COMMITTEE REPORT

February 23, 2022

**S. 133**

Introduced by Senators Massey, Gustafson, Rice, Hembree, Kimbrell, Turner, Bennett, Climer, Garrett, Cash, Adams, Verdin, Peeler, Grooms, Young, Campsen, M. Johnson, Talley, Goldfinch, Shealy, Cromer and Senn

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Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Joint Resolution (S. 133) to make application to the Congress of the United States to call a convention for proposing amendments pursuant to Article V of the United States Constitution limited to proposing amendments that impose fiscal, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the joint resolution, as and if amended, by striking all after the title and inserting therein the following:

/ Whereas, the founders of our constitution empowered state legislators to be guardians of liberty against future abuses of power by the federal government; and

Whereas, the federal government has created a crushing national debt through improper and imprudent spending; and

Whereas, the federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent; and

Whereas, the federal government has ceased to live under a proper interpretation of the Constitution of the United States; and

Whereas, it is the solemn duty of the states to protect the liberty of our people—particularly for the generations to come—by proposing Amendments to the Constitution of the United States through a convention of the states under Article V for the purpose of restraining these and related abuses of power. Now, therefore,

Be it therefore resolved by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly of South Carolina, by this joint resolution, hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.

SECTION 2. The Clerks of the South Carolina House of Representatives and the South Carolina Senate shall transmit copies of this resolution to the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, the members of the South Carolina Congressional Delegation, and the presiding officers of each of the legislative houses in the several states, attesting to the enactment of this joint resolution by the South Carolina General Assembly and requesting cooperation.

SECTION 3. This joint resolution constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on the same subject.

SECTION 4. This joint resolution takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This joint resolution allows the General Assembly to apply to Congress for the calling of a convention of the states with the purpose of proposing amendments to the United States Constitution.

The South Carolina delegation will consist of seven delegates and three alternative delegates, three from the House of Representatives, two from the Senate, and two additional delegates as specified by this resolution. We anticipate that any responsibilities within the joint resolution can be managed within the normal course of business for both bodies. Therefore, this joint resolution will have no expenditure impact for either body.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **JOINT RESOLUTION**

TO MAKE APPLICATION TO THE CONGRESS OF THE UNITED STATES TO CALL A CONVENTION FOR PROPOSING AMENDMENTS PURSUANT TO ARTICLE V OF THE UNITED STATES CONSTITUTION LIMITED TO PROPOSING AMENDMENTS THAT IMPOSE FISCAL RESTRAINTS ON THE FEDERAL GOVERNMENT, LIMIT THE POWER AND JURISDICTION OF THE FEDERAL GOVERNMENT, AND LIMIT THE TERMS OF OFFICE FOR ITS OFFICIALS AND FOR MEMBERS OF CONGRESS; TO PROVIDE CERTAIN RESERVATIONS, UNDERSTANDINGS, AND DECLARATIONS LIMITING THE APPLICATION; AND TO PROVIDE CERTAIN SELECTION CRITERIA FOR DELEGATES TO A CONVENTION OF THE STATES AS WELL AS LIMITATIONS UPON THEIR AUTHORITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) The General Assembly finds that:

(1) the Founders of the United States Constitution empowered state legislators to be guardians of liberty against the excessive use of power by the federal government;

(2) the federal government has created a crushing national debt through improper and imprudent spending;

(3) the federal government has ceased to operate under a proper interpretation of the United States Constitution;

(4) the federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent; and

(5) it is the solemn duty of the states to protect the liberty of our people, particularly of the generations to come, by proposing amendments to the United States Constitution through a convention of the states under Article V for the purpose of restraining these and related abuses of power.

(B) The General Assembly of South Carolina, by this joint resolution, hereby makes application to the Congress of the United States to call an amendment convention of the states pursuant to Article V of the United States Constitution limited to proposing amendments to the United States Constitution that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.

(C) This application shall constitute a continuing application for a convention of the states pursuant to Article V of the United States Constitution until the legislatures of two‑thirds of the states have made applications on the same subject and the convention has been called by the Congress of the United States.

(D) The Clerk of the House of Representatives and the Senate shall transmit copies of this resolution to the President of the United States, the Speaker and the Clerk of the United States House of Representatives, the President and the Clerk of the United States Senate, the members of the South Carolina Congressional Delegation, and the legislatures of each of the several states, attesting to the enactment of this joint resolution by the South Carolina General Assembly.

SECTION 2. The South Carolina General Assembly adopts this application, expressly subject to the following reservations, understandings, and declarations:

(1) an application to the Congress of the United States to call an amendment convention of the states pursuant to Article V of the United States Constitution confers no power to Congress other than the power to call such a convention. The power of Congress to exercise this ministerial duty consists solely of the authority to name a reasonable time and place for the initial meeting of a convention;

(2) Congress shall perform its ministerial duty of calling an amendment convention of the states only upon the receipt of applications for an amendment convention for the substantially same purpose as this application from two‑thirds of the legislatures of the several states;

(3) Congress does not have the power or authority to determine any rules for the governing of an amendment convention of the states called pursuant to Article V of the United States Constitution. Congress does not have the power to set the number of delegates to be sent by any state to such a convention, nor does it have the power to name delegates to such a convention. The power to name delegates remains exclusively within the authority of the legislatures of the several states;

(4) by definition, an amendment convention of the states means that states shall vote on the basis of one state, one vote;

(5) a convention of the states convened pursuant to this application must be limited to consideration of the topics specified in this joint resolution and no other. This application is made with the express understanding that an amendment that in any way seeks to amend, modify, or repeal any provision of the Bill of Rights shall not be authorized for consideration at any stage. This application shall be void ab initio if ever used at any stage to consider any change to any provision of the Bill of Rights;

(6) pursuant to Article V of the United States Constitution, Congress may determine whether proposed amendments shall be ratified by the legislatures of the several states or by special state ratification conventions. The South Carolina General Assembly recommends that Congress select ratification by the legislatures of the several states; and

(7) the South Carolina General Assembly may provide further instructions to its delegates and may recall its delegates at any time for a breach of duty or a violation of the instructions provided.

SECTION 3. (A) Any time a convention is called pursuant to Article V of the United States Constitution, the selection of delegates from South Carolina to the convention and their participation must be governed as follows:

(1) Eligible delegates and alternates must be residents of South Carolina and otherwise shall meet the same qualifications necessary to hold office in the South Carolina House of Representatives. Delegates and alternates may include persons holding public office, except that no member of the United States House of Representatives or Senate is eligible.

(2) The House of Representatives shall select, by simple majority vote, three delegates who meet the eligibility requirements outlined in item (1), and the Senate shall select, by simple majority vote, two delegates who meet these requirements. These five delegates shall then nominate five additional delegates who meet the eligibility requirements outlined in item (1) and are not sitting members of the South Carolina General Assembly. From these five nominated delegates, the Speaker of the House of Representatives shall select one to serve as a delegate, and the President of the Senate shall select one to serve as a delegate. The other three nominated delegates shall serve as alternate delegates. This total of seven delegates and three alternate delegates shall constitute South Carolina’s delegation to the convention.

(3) Each delegate and alternate shall, by oath or affirmation as provided for in Section 26, Article III of the Constitution of South Carolina, 1895, and as a condition of participating in the convention, agree to faithfully and impartially discharge all the duties incumbent upon a convention delegate, including the duty to abide by instructions established by joint resolution of the South Carolina General Assembly for participation in the convention and not to act outside the scope of the call for the convention. Each delegate and alternate shall further agree to immediately notify the Speaker of the House of Representatives and President of the Senate if he believes that any South Carolina delegate or alternate has violated his oath or instructions while participating in the convention.

(4) After delegates and alternates have been selected, the South Carolina General Assembly may by joint resolution recall delegates or alternates to the convention or appoint new delegates or alternates.

(5) If the South Carolina General Assembly is not in session, then delegates may be recalled pending a joint resolution by a joint legislative committee duly authorized by the South Carolina General Assembly for that purpose. This joint legislative committee is authorized to conduct its business via telephone or via other forms of electronic communication.

(6) A delegate who is recalled, disqualified, or otherwise unable to perform his duties shall be replaced immediately by one of the alternates, as directed by the joint resolution or duly authorized joint legislative committee.

(B) Prior to a convention, the General Assembly shall by joint resolution provide instructions to the delegates and alternates selected pursuant to subsection (A) regarding the scope of matters they may consider and vote on at the convention, including rules of procedure and proposed amendments. These instructions may be changed by the South Carolina General Assembly prior to or during the course of the convention. These instructions shall include, but are not limited to:

(1) an instruction that the South Carolina delegates may not support any voting rule other than the default rule whereby each state exercises one vote; and

(2) an instruction that, on all voting matters at the convention, the decision of a simple majority of the South Carolina delegates shall constitute a single vote for South Carolina.

(C) Should a convention adopt a voting rule other than the default rule whereby each state exercises one vote, the authority of the South Carolina delegates and alternates is automatically revoked.

(D) Any vote cast by a delegate or alternate at an Article V convention is void if it is outside the scope of:

(1) the instructions established by a joint resolution adopted under subsection (B) of this SECTION;

(2) the limits placed by the South Carolina General Assembly in the joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention; or

(3) the limits contained in the narrowest state resolution applying for the Article V convention, if South Carolina was not one of the states applying for the Article V convention.

(E) In the event that the Speaker of the House of Representatives or President of the Senate receives notice that a delegate or alternate has violated his oath or instructions, an emergency meeting of the joint legislative committee described in subsection (A)(5) shall be convened within twenty‑four hours of the notification to consider recalling the delegate or alternate in question.

(F) Should the provisions of subsection (A) be in conflict with the rules or procedures established by a convention, the General Assembly may by joint resolution conform the provisions of subsection (A) to such rules or procedures.

(G) Delegates and alternates traveling to and participating in a convention shall be paid the usual mileage, subsistence, and per diem as is paid to members of state boards, commissions, and committees, to be paid equally from the approved accounts of the South Carolina House of Representatives and Senate.

SECTION 4. This joint resolution takes effect upon approval by the Governor.

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