

LEGISLATIVE COMMITTEE MINUTES

# **HB392**

# Bill as Introduced

HB 392-FN - AS AMENDED BY THE HOUSE

22Feb2023... 0452h

2023 SESSION

23-0604  
06/04

HOUSE BILL            **392-FN**

AN ACT                relative to constitutional convention procedures for delegates.

SPONSORS:            Rep. Newell, Ches. 4; Rep. Read, Rock. 10

COMMITTEE:          State-Federal Relations and Veterans Affairs

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ANALYSIS

This bill enacts procedures to choose, regulate, and bind delegates to an amendment proposing convention under Article V of the United States Constitution.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears [~~in brackets and struck through~~].  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT relative to constitutional convention procedures for delegates.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Constitutional Conventions and State Party Conventions; General Provisions; Election of  
2 Delegates. Amend RSA 667:1 to read as follows:

3 667:1 Election of Delegates.

4 *I. Whenever the qualified voters of the state under the provisions of the New Hampshire*  
5 *constitution shall determine that there is necessity for the calling of a convention to revise the New*  
6 *Hampshire constitution, the general court shall, as is required by the New Hampshire*  
7 *constitution, call such convention and shall set the day for the election of delegates and the day and*  
8 *time for the assembly of said delegates in the capitol at Concord.*

9 *II. Whenever a Convention is called to propose amendments to the U.S. Constitution*  
10 *pursuant to Article V of the Constitution of the United States, the general court shall set*  
11 *the day for the election of federal delegates and alternate federal delegates.*

12 *III. Whenever a Convention is called to ratify amendments to the U.S. Constitution*  
13 *pursuant to Article V of the Constitution of the United States, the general court shall set*  
14 *the day for the election of state ratifying delegates and alternate state ratifying delegates.*

15 2 Constitutional Conventions and State Party Conventions; General Provisions; Numbers.  
16 Amend RSA 667:2 to read as follows:

17 667:2 Number.

18 *I. Representation in the New Hampshire constitutional convention is on the basis of*  
19 *representative districts of the state. Representative districts are entitled to the same number of*  
20 *delegates to the New Hampshire constitutional convention as they are entitled to representatives*  
21 *to the general court.*

22 *II. Representation in the federal proposing convention is on the basis of*  
23 *representative districts of the Congress. Representative districts shall be entitled to 2*  
24 *delegates for each Congressional district and 1 state-wide at-large delegate for a total of 5*  
25 *delegates.*

26 *III. Representation in the state ratifying convention is on the basis of representative*  
27 *districts of the state. Representative districts are entitled to the same number of delegates*  
28 *and the same number of alternate delegates to the state ratifying convention as they are*  
29 *entitled to representatives to the general court.*

30 3 Constitutional Conventions and State Party Conventions; General Provisions; Compensation.  
31 Amend RSA 667:5 to read as follows:

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1       667:5 Compensation. Each delegate shall receive [~~\$3~~]**\$100** per day for [~~his~~] **their** attendance at  
2 the convention and the same allowance for mileage as is provided for members of the general court.

3       4 Constitutional Conventions and State Party Conventions; General Provisions; Amendments.  
4 Amend RSA 667:6 to read as follows:

5       667:6 Amendments. The amendments to the *New Hampshire* constitution as are agreed to by  
6 such *New Hampshire* constitutional convention shall be submitted so that they can be voted on by  
7 the qualified voters either separately or by groups as the *New Hampshire* constitutional convention  
8 may determine. The *New Hampshire* constitutional convention shall provide for ascertaining the  
9 voters' decisions and the publication of the same by executive proclamation which shall be the  
10 effective date unless otherwise determined by the New Hampshire Constitutional convention, and  
11 may do any and all other things necessary to carry out the purposes of the *New Hampshire*  
12 Constitutional convention.

13       5 Constitutional Conventions and State Party Conventions; Filing; Eligibility. Amend RSA  
14 667:7 to read as follows:

15       667:7 Eligibility. Any person who by the laws of this state is a qualified voter in the town, ward,  
16 or unincorporated place from which he may be elected is eligible to be a delegate to the constitutional  
17 convention[~~-~~] **except that no person shall be eligible to be a delegate to constitutional**  
18 **convention who:**

19           ***I. Is registered or required to be registered as a lobbyist under RSA 15 or under 2***  
20 ***U.S.C. section 1603, or rules or regulations adopted under such laws; or***

21           ***II. Holds any office or position within the government of the United States of***  
22 ***America, including members of Congress, the Federal Judiciary, or the Federal Executive***  
23 ***Branch.***

24       6 Constitutional Conventions and State Party Conventions; Filing; Declaration of Candidacy.  
25 Amend RSA 667:10 to read as follows:

26       667:10 Declaration of Candidacy **and Pledge.**

27           ***I.*** On or before the closing date for filing declarations of candidacy with the town or city  
28 clerk as provided by RSA 667:8, any candidate for delegate **to the *New Hampshire*** constitutional  
29 convention shall file with the town or city clerk a declaration of candidacy in substantially the  
30 following form, which shall be prepared and furnished by the secretary of state:

31 I, \_\_\_\_\_, candidate for office of delegate to the *New Hampshire* constitutional  
32 convention from District No. \_\_\_\_\_ of \_\_\_\_\_ county hereby certify that I am at least 18  
33 years of age; that I am domiciled in ward \_\_\_\_\_ of the city of \_\_\_\_\_ (or town or  
34 unincorporated place of \_\_\_\_\_) county of \_\_\_\_\_ state of New Hampshire; that I am  
35 a voter in District No. \_\_\_\_\_ of \_\_\_\_\_ county.

36           ***II.*** On or before the closing date for filing declarations of candidacy with the town or city  
37 clerk as provided by RSA 667:8, any candidate for delegate **to the state ratifying convention** shall

1 file with the town or city clerk a declaration of candidacy in substantially the following form, which  
2 shall be prepared and furnished by the secretary of state:

3 I, \_\_\_\_\_, candidate for office of delegate to the *state ratifying* constitutional  
4 convention from District No. \_\_\_\_\_ of \_\_\_\_\_ county hereby certify that I am at least 18  
5 years of age; that I am domiciled in ward \_\_\_\_\_ of the city of \_\_\_\_\_ (or town or  
6 unincorporated place of \_\_\_\_\_) county of \_\_\_\_\_ state of New Hampshire; that I am  
7 a voter in District No. \_\_\_\_\_ of \_\_\_\_\_ county. *I do solemnly swear or affirm that I*  
8 *will vote \_\_\_\_\_ (in favor or against) the proposed amendment to the Constitution of the*  
9 *United States. I will accept and act in accordance to the limits of the authority as a*  
10 *delegate granted to me by New Hampshire law. I understand penalties and consequences*  
11 *that may be imposed under New Hampshire law for violation of this oath.*

12 **III.** On or before the closing date for filing declarations of candidacy with the town or city  
13 clerk as provided by RSA 667:8, any candidate for delegate *to the state ratifying convention* shall  
14 file with the town or city clerk a declaration of candidacy in substantially the following form, which  
15 shall be prepared and furnished by the secretary of state:

16 I, \_\_\_\_\_, candidate for office of delegate to the *federal proposing* constitutional  
17 convention from District No. \_\_\_\_\_ of \_\_\_\_\_ county hereby certify that I am at least 18  
18 years of age; that I am domiciled in ward \_\_\_\_\_ of the city of \_\_\_\_\_ (or town or  
19 unincorporated place of \_\_\_\_\_) county of \_\_\_\_\_ state of New Hampshire; that I am  
20 a voter in District No. \_\_\_\_\_ of \_\_\_\_\_ county. *I do solemnly swear or affirm that to*  
21 *the best of my abilities, I will, as a delegate to a federal proposing Convention, uphold the*  
22 *Constitution and laws of the United States of America and the state of New Hampshire. I*  
23 *will accept and act in accordance to the limits of the authority as a delegate granted to me*  
24 *by New Hampshire law, and I will not vote to consider or approve any unauthorized*  
25 *amendment or policy proposal introduced by the Convention as prohibited by New*  
26 *Hampshire law. I understand penalties and consequences that may be imposed under New*  
27 *Hampshire law for violation of this oath.*

28 7 Constitutional Conventions and State Party Conventions; Ballots; Forms. Amend RSA 667:12  
29 to read as follows:

30 667:12 Form.

31 **I.** Every ballot for the election shall contain the name and domicile of each candidate who  
32 has filed a declaration of candidacy for delegate.

33 **II.(a)** The names of candidates upon the ballot for delegate to the New Hampshire  
34 Constitutional Convention shall be arranged in perpendicular columns under the title "For Delegate  
35 to the *New Hampshire* Constitutional Convention." *Below each such phrase shall be printed*  
36 *in small but easily legible letters "Vote for not more than \_\_\_\_ (here insert a number*  
37 *designating how many persons are to be voted for)."*

1           ***(b) The names of candidates upon the ballot for delegate to the federal***  
 2 ***proposing Convention shall be arranged in perpendicular columns under the title "For***  
 3 ***Delegate to the Federal Proposing Convention." Below each such phrase shall be printed***  
 4 ***in small but easily legible letters "Vote for not more than two."***

5           ***(c) The names of candidates upon the ballot for delegate to the federal ratifying***  
 6 ***Convention shall be arranged in perpendicular columns under the title "For Delegate IN***  
 7 ***FAVOR of Ratification" for candidates who pledge to vote in favor of ratification or "For***  
 8 ***Delegate OPPOSED to Ratification" for candidates who pledge to vote against ratification.***  
 9 ***Below each such phrase shall be printed in small but easily legible letters "Vote for not***  
 10 ***more than \_\_\_\_ (insert a number designating how many persons are to be voted for)."***

11           III. ~~[Below the title shall be printed in easily legible type the words "Vote for" followed by a~~  
 12 ~~spelled number designating the number of persons to be elected to such office.]~~ At the right of the  
 13 name of each candidate and on the same line, there shall be a square. Following the names there  
 14 shall be as many blank lines as there are persons to be elected. Whenever there are 2 or more  
 15 candidates, the names shall be printed upon the ballot in alphabetical order of their surnames  
 16 according to the alphabetization procedure established in RSA 656:5-a.

17           8 Constitutional Conventions and State Party Conventions; Election Procedure; Plurality; Ties.  
 18 Amend RSA 667:17 to read as follows:

19           667:17 Plurality; Ties. ~~[In all elections hereunder, a plurality shall elect; and, in case of a tie~~  
 20 ~~vote, the tie shall be determined by lot by the secretary of state in the presence of the candidates~~  
 21 ~~who are tied if, upon notice from him, they elect to be present.]~~

22           ***I.(a) In the election for delegates to the state ratifying convention, the leading side***  
 23 ***shall be either all candidates who pledged to vote for ratification or all candidates who***  
 24 ***pledged to vote against ratification, whichever has the highest vote total among all***  
 25 ***candidates so pledged. In the case of a tie, the leading side shall be the side to which the***  
 26 ***candidate with the plurality of votes has pledged. From among the total number of***  
 27 ***delegates to which a district is entitled, the leading side shall be entitled to the smallest***  
 28 ***possible proportion of delegates not less than the proportion of the total vote received by***  
 29 ***the leading side with the remaining delegates chosen from among the other side. Within***  
 30 ***each side, the highest vote totals shall elect the number of delegates to which that side is***  
 31 ***entitled.***

32           ***(b) For every delegate to the state ratifying convention elected to each side, an***  
 33 ***alternate delegate shall also be selected from among the remaining candidates on the same***  
 34 ***side. Within each district, within each side, the highest vote totals among those candidates***  
 35 ***who were not elected delegate shall elect the number of alternate delegates to which that***  
 36 ***side is entitled.***

1           (c) *In elections for delegate to the federal proposing convention, the plurality*  
 2 *shall elect. Among the remaining candidates, the plurality shall elect the alternate*  
 3 *delegate to the federal proposing convention.*

4           **II. Except as provided in paragraph I,** in all elections hereunder, a plurality shall elect;  
 5 and, in case of a tie vote, the tie shall be determined by lot by the secretary of state in the presence of  
 6 the candidates who are tied if, upon notice from ~~him~~ **the secretary of state**, they elect to be  
 7 present. **This provision shall also apply to determine the leading side in an election for**  
 8 **delegates to the state ratifying convention if the procedure in subparagraph I(a) fails to**  
 9 **determine a winner.**

10           9 Constitutional Conventions and State Party Conventions; Vacancies; Filling Vacancies.  
 11 Amend RSA 667:19 to read as follows:

12           667:19 Filling Vacancies.

13           **I.** A vacancy caused by the death, resignation or removal from a district of a delegate **to a**  
 14 **New Hampshire constitutional convention** may be filled by a special election held in the district.  
 15 The special election may be held on the same day on which another meeting of the town or ward is  
 16 held or at a different time. However, if the special election is held in a representative district having  
 17 more than one town, ward or unincorporated place, the election must be held on the same day  
 18 throughout the district. An article for the election of a delegate shall be inserted in the warrants  
 19 calling the meeting. All laws relating to the election of representatives to the general court, so far as  
 20 they are applicable, apply to the special election to fill the vacancy in the office of delegate.

21           **II. Vacant seats in a state ratifying convention shall be filled by the alternate**  
 22 **delegate who received the most votes in the same district as the delegate whose seat has**  
 23 **been vacated who pledged to vote in the same manner as said delegate. If no such**  
 24 **alternate delegate is available, the speaker of the house of representatives of the state of**  
 25 **New Hampshire shall choose an alternate delegate to serve in the vacated seat from among**  
 26 **the alternate delegates who pledged to vote in the same manner as the delegate from the**  
 27 **vacated seat. The secretary of state shall issue new credentials to an alternate delegate**  
 28 **immediately upon being notified of the vacancy.**

29           **III. Vacant seats in a federal proposing convention shall be filled by the alternate**  
 30 **delegate from the same district as the delegate whose seat was vacated. If no such**  
 31 **alternate delegate is available, the alternate delegate shall be chosen by the oversight**  
 32 **committee pursuant to RSA 667:25. The secretary of state shall issue new credentials to an**  
 33 **alternate delegate immediately upon being notified of the vacancy.**

34           10 New Sections; Constitutional Conventions and State Party Conventions; Delegates; Delegate  
 35 Instructions. Amend RSA 667 by inserting after section 23 the following new sections:

36           667:24 Delegate Instructions.



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1 I. If a convention is called to propose amendments to the U.S. Constitution pursuant to  
2 Article V of the Constitution of the United States on the basis of applications that include an  
3 application from the legislatures of state of New Hampshire, the text of said application of the  
4 legislature of the state of New Hampshire shall be considered binding instructions upon the New  
5 Hampshire delegates to the federal proposing convention.

6 II. The general court may adopt, by joint resolution, instructions that are binding upon  
7 delegates to a federal proposing convention and said instructions may alter or supersede previous  
8 instructions including instructions created pursuant to paragraph I.

9 III. Notwithstanding other provisions of law, delegates to a federal proposing convention  
10 shall not have the authority to allow consideration, support, or approve an amendment that is not  
11 authorized by the application of the several states. Nor may delegates allow consideration, support,  
12 or approval of measures to restrict or delay public access to information concerning the proceedings  
13 of the convention. Improper consideration, support, or approval shall include, but not be limited to,  
14 making or seconding a motion, voting for, or otherwise taking any formal action in favor of an  
15 unauthorized Amendment to the United States Constitution.

16 IV. A delegate to a New Hampshire constitutional convention who pledges to vote in FAVOR  
17 of a proposed Amendment to the Constitution of the United States pursuant to RSA 667:12, II(c)  
18 shall vote in favor of said amendment. A delegate to a New Hampshire constitutional convention  
19 who pledges to vote AGAINST a proposed Amendment to the Constitution of the United States  
20 pursuant to RSA 667:12, II(c) shall vote against said amendment.

21 667:25 Penalties and Enforcement.

22 I. Whenever a Convention is called to propose amendments to the U.S. Constitution  
23 pursuant to Article V of the Constitution of the United States, the general court shall form an  
24 oversight committee with membership selected as follows:

25 (a) Four members of the delegation shall be selected by the New Hampshire house of  
26 representatives; one member shall be appointed by the speaker of the house of representatives and 3  
27 members shall be elected by a majority vote of the house of representatives.

28 (b) Three members shall be selected by the New Hampshire senate; one member shall be  
29 appointed by the senate president and 2 members shall be elected by a majority vote of the senate  
30 members.

31 (c) Not more than 4 members of the oversight committee shall be of the same political  
32 party.

33 (d) No person shall serve as a member of the oversight committee unless they are  
34 eligible to serve as a delegate to the amendment proposing convention pursuant to RSA 667:6. No  
35 person shall serve as a member of the oversight committee if they are a delegate or an alternate  
36 delegate to the amendment proposing convention.

1           II. Any vote taken by a delegate from New Hampshire at a federal proposing convention in  
2 violation of RSA 667:24 or other provision of law shall be null and void. Any delegate making this  
3 vote shall be immediately disqualified from serving as a delegate to the convention in question. Any  
4 delegate or member of the oversight committee who has reason to believe that any other delegate  
5 from New Hampshire has taken such disqualifying action shall immediately report such action to  
6 the full oversight committee and to the New Hampshire secretary of state. Upon receipt of written  
7 or other recorded evidence of unauthorized consideration, support, or approval by a delegate the New  
8 Hampshire secretary of state shall:

9           (a) Take immediate action to revoke the credentials of the offending delegate and  
10 immediately fill the vacancy in accordance with RSA 667:19, III.

11           (b) Notify the official organizers of the federal proposing convention in question and all  
12 appointed delegates to such convention of the automatic revocation of any delegate's certification  
13 should the delegate violate their oath to act only within the limits of the authority granted by the  
14 state of New Hampshire.

15           III. The oversight committee shall:

16           (a) Aid the delegates to the federal proposing convention including, but not limited to,  
17 ensuring that they properly understand the requirements of them in accordance with the law and  
18 any instructions provided by the general court.

19           (b) Regularly hold public hearings to ascertain the views of the citizens of the state of  
20 New Hampshire and shall use that information to better advise the delegates of the convention.

21           (c) Fill, by majority vote, any vacancy that may occur on the oversight committee with  
22 an acting member of the committee who shall serve until a permanent replacement is appointed in  
23 the same manner as the committee member whose seat has been vacated.

24           (d) Create, update, and transmit to the secretary of state a list of alternate delegates to  
25 be appointed if necessary pursuant to RSA 667:19, III.

26           IV. A delegate to a state ratifying convention who knowingly refuses to cast that delegate's  
27 vote as prescribed in RSA 667:24 is no longer eligible to hold the office of delegate and that office is  
28 deemed and declared vacant by operation of law. The chairperson of the convention shall  
29 immediately seat an alternate in their place in accordance with RSA 667:19, II. The alternate  
30 delegate shall cast the delegate's vote as prescribed by this section.

31           11 Criminal Code; Falsification in Official Matters; False Swearing. Amend RSA 641:2 to read  
32 as follows:

33           641:2 False Swearing.

34           I. A person is guilty of a misdemeanor if:

35           ~~[I.—He makes]~~ (a) *Such person makes* a false statement under oath or affirmation or  
36 swears or affirms the truth of such a statement previously made and ~~[he does]~~ *he or she does* not  
37 believe the statement to be true if:

1           ~~(a)~~ (1) The falsification occurs in an official proceeding, as defined in RSA 641:1, II,  
2 or is made with a purpose to mislead a public servant in performing ~~his~~ **their** official function; or

3           ~~(b)~~ (2) The statement is one which is required by law to be sworn or affirmed  
4 before a notary or other person authorized to administer oaths; or

5           ~~II. He makes~~ (b) **Such person makes** inconsistent statements under oath or affirmation,  
6 both within the period of limitations, one of which is false and not believed by ~~him~~ **such person** to  
7 be true. In a prosecution under this section, it need not be alleged or proved which of the statements  
8 is false but only that one or the other was false and not believed by the defendant to be true.

9           ***I-a.(a) A person shall be guilty of a class B felony if such person purposefully acts in***  
10 ***violation of instructions required due to their official role as a delegate to a federal***  
11 ***proposing convention authorized pursuant to article V of the Constitution of the United***  
12 ***States. A person found guilty under this section who has purposefully attempted to alter,***  
13 ***amend, or supercede the Constitution of the United States in contradiction to the laws of***  
14 ***the state of New Hampshire or of the United States may be barred from holding public***  
15 ***office pursuant to Section III of the Fourteenth Amendment to the Constitution of the***  
16 ***United States.***

17           ***(b) A person shall be guilty of a class A misdemeanor if such person knowingly***  
18 ***acts in violation of instructions required due to their official role as a delegate to a federal***  
19 ***proposing convention authorized pursuant to article V of the Constitution of the United***  
20 ***States. A person found guilty under this section who has knowingly attempted to alter,***  
21 ***amend, or supercede the Constitution of the United States in contradiction to the laws of***  
22 ***the state of New Hampshire or of the United States may be barred from holding public***  
23 ***office pursuant to Section III of the Fourteenth Amendment to the Constitution of the***  
24 ***United States.***

25           ~~III.~~ **II.** No person shall be guilty under this section if ~~he retracts~~ **such person retracts**  
26 the falsification before it becomes manifest that the falsification was or would be exposed.

27           12 Effective Date. This act shall take effect January 1, 2024.

**HB 392-FN- FISCAL NOTE**  
AS AMENDED BY THE HOUSE (AMENDMENT #2023-0452h)

AN ACT relative to constitutional convention procedures for delegates.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Complex Felony Case	\$3,195	\$3,244	\$3,366
Routine Criminal Case	\$644	\$657	\$779
Appeals	Varies	Varies	Varies
Judicial Council	FY 2023		FY 2024
Public Defender Program	Has contract with State to provide services.		Has contract with State to provide services.
Contract Attorney - Felony	\$825/Case \$105 administrative fee \$200 incarceration fee		\$825/Case \$105 administrative fee \$200 incarceration fee

	(If applicable)	(If applicable)
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)
Contract Attorney - Major Crimes (aggravated felonious sexual assault, felonious sexual assault and first degree assault)	\$2,490/Case \$140 administrative fee \$200 incarceration fee (If applicable)	\$2,490/Case \$140 administrative fee \$200 incarceration fee (If applicable)
Assigned Counsel - Felony. Homicide including capital cases. Travel time to court does not count toward the cap.	\$125/Hour up to \$20,000	\$125/Hour up to \$20,000
Assigned Counsel - Major Crimes. Aggravated felonious sexual assault, felonious sexual assault, first degree assault, class A felony robbery and felony arson. Travel time to court does not count toward the cap.	\$125/Hour up to \$12,500	\$125/Hour up to \$12,500
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	\$90/Hour up to \$5,500	\$90/Hour up to \$5,500
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
<p>It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.</p>		
Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	\$64,223	\$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	\$6,123	\$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	\$688	\$688
<p>The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.</p>		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

# Committee Minutes

**SENATE CALENDAR NOTICE**  
**Election Law and Municipal Affairs**

Sen James Gray, Chair  
Sen Keith Murphy, Vice Chair  
Sen Daryl Abbas, Member  
Sen Donna Soucy, Member  
Sen Rebecca Perkins Kwoka, Member

Date: March 29, 2023

**HEARINGS**

Tuesday	04/04/2023
(Day)	(Date)
Election Law and Municipal Affairs	Legislative Office Building 103 9:00 a.m.
(Name of Committee)	(Place) (Time)
9:00 a.m. <b>HB 203</b>	relative to publication of annual county budgets.
9:15 a.m. <b>HB 237</b>	relative to the date of asset evaluation for purposes of determining eligibility for certain property tax exemptions.
9:30 a.m. <b>HB 284</b>	relative to financial information regarding requests for bids and proposals and to raise the minimum value of county purchases of equipment or materials which are subject to competitive bidding.
9:45 a.m. <b>HB 392-FN</b>	relative to constitutional convention procedures for delegates.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**HB 203**

Rep. Edwards

**HB 237**

Rep. Pauer

Rep. Jonathan Smith

Rep. Maggiore

Rep. Stavis

**HB 284**

Rep. Aron

Rep. Potucek

Rep. Rollins

Rep. Plett

Rep. Stapleton

**HB 392-FN**

Rep. Newell

Rep. Read

Tricia Melillo 271-3077

James P. Gray  
Chairman



**Senate Election Law and Municipal Affairs Committee**  
*Tricia Melillo 271-3077*

**HB 392-FN**, relative to constitutional convention procedures for delegates.

**Hearing Date:** April 4, 2023

**Members of the Committee Present:** Senators Gray, Murphy, Abbas and Perkins Kwoka

**Members of the Committee Absent :** Senator Soucy

**Bill Analysis:** This bill enacts procedures to choose, regulate, and bind delegates to an amendment proposing convention under Article V of the United States Constitution.

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**Sponsors:**

Rep. Newell

Rep. Read

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**Who supports the bill:** Representative Jodi Newell, Debbie Augustine, Kenn Quinn, Samuel Fieldman, Ron Klemarczyk, Beverly Grenert, Debbie Augustine, Eric Benevides, Debra Merrick, and Carol Petruszewicz

**Who opposes the bill:** Julie Smith

**Summary of testimony presented in support:**

**Ken Quinn**

- He is currently working on an Article V convention for congressional term limits.
- His studies found that 82% of Americans support the action of this bill.
- He has little hope that congress will limit the lengths of their own terms.
- He believes procedures for conventions are needed here in New Hampshire.
- HB 392 clarifies the concerns of legislators regarding formal procedures.
- He believes this legislation will be helpful by allowing legislators the freedom to focus more on policy rather than the process.
- New Hampshire leads the country in using conventions to adopt a new constitution or to propose amendments.
- Two conventions were used to adopt a new state constitution and fifteen conventions have been convened to propose amendments to the constitution.
- Throughout those conventions, delegates have proposed 197 amendments and ratified 96 of them.
- New Hampshire uses these procedures annually.

**Samuel Fieldman – National Council for Wolf PAC**

- The National Council for Wolf PAC sought to amend the United States Constitution to end the corruption of money in politics.
- HB 392 will regulate the process of conducting conventions.
- This bill has been uncontroversial due to the existence of checks and balances built into the system.

- It adds additional protections to help the state of New Hampshire ensure that it is properly regulating the delegate procedures.
- The procedures outlined in HB 392 are in line with New Hampshire state regulations under Article 7.
- There was a provision in which the town of Boscawen was able to combine delegates and instruct them to remove and replace a delegate with an alternate.
- In 1933 during the ratification of the 21<sup>st</sup> amendment in Arizona, regulations allowed a delegate to be replaced if they violated their oath.
- Since then, states have scrambled to get laws in place.
- In 2020, the language in this bill was copied and upheld in the New Mexico Electoral College Bill.
- It would be easier if states had gold standard, regulations for delegates, in place ahead of time
- Regulations like this were endorsed by the American Bar Association and both Republicans and Democrats.
- Senator Abbas asked what would happen if a policy issue was raised during the convention but was not discussed prior to that delegate being seated.
  - Mr. Fieldman replied, if a policy issue is not within the scope of the call of the convention, the delegate would not be able to take action and vote. He continued; Florida is one of the states that has a comparable process to the Article V limited convention process. Every 20 years Florida holds a convention which is limited to budgetary issues. In 2008 there was a dispute whether or not some of the issues that were brought up were within the scope. The state supreme court decided that the provisions that passed in 2008, that were not in the budgetary scope, were not allowed to go on for ratification.
- Senator Abbas asked if there is a procedure in place to provide delegates the necessary authority.
  - Mr. Fieldman replied, yes the state legislature is responsible for instructing its delegates under the Article V convention process, which includes this provision. The state legislature could expand or contract instructions to delegates.

### **Representative Jodi Newell**

- HB 392 is not a call for an Article V convention.
- It establishes regulations and processes for the delegates to a convention.
- Senator Murphy asked if there was a particular issue that she would like to see addressed .
  - Rep. Newell replied that she first looked into this because she wanted to get money out of politics. This is what the people want but the people that change it are negatively affected by the change. She is trying to respond to what she heard other states and organizations are doing when calling a convention.

### **Debbie Augustine**

- Since June of 2020, she has volunteered with Wolf PAC.
- This organization is committed to restoring free and fair elections.
- She expressed her frustration and anger in regards to the corruption in Congress.
- She questions if the future of democracy will just belong to the highest bidder.
- HB 392 spells out a regulatory process for delegates of an Article V convention to the United States Constitution.

- It also addresses the issue of campaign reform by means of a Constitutional Amendment.
- The passage of HB 392 could pressure Congress into addressing the systemic corruption entrenched in politics.

**Summary of testimony presented in opposition: None**

TJM

Date Hearing Report completed: April 7, 2023

# Speakers





## Senate Remote Testify

### Election Law and Municipal Affairs Committee Testify List for Bill HB392 on 202 Support: 7 Oppose: 1

<b><u>Name</u></b>	<b><u>Title</u></b>	<b><u>Representing</u></b>	<b><u>Position</u></b>
Smith, Julie	A Member of the Public	Myself	Oppose
Klemarczyk, Ron	A Member of the Public	Myself	Support
Grenert, Beverly	A Member of the Public	Myself	Support
Augustine, Debbie	A Member of the Public	Myself	Support
Quinn, Kenn	A Lobbyist	Myself	Support
Benevides, Eric	A Member of the Public	Myself	Support
Merrick, Debra	A Member of the Public	Myself	Support
Petrusewicz, Carol	A Member of the Public	Myself	Support

# Testimony



**Senate Election Law and Municipal Affairs Committee**

**April 4, 2023**

**HB 392 - relative to constitutional convention procedures for delegates.**

**Testimony**

Good morning Mister Chairman and members of the committee.

Thank you for the opportunity to speak with you today. My name is Debbie Augustine and I live in Contoocook, NH. I'm here to ask you to support HB 392, relative to constitutional convention procedures for delegates.

Since retiring in June of 2020, I've been volunteering with Wolf PAC, an organization committed to restoring free and fair elections. But long before that, and especially since my granddaughter was born 10 years ago, I had become extremely frustrated with the shameless corruption in Congress, and with its blind allegiance to their large special interest donors. I was also angry that so many of them spend vast amounts of their time fundraising for re-election when they should be passing meaningful legislation for their constituents. Unfortunately, a lot of us have already resigned ourselves to the fact that this is just the way it is. But should the future of democracy for our kids and grandkids belong to the highest bidders too?

HB 392 spells out the regulatory process for delegates of an Article V convention of the U.S. Constitution, which could ultimately help address critical issues such as campaign finance reform by means of a Constitutional amendment.

Passing this bill could help expedite a states-led effort to pressure Congress into dealing with the systemic corruption so heavily entrenched in our politics. And, as we know too well, Congress won't be proposing any kind of anti-corruption legislation for itself anytime soon.

We can show New Hampshire means business when it comes to "business as usual" by passing HB 392. Our state, along with the other states, has the power to pressure Congress into fixing our broken campaign finance system - but only if we use it.

I thank you for your service as legislators, and respectfully urge you to support this important legislation.

To Sen. Gray, Chairman; Sen. Murphy, V Chairman; and Members of the Senate Election Law and Municipal Affairs Committee:

Re: HB 392 (Delegate bill for Art. V Convention); Hearing 4-4-2023

Both the Convention of States and Term Limits Applications asking Congress to call a convention under Article V were soundly defeated in the House (ITL). The only surviving Article V Convention legislation this session are Delegate Bills **HB 392** & **HB 269**—both of which purport to select & control Delegates to an Art. V Convention.

But Delegate bills are useless for their proclaimed purpose, in that Delegates to an Article V convention would have more power than State Legislatures and Congress; and could dissolve both. Therefore, Delegates aren't subject to State law.

Convention Delegates, as sovereign Representatives of “We the People,” have the inherent Right “to alter or to abolish” our “Form of Government” (i.e. write a new Constitution), as expressed by the Declaration of Independence, para 2. And we don't know who those Delegates would be or how they'd be selected!

Legislators are falsely assured by the convention lobby that State Legislatures choose the Delegate-selection process, set the Rules, instruct Delegates, propose, and ratify Amendments, and thereby control the Convention. But none of this is true! See "**State Legislatures have no power to select & control Delegates to an Art. V Convention.**"

Delegate bills do serve one purpose, however; and that is to give legislators a false sense of security by fooling them into thinking they can prevent a "runaway" convention—so that they'll vote for the Applications.

Indeed, the convention lobby, backed by **dark money**, uses delegate bills to trick legislators, in order to snare votes on Applications that risk our Constitution. Then they invoke these delegate bills to justify the next application. Don't let them get away with it!

I urge you to **Vote “No” on HB 392** and, also **HB 269**, should the latter pass the House on Thursday. The Constitution isn't the problem!

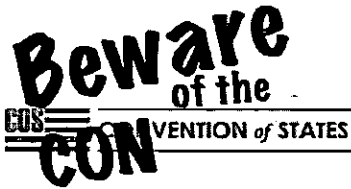
Thank you for your consideration.

Respectively,

Judi Caler, President  
Citizens Against an Article V Convention

# Dark Money<sup>1</sup>—Not the Grassroots—Is Behind the Convention of States Organizations

By Judi Caler



Patriots are rightly concerned that Mark Meckler, lobbyist and President of the Convention of States organizations (COS), has spent tens of millions of dollars spreading misinformation and cajoling State Legislatures into passing applications asking Congress to call a convention under Article V of the U.S. Constitution. Thirty-four States are needed to pass such applications to trigger a constitutional convention, where a new Constitution would likely be proposed, along with an easier mode of ratification. So, who is behind COS?

Meckler tells state legislators that COS is a grassroots movement, funded by thousands of ordinary citizens. In fact, since December, 2017, the COS [homepage](#) boasted:

## *WHO'S BEHIND THIS THING?*

*The American people. We thought you'd never ask! The Convention of States Project is first and foremost a movement of grassroots citizens who are fed up with business as usual in D.C. We're funded by thousands of everyday patriots who have committed their lives, fortunes, and sacred honor to protecting liberty for future generations.*

But [Andy Schlafly](#), attorney and son of conservative icon Phyllis Schlafly, testified at a [Pennsylvania hearing](#) on Oct. 22, 2019 against COS's Article V convention application (@ 11:55):

Schlafly: "...[W]ho's funding them? Where's the money coming from? There's a lot of **money** behind this. And they're not disclosing where the money behind this push to change the Constitution is coming from. That should scare everybody in this room. Who are these people who are pushing to rewrite the Constitution? I suspect some of them are globalists, but ask them...it's not disclosed. And I'm certainly not in favor of allowing billionaires who don't disclose their identity...[or] their real agenda...to rewrite our Constitution. That's **not** a good idea."

Meckler, at the same [hearing](#), feigning outrage, fumed (@ 46:11):

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<sup>1</sup> Dark money is money donated to politically active nonprofit organizations or anonymous corporate entities, which spend this money to influence political campaigns or other special interests but are not required to reveal their donors.

Meckler: "...[W]ho's funding this? Any of you at any time are welcome to visit our very fancy corporate offices ***in my house in Texas. In my personal home office off the kitchen, where all the billionaires apparently come visit me. It's an outrage and a slander.*** And this kind of slanderous politics takes this discussion to some place it should not go, which is frankly, it's just slander, and innuendo. It's gutter politics. And I don't believe in it...

"I can tell you who my donors are. See, because the person that raises the money for...this organization is my wife of 26 years who works in the office next to mine, who has raised money from over 80,000 individual grassroots patriots all over this country. So, if those are the millionaires and billionaires that Mr. Schlafly is afraid of, well, he might want to talk to the grandmas who send me checks and say, 'it's five bucks a month out of my fixed income, and I'm sorry I can't afford any more.' Again, an outrageous slander on the tens of thousands of people supporting this movement."

Notice that in one fell swoop, Meckler masterfully deflects attention from the source of his funding, while playing the victim and accusing his opponents of slander.

So, what's the truth? Let's go straight to the tax-exempt returns that Meckler is required to file with the IRS every year. These returns, also known as 990s, are public information and filed by all nonprofits.

The most recent 990s available for Meckler's organizations are for the years 2020, 2019, and 2018. The Meckler organizations appear to include Convention of States Action (COSA); Citizens for Self-Governance (CSG); Citizens for Self-Governance Action (CSG Action); and Defending Liberty, Inc. (DLI). Each year, Meckler filed a 990 return for each entity, as required by law, and signed them under penalty of perjury.

Nonprofits are not required to disclose the identity of their contributors—so all contributors are anonymous, unless the organization chooses to disclose them. That's why the accompanying Schedule B doesn't include the names & addresses of the donors—only the total amount of all donations totaling \$5,000 or more from each numbered donor during the year. Still, those figures are revealing.

Donations of \$5,000 or more to each entity are summarized by year on the accompanying Chart. The source documentation for figures on the Chart can be found mostly on Schedule B of the linked 990s.

Here's the short version:

Between 2018 and 2020, contributions ranging from \$5,000 to \$2,000,000 per donor, to the four entities totaled \$16,751,011, or 63% of the \$26.7 million in contributions reported on Meckler's combined 990s for the 3-year period. And that \$16.7 million was from *at most* 168 unique anonymous persons; thus, their average contribution was almost \$100,000 [ $\$16,751,011 \div 168 = \$99,708$ ].

But likely, Meckler has fewer than 168 major donors, as repeat donors over the 3-year period are to be expected. So, depending upon how many major donors gave in one, two, or three years and/or gave to multiple Meckler entities, the average donation per major donor over the three-year period amounts to *at least \$99,708, and may be more than \$200,000 or \$300,000!* **So, COS isn't a grassroots organization funded from the bottom up by small donors.** Schedule B provides proof that COS's agenda to replace our Constitution is coming mostly from major donors.

Meckler frequently sends out emails asking for money, to his list of unsuspecting patriots. Unsurprisingly, most of his requests are accompanied by an offer from a "generous donor" to match each contribution. The patriots on Meckler's email list probably have no idea that Meckler has been receiving almost two-thirds of his contributions from multi-millionaires and/or billionaires while drawing salaries for himself and his wife totaling hundreds of thousands of dollars annually.

We can only conclude that Meckler is disingenuous when he ridicules the suggestion that his organizations are funded by undisclosed multi-millionaires and billionaires. And while his organizations may well receive some small donations, he denies that the bulk of his money comes from the superrich. And all the while, he yells "slander" with a straight face, and shamelessly conjures up Grandma wishing she could give him more of her paltry income, when asked about the millions in dark money he's amassing!

We know why the liquor, drug, and tobacco industries invest millions in lobbyists to influence state legislation. But why would major donors invest millions in COS to bring about a convention to rewrite the U.S. Constitution?

The total amount of money spent over the years by the Meckler organizations to trigger a constitutional convention is astonishing. Meckler needs to be confronted everywhere he goes by opponents, supporters, & legislators alike—and asked why he is hiding the fact that he's working for the superrich. We have a right to know; it's our Constitution they're after!

You can download the 990 forms from the accompanying Chart and copy Schedule B, so you'll have ammo to push back with, the next time Meckler plays the Grandma card.

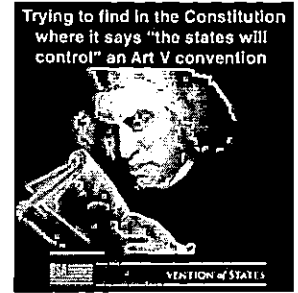
**Meckler Entities Anonymous Major Contributions (≥ \$5,000) for Years 2018 Through 2020**

Meckler Organizations' Forms 990	(A) # of Major Donors (Sched. B)	(B) Total \$ from Major Donors (Sched. B)	(C) Total of all Contributions: Form 990 p.1, line 8	B ÷ C Major Contributions' % of Total	B ÷ A Average Major Donation
<u>COSA 2020</u> <u>47-2245708</u>	55	\$4,112,370	\$7,159,560	57%	\$74,770
<u>COSA 2019</u>	45	3,884,001	6,777,645	57%	86,311
<u>COSA 2018</u>	26	2,239,125	4,872,216	46%	86,120
<u>CSG 2020</u> <u>27-1657203</u>	8	1,016,800	1,622,566	63%	127,100
<u>CSG 2019</u>	13	633,100	961,914	66%	48,700
<u>CSG 2018</u>	13	1,844,815	2,319,810	80%	141,909
<u>CSG Action 2020</u> <u>27-4648506</u>	1	2,000,000	2,000,000	100%	2,000,000
<u>CSG Action 2019</u>	2	305,800	305,800	100%	152,900
<u>CSG Action 2018</u>	2	535,000	581,000	92%	267,500
<u>DLI 2018: 812320022</u> <u>No Rev. 2019-20</u>	3	180,000	180,000	100%	60,000
<b>TOTALS</b>	<b>168</b>	<b>\$16,751,011</b>	<b>\$26,780,511</b>	<b>% of total contributions ≥ \$5,000*</b>	<b>Avg. \$ per Major Donor – at the very least*</b>
<b>*See note below</b>				<b>63%</b>	<b>\$99,708</b>

\*Note: \$16,751,011 in major contributions [≥ \$5,000] out of \$26,780,511 total contributions [63%] were reported, from 168 Major Donors giving \$5,000 or more to the above Meckler entities from 2018-2020. Thus, the Average contribution given by a Major Donor was *at the very least* \$99,708 [ $\$16,751,011 \div 168$ ] and may be over \$200,000 or \$300,000—if the same Major Donors contributed in multiple years and/or to multiple Meckler entities.

## State Legislatures have *no power* to select & control Delegates to an Article V Convention

Congress calls the convention provided for in Article V, US Constitution, and makes the laws necessary and proper to organize the convention:



Article V, US Constitution, says:

*“The Congress, whenever two thirds of both Houses shall deem 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...”* [emphasis added]

Article I, §8, last clause, US Constitution, says Congress shall have the Power...

*“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”* [italics added]

The April 11, 2014 Report of the Congressional Research Service [CRS] shows that Congress is well aware that it has the authority to organize and set up the convention:

*“Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; ... (4) determining the number and selection process for its delegates...”* (p. 4) [emphasis added]

S. 1272, the Federal Constitutional Convention Procedures Act, passed the US Senate during 1973, and illustrates that Congress recognizes that it has the power to determine the number and selection process for Delegates: **It provided for the election of one Delegate from each Congressional District; and the election of two additional Delegates for the State at large.**<sup>1</sup>

The convention is a *federal function*, not a State function; and State Legislatures have no control over it. When those pushing for an Art. V Convention assure you that State Legislatures *will select Delegates & force them to sign Oaths of obedience to the State Legislature*, they are making stuff up. **Congress decides how Delegates will be selected!** Whether Congress provides for the election of Delegates (as in S. 1272); or Congress selects the Delegates, State Legislatures have **no power over Delegates**. Furthermore, Delegates have **the self-evident Right** to “alter or abolish” the existing state & federal governments. **So no one has power over Delegates!**

*We don't know* what Congress will do about selecting Delegates! Congress may appoint *themselves* as Delegates.<sup>2</sup>

<sup>1</sup> So the number of Delegates each State gets would be the same as its number of electoral votes! E.g., Calif would get 55 Delegates.

<sup>2</sup> Page 40 of the CRS Report shows it's been recognized that there doesn't seem to be any “. . . constitutional prohibition against [U.S.] Senators and Representatives serving as delegates to an Article V Convention. . .”

## Tricia Melillo

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**From:** Trudy Stamps <trudy@twixt.com>  
**Sent:** Tuesday, March 14, 2023 11:10 PM  
**To:** Tricia Melillo  
**Subject:** vote "No" on SB 392

Caution! This message was sent from outside your organization.

Sen. Gray, Chairman; Sen. Murphy, V Chairman  
Members of the Senate Election Law and Municipal Affairs Committee

**We are at a critical point!** Any "innocent" seeming bill for controlling delegates, etc. can trip the switch to a **DISASTER!**

Legislation introduced last year in Congress would direct the Archivist of the United States to **count ALL non-rescinded applications** for an Article V Convention together. **This Flyer** shows that the proposed legislation filed in Congress directs that **all non-rescinded applications are to be counted together to get to 34 States**. So no matter what amendment is requested in the application, it will be *lumped together with all other non-rescinded applications to get to 34*.

**No matter what subject is on the application, it doesn't matter!** We're likely to lose our Constitution should Congress call an Article V convention.

**We are being misled!** The COS (Convention of States) people suggest that we can "make Congress work" for us by having a convention.

**DO YOU KNOW WHAT CAN HAPPEN? The entire Constitution can be RE-WRITTEN! NOTHING can stop this** if a convention starts up!!

**New Hampshire must VOTE NO on SB 392, and any other applications asking Congress to call an Article V convention.**

In our politically divided situation, neither extreme would want the "other" re-writing our Constitution. **WE MUST PRESERVE the ORIGINAL!**

Consider this: **How to get a new Constitution under the pretext of proposing amendments.** <https://caavc.net/wp-content/uploads/2020/07/COS-Fake-Quote.pdf>

We're jeopardizing our Constitution at any convention Congress calls, because **conventions can't be limited. These folks at COS are deceiving us!!**

Thank you for your consideration of these significant issues. **New Hampshire must VOTE NO on SB 392, and any other applications asking Congress to call an Article V convention.**

Trudy Stamps





April 10, 2023

Senator Gray, Chairman  
Senator Murphy, Vice Chairman  
Members of the Election and Municipal Affairs Committee

RE: HB392

Dear Committee,

The House narrowly passing HB269 shows an elevated degree of concern several members have regarding the Constitutional Convention calls. So far this 2023 session season across several States, no State has passed a call for a Constitutional Convention aka Article V. I repeat, NONE.

HB 392 is a measure intended to give comfort to those who oppose the Constitutional Conventions. Representative Jodi Newell (HB269 Sponsor) said so herself:

*"... this is not an A5C [Article V Convention] call. This is the solution to the fear and uncertainty that dissuades us from using what is essentially a constitutional right."*

Though Rep. Newell is correct; Article V is a Constitutional right, she is not correct in it's application here. Primarily because States have NO POWER to determine nor control delegates to a Constitutional Convention. Congress does. Yes, the same people intended to be reigned in by a Constitutional Convention. States simply have no authority in this delegate area. Its is not in Article V. Read it.

What States do have the power to do is Nullify. Federal authority is granted in Article 1 Section 8. It is limited in scope. Amendment 10 speaks to all other authority being reserved to the States and the People. If you are upset with an unconstitutional edict coming down from Washington, nullify it. Simply do not comply or act.

You can also educate the electorate. A well-informed electorate in two years, can replace each US Representative. Educate the electorate and replace the people who are not following their oath thus causing the problems.

Is the Constitution really the problem? Simply put, No. The Constitution is clear in its checks and balances. People not following the Constitution is the problem. We are to hold our elected officials accountable to the agreement.

Sincerely,

*Tim Marden*

Tim Marden  
Newberry Florida City Commissioner  
352-474-1022  
tmarden@newberryfl.gov

**Tricia Melillo**

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**From:** Russell Payne <19riderlee36@comcast.net>  
**Sent:** Wednesday, March 15, 2023 11:36 AM  
**To:** James Gray  
**Subject:** SB 392

Caution! This message was sent from outside your organization.

Dear Chairman Chairman Gray And All Members of the Hampshire State Senate:

I urge you to vote "No " on SB 392 for State legislators have no power to select delegates. Check out Chief Justice Warren Burgers

LETTER to Phyllis Schlafly dated June 22, 1988:

*"...[T]here is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda...After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda..."*

*Also check this documentation: States have no Power to Select or Control Delegates to an Article V Convention"*

Beware of fraudulent claims about Article V Conventions made by Mark Meckler's Convention of States. Before the hearing on this Thursday please consider these concerns. Don't ignore the fact that you have been targeted by well financed agendas designed to deceive State Legislators with the "cheese in the mousetrap" as bait to promote popular causes like Term Limits fueled by Dark Money.

Dark Money—Not the Grassroots—Is Behind the Convention of States Organizations (COS) .

Consider the fact that 2/3 of the money fueling this movement comes from donors giving COS \$5,000 to two million dollars. I want to emphasize to you that Article V Conventions are a bad idea whether you support Term Limits or not. The Con-Con movement is an attack on the US Constitution. If this Deep State cabal of billionaires had any loyalty to our country it would not take tens of billions of dollars for over four decades to stop the Federal government's overreach of power that only needs 218 Congressmen voting "no" for unconstitutional legislation and spending to be controlled.

I urge you to vote "No" on HCR 4 and the Amendment . We don't want a "Lame Duck Congress," enemy of "the will of the people," to be multiplied where every Congressman's last term of office would become a "Lame Duck Session." Ask those who promote these fraudulent bills to show you the constitutional authorization that would give them this authority. I urge you to consider your decision based on wisdom expounded by a great American - Booker T Washington:

A lie doesn't become truth, wrong doesn't become right, and evil doesn't become good, just because it's accepted by a majority."

Sincerely &\* Respectfully

Russ Payne 45 Coventry Ct , Merrimack NH 03054-3404

**Tricia Melillo**

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**From:** Jim Rubens <jimrubens@gmail.com>  
**Sent:** Tuesday, April 4, 2023 11:28 AM  
**To:** James Gray; Keith Murphy; Daryl Abbas; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo  
**Subject:** Please OTP on HB392

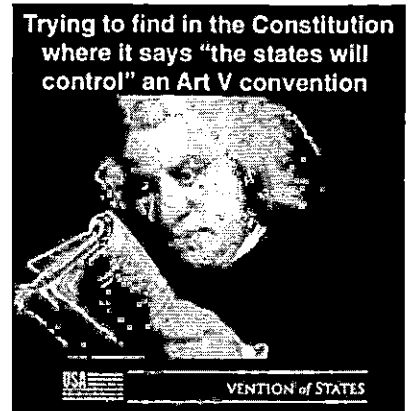
Caution! This message was sent from outside your organization.

Hello, Senators,

This bill provides an additional level of protection against the theorized "runaway convention" by binding delegates to a potential future amending convention to the instructions given by the NH legislature to those delegates. Even if you are skeptical about the state-led Article V amending process, this bill should earn your OTP vote because of the additional protection provided.

Thank you for your consideration,  
Jim Rubens  
former state senator, District 5  
former chair, NH GOP platform committee  
(603) 359-3300 m

## Oppose the sham Delegate selection & control Bills



**Please Oppose HB 269**, which purports to provide for *the selection & control by the State Legislature* of Delegates to a Convention called by Congress pursuant to Article V, US Constitution.

**Please also Oppose HB 392**, which purports to provide for *the election and control of Delegates* to a Convention called by Congress pursuant to Article V, US Constitution.

**James Madison, Alexander Hamilton, 4 US Supreme Court Justices** (2 Conservatives & 2 Liberals) and other legal scholars warn *against* an Article V convention. They warn that Delegates to the Convention cannot be controlled.

James Madison also expressly warned that those who secretly wish to get a new Constitution would push for a Convention under the pretext of getting Amendments. <sup>1</sup>

It was because of such warnings that the convention lobby *fabricated* the claims that State Legislatures have the power to determine how Delegates are selected and how many there would be; that State Legislatures would decide what Amendments could be considered at the Convention; and would be able to force Delegates to obey the Legislatures' instructions, take Oaths of obedience and that Delegates could be criminally prosecuted for addressing any Amendment not previously requested by 34 State Legislatures. <sup>2</sup>

The words of *our Constitution* show that their claims are false:

**The Truth of the Matter is that State Legislatures have *no power* to select & control Delegates to an Article V Convention**

Congress calls the convention provided for in Article V, US Constitution, and makes the laws necessary and proper to carry out its power to call the convention:

**Article V, US Constitution**, says:

*“The Congress, whenever two thirds of both Houses shall deem 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...”* [emphasis added]

**Article I, §8, last clause, US Constitution**, says Congress shall have the Power...

*“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”* [italics added]

The April 11, 2014 Report of the Congressional Research Service [CRS] shows that Congress is well aware of its constitutional powers re "calling" the Convention:

“Second, While the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; ... (4) determining the number and selection process for its delegates...” (p. 4) [emphasis added]

**S. 1272, the Federal Constitutional Convention Procedures Act**, passed the US Senate during 1973, and illustrates that Congress recognizes that it has the power to determine the number and selection process for Delegates: **It provided for the election of one Delegate from each Congressional District; and the election of two additional Delegates for the State at large.**

**So Congress decides how Delegates will be selected.** Whether Congress provides for the election of Delegates (as in S. 1272); or **Congress selects the Delegates, State Legislatures have no power to determine how Delegates are selected.**

*We don't know* what Congress will decide about selecting Delegates! Congress may appoint *themselves* as Delegates.<sup>3</sup>

**Furthermore, no one can control the Delegates:** they have the self-evident Right to “alter or abolish” the existing state and federal governments. Our only precedent for a federal "amendments" convention was the convention called by the Continental Congress on Feb. 21, 1787 for "the sole and express purpose of revising the Articles of Confederation". But the Delegates ignored their instructions and wrote a new Constitution which created a new form of government and which had its own easier mode of ratification. As justification for what they did, **James Madison invoked that Right (set forth in our Declaration of Independence)** of a People to throw off one government and set up a new one.

The convention is *a federal function*, not a State function; and State Legislatures have no control over it. When lobbyists pushing for an Article V Convention assure you that State Legislatures *will determine how Delegates are selected and can force them to sign Oaths of obedience to the State Legislature*, they are making stuff up.

#### Endnotes:

<sup>1</sup> **Getting a new Constitution under the pretext of getting Amendments** shows at endnote 3 where Madison said this.

<sup>2</sup> **Con-con legislation filed in Congress last year** shows the convention lobby doesn't believe their own talking points. That legislation provided that **all** non-rescinded applications for a Convention (*regardless of the amendment specified*) would be counted together to get to 34 States.

Con-con legislation filed *last month* in Congress (**HCR 24**) provides that **all applications for a convention on any "national issue (plenary)"** or for a BBA - *whether since rescinded or not* - are to be counted. *Please let that sink in.*

<sup>3</sup> Page 40 of the **CRS Report** shows it's been recognized that **there doesn't seem to be any "... constitutional prohibition against [U.S.] Senators and Representatives serving as delegates to an Article V Convention. . ."**

## Tricia Melillo

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**From:** Russell Payne <19riderlee36@comcast.net>  
**Sent:** Sunday, April 9, 2023 11:18 PM  
**To:** James Gray; Keith Murphy; Daryl Abbas; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo  
**Subject:** HB 392

Caution! This message was sent from outside your organization.

Dear Chairman James Gray & all Members of Election Laws and Municipal Affairs Committee,

If the House Sponsors knew that Article V is silent about all the details if an Article V Convention be called, then they would not introduce such useless legislation and waste the legislatures valuable time. Show me in Article V where it gives the States authorization for power control an Article V Convention.

There is a lot of difference in what Ken Quinn US Term limits lobbyist says, and what is accurate. He gets paid to win your vote. When and if The Congress calls for a Constitutional Convention there is no higher power other, than Almighty God. The convention will be sovereign as the 1787 Constitutional Convention was. It will represent the will of the people.

The inherent Right of the Framers in 1787 to go above the Commission of each State Legislature came from the 2nd paragraph of the Declaration of Independence:

"But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government.

There are numerous new Constitutions already drafted. The dangers represented in a sovereign convention are obvious. Washington, Madison and Hamilton won't be there to guard our liberty.

Sincerely & Respectfully

Russ Payne Merrimack



## Tricia Melillo

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**From:** Kay Causey <restofmyself@aol.com>  
**Sent:** Monday, April 10, 2023 1:48 AM  
**To:** Tricia Melillo  
**Subject:** Please help save our beloved by voting "NO!" on HB 392.

Caution! This message was sent from outside your organization.

To the attention of "Sen. Gray, Chairman; Sen. Murphy, V Chairman; and Members of the Senate Election Law and Municipal Affairs Committee"

As this "***Pig in a Poke***" flyer shows, the Convention Lobby fabricated the *false and preposterous* claim that when Congress calls a convention under Art. V, *State Legislatures—not Congress*—have the power to make all laws "necessary and proper" to carry out the call. But the Necessary & Proper clause of the US Constitution clearly grants that power to Congress!

As for ***TERM LIMITS***:

1. the ballot box is SUPPOSED to be term limits. That means our legislators should beef up, according to the state Constitution, the state election laws.
2. Voters are knee capped by term limits— because they like to **KEEP** their good, constitutional legislators. Don't you see that it hamstring **voters**?
3. Do you know how much damage just **ONE** lame duck legislator can do when he she does not have to face constituents?

How about a whole **GANG** of them with expiring terms in house or senate at the **same** time! It would be a free for all race as to who could get paid handsomely for the most radical damage.

Have you not seen this before with lame ducks? IMAGINE a "fruit basket turn over" in the senate FOR SIX long unaccountable YEARS! And TWO years in the House!

Were not our founders geniuses??—for not putting term limits in the constitution?

Is risking the loss of our beloved constitution worth the price?

Note: an ART.V convention, **called and arranged** by FED. Congress, not STATE —can propose ANY amendments OR a NEW CONSTITUTION—with its own **easier** mode of ratification!

Think **deeply** on these things. Then once you see the **danger of term limits**, once you see states, (even with silly delegate bills) cannot select and control delegates, vote **"NO!"**

Then concentrate on making our state election laws have more Teeth. And, begin to **nullify** unconstitutional Fed. Law. The **10th** amendment is our route back to State's Rights.

We the people of New Hampshire will back you up!

And, immediately **RESCIND** any old applications you may still have! These things are as dangerous as a loaded gun in the hands of a **SMALL** child.

Ask yourself "Does COS really think they can improve upon the wisdom of our founders?" That is actually funny when you think about it.

Sincerely,

Kay Rutledge Causey—direct descendent of John and Edward Rutledge who signed the Constitution and the Declaration of Independence respectively. I add this to let you know that I had to study the Federalist Papers and the constitution since a child.

The lives of the Rutledges were destroyed for you, this country, and our posterity.

Voting FOR a convention makes you, sadly, complicit in getting rid of our constitution, not to mention in breach of ART VI and the Public Trust. PLEASE, Don't be swayed into violating your Oath. Think about it—per your solemn Oath you swore to defend and protect our present constitution from ALL enemies—both foreign AND "domestic." That is why your Oath directly follows ART V.

**Tricia Melillo**

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**From:** msharp2@nc.rr.com  
**Sent:** Monday, April 10, 2023 7:49 AM  
**To:** msharp2@nc.rr.com  
**Subject:** Important message from North Carolina

Caution! This message was sent from outside your organization.

Dear Ms. Melillo, Senator Gray, Senator Murphy and members of the Senate Election Law and Municipal Affairs Committee,

Please vote NO on **HB 392** - (Delegate bill) for the following reason.

The term "convention of states" or "balanced budget application" is being used to make people believe that there is such a thing as a convention that can be controlled from start to finish by the States. But the only convention "for proposing amendments" is one called by Congress. A "Constitutional Convention," a "Convention to Propose Amendments" and a "Convention of States" are just different names for the same thing. And Congress has total power to organize and set it up under Article I, Section 8; last paragraph. But once the convention is convened, the delegates become the sovereign representatives of the people and can do whatever they want. They cannot be controlled by anyone outside of the Convention. Therefore your delegate bill means nothing as does your Convention of States bill.

State Legislatures cannot control a Convention. State Legislatures "apply" to Congress to call a convention. Congress "calls" the convention. Pursuant to Art. I, §8, last clause, Congress makes the laws to carry out its delegated power to "call" the convention. And when the Continental Congress called the convention of 1787 to "revise" our 1st Constitution, the Delegates ignored the instructions from Congress & the States and wrote a new Constitution with a new & easier mode of ratification [link]. That's why James Madison, Alexander Hamilton, 4 US Supreme Court Justices, and many other legal scholars warn against another convention [link]. Constitutional litigators & law professors William Olson and Herbert Titus recently warned that COS's "false assurances" are "reckless in the extreme".

I beg of you to PLEASE vote NO on **HB 392**.

Thank you for your time and for defending our Constitution.

Sincerely,

Melissa F. Sharpley  
5504 Daywood Court  
Raleigh, NC 27609  
[Msharp2@nc.rr.com](mailto:Msharp2@nc.rr.com)

**Tricia Melillo**

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**From:** Jane Aitken <themaclady@comcast.net>  
**Sent:** Monday, April 10, 2023 8:57 AM  
**To:** ~Senators; Tricia Melillo  
**Subject:** OPPOSE HB 392

ON behalf of thousands of NH's teaparty and CNHT members, I would like to request that you vote NO on HB 392.

Please place our testimony into the record.

State Legislatures have no constitutional authority to decide how Delegates to an Article V Convention are selected. Congress alone has the constitutional authority to determine the number and selection process for Delegates. And nobody has the power to control the Delegates. The sole purpose of Delegate bills is to manipulate State Legislators into believing the false assurance that they will be able to control an Article V Convention called by Congress.

<https://us-east-2.protection.sophos.com?d=cnht.org&u=aHR0cDovL3d3dy5jbmh0Lm9yZy9uZXdzL3dwLWNvbnRlbnQvdXBsb2Fkcy8yMDIzLzA0L3N0YXRILWxlZ2lzbGF0dXJlcy1oYXZlLW5vLXBvd2VyLXRvLXNlbGVjdC1vci1jb250cm9sLWR1bGVnYXRlcy1mZWl1LTI4LTIwMjIucGRm&i=NWRlZTQ5ZjExZDY0YzZwZGFjNjE0MWMw&t=eUtgajAvK1YyRHdYUnY5MlpYdFkzOHZlcGpadUI4eENQmMxMHhCazR1WT0=&h=f47a295fef945709d78f2cf439ec520&s=AVNPUEhUT0NFTkNSWVBU SVbvQHbAX7jWUECTa5uDP1e85aKewFOuhX-CeqPBMILhfQ>

Thank you,

Jane Aitken, Chair  
cnht.org  
nhteapartycoalition.org

**Tricia Melillo**

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**From:** Debbie Strodel <prov1434@gmail.com>  
**Sent:** Monday, April 10, 2023 9:49 AM  
**To:** Tricia Melillo  
**Subject:** Vote NO on HB 392

Caution! This message was sent from outside your organization.

"Sen. Gray, Chairman;  
Sen. Murphy, V Chairman; and Members of the Senate Election Law and Municipal Affairs  
Committee"

**Please Vote "No" on HB 392.**

**No one has the power to control the Delegates. This is a stupid bill.**

Debbie Strodel  
Wolfeboro, NH  
prov1434@gmail.com

***Pray as if everything depends upon God, act as if everything depends upon us.***

## Laws and Resolutions Protecting our Right to Amend the U.S. Constitution

State	Act or Resolution	Number of Delegates	Oath	Recall	Nullifies Vote	Maximum Penalties: Criminal or Civil	Year Passed	Link to Text of Act or Res.
Wisconsin	AB-165, ASA1	9 Delegates. (The speaker of the assembly and president of the senate each appoint 3 from their respective chamber. The governor appoints 1 from either chamber. The minority leader of the assembly and minority leader of the senate each appoint 1 from their respective chamber.)	No	Yes	No	No	2017	Click <a href="#">HERE</a> for AB-165, and <a href="#">HERE</a> for ASA1
Oklahoma	HCR 1007	7 Members. (3 appointed by House Speaker, 3 appointed by President Pro Tempore, 1 appointed by both.)	Yes	Yes	No	No	2017	Click <a href="#">HERE</a> for HCR 1007
Arizona	HCR 2022	At least 1 but not more than 7, and an equal number of paired alternates: 3D-3A chosen by House, 3-3 chosen by Senate, 1-1 chosen jointly by Speaker and Senate President	Yes	Yes. Subject to recall by AVC Committee appointed to monitor commissioners	No	No	2017	Click <a href="#">HERE</a> for HCR 2022
Wyoming	HB 0050 HEA 123	6 (Senate and House each appoint 3 Delegates.)	Yes	Yes	Yes	Criminal (Felony: 5 Years Imprisonment, \$10,000. fine, or both.)	2017	Click <a href="#">HERE</a> for HB0050 HEA123
Texas	SB 21	To be Determined. Assumed to be 5 Delegates with 5 Paired Alternates.	Yes	Yes	Yes	No	2017	Click <a href="#">HERE</a> for SB 21
Alaska	HCR 4	To be Determined after Call.	Yes	Yes	No	No	2016	Click <a href="#">HERE</a> for HCR 4



**BALANCED BUDGET  
AMENDMENT  
TASK FORCE**

2740 SW Martin Downs Blvd. #235, Palm City, FL 34990  
Phone: (386) 423-4744 | [www.bba4usa.org](http://www.bba4usa.org) | [www.bba.foundation](http://www.bba.foundation)

## Laws and Resolutions Protecting our Right to Amend the U.S. Constitution

State	Act or Resolution	Number of Delegates	Oath	Recall	Nullifies Vote	Maximum Penalties: Criminal or Civil	Year Passed	Link to Text of Act or Res.
South Dakota	HB 1069	Not Stated	Yes	Yes	Yes	Civil (\$5,000 Penalty.)	2015	Click <a href="#">HERE</a> for HB 1069
North Dakota	HB 1441	Not Stated	Yes	Yes	No	No	2015	Click <a href="#">HERE</a> for HB 1441
Utah	HB 392	Not Stated	Yes	Yes	Yes	Criminal (Third Degree Felony, Punishable by 0-5 years in Prison and \$5,000.)	2014	Click <a href="#">HERE</a> for HB 392
Tennessee	SB 1432	To be Determined after Call. Assumed 2 Delegates with paired Alternates.	Yes*	Yes	Yes	Criminal (Class E Felony: 1-6 years in Prison, \$3,000. fine.)	2014	Click <a href="#">HERE</a> for SB 1432
Georgia	HB 930	5 Delegates. (2 elected by Senate, 2 by House, 1 by both Chambers.)	Yes*	Yes	Yes	Criminal (Misdemeanor Imprisonment 1 year, \$1,000.)	2014	Click <a href="#">HERE</a> for HB 930
Florida	HB 609	To be Determined. (Assumed to be 2 Delegates with 2 Paired Alternates.)	Yes*	Yes	Yes	Criminal (Felony of the third degree: Imprisonment not exceeding 5 years, \$5,000.)	2014	Click <a href="#">HERE</a> for HB 609
Indiana	SB 224	Not Stated	No	Yes	Yes	Criminal (Class D Felony: 6 mos.-3 yrs. in Prison.)	2013	Click <a href="#">HERE</a> for SB 224

\*Required, but only principles of oath specified.



**BALANCED BUDGET  
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**Tricia Melillo**

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**From:** Robert Hoey <rrhoey@gmail.com>  
**Sent:** Monday, April 10, 2023 10:49 AM  
**To:** Tricia Melillo  
**Subject:** vote NO

Caution! This message was sent from outside your organization.

Attention:

Sen. Gray, Chairman; Sen. Murphy, V Chairman; and Members of the Senate Election Law and Municipal Affairs Committee

Please vote NO on HB 392

"States have no Power to Select or Control Delegates to an Article V Convention" (flyer) shows that those who promise that State Legislators will select and control the Delegates are making stuff up! Delegates have the self-evident Right "to alter or to abolish" the existing state & federal governments. Thus no one has power over Delegates.

Thank you  
Robert Hoey

## **New Hampshire MATTERS to me!**

Senators, you should be concerned that you won't be able to control the Delegates to a Convention. See this "Pig in a Poke" flyer!

"States have no Power to Control Delegates to an Article V Convention" (flyer) shows that those who promise that State Legislators will select and control the Delegates are making stuff up!

It is dangerous to risk a "convention" (whatever you might call it!) If our constitution is revised, it could allow us to join into a "North American Community" (Canada, Mexico and the USA). A convention puts us in a place where delegates could "close the doors" (as happened in 1778) and take a completely new direction, with plans to totally revise (re-write) our treasured Founding Document! You can see some of the details here: USMCA 'Trade Agreement,' the North American Union, an Article V convention, and Red Flag Laws: Connecting the dots.

U.S. Congress will be in charge of setting up any "approved" convention — it will not be in the hands of states who presume they can limit a "convention of states"! Article V has no such limits! Legislation recently filed in Congress suggests that Congress intends to count ALL non-rescinded applications for an Article V convention together to get to 34 States. You have no idea what could come of that!!

**Don't PLAY WITH FIRE! STOP any applications in New Hampshire! We must protect our constitution!**

**Vote "No" on HB 392, and HB 269 (if passed).**

Sincerely,  
Trudy Stamps

**Tricia Melillo**

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**From:** Beverly Manning <bevsvie@gmail.com>  
**Sent:** Monday, April 10, 2023 12:30 PM  
**To:** Tricia Melillo  
**Subject:** Vote "No" on HB 392.& ALL FOR A5CY

Caution! This message was sent from outside your organization.

**CHAIRMAN, VICE CHAIRMAN, & Members of the Senate Election Law and Municipal Affairs Committee,**

**You're BEING LIED TO! DON'T BE FOOLED!**  
**Our PRECIOUS CONSTITUTION NEEDS DEFENDING, NOT AMENDING,**  
**REWRITING!**  
Beverly Manning

**Tricia Melillo**

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**From:** John Lautzenheiser <jrlautzen@gmail.com>  
**Sent:** Monday, April 10, 2023 7:30 PM  
**To:** Tricia Melillo  
**Subject:** Please oppose HB 392

Dear Senator Gray, Chairman; Senator Murphy, Vice Chairman; and Members of the Senate Election Law and Municipal Affairs Committee:

Please oppose HB 392, which in practice would be useless in preventing an Article V convention from depriving New Hampshire residents of their rights under the current US Constitution.

An Article V convention would almost certainly end some of the limitations on the power of the federal government, making New Hampshire's problems even worse. HB 392 won't prevent this.

John Lautzenheiser  
Londonderry, NH

**Tricia Melillo**

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**From:** Claire Ketteler <cketteler@tds.net>  
**Sent:** Monday, April 10, 2023 7:36 PM  
**To:** James Gray; Keith Murphy; Daryl Abbas; Donna Soucy; Rebecca Perkins Kwoka  
**Cc:** Tricia Melillo  
**Subject:** Vote "No" on HB 392  
  
**Importance:** High

Dear Senators on the Election Law and and Municipal Affairs,

Please Vote "No" on HB 392 - AN ACT relative to constitutional convention procedures for delegates.

This is a dangerous bill. Those who promise that State Legislators will select and control the Delegates to a constitutional convention are sadly mistaken.

Delegates have the self-evident Right "to alter or to abolish" the existing state & federal governments. Thus no one has power over Delegates.

The US and NH Constitutions are fine the way they currently are. A constitutional convention is not needed. We do not need any changes currently. We only need people to follow the Constitution as written.

Thank you!  
Claire Ketteler  
546 Chalk Pond Road  
Newbury NH 03255  
603-763-3082



## GEORGETOWN LAW

April 10, 2023

Honorable James Gray  
Chairman  
Committee on Election Law and Municipal Affairs  
New Hampshire Senate  
Concord, NH 03301

Re: *H.B. 392*

Dear Chairman Gray and Committee Members:

I write to urge you to vote against H.B. 392, relating procedures for delegates to a possible federal Article V convention. Contrary to the testimony presented to the Committee last week, this legislation would do nothing to mitigate the dangers of an Article V convention. To the contrary, H.B. 392 would be wholly unworkable and ineffectual. I also am concerned that some of the testimony the Committee heard last week gave the misimpression that legislation of this kind is uncontroversial by conflating it with very different proposals. In fact, many state legislatures have rejected bills similar to H.B. 392. I urge you to do the same.

### **An Article V Convention Would Put Our Basic Liberties at Grave Risk**

Nothing in Article V, or anywhere else in the Constitution, puts any limits on what a convention could do except that it may not deny states equal representation in the Senate. If anyone tells you that other limitations exist, I would encourage you to ask them to point you to something in Constitution that supports those safeguards. There is nothing.

Two witnesses at last week's hearing insisted that an Article V convention would be "limited" in what it could consider. Mr. Quinn made a reference to "conventions ... to ... adopt a new constitution" and insist that such a convention "is not what this is about". Mr. Fieldman referred to "the Article V limited convention process". Nothing in Article V says anything about limiting a convention. Article V does speak of "a Convention for proposing Amendments", but it says nothing about limiting the scope of those amendments. Legislatures commonly amend legislation by "striking all after the enacting clause and inserting the following:". The 1787 Philadelphia Convention that replaced the Articles of Confederation with our current Constitution did not take that approach, but it could have: it did retain some parts of the Articles and in that sense could be termed an "amendment". The Constitution of the Confederate States of America incorporated large parts of the U.S. Constitution, yet its differences – which could be termed "amendments" – fundamentally changed the nature of the entire document.

It would be foolhardy in the extreme to assume that a consensus in values will protect the liberties in the current Constitution that we hold dear. Because our nation is so sharply divided, and because our current politics are characterized by a remarkable degree of ruthlessness, this danger is present whatever one's particular political perspective might be.

To senators that feel strongly about gun rights, I ask how confident you are in what would come out of an Article V convention if some horrific school shooting occurs during the convention? Skepticism about the Second Amendment is by no means limited to liberals. The congressionally-chartered National Constitution Center commissioned an alternative “Conservative Constitution”, which would provide that “states, and the United States in places subject to its general regulatory authority, may enact and enforce reasonable regulations on the bearing of arms, and the keeping of arms by persons determined, with due process, to be dangerous to themselves or others.”<sup>1</sup> One of its authors, Princeton Professor Robert P. George, is on the Legal Board of Reference of the Convention of States Project, one of the major advocates of an Article V convention.<sup>2</sup>

To senators who share Wolf-PAC’s concerns about the corrupting influence of money in politics, I ask how confident you are that moneyed special interest groups will not twist an Article V convention to do their bidding? As weak as our campaign finance and public corruption laws are now, many of them would not apply at all to an Article V convention. Given how much special interests will spend to influence a single provision in a single annual appropriations bill, can we have any real doubt that they would run riot over an Article V convention? Wolf-PAC’s proposed “cure” is even worse than the disease. I also would note that we are wildly unlikely to have an Article V convention called for campaign finance reform: in nine years of trying, Wolf-PAC persuaded only five states to pass its application – the most recent in 2016 – and now is down to three states with the rescissions of Illinois and New Jersey.

### **The Supposed “Safeguards” Asserted by Witnesses Do Not Exist**

Referring to an Article V convention, Mr. Fieldman referred to “numerous safeguards in place over it with the checks and balances built into the system that relate to the courts, the Congress, the states themselves, as well as the delegates”. None of these purported safeguards may be relied upon.

The Supreme Court has held repeatedly that the process of amending the U.S. Constitution is a political question into which the courts may not intrude.<sup>3</sup> The current Supreme Court seems highly unlikely to disregard this precedent and attempt to manage how an Article V convention proceeds.

The Article V convention process is specifically designed to prevent congressional involvement. Indeed, Mr. Quinn and Mr. Fieldman both say they regard Congress as an implacable opponent of their respective proposals and are seeking an Article V convention precisely to deny Congress any role in the process. Nothing in Article V enables Congress to intervene to correct or disband a runaway convention.

One may hope that the delegates will behave appropriately, but that hope is a thin reed on which to bet our constitutional rights and liberties. If voters choose the delegates (currently the law only in Rhode Island), one may expect an avalanche of special interest spending in support of their favored candidates. Existing campaign finance laws generally are not written to cover delegates to an Article V convention because none was anticipated when those laws were written. In the great majority of states where legislatures, with or without gubernatorial involvement, appear to have selection powers under state law, one may again expect aggressive special interest spending to lobby for their chosen candidates. Because such appointments would not constitute legislation, lobbying disclosure laws may not apply. And, of course, if Congress decides to appoint delegates itself, special interests are already all-too-familiar with how to spend money to obtain results. In addition, just as past legislators’ failure to anticipate an Article V convention may have caused them to write lobbying restrictions that do not apply

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<sup>1</sup> <https://constitutioncenter.org/news-debate/special-projects/constitution-drafting-project/the-conservative-constitution/introduction-to-the-conservative-constitution>.

<sup>2</sup> <https://conventionofstates.com/endorsements>.

<sup>3</sup> See, e.g., *Coleman v. Miller*, 307 U.S. 433 (1939); *Leser v. Garnett*, 258 U.S. 130, 137 (1922).

to attempts to influence who becomes a delegate, they also may not apply to lobbying the delegates once they are chosen.

One might hope that the states would provide some backstop to a runaway convention, but that is far from assured. Article V imposes no deadline on the ratification of amendments: the Twenty-Seventh Amendment was ratified more than two centuries after Congress proposed it to the states. Once a convention proposed a new constitution or package of amendments, they would be hanging over the nation, waiting for its proponents to win a “wave” election and get over the top on ratifications.

Even this process may not, in fact, be followed. The Philadelphia Convention of 1787 blatantly disregarded the ratification procedures in the Articles of Confederation. Article XIII of the Articles of Confederation required Congress and every state legislature to ratify any amendments; the Philadelphia Convention, however, provided that its new Constitution would take effect if two-thirds of the states ratified it. (Article VI, paragraph 2, of the Articles of Confederation also prohibited any side agreements among the states.) If an Article V convention decides to follow the 1787 convention’s precedent, it could either lower the threshold for ratification of a new constitution or could designate another process completely, such as a national referendum, for ratification. With special interest groups flooding the airwaves with advertisements promoting their new convention, voices of caution would likely be drowned out.

#### **H.B. 392 Would Be Ineffectual at Remediating Those Dangers**

Representative Jodi Newell asserted that he bill, H.B. 392, is “the solution to the fear and uncertainty that sways us from using what is a constitutional right.” Unfortunately, she is far too optimistic. In an Article V convention, power would reside in all delegates, not just those from New Hampshire. It follows, then, that no legislation this Legislature could pass would meaningfully reduce the dangers of such a convention.

Even if the peril was somehow limited to the actions of New Hampshire’s delegates, H.B. 392 would not meaningfully reduce that peril. The assumption underlying the legislation is that a convention will move slowly, with many intermediate votes in which unfaithful delegates would reveal themselves. That pattern is extremely unlikely, and the enactment of H.B. 392 and similar proposals in other states would make it even more unlikely. The common practice in negotiating complex and controversial legislation is to wrap it all up into a single package passed by a single vote at the end. Negotiators operate on the principle that “nothing is agreed until everything is agreed.” This is how Congress passes year-end appropriations bills, year-in and year-out. This is how Congress passed the major coronavirus relief bills in 2020. Sweeping legislation such as the Affordable Care Act, the 2017 tax cuts, and President Biden’s two “reconciliation” bills went through some procedural votes but only single final votes on packages crafted behind closed doors.

There is every reason for an Article V convention to act the same way, particularly if delegates risk being replaced if it holds multiple substantive votes. Several existing amendments to the U.S. Constitution combine multiple disparate purposes, including the Fifth (grand juries, double jeopardy, self-incrimination, due process of law, and takings of private property for public use); the Sixth (speedy and public trials, juries, venue for trial, access to charges, confrontation of adverse witnesses, compulsory process, and right to counsel); the Eighth (bail, fines, cruel and unusual punishment); and particularly the Fourteenth (birthright citizenship, privileges and immunities, due process, equal protection, right to vote, apportionment of representatives, disqualification of former confederates from public office, U.S. public debt, confederate debts, slaveholders’ claims, and Congress’s legislative power). Nothing in Article V prevents a convention from writing an entirely new constitution, but even if it opts to work from the existing version, it can bundle together as many provisions as it likes.



If the convention adjourns immediately upon voting to approve a new constitution, or a package of amendments, recalling delegates would be meaningless because their service will already have ended. In theory, delegates could later be punished for voting for the convention's final act, but this would be unlikely. If prosecutors approved of the delegates' actions or found them reasonable, no charges would be brought. Proving beyond a reasonable doubt that the delegates intended to violate their oaths would be exceedingly difficult. And few judges would be inclined to impose more than a slap on the wrist for such delegates – fines that could be offset many times over by “gifts” from special interest groups that favored the constitutional changes.

Even in the wildly unlikely event that the delegates were severely punished, the damage would already be done: nothing in Article V gives states any control over delegates to a convention, much less any authority to nullify their votes retroactively. Indeed, nothing in Article V gives state legislatures the power to appoint delegates at all: as the Congressional Research Service has noted, “Congress has historically laid claim to broad responsibilities in connection with a convention, including ... selection process of its delegates”.<sup>4</sup>

### **Proponents Misleadingly Refer to Very Different Procedures as Precedents**

An Article V convention would have unprecedented power and hence would represent an unprecedented danger to our nation. Not surprisingly, those urging that we take this extraordinary gamble go to great lengths to compare an Article V convention to normal parts of our political life. None of these analogies bear even the most cursory scrutiny.

Mr. Quinn tried to normalize an Article V convention by pointing out that New Hampshire sends commissioners each year to the National Conference of Commissioners on Uniform State Laws. The National Conference, of course, has no power to change our system of government or impair our basic rights. Indeed, nothing the Conference writes has any legal effect unless and until it is enacted for a particular state by that state's legislature.

Mr. Quinn also referred to New Hampshire's proud tradition of holding state constitutional conventions. Senators may wish to consider whether the tenor of New Hampshire politics is fairly representative of those of other states or of the nation as a whole, which would set the tone for an Article V convention. More to the point, these conventions' ability to undermine basic rights and liberties was limited by the presence of the U.S. Constitution and its Bill of Rights. If an ill-advised state constitutional convention were to repeal or water-down Article 19 of the New Hampshire Bill of Rights, which limits searches and seizures, the Fourth Amendment to the U.S. Constitution would remain as a backstop. Because of the Supremacy Clause, no such backstop exists should an Article V convention determine that the federal government needs more intrusive powers.

Mr. Fieldman cleverly referred to “conventions under the U.S. Constitution”, perhaps giving the impression that an Article V convention of the kind he seeks is not unprecedented. What he was referring to, however, was the *state* conventions called to *ratify* the Twenty-First Amendment (ending prohibition). These conventions, of course, were fundamentally different: they posed no threat to our system of government as they could only approve or reject a particular proposed amendment sent to them by two-thirds majorities in both chambers of Congress. The Article V convention he proposes, by contrast, would have a wide-open agenda and could rewrite or remove any protections in the U.S. Constitution except the requirement of equal representation in the Senate.

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<sup>4</sup> THOMAS H. NEALE, CONG. RESEARCH SERV., THE ARTICLE V CONVENTION FOR PROPOSING CONSTITUTIONAL AMENDMENTS: HISTORICAL PERSPECTIVES FOR CONGRESS 1 (CRS R43592 Oct. 22, 2012).

Mr. Fieldman also sought to analogize H.B. 392 with something (he did not say what) that the U.S. Supreme Court unanimously upheld in 2020. Presumably he is referring to *Chiafalo v. Washington*, which upheld states' authority to fine presidential electors who vote for someone other than the candidate they were chosen to support. A case involving the election of presidents has little to do with an Article V convention amending the Constitution. First, the Constitution provides that states select presidential electors; it says nothing of the kind about delegates to an Article V convention. Presidential electors are therefore state officials in some senses; delegates to an Article V convention are not. Second, determining whether presidential electors were true to their commitments is entirely straightforward: if they do not vote for the specific designated individual, they have been faithless. By contrast, judgment calls are inevitably involved in assessing whether a delegate has acted consistently with the wishes of a state's legislature. For example, if a convention is called "to limit the power and jurisdiction of the federal government", as one of the major pro-convention groups proposes,<sup>5</sup> would delegates be faithful to their charges if they voted to repeal the Second Amendment, thereby eliminating the federal government's jurisdiction to block state gun control laws? Third, as noted above, delegates could reasonably expect that the prospects of punishment are quite remote. Finally, the appeal of being a faithless presidential elector is to become a footnote in history; the appeal of voting for a sweeping revision of the U.S. Constitution is to *make* history. As we have seen in recent years, many people of various political persuasions are willing to take great personal risks to achieve political ends they believe are important.

Some of the other reassuring references in the witnesses' testimony were too vague to pin down. Given the remoteness of their vague analogies that can be fact-checked, I respectfully submit that caution is in order. If senators are interested in whether this or that public official or organization supports H.B. 392, I would urge them to contact that official or organization to determine what proposal, in fact, they actually supported. By definition, legislation considered in the U.S. Congress will have a different scope and different effect than that in the New Hampshire General Court.

I also note that the overclaiming that convention proponents are doing on behalf of H.B. 392 during Committee consideration can be expected to continue should the legislation be enacted. This could give Members of this and other state legislative bodies a false sense of security in launching on the most dangerous gamble with our nation's liberties since at least the Civil War.

In sum, I would respectfully urge the Committee to reject H.B. 392 and any similar legislation. It will fail to accomplish any of its purported objectives but would normalize the inherently dangerous process of an Article V convention by suggesting that it can be, in Mr. Fieldman's words, "handled in a way that is safe". I appreciate your consideration of these comments.

Sincerely yours,

*David A. Super*

David A. Super  
Carmack Waterhouse Professor of Law and Economics

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<sup>5</sup> <https://conventionofstates.com/files/model-convention-of-states-application>.

**Tricia Melillo**

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**From:** Mary W. Mann <mary.w.mann@gmail.com>  
**Sent:** Monday, April 10, 2023 10:40 PM  
**To:** Tricia Melillo  
**Subject:** Vote "No" on HB 392.

Caution! This message was sent from outside your organization.

Dear Senator Gray,  
Chairman of the Senate Election Law and Municipal Affairs Committee,

I'm sure you must realize that **Delegates to a Convention** called to serve under an Article V Convention **are not controlled by State Delegate Laws**, under the Constitution.

This makes the Delegate bills **useless** for their stated purpose. But they DO make legislators falsely believe that the convention won't "run away," no matter how FALSE that is.

It also falsely assures legislators that wouldn't otherwise, will vote for Art. V Convention applications that RISK OUR CONSTITUTION. *I dearly appreciate our Constitution as it is now!*

Sincerely,  
Mary Mann  
Virginia---Because it MATTERS to ALL the states!

## Tricia Melillo

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**From:** Kay Causey <restofmyself@aol.com>  
**Sent:** Monday, April 17, 2023 12:13 AM  
**To:** Tricia Melillo  
**Subject:** Please help save our beloved Constitution by voting NO! On HB392

Caution! This message was sent from outside your organization.

To the Attention Of: Senator Gray, Chairman, Senator Murphy, V Chair, and Members of  
The Senate Election Law and Municipal Affairs Committee

Dear Senators,

This is only ONE of several constitutions, lying quietly on the shelf, waiting for gullible legislators (No, I don't think you are gullible) but there are many who have been told, without evidence, that they will **have** to RATIFY whatever comes out of a convention! That is not true!

PS: here is the link [Constitution for the Newstates of America](#)  
**Carefully Look at Article XII, Section 1.**

IF it were only amendments added to *our current constitution* then YES, states would have to ratify. **BUT, if a NEW constitution (which is the only reason to even HAVE a convention) then NO states or fewer— may likely be required to ratify.**

Read what brilliant constitutional scholars have to say about a convention: The “**Brilliant Men**” flyer shows that James Madison, Alexander Hamilton, four US Supreme Court Justices, and other jurists and scholars warned that Delegates to an Article V convention can't be controlled.

Representative Pepper Ottmam from Wyoming: COS  
exposed. <https://www.brighteon.com/4e5388fc-86e4-4d8a-b1c0-5cd0590f5187>

### *As for **TERM LIMITS:***

1. the ballot box is SUPPOSED to be term limits. That means legislators should beef up, according to the state Constitution, the state election laws.
2. Voters are knee capped by term limits— because they like to **KEEP** their good, constitutional legislators.
3. Do you know how much damage just **ONE** lame duck legislator can do when he she does not have to face constituents?

How about a whole **GANG** of them with expiring terms in house or senate at the **same** time! It would be a free for all race as to who could get paid handsomely for the most radical damage.

Have you not seen this before with lame ducks? IMAGINE a “fruit basket turn over” in the senate FOR SIX long unaccountable YEARS! And TWO years in the House!

Were not our founders geniuses??—for not putting term limits in the constitution?

**Is risking the loss of our beloved constitution worth the price?**

Note: an ART.V convention, **called and arranged** by FED. Congress, not STATE —can propose ANY amendments OR a NEW CONSTITUTION—with its own **easier mode of ratification!** (Please verify this with CRS—Congressional Research Service— before you decide)

Think **deeply** on these things. Then once you see the **danger of term limits**, once you **see states**, (even with silly delegate bills) cannot select and control delegates, vote **“NO!”**

Then concentrate on making the state election laws have more Teeth. And, begin to **nullify** unconstitutional Fed. Law. The **10th** amendment is our route back to State’s Rights in ALL states.

We the people of New Hampshire will back you up! I have many friends in New Hampshire and i do not get paid to write to you. HOWEVER, your vote on this issue not only affects your constituents— but EVERY American in all states as it is more a NATIONAL issue. Every American is “a people.” AND, my friends are aware i know the CONSTITUTION, THE FEDERALIST PAPERS AND ANTI-FEDERALIST PAPERS.

And, please immediately **RESCIND** any old applications you may still have! These things are as dangerous as a loaded gun in the hands of a SMALL child.

Ask yourself “Does COS really think they can improve upon the wisdom of our founders?” That is actually funny when you think about it. Thank you.

Sincerely,

Kay Rutledge Causey—direct descendent of John and Edward Rutledge who signed the Constitution and the Declaration of Independence respectively. I add this to let you know that I had to study the Federalist Papers and the constitution since a child.

The lives of the Rutledges were destroyed for you, this country, and our posterity.

Voting FOR a convention makes you, sadly, complicit in getting rid of our constitution, not to mention in breach of ART VI and the Public Trust. PLEASE, Don’t be swayed into violating your Oath. Think about it—per your solemn Oath you swore to defend and protect our present constitution from ALL enemies—both foreign AND “domestic.” That is why your Oath directly follows ART V.

*States have no Power to **Select or Control Delegates** to an Article V Convention "*

**Testimony in support of HB 392 (Convention Procedures for Delegates)**  
Submitted by Kenn Quinn from Bridgton, Maine

Dear Chairman Gray, Vice Chairman Murphy, and committee members,

My name is Kenn Quinn, and I am the Regional Director with U.S. Term Limits. I'm here today to testify in support of HB 392 for establishing convention procedures for delegates. This issue is of great importance to me as I am working on calling a convention under Article V of the U.S. Constitution to have the state legislatures propose a Term Limits Amendment for Congress. This reform is supported by **82% of the voters nationally** across party lines, with 87% Republicans, 83% Democrats, and 78% Independents in support.

The refusal of Congress to propose such an amendment is the reason the Framers provided the convention mode in Article V. They knew that Congress would become unresponsive to the people and gave you, our state legislatures, a check against such an abuse of power. Today, we know that members of Congress will not propose an amendment to limit their own terms of office, and this is why we are turning to you to propose it instead, using the Article V convention.

New Hampshire has a long, rich history of using the conventions process for its state constitution, leading the country with **(17) conventions; (2) to adopt a new constitution, and (15) to propose amendments**. A total of **(197) amendments have been proposed in conventions, with (96) of them being ratified by the voters of New Hampshire**. New Hampshire has also participated in dozens of conventions with the colonies or states since our founding to propose reforms and, even today, participates annually in a Convention of the States known as the **Uniform Law Commission (ULC)** to propose uniform state laws. In this session, the NH General Court is considering two of these laws (HB 68 and HP 584), which are the product of the ULC.

HB 392 is very similar to the **Uniform Faithful Presidential Electors Act (UFPEA)**, adopted by the Uniform Law Commission in 2010, and "provides a statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state." The significance of this law is that it was challenged and went to the U.S. Supreme Court in 2020 in *Chiafalo v Washington*. I cite the summary provided by the ULC; "the Supreme Court has made clear that states have the authority to bind their electors to the candidates they have pledged to support. By enacting legislation like UFPEA, states assure citizens that their votes will not be overridden by a single elector and protects the country from the chaos that would ensue if a handful of electors could negate the will of the voters." This decision by the U.S. Supreme Court was unanimous and provides a precedent that state legislatures have the authority to bind those electors and would be similar to those they commission as delegates in a convention.

Although New Hampshire has a lot of expertise with conventions, there are still some legislators that are hesitant to use this constitutional authority due to concerns they have about the convention process. Enacting HB 392 will help alleviate those concerns in order to allow them to focus on joining other state legislatures in applying for needed reforms. I encourage you to please vote Ought to Pass on HB 392.

Sincerely,  
Kenn Quinn

Honorable Chairman Gray and Committee Members:

The American Legislative Exchange Council has supported and promoted Article V companion legislation like SB 211. The Balanced Budget Amendment people have had national gatherings making up delegate rules. And the national, bipartisan, Assembly of State Legislatures have met three times making and agreeing upon rules. There have been a lot of people spending time and money on these bills but **now, in Mr. Meckler's Feb. 2023, testimony, he says they aren't necessary.** That's not to say it's been a waste of time! Many legislators know it was a way to trick folks into thinking this is a 100% safe and transparent process. **Are you one of those who have known all along? Or did they dupe you like most others?**

Do we know if there's anything else the COS co-founder and president Mark Meckler doesn't believe we need? Or perhaps doesn't even believe in? Mark Meckler's philosophy differs from what COS promises. In this clip of Mr. Meckler testifying, he says "the people" control the Convention, **We The People are the sovereign.** And by we the people, I mean **We The People.** I don't mean legislators, or legislatures,.. " <sup>1</sup> While COS claims the LEGISLATURES will be in total control. So, is it a convention of states, a convention of state legislatures, or a convention of The People? There are differences and it does matter.

Most on the right know it was a legal adoption of our current US Constitution via our Declaration of Independence.<sup>2</sup> No state legislature, nor Congress, ever voted to ratify our Constitution as the rules required, regardless of what the other COS co-founder Michael Farris has said.<sup>3</sup> "The express authority of the people alone gave due validity to the Constitution." - Federalist #43. These things prove delegates do not represent the state legislatures, but THE PEOPLE. And in turn, they cannot be bound or limited by the state legislatures. At times, when Mr. Meckler is caught off guard, he seems to forget that he must remain consistent with the COS marketing that this process is perfectly fine because the states are in total control or it all falls apart. That's what I assume. It is possible Mr. Meckler doesn't truly understand what he's talking about.

Taking a page from the COS, one could argue that Leser v. Garnett could also mean that delegates are serving a 'federal function' and as such cannot be limited by the people of a state either. But that wasn't what Leser v. Garnett said,<sup>4</sup> so I won't play the game the pro-COS people do by applying the ruling on one thing to make another sound viable. I comment about it so you can see an example of how things have intentionally been mischaracterized.



Even if at some point the state legislatures try to limit and control the delegates, that does not change the fact that it has been known <sup>5</sup> and ruled they cannot. Are we suddenly supposed to believe the judges were too stupid to make correct rulings until the Convention of States sprang into existence to correct them and that COS will win every legal challenge that will come? <sup>6,7</sup>

Isn't it commonly understood that any Art V convention would operate using Mason's Manual as most state legislatures do? It does provide some insulation to individuals, does it not? As does the Constitution (5th Amendment and Art 1 immunities from arrest). Regardless, the yet-to-be-known delegates will declare their rules, including the use of Mason's executive sessions. Paul Mason, the author of Mason's rules, wasn't even born until 1896. If we thought Framers James Madison trembled at the thought of a new convention back then, this would really have iced his cake!

**This thing is all over the place.** Perhaps that's why COS has been at this for ten years and are only halfway? Republicans voted against COS nearly 2-1 in Wyoming recently and they've already failed in five other states this year.

I am not a constituent but I still don't want Texas kicking this can down the road. **It's time to let it die gracefully. I urge you do not support any Art V legislation at this time.**

Thank you,

Lynette Indiana  
REPUBLICAN

Citizens Committed to the Constitution

(1) Jun 12, 2015, Montana hearing clip here (it is the same as the hyperlinked above): <https://www.youtube.com/watch?v=HZrJeaEZfF8&t=137s>

Republican Senator Sales: "Does it concern you...that Congress may bypass us [state legislatures] in passing constitutional amendments you'd like to see?"

Meckler, "No, it doesn't concern me at all. There's a distinct difference of philosophy here, and our organization stands for the principle that "We the People" are sovereign in the United States of America, **and by we the people, I mean we the people. I don't mean legislators, or legislatures, I mean I have faith in the American people.** There's an undercurrent in what you're saying, that

indicates that, you believe that maybe perhaps... you don't have the same faith in the American people."

**Does that not defies the claims of the Convention of States? According to Mark Meckler, he's OK with bypassing State Legislatures.**

(2) Federalist #40 <https://founders.archives.gov/documents/Madison/01-10-02-0236>

James Madison says, referring to having changed the ratification process, "In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation OF THE LEGISLATURES OF ALL THE STATES, they have reported a plan which is to be confirmed by the PEOPLE and may be carried into effect by NINE STATES ONLY."

He later refers to their having scrapped the entire Articles of Confederation as, "it is therefore essential that such changes be instituted by some INFORMAL AND UNAUTHORIZED PROPOSITIONS". (Emphasis in original)

Madison then justifies having violated the instructions from the states and having changed the ratification process **by citing a higher authority:** "the transcendent and precious right of the people to 'abolish or alter their governments as to them shall seem most likely to affect their safety and happiness' ".

(3) From Michael Farris' book, Constitutional Law for Enlightened Citizens, page 74 & 75. (The book is expensive to purchase. I can provide a pdf if you ask. I did not attach it because I feared it would make my correspondence look like spam and filtered, stopping delivery of my letter.)

"On September 28, 1787, eleven days after receiving the recommendation from the Philadelphia Convention, Congress voted to approve the submitted recommendation. The official language read as follows:

Resolved, unanimously, That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a Convention of delegates chosen in each state, by the people thereof, in conformity to the resolves of the Convention made and provided in that case.

Note that Congress was the agency that had said that the convention was called "for the sole and express purpose of revising the Articles of Confederation." And this same Congress unanimously approved the proposed Constitution and sent it on to the states. If the convention had indeed exceeded its authority, then Congress was the body with the legal authority and the clear opportunity to say, "We reject this proposal because this document exceeded your authority." "

Farris citation is Elliot's Debate notes 1:319. That citation is correct; however, it is woefully lacking like so much that COS does, they spin half-truths and over simplify.

**One must reference the complete historic information! The general public became aware of the debate in Congress through the publication of two widely reprinted Antifederalist items. The most complete record of Congress' actions on the Constitution is the notes of debates kept by Melancton Smith, a New York delegate. And we have the Journals of Congress, manuscript motions made in Congress, Melancton Smith's notes of debates, Richard Henry Lee's amendments, and the letter books of the Secretary of Congress.**

On 26 and 27 September Congress debated the manner in which it would send the Constitution to the states. Critics of the Constitution wanted it transmitted to the state legislatures with an indication that the Convention had violated Article XIII of the Articles of Confederation and the congressional resolution of 21 February 1787....

On 28 September Congress reached a compromise. It resolved "unanimously" that it be sent to the states; *that the Constitution and the resolutions and the letter of the Convention be sent to the states with only a suggestion that the states call conventions to consider the Constitution...*

On 24 October "Sentinel" II stated that after "two days animated discussion," the proponents of the Constitution dropped their attempt to have Congress send the Constitution to the states *with its approval*.

**By cleverly wording the resolution of transmittal, they tried to mislead the public into believing that Congress had "unanimously" voted on and approved the Constitution.**

On 6 December the Petersburg Virginia Gazette published Lee's amendments and his letter of 16 October to Edmund Randolph which **reiterated the charge made by Sentinel** .

Source: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009. I can provide a pdf for this information too. I would also direct you to Article V scholar Shawn Meehan. Mr. Meehan is one of the active leading experts on the right and founder of Guard the Constitution.

(4) Leser v. Garnett (1922), the Supreme Court ruled... but the function of a state legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the federal Constitution, and it transcends any limitations sought to be imposed by the people of a state.

And again, Hawke v. Smith, 253 U.S. 221 (1920) - "The function of a state legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing such amendments, is a federal function, derived not from the people of that state, but from the Constitution."

Federalist #39 also tells us such a convention would be a federal function. COS needs to apply the full Constitution; Art 1 Sec 8 does apply and puts Congress in control.

(5) From Frantz v. Autry here: <http://law.justia.com/.../supreme-court/1907/3107.html>

¶15 In 1894 the state of New York had under consideration the revision of its state constitution. One of the first questions that arose in the convention was the ascertainment of the rights and powers of the convention to pass upon the election and qualifications of one of its members. This question was referred to the judiciary committee, of which committee the Honorable Elihu Root, now secretary of state, and one of the ablest lawyers and statesmen of this country, was chairman. In his report to the convention, he says:

"The convention has been created by the direct action of the people and has been by them vested with the power and charged with the duty to revise and amend the organic law of the state.

"The function with which it is thus charged is a part of the highest and most solemn act of popular sovereignty and in its performance the convention has and can have no superior but the people themselves.

"No court or legislature or executive officer has authority to interfere with the exercise of the powers or the performance of the duties which the people have enjoined upon this, their immediate agent."

¶16 And, again, in stating the nature of a constitutional convention, he says:

"A constitutional convention is a legislative body of the highest order. It proceeds by

legislative methods. Its acts are legislative acts. Its function is not to execute or interpret laws, but to make them. That the consent of the general body of electors may be necessary to give effect to the ordinances of the convention no more changes their legislative character than the requirement of the governor's consent changes the nature of the action of the senate and assembly."

¶17 And, again, in speaking of the importance of the independence of the convention, he uses this language:

"It is far more important that a constitutional convention should possess these safeguards of its independence than it is for an ordinary legislature; because the convention acts are of a more momentous and lasting consequence and because it has to pass upon the power, emoluments and the very existence of the judicial and legislative officers who might otherwise interfere with it. The convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the convention would be wholly incompatible with the free exercise of that will." Proceedings of the New York Constitutional Convention, 1894, pages 79-80.

¶18 Mr. Bryce, in his excellent work on the American Commonwealth, vol. 1, page 436, says:

"A state constitution is really nothing but a law made directly by the people voting at the polls upon a draft submitted to them. The people of a state when they so vote act as a primary and constituent assembly, just as if they were all summoned to meet in one place like the folk-motes of our Teutonic forefathers, it is only their numbers that prevents them from so meeting in one place and oblige the vote to be taken in a variety of polling places. Hence the enactment of a constitution is an exercise of direct popular sovereignty to which we find few parallels in modern Europe, though it was familiar enough to the republic of antiquity and has lasted until now in some of the cantons of Switzerland."

¶19 In *Goodrich v. Moore*, 2 Minn. 61, the supreme court of Minnesota declared that a constitutional convention is the highest legislative assembly recognized in law, invested with the power of enacting or framing the supreme law of the state, and in the course of the opinion, Mr. Justice Atwater, speaking for the court, said:

"But even had the legislature intended and attempted to claim and exercise the act of providing a printer for the constitutional convention, it would have been an unauthorized and unwarrantable interference with the rights of that body. The admission of such a right in the legislature would place the convention under its

entire control, leaving it without authority even to appoint or elect its own officers, or adopt measures for the transaction of its legitimate business. It would have less power than a town meeting and be incompetent to perform the objects for which it convened. It would be absurd to suppose a constitutional convention had only such limited authority. It is the highest legislative assembly recognized in law, invested with the right of enacting or framing the supreme law of the state. It must have plenary power for this and over all the incidents thereof. The fact that the convention assembled by authority of the legislature renders it in no respect inferior thereto.

¶20 In *Sproule v. Fredericks*, 11 So. 472, the supreme court of Mississippi, in discussing the powers of the convention says:

"It is the highest legislative body known to freemen in a representative government. It is supreme in its sphere. It wields the powers of sovereignty, specially delegated to it, for the purpose and the occasion, by the whole electoral body, for the good of the whole commonwealth. The sole limitation upon its powers is that no change in the form of government shall be done or attempted. The spirit of republicanism must breathe through every part of the framework, but the particular fashioning of the parts of this framework is confided to the wisdom, the faithfulness, and the patriotism of this great convocation, representing the people in their sovereignty. The theorizing of the political essayist and the legal doctrinaire, by which it is sought to be established that the expression of the will of the legislature shall fetter and control the constitution-making body, or, in the absence of such attempted legislative direction, which seeks to teach that the constitutional convention can only prepare the frame of a constitution and recommend it to the people for adoption, will be found to degrade this sovereign body below the level of the lowest tribunal clothed with ordinary legislative powers."

¶21 In *Loomis v. Jackson*, 6 W. Va. 613, in discussing the powers of the constitutional convention, Judge Woods, speaking for the court, on page 708 of the opinion, said:

"I have had no difficulty in reaching the following conclusions upon the constitutional questions presented in this specification, viz:

"First, that a constitutional convention lawfully convened does not derive its powers from the legislature, but from the people:

"Second, that the powers of a constitutional convention are in the nature of sovereign powers:

"Third, that the legislature can neither limit or restrict them in the exercise of these powers."]

FRANTZ v. AUTRY law.justia.com

(6) Candid interview with Dr. Edwin Vieira, Jr., who holds four degrees from Harvard and for more than thirty years he has practiced law, with emphasis on constitutional issues. In the Supreme Court of the United States he successfully argued or briefed the cases leading to the landmark decisions. While I urge you to listen to the full conversation, it's tagged to start where Vieira mentions it's a huge boondoggle for lawyers: <https://www.youtube.com/watch?v=Ymlgk4JA5PQ&t=808s>

(7) Tea Party leader and constitutional attorney Kris Anne Hall mentioned her conversation with **Michael Farris saying he predicates a minimum of 5 yrs. of legal battles.** This presentation is tagged to start where Kris Anne begins speaking about Art V. **I urge you to watch the full ten minute conversation.** She speaks about Farris at the 1:27:06 mark: <https://www.youtube.com/watch?v=1VgD1VRgFIY&t=4887s>

## Tricia Melillo

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**From:** Daniel Richardson <daniel6\_22@comcast.net>  
**Sent:** Monday, April 17, 2023 4:48 PM  
**To:** James Gray; Keith Murphy; Daryl Abbas; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo  
**Subject:** Vote "No" on HB 392 relative to constitutional convention procedures for delegates.

Caution! This message was sent from outside your organization.

Senate Election Law and Municipal Affairs Committee -

Opposed to HB 392. Its wide-open for abuse.

With HB 392, the House has again demonstrated incredibly poor statecraft. As passed by the House, HB 392 has added anew the words "unauthorized", "authorized" and "authority" in amended and added sections. These words are not found in RSA 667 in any manner. As worded, HB 392 leaves these terms undefined and **wide open to evil abuse** by the party in power. These words are key to control of delegates. These primary concepts are parameters of democratic Constitutional process and must be the result of these questions being presented to the citizens for approval.

Vote NO on HB 392 if "unauthorized", "authorized" and "authority" remain ambiguous or not derived from NH citizen's voice.

US Congress alone has the US Constitutional authority to determine the number and selection process for Delegates to a US Constitutional Article V Convention, as prescribed therein. Moreover, HB 392 purports that Delegates to a US Constitutional Article V Convention will be elected by STATE election. The Federal Constitutional Convention Procedures Act (S. 1272) provided for the FEDERAL election of one Delegate from each Congressional District; and the election of two additional Delegates for the State at large.

The *second most* important factor to an Article V Convention is the provenance and character of Delegates we send. James Madison, Alexander Hamilton, four US Supreme Court Justices, and other jurists/scholars warned that Delegates to an Article V convention can't be controlled.

The *most* important factor is the constrained scope to which the state wants to bind its Delegates. This ability to constrain does not exist constitutionally. The failings of HB 392 also leave it undefined. Why do we leave scope so arbitrary?

Daniel Richardson, Nashua



## Tricia Melillo

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**From:** Kathy O'Donnell <kathyod@plainstel.com>  
**Sent:** Monday, April 17, 2023 7:37 PM  
**To:** Tricia Melillo  
**Subject:** Vote "No" on HB 392

Caution! This message was sent from outside your organization.

Dear Sen. Gray, Chairman;  
Sen. Murphy, V Chairman;  
and Members of the Senate Election Law and Municipal Affairs Committee,

As a true supporter of our Constitution, I am writing to ask that you please VOTE NO on HB 392 and any other applications asking Congress to call an Article V convention.

This bill being brought before you purports that the appointment of Delegates to an Article V convention be made by the NH voters.

HOWEVER, pursuant to the "necessary and proper" clause of the US Constitution, CONGRESS alone has the Constitutional authority to determine the number and selection process for Delegates!

State Legislatures &/or voters have nothing to do with the selection of Delegates.

Furthermore, no one has the power to control Delegates. As James Madison pointed out, Delegates have the right, recognized by our Declaration of Independence, to throw off the government we have and draft a new Constitution which creates a new form of Government.

Should an Article V convention ever be called, we WILL lose our Constitution. The billionaires funding the push for the Article V convention already have new constitutions written and ready to be put in place of ours. Please DO not let that happen!

PLEASE, you must vote NO on HB 392 and defend our Constitution which protects our GOD-GIVEN RIGHTS.

Thank you for defending our Constitution.

Sincerely,

Kathy O'Donnell

PLEASE DO FURTHER RESEARCH - our constitution is at stake:

"States have no Power to Select or Control Delegates to an Article V Convention" (flyer) shows that those who promise that State Legislators will select and control the Delegates are making stuff up! Furthermore, Delegates have the self-evident Right "to alter or to abolish" the existing state & federal governments. Thus no one has power over Delegates.

As the "Pig in a Poke" flyer shows, the Convention Lobby fabricated the false and preposterous claim that when Congress calls a convention under Art. V, State Legislatures—not Congress—have the power to make all laws "necessary and proper" to carry out the call. But the Necessary & Proper clause of the US Constitution (Article I, Section 8, last clause) clearly grants that power to Congress!

The "Myths v. Facts" flyer explains WHO has the power to do WHAT under Article V of the US Constitution. Congress has no power to select Delegates or to control them.

The "Brilliant Men" flyer shows that James Madison, Alexander Hamilton, four US Supreme Court Justices, and other jurists and scholars warned that Delegates to an Article V convention can't be controlled.

"Dark Money—Not the Grassroots—Is Behind the Convention of States Organizations (COS)" proves that almost 2/3 of the money driving COS's effort to apply to Congress for an Article V Convention, is coming from major donors giving COS \$5,000 to \$2,000,000 over the latest 3 years of reporting available. Why are multi-millionaires and billionaires trying to get their hands on our Constitution?

# Voting Sheets

**Senate Election Law  
& Municipal Affairs Committee  
EXECUTIVE SESSION RECORD  
2023 Session**

Bill HB 392

Hearing date: 4/4/23

Executive Session date: \_\_\_\_\_

Motion of: Re-Refer Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Murphy, Vice Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Abbas	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Murphy, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Abbas	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Murphy, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Abbas	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Gray

Notes: \_\_\_\_\_

\_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Tuesday, April 18, 2023

THE COMMITTEE ON Election Law and Municipal Affairs

to which was referred **HB 392-FN**

AN ACT

relative to constitutional convention procedures for delegates.

Having considered the same, the committee recommends that the Bill

**BE RE-REFERRED TO COMMITTEE**

BY A VOTE OF: 5-0

Senator James Gray  
For the Committee

Tricia Melillo 271-3077

**Docket of HB392**

Docket Abbreviations

**Bill Title:** relative to constitutional convention procedures for delegates.*Official Docket of HB392.:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/9/2023	H	<b>Introduced</b> (in recess of) 01/05/2023 and referred to State-Federal Relations and Veterans Affairs <b>HJ 3 P. 14</b>
1/19/2023	H	Public Hearing: 02/03/2023 09:00 am LOB 206-208
1/26/2023	H	Executive Session: 02/03/2023 01:00 pm LOB 206-208
2/1/2023	H	Executive Session: 02/10/2023 10:00 am LOB 206-208
2/15/2023	H	Committee Report: Ought to Pass with Amendment <b>#2023-0452h</b> 02/10/2023 ( <b>Vote 16-0; CC</b> ) <b>HC 12 P. 8</b>
2/22/2023	H	Amendment <b>#2023-0452h</b> : AA VV 02/22/2023 <b>HJ 6 P. 13</b>
2/22/2023	H	<b>Ought to Pass with Amendment</b> 2023-0452h: MA VV 02/22/2023 <b>HJ 6 P. 13</b>
3/7/2023	S	Introduced 02/22/2023 and Referred to Election Law and Municipal Affairs; <b>SJ 9</b>
3/29/2023	S	<b>Hearing:</b> 04/04/2023, Room 103, LOB, 09:45 am; <b>SC 16</b>
4/18/2023	S	Committee Report: Rereferred to Committee, 05/11/2023; <b>SC 21</b>
5/11/2023	S	Sen. Gray Moved Laid on Table, MA, VV; 05/11/2023; <b>SJ 14</b>
5/11/2023	S	Pending Motion Rerefer to Committee; 05/11/2023; <b>SJ 14</b>

NH House

NH Senate

# Other Referrals



## Senate Inventory Checklist for Archives

Bill Number: HB 392

Senate Committee: ELMA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

Executive Session Sheet

Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_ Enrolled Bill Amendment(s)

\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

\_\_\_ as amended by the senate      \_\_\_ as amended by the house

\_\_\_ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Tricia Mello  
Committee Aide

8/29/23  
Date

Senate Clerk's Office AK