> This constitutional requirement, that the measure sought to be initiated shall have an enacting clause, is mandatory. There is absolutely no enacting clause in the measure here involved; and therefore, the petition is not legally sufficient. The absence of the enacting clause is a fatal defect.[45]

The dangers of not treating such provisions as mandatory have been noted:

> It seems to us that the rule which gives to the courts and other departments of the government a discretionary power to treat a constitutional provision as directory, and to obey it or not, at their pleasure, is fraught with great danger to the government. We can conceive of no greater danger to constitutional government, and to the rights and liberties of the people, than the doctrine which permits a loose, latitudinous, discretionary construction of the organic law.[46]

That an enacting clause provision is mandatory and not directory, and that its absence renders a law invalid, was also held by the Supreme Court of South Carolina,[47] and the Supreme Court of Indiana.[48] These provisions relating to the mode of enacting laws "have been repeatedly held to be mandatory, and that any legislation in disregard thereof is unconstitutional and void."[49]

Thus laws which fail to adhere to the fundamental concept of containing an enacting clause lose their authority as law. It thus would seem quite clear that the lack of enacting clauses on the laws used in Revised Statutes or the U.S. Code have no sign of authority and are void as laws. It was not a choice of Congress or the Legislature to approve of laws which have no enacting style. The use of such form and style for all laws is mandatory, and any failure to comply with it for any reason, such as for convenience, renders the measure void.

The Absence of an Enacting Clause Provision in a Constitution

While the U.S. Constitution and a few State constitutions do not specifically prescribe that all laws use an enacting style, its use is nonetheless required by our unwritten constitution. The use of an enacting clause and even a title exists by fundamental law; they are common law concepts.

Like many other old and well established concepts of law and procedure, the framers of the U.S. Constitution did not feel it necessary to write into it the requirement of an enacting clause or titles on all laws. There are so many of these fundamental concepts that it would be impractical to list them all in a constitution. But that does not mean they don't exist, just like the rights enumerated in the Bill of Rights were not originally written into the Constitution because they were recognized to be so fun-da mental it would be superfluous to list them.

That the use of an enacting clause is necessary or required despite its failure to be prescribed in a constitution has been often recognized. Several legal authorities have cited with approval Mr. Cushing, in his *Law & Practice of Legislative Assemblies* (1819) § 2102, where he states:

> (1) Where enacting words are prescribed, nothing can be a law which is not introduced by those very words, even though others which are equivalent are at the same time used.
>
> (2) Where the enacting words are not prescribed by a constitutional provision, the enacting authority must notwithstanding be stated, and any words which do this to a common understanding are doubtless sufficient, or the words may be prescribed

45 *Hailey v. Carter,* 251 S.W.2d 826, 828 (Ark. 1952).

46 *Hunt v. State,* 3 S.W. 233, 235, 22 Tex. App. 396 (1886).

47 *Smith v. Jennings,* 45 S.E. 821, 67 S.C. 324 (1903).

48 *May v. Rice,* 91 Ind. 546 (1883).

49 *State v. Burlington & M. R.R. Co.,* 84 N.W. 254, 255, 60 Neb. 741 (1900).