Robert's Rules of Order*, Article IV

⁴ 15th Amendment – Right to vote must extend to all races, 19th Amendment – Women's right to vote, 24th Amendment – Banned poll taxes, 26th Amendment – Lowered age to 18



with the possibility of a runaway convention that could propose an amendment that weakens or eliminates those protections. Established case law rests on those four amendments and individuals rely on that precedent to protect their rights from being violated by a state action or policy.

Beyond the possibility of a runaway convention, even if it could be limited in scope, NCR takes issue with one of the proposed areas to be discussed at the convention of states: Limiting the federal jurisdiction. NCR takes issue with this component as it is broad in scope, the proposed amendments that have been brought forth within its scope, and the impact it could have on litigating violations of an individual's right to vote.

Language in LR 6 simply states "limiting federal jurisdiction", NCR takes issue with the broad scope that the language could encompass and what possible proposals could be generated by the convention under this wide umbrella. First, federal jurisdiction is inherent to the protecting the right to vote. The United States has a state-centered election system where elections are conducted by the individual States⁵, therefore a violation of a voter's right would be at the hands of the state or a political subdivision of the state. Under this structure, federal jurisdiction is necessary to provide a remedy for the voter and ensure future violations do not occur. After issues in Douglas County with polling places being moved without notice and voter confusion, the Department of Justice came in to Nebraska to investigate and sent Dept. of Justice attorneys to observe elections in 2014 and 2016. Nebraska does not have an explicit statute giving nonpartisan election observers the right to observe at polling sites. Federal jurisdiction is necessary to ensure federal observers are present to prevent disenfranchisement of voters on Election Day.

Proponents of an Article V convention have, through the discussion of possible proposals, given some insight on what they envision "limiting federal jurisdiction" to encompass. Texas Governor Gregg Abbott, a vocal proponent of an Article V convention, released nine amendments he wants passed by the convention, two of which are very concerning as it relates to voting rights.⁶

The prohibition on administrative agencies would directly impact the Election Assistance Commission that provides additional rules and regulations as it relates to the few areas of elections standardized across the

⁵ A proposed amendment by Gov. Gregg Abbott would jeopardize the federal government's ability to go into states and enforce voting rights. The amendment would limit the actions of the federal government to the powers expressly delegated to it in the Constitution. There exists no explicit power to enforce the right to vote.

⁶ (1) Prohibit administrative agencies and the unelected bureaucrats that staff them from preempting state law, (2) Allow a two-thirds majority of the States to override a federal law or regulation



nation including the federal voter registration card, overseas and military voting, and election equipment and technology considered accessible under the *Help America Vote Act*. A similar proposal was introduced and passed by the body of the Convention of States simulation, allowing for a regulation proposed or *an existing regulation* to be brought to a vote where one quarter of the House of Representatives or Senate transmit written declaration of opposition. Voters rely on the regulations set forth by the EAC, repealing existing regulations could jeopardize accessibility of elections for voters with disabilities, military voters overseas, and voters across the nation.

The second proposed amendment to limit federal jurisdiction includes allowing the repeal of a federal law by a vote of the states. Governor Gregg Abbott's amendment would require two-thirds of states to vote for repeal (33 states), the amendment passed by the Convention of States proposes an even lower threshold of three-fifths (30 states). To provide context to the danger of this trigger, the population of the 33 least populated states accounts for 28% of the nation's population, for 30 states the distribution is 23%. This proposal is significantly distressing for voting rights as three major pieces of federal legislation have shaped state protections, the *Voting Rights Act of 1965*, the *National Voter Registration Act of 1993*, and the *Help America Vote Act of 2003*. While proponents may counter with the odds of this happening, it is incredibly important to note that the *Voting Rights Act* provided numerous protections to minority voters, eliminated policies aimed at disenfranchising key demographics, and was passed in the face of overwhelming opposition. Sixty-years later we have seen the importance of this legislation; the effects were seen almost instantly with voter registrations and participation by African-Americans in elections in the South increasing exponentially. Imagine the negative impact a legislation kill-switch as proposed by Governor Abbott and the Convention of States could have had on that historic piece of legislation.

It is for these reasons that Nebraskans for Civic Reform opposes LR 6. We are not willing to jeopardize the right to vote and protections currently provided by the federal government – regardless of the unlikelihood of such an occurrence. They are simply too important to play the odds and leave vulnerable when a less unpredictable vehicle exists for proponents of LR 6 may use to pursue their agenda.

Bri McLarty Huppert
Director of Voting Rights
Bri.mclarty@nereform.org