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Hon. Michael Moffett, Chairman
NH House State-Federal Relations and Veterans Affairs Committee
Legislative Office Building
107 North Main Street
Concord, NH 03301

RE: HB 264-FN (relative to delegates to an Article V convention)

Dear Chairman Moffett:

I am here in OPPOSITION to House Bill 264-FN relative to delegates to an Article V convention.

Article V of the U.S. Constitution's reference to a Call for Convention to amend the Constitution does not mention the word "delegates," nor does it provide for the selection process of delegates, their qualifications, and their exercise of discretion, judgment or character.

House Bill 264 will wrongly impose a class B felony against any so-called "unfaithful delegates" to an Article V convention, who "support or approve the proposing of an unauthorized amendment." It gives a definition for "Legislative instructions," but does not elaborate on how those instructions are to be established, or the process by which the general court determines which amendments would be authorized by the general court for an Article V convention.

Indiana Governor Mike Pence signed SB 224 on May 7, 2013, a bill to recall, replace, nullify the vote of and criminally charge any faithless delegate to an Amendment Convention called under Article V of the U.S. Constitution. Proponents of the Indiana law suggest that it "ensures that Indiana delegates to an Article V convention act only within the authority provided by the state legislature." However, delegates to a convention to propose amendments to the U.S. Constitution are performing a duty under a **federal** responsibility. And when the Convention is called, the delegates are no longer subject to the authority of their respective, sending States.

First, if House Bill 264 were made into law, it may very well be unenforceable. James Madison's Journal of the Federal Convention of 1787 shows that on May 29, 1787, the

delegates to that convention voted to make their proceedings secret. Any future called Article V convention can do the same as well.

Second, if House Bill 264 were made into law, it would most likely be immediately challenged as unconstitutional. Even though delegates at the 1787 Convention received specific instructions from the congress and similar instructions from the states to ONLY amend the Articles of Confederation, delegates were NOT– as a matter of principle – subject to them. This standard applies even today because the convention method is in fact a general convention of delegates representing the sovereign will of the People, NOT A CONVENTION OF STATES comprised of commissioners sent and controlled by states.

Third, what most proponents of House Bill 264 would say is that they fear a “runaway convention.” However, some scholars assert that the language of Article V places no limitation on either the number or the scope of amendments that would be within a convention’s purview. Constitutional scholar Charles Black offered emphatic support of this viewpoint in the 1970s: “*I believe that, in Article V, the words ‘a Convention for proposing such amendments’ mean ‘a convention for proposing such amendments as that convention decides to propose.’*”

In **Federalist No. 49**, James Madison warned against having a convention to address breaches of the federal Constitution. In **Federalist No. 85**, Alexander Hamilton argued that the Article V amendment process is a tool for states to use when the national government spins out of control. In James Madison’s letter to Turberville (Nov. 2, 1788), Madison warns of the terrible dangers of an Article V convention. In **Justice Arthur Goldberg’s op ed in The Miami Herald** of Sep. 14, 1986, he warns us that “*...any attempt at limiting the agenda would almost certainly be unenforceable.*”

Make no mistake. An Article V convention is an assembly of delegates operating with sovereign power. Sovereignty is defined as “dominant power or supreme authority”. Delegates thus operate as sovereign representatives of the People with unlimited and unrestrained power to alter, abolish or establish government. Therefore, I believe that House Bill 264 is unenforceable, unconstitutional, and provides no guarantees against a runaway Article V convention. I strongly urge this committee to vote against House Bill 264.

Thank you for your attention to this matter.

Please vote to ITL HB 264.

Respectfully,

/s/ Robert T. Bevill, J.D., LL.M.
Justice of the Peace, Hillsborough County