

PUBLIC HEARING

before

ASSEMBLY STATE GOVERNMENT COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION No. 22

(Applies to Congress for constitutional amendment to
balance the Federal budget)

ASSEMBLY CONCURRENT RESOLUTION No. 69

(Memorializes Congress to pass legislation proposing a
Federal balanced budget amendment)

June 20, 1988
Room 418
State House Annex
Trenton, New Jersey

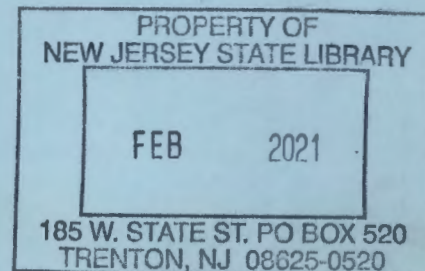
MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert J. Martin, Chairman
Assemblywoman Marion Crecco, Vice Chairman
Assemblyman William E. Schluter
Assemblyman Joseph Charles, Jr.
Assemblyman Anthony J. Cimino

ALSO PRESENT:

Assemblyman Chuck Hardwick
Speaker, General Assembly
District 21

Donald S. Margeson
Office of Legislative Services
Aide, Assembly State Government Committee



* * * * *

New Jersey State Library

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625



T. J. MARTIN
CHAIRMAN
N. GRECCO
V. - CHAIRMAN
M. E. SCHLUTER
H. CHARLES, JR.
J. J. CIMINO

New Jersey State Legislature
ASSEMBLY STATE GOVERNMENT COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
(609) 292-9106

MEMORANDUM

June 10, 1988

TO: MEMBERS OF THE COMMITTEE

FROM: ASSEMBLYMAN ROBERT J. MARTIN, CHAIRMAN

SUBJECT: PUBLIC HEARING AND COMMITTEE MEETING -
JUNE 20, 1988

(Address comments and questions to
Donald S. Margeson, Committee Aide (609) 292-9106)

The Assembly State Government Committee will meet on Monday, June 20, 1988 from 9:00 A.M. to 11:00 A.M. in Room 418 of the State House Annex in Trenton to consider the following legislation:

ACR 22 Kamin	Applies to Congress for constitutional amendment to balance federal budget.
ACR 69 Hardwick	Memorializes Congress to pass legislation proposing a federal balanced budget amendment.

The public is invited to present oral or written testimony at this meeting of the Committee. Members of the public who wish to speak at the meeting should notify Fayeann Sharper, secretary to the Committee. A transcript of the proceedings will be taken, and written statements regarding the above legislation which are timely delivered to the Committee Aide will be included in that record.

The Committee will also consider the following legislation:

AJR 74 Roma	Designates first Sunday in April as "Holocaust Victims Remembrance Day."
SCR 60 Connors	Memorializes Congress not to impose certain fees on sailing vessels.

ASSEMBLY CONCURRENT RESOLUTION No. 22

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman KAMIN

1 A *CONCURRENT RESOLUTION* applying to the Congress of the
 United States for the calling of a convention for the purpose
3 of proposing an amendment to the Constitution of the United
 States.

5

 BE IT RESOLVED *by the Senate and General Assembly of the*
7 *State of New Jersey the Senate concurring*):

9 1. The State of New Jersey applies to the Congress of the
 United States of America under Article V of the United States
11 Constitution to call a convention for proposing an amendment to
 the United States Constitution to require a balanced federal
13 budget and a limitation on the rate of increase of federal
 spending, such as Senate Joint Resolution 13/House Joint
15 Resolution 27 (99th Congress, 1st session).

 2. This application by the Legislature of the State of New
17 Jersey constitutes a continuing application in accordance with
 Article V of the Constitution of the United States until at least
19 two-thirds of the legislatures of the several states have made
 similar applications pursuant to Article V, but if Congress
21 proposes an amendment to the Constitution to achieve
 substantially the same purpose with that described in section 1
23 of this concurrent resolution before January 1, 1989, this
 application for a state application shall no longer be of any
25 force or effect.

 3. Copies of this concurrent resolution shall be sent to the
27 legislatures of all the states, to the Clerk of the United States
 House of Representatives and to the Secretary of the Senate in
29 Washington, D.C., requesting each of the several states to pass a
 substantially identical application to the United States Congress
31 so as to meet the constitutional requirements for application for
 such a convention by two-thirds of the states.

1

STATEMENT

3

The purpose of this resolution is to apply to Congress to call a convention to propose an amendment to the Constitution of the United States to mandate a balanced federal budget and a limitation on the rate of increase of federal spending, such as Senate Joint Resolution 13/House Joint Resolution 27 (99th Congress, 1st session).

9

11

FEDERAL AND INTERSTATE RELATIONS

State Government

13

Applies to Congress for constitutional amendment to balance federal budget.

15

ASSEMBLY CONCURRENT RESOLUTION No. 69

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman HARDWICK

1 A *CONCURRENT RESOLUTION* expressing the sense of the
Legislature in support of legislation submitting a federal
3 balanced budget amendment to the Congress of the United
States and memorializing the Congress to pass same.

5

WHEREAS, By joint resolution introduced on June 17, 1987, in
7 the first session the One-Hundredth Congress of the United
States, the following, article was proposed as an amendment
9 to the Constitution of the United States:

11

"ARTICLE--

13

"SECTION 1. Prior to each fiscal year, the Congress and the
15 President shall agree on an estimate of total receipts for that
fiscal year by enactment into law of a joint resolution devoted
17 solely to that subject. Total outlays for that year shall not
exceed the level of estimated receipts set forth in such joint
19 resolution, unless three-fifths of the total membership of
each House of Congress shall provide, by a rollcall vote, for a
21 specific excess of outlays over estimated receipts.

"SECTION 2. Whenever actual outlays, exceed actual
23 receipts for any fiscal year, the Congress shall, in the ensuing
fiscal year, provide by law for the repayment of such excess.
25 The public debt of the United States shall not be increased
unless three-fifths of the total membership of each House
27 shall provide by law for such an increase by a rollcall vote.

"SECTION 3. Prior to each fiscal year, the President shall
29 transmit to the Congress a proposed budget for the United
States Government for that fiscal year in which total outlays
31 do not exceed total receipts.

1 "SECTION 4. No bill to increase revenue shall become law
 unless approved by a majority of the total membership of each
 3 House by a rollcall vote.

"SECTION 5. The provisions of this article are waived for
 5 any fiscal year in which a declaration of war is in effect.

"SECTION 6. Total receipts shall include all receipts of the
 7 United States except those dervied from borrowing. Total
 outlays shall include all outlays of the United States except
 9 for those for repayment of debt principal.

"SECTION 7. This article shall take effect beginning with
 11 fiscal year 1991 or with the second fiscal year beginning after
 its ratification, whichever is later."

13

WHEREAS, Several members of Congress, including members of
 15 the New Jersey Congressional delegation, have introduced this
 proposed amendment to the Constitution of the United States;
 17 and

WHEREAS, Public sentiment has shown continuing support for a
 19 federal balanced budget; now, therefore,

21 BE IT RESOLVED *by the General Assembly of the State of*
New Jersey (the Senate concurring):

23 1. It is the sense of the Legislature of the State of New
 Jersey that legislation proposing a federal balanced budget
 25 amendment to the United States Congress is appropriate at this
 time.

27 2. The United States Congress is respectfully memorialized
 to pass the legislation now pending, or other similar legislation,
 29 for the purpose of amending the Constitution of the United
 States to require a balanced federal budget.

31 3. A duly authenticated copy of this concurrent resolution,
 signed by the Speaker of the General Assembly and by the
 33 President of the Senate and attested to by the Clerk of the
 General Assembly and the Secretary of the Senate, be
 35 transmitted forthwith to the presiding officers of the United
 States Senate and House of Representatives and to each of the
 37 members of the Congress of the United States elected from New
 Jersey.

1 STATEMENT

3 This resolution expresses the sense of the Legislature in
5 support of legislation submitting a federal balanced budget
7 amendment to the Congress. House Joint Resolution 321 and
9 other similar federal legislation now pending in Congress, if
11 passed by a two-thirds vote of both the United States House of
Representatives and the United States Senate, would convene a
constitutional convention for the submission of the amendment
to ratification by the states.

13 FEDERAL AND INTERSTATE RELATIONS
State Budget and Finance

15 Memorializes Congress to pass legislation proposing a federal
17 balanced budget amendment.

TABLE OF CONTENTS

	<u>Page</u>
Assemblyman Richard C. Kamin District 23	4
Congressman James A. Courter District 12	6
Lance Lamberton President New Jerseyans for a Balanced Budget	15
William Niskanen Chairman Cato Institute	19
Dr. Beryl Sprinkel Chairman President's Council of Economic Advisors	19
Governor Richard J. Hughes Former Governor of New Jersey Former Chief Justice, New Jersey Supreme Court	33
Howard Phillips National Chairman Conservative Caucus	37
Phyllis Schlafly President Eagle Forum	40
Robert Morris Chairman National Committee to Restore Internal Security	47
Reverend Clifford Marlowe Pennsylvanians to Protect the Constitution	52
Laura Giannotta State Director National Federation of Independent Business of New Jersey	53
Stephen Markman, Esq. Director Office of Legal Policy U.S. Department of Justice	59
Senator Richard A. Zimmer District 23	64

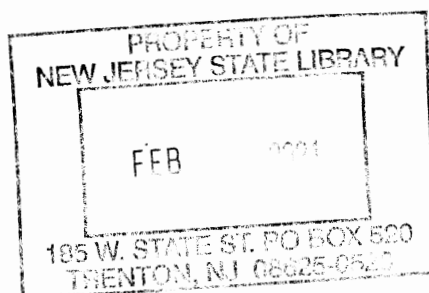


TABLE OF CONTENTS (continued)

	<u>Page</u>
David Halbrook Member of Mississippi House of Representatives National Director American Legislative Exchange Council	70
Marilyn Rosenbaum Chairwoman New Jersey Citizens to Protect the Constitution	79
Ralph Wagner National Council of Churches	85
Ronald I. Coun President American Jewish Congress, New Jersey Region	85
Andrew L. Demchick Director B'Nai B'Rith of New Jersey	87
Betty A. Little American Association of University Women	88
 APPENDIX:	
Press release submitted by Congressman James A. Courter District 12	1x
Statement submitted by Lance Lamberton President New Jerseyans for a Balanced Budget	2x
Statement submitted by Phyllis Schlafly President Eagle Forum	10x
Materials submitted by Reverend Clifford J. Marlowe Pennsylvanias to Protect the Constitution	22x
Statement submitted by Laura Giannotta Government Relations Director National Federation of Independent Business New Jersey Chapter	102x
Report submitted by Stephen Markman, Esq. Director Office of Legal Policy U.S. Department of Justice	103x

APPENDIX (continued)

	<u>Page</u>
Statement submitted by David Halbrook Member of Mississippi House of Representatives National Director American Legislative Exchange Council	162x
Statement submitted by Marilyn Rosenbaum New Jersey Citizens to Protect the Constitution	168x
Statement submitted by Andrew L. Demchick Eastern Regional Director B'Nai B'Rith	180x
Statement submitted by Betty A. Little American Association of University Women New Jersey Division	185x
Statement submitted by Elizabeth H. Schuyler American Association of University Women New Jersey Division	191x
Statement submitted by Wayne Dibofsky Associate Director of Government Relations New Jersey Education Association	196x
Statement submitted by Gardiner Rogers Chairman, Board of Policy Liberty Lobby	206x
Statement submitted by Linda B. Bowker President National Organization for Women of New Jersey	211x
Statement submitted by Marie Curtis Legislative Vice President League of Women Voters of New Jersey	212x
Statement submitted by Lawrence Grossman Member of Board of Directors Jewish Federation of Greater Middlesex County	214x
Statement submitted by Sherry Zowader New Jersey State Public Affairs Chairwoman National Council of Jewish Women	220x
Statement submitted by David Mallach Director, Community Relations Committee Jewish Federation of Metrowest	223x
Materials submitted by Ron Cerrigone Farmingdale, New Jersey	226x

APPENDIX (continued)

	<u>Page</u>
Statement submitted by Larry Bacchi National Secretary Teachers Saving Children	257x
Statement submitted by John Kucek Citizens Committee of Somerset County	260x
Statement submitted by Gertrude E. Unsel President, New Jersey Unit Women for Constitutional Government	263x
Statement submitted by Anne Melson Stommel Red Bank, New Jersey	267x
Letter from J.A. Morris Wyckoff, New Jersey	270x
Letter from Richard A. Seggel President Dodge-Newark Supply Co.	271x
Letter from Kenneth F.X. Albers Chairman of the Board and Chief Executive Officer The Provident Savings Bank	272x
Letter from Paul Samperi Samperi Restaurant Services	273x
Petition submitted to Committee	274x

* * * * *

ASSEMBLYMAN ROBERT J. MARTIN (Chairman): If I may have your attention please? We would like to begin the hearing this morning. My name is Bob Martin. I'm Chairman of the Assembly State Government Committee.

This is a public hearing this morning. We will be considering ACR-22 primarily. There are some other matters on our agenda, including an ACR by Speaker Hardwick, which would encourage Congress to take another means of achieving the ends which ACR-22 was designed to do. Those are the two bills that we will be considering first and foremost this morning.

We begin by asking our Committee Aide, Don Margeson, to call the roll.

MR. MARGESON (Committee Aide): Assemblyman Cimino?

ASSEMBLYMAN CIMINO: Here.

MR. MARGESON: Assemblyman Schluter?

ASSEMBLYMAN SCHLUTER: Here.

MR. MARGESON: Chairman Martin?

ASSEMBLYMAN MARTIN: Here. Seeing three members of the five member Committee here, I declare we have a quorum.

I might make a few opening remarks and set a few ground rules.

I know there is a great deal of interest in this particular legislation. We did hold hearings on this sometime last year when Dick Zimmer -- now State Senator -- was Chairman of this Committee. We have revisited at this time for a number of reasons: First of course because the sponsor of the legislation, Dick Kamin, has asked us to hear the bill. There has also been some increased concern with the economic problems arising out of Wall Street last fall, whether they be related to difficulties of Congress to balance the Federal budget. Because of that, with some of the economic problems that have occurred in New Jersey with jobs lost, with persons' pensions, and other factors as far as earnings affected by the stock market, I think it at least is incumbent upon us to ask the

question whether this legislation is appropriate to be considered by New Jersey.

~~this morning~~ It should be noted that we're not first in this area. There have been 32 states who have taken formal action on an ACR similar to that which we are considering today. ~~we will be~~

UNIDENTIFIED MEMBER OF AUDIENCE: It's 30. Two have backed out since then.

ASSEMBLYMAN MARTIN: Sir, I am going to ask you to allow those who are speaking to make their own statements. You will be recognized when you have the opportunity.

Just to clear the air, there have been a couple of states that have attempted to rescind previous action. But there have been 32 states at some time which have taken a formal action in favor of such an ACR.

A couple of comments of my own. I think it seems to boil down to two core issues on the ACR. The first of which is whether we should ask Congress in the first instance to have a balanced budget? I think that's a question which this country has wrestled with for a number of years, and certainly with the increased deficit there are many people concerned. I note that Tom Kean expressed concern about it in his recent book, "The Politics of Inclusion." The fact is, that without a balanced budget, the Federal government may be leading us into worse economic conditions. And as I said before, I think the dilemma that was experienced by Wall Street last fall may be -- as at least some economists say -- somewhat related to that Federal deficit.

Assuming that there are those who favor the balanced budget, the second question which has arisen in the previous hearing is whether this method that ACR-22 asks us to approve is an appropriate means of trying to reach that goal?

Those of you who are familiar with the Constitution recognize that there are two ways in which a constitutional amendment can be formally proposed: The first method is by a

two-thirds vote of each house of Congress. The second method -- which has not been utilized to date, but is provided for in the Constitution -- allows the individual states through their state legislatures to petition Congress to hold a national convention; the manner which is suggested in this ACR-22.

I know in speaking to the sponsor, he has selected this legislation because of a recognition that to date Congress has seemed to be reluctant -- if that's the appropriate word -- certainly hesitant, and in fact has been unwilling to take any action as far as the first proposed method to have a balanced budget amendment. So this method, which other states have utilized, is one suggested, and of course is the topic which we will be dealing with this morning.

Before I call the sponsor up, I just want to say one other personal comment. I've received a lot of mail on this issue. I know it's very sensitive to many persons in this room, as well as many constituents. We will attempt to have a fair hearing. We will attempt to balance as much as we can the pros and cons, have everybody have an opportunity to state their case.

I know that some people have expressed that if we go this route, the Bill of Rights -- our fundamental freedoms as we know it in the United States -- would somehow be put in jeopardy. I just want to say personally, regardless of whether this is approved or not, I myself am confident that the American public will never legislate -- through either their state legislators or by themselves -- and remove our fundamental freedoms.

My limited reading of history has suggested that where countries have lost their freedoms has come from two primary causes; one of which is by outside invasion, military invasion by another country; the second of which is economic crisis, which in turn has led to a change in the form of government, and through that has come a dictatorship, and then ultimately a

loss of freedoms. A classic example, I think, is the Weimar Republic in Germany, which led to the fall of that republic and the rise of Hitler.

With that aside, we will begin this hearing by calling the sponsor, Assemblyman Dick Kamin. Mr. Kamin?

I'd also like to point out that we recognize one of our Committee members, Assemblyman Charles.

ASSEMBLYMAN CHARLES: Mr. Chairman.

A S S E M B L Y M A N R I C H A R D C. K A M I N: Mr. Chairman, Mr. Speaker, members of the Committee, first of all let me thank you for this opportunity to present what I think is one of the very most important issues facing, not only the State of New Jersey, but this country. There is an impressive list of individuals and groups to testify today on ACR-22, so I will try to keep my remarks brief so you'll have a chance to hear both sides in this important issue.

ACR-22 calls for a convention to amend the Constitution to require a balanced budget, and a limitation on the rate of increased Federal spending. Favorable action by this Committee today or in the future can bring us closer to getting control of our fiscal problems in Washington.

I don't think there's any question of the need. The Federal government continues to spend, and spend heavily, because it's in their best interest -- those members of Congress -- to continue to do so; as James Buchanan, Professor of Economics, received the Nobel Prize for Economics stating that very issue.

Just so that you understand and realize how widespread this problem is, just reflect back to here in New Jersey just last week, when our house could not even pass a change in the State spending cap.

Why should we go the role of a convention? Because Congress is stuck. Twenty-seven of the last twenty-eight budgets have been unbalanced. The deficit has doubled in the

last six years. The Senate has acted in the United States, but never in the House.

It's not a new idea to amend the Constitution. There have been thousands of proposals over the years, from school prayer to banning abortion, allowing racial quotas, school busing, the Equal Rights Amendment, statehood for the District of Columbia. In fact, there's been over 10,000 proposals over the years, and only 33 of those have been sent to the States, 25 have been ratified by the legislatures, and only one -- the Twenty-first Amendment which repealed prohibition -- was ratified by the state conventions. Remember that it takes two-thirds of the states, or Congress to propose.

The safeguard of our freedoms, as seen by James Madison in "Federalist Papers, No. 43" when he wrote that the purpose of permitting future constitutional conventions was to encourage "state governments to originate the amendments of errors as they may be pointed out by experience."

The fear from many groups and individuals -- many of whom are here today -- from all parts of the political spectrum, is that a convention would be hijacked and one or more groups would become part of a runaway convention. My belief is that the safeguard of ratification by three-fourths of all the states is a powerful protection indeed, which was provided by our founding fathers. Congress can act on its own to avoid the convention, as they did when they made changes which were to directly elect United States Senators in the early part of this century. Any delegates that would be selected would have a legal and moral obligation to stay on the topic that the convention was called for. In fact, there was a two-year study by the Justice Department's Office of Legal Policy which concluded that the Constitution permits limitations on the subject matter for a convention, and permits effective enforcement of those limitations. We the Committee believe the fear of a runaway convention is not well-founded.

The real fear is not of a convention, but that of a constitutional restraint on Washington's ability to continue to dispense the taxpayers' largess. Peter Rodino has kept the issue in the House Judiciary Committee for years. It's good that he's going to be retiring this year. We need the threat of a convention to force Congress to do what it has not done; to do what is not in its best interest, but certainly is in the best interest of the future of this great country.

I think it's most appropriate that this hearing is being held today on Legislative Family Day, because the well-being of the next generations are with us in today's chambers when we have our quorum call in about an hour.

Mr. Chairman, I thank you for the opportunity to present this bill. If I may, I'd like to ask a couple of other important people -- that have taken to heart this ACR-22 to the same degree that I have -- to add their comments at this point.

ASSEMBLYMAN MARTIN: Thank you, Dick. What we intend to do-- I said before, we will attempt to be balanced. We will try to give everybody an opportunity. One thing that we do recognize is that there are some people who have come here from out-of-state, as well as from Washington -- that's out-of-state too, but-- (laughter)

C O N G R E S S M A N J A M E S A. C O U R T E R: (from audience) It's more than out-of-state.

ASSEMBLYMAN MARTIN: With certain dignitaries we want to make sure they have an opportunity to speak this morning. I think it's clear that we will not hear all the testimony this morning, and if we don't, we do not want to hold over anyone unnecessarily who has made a special effort to be here.

So with that in mind, we will call up certain people by panel, and allow them to speak cumulatively for a half an hour. We will start with certain persons for the amendment. Dick, I would ask you to join them while they're here, and also after that we will have people who have expressed an interest

New Jersey State Library

New Jersey State Library

to speak against your amendment for a half an hour by means of a panel.

I also want to make note that we are delighted to have the Speaker of the Assembly to my left. Speaker Hardwick has expressed an interest in being here to hear the testimony today. As Speaker he is an ex officio member of any Committee. While not (sic) a non voting member, he can attend the Committee hearings and is free to participate in any and all of the conversations and the questioning of the various speakers. Mr. Speaker?

ASSEMBLYMAN HARDWICK: Mr. Chairman, I just wanted to make a brief comment. Number one, I wanted the Committee members to know that because of the importance of this issue, when we have our quorum call in about an hour or so, and I have to leave for that, I will be directing the clerk to vote you present for the quorum call, so that you're not missing a quorum call. I think this is an important issue, and whatever time you can spend on it I think will be worthwhile.

I certainly want to say I agree with so much of what Dick Kamin said -- a very fine legislator -- especially that Congress' spending is out of control, unable to bring any discipline at all.

I'm glad, Mr. Chairman, that you've posted ACR-69, sponsored by me, which memorializes Congress to pass legislation proposing a Federal balanced budget amendment. Whatever would happen to the constitutional convention issue, it is so important that we begin taking every preliminary step that we can, urging Congress, beating up on Congress, to do the right thing; which is aside and apart from a constitutional convention.

So I firmly believe in a Federal balanced budget. The issue is the best way to achieve it. In the meantime we're debating the constitutional convention. We should ensure that members of Congress have done the responsible thing and

everything possible to bring that issue to a vote in the Congress.

So, with those introductory comments, I have every bit of confidence in your chairmanship of this Committee, and you're in for some very interesting testimony.

ASSEMBLYMAN MARTIN: Thank you, Mr. Speaker. As I said before, we'll start with a panel of those for the issue. Just to give advanced notice-- For those who will be speaking directly after, we would ask at that time that former Governor Hughes, Phyllis Schlafly, Howard Phillips, and Robert Morris will have an opportunity as soon as we take the first speakers with Mr. Kamin.

At this time we'd like to have--

ASSEMBLYMAN CIMINO: Mr. Chairman, if I may?

ASSEMBLYMAN MARTIN: Yes?

ASSEMBLYMAN CIMINO: Pardon me, Mr. Chairman. Not that I want to make this be contentious or adversarial, but quite frankly -- least my silence be taken as a consent to Assemblyman Kamin's comments with respect to Chairman Rodino -- let the record show that I am not one who is in favor of Chairman Rodino leaving the House of Representatives. The point of fact is that Chairman Rodino, in his work in the House of Representatives, in fact has done a substantial amount of good for the American people. As a matter of fact, he very well may have saved the institutions of government at a very critical time in the history of the United States of America. Thank you very much.

ASSEMBLYMAN MARTIN: Okay. At this point in time we'd like to have join Dick Kamin, Congressman Jim Courter from the 12th District of New Jersey; Lance Lamberton, President of New Jerseyans for a Balanced Budget; and, if he arrives, we will ask that Beryl Sprinkel, the Chairman of the Council of Economic Advisors, would also come forward.

Gentlemen, what I would like to do is allow each of you to have approximately five to ten minutes to state your position ~~and the reasons for it, and then~~ allow Committee members ~~of~~ ask questions ~~relating~~ thereto. Congressman Courter, delighted to have you here.

CONGRESSMAN COURTER: Thank you very much, Mr. Chairman. It's a distinct honor and pleasure for me to be here. And also, I would like to acknowledge the fact that those people that have a different view than mine are certainly wonderful people, and people that I've known and admired and continue to do so. Governor Hughes, Phyllis Schlafly, Bob Morris, Howard Phillips -- when he does come -- these are people I've worked with over the years, and will continue to work with them on many issues that we share in common.

Why are we here today? We've obviously gone through this exercise before. I testified on this identical matter, in this identical room, in 1986. We had Assemblyman Zimmer at that particular time who chaired the hearing.

What progress has been made on the issue since then? Obviously none, zero. The State Legislature did not pass this legislation, and the governing majority in Congress continues to bury balanced budget amendment bills. The Majority's determination to resist the people's interest and support for balanced Federal budgets is a wonder to behold. But less wonderful I would say than the people's longstanding determination to make Congress live with the balanced budget requirement.

In this struggle I have no doubt that the people's will will eventually prevail. One day we will have a balanced budget amendment. One day we will eventually have a balanced budget on the Federal level.

The budget situation which has prevailed in Washington in the last decade and a half or so, is new in the history of the republic -- if you can actually believe it. Formerly, the

executive branch characteristicly tried to convince the Congress to expand the budget, while Congress was tightfisted with the taxpayers' money. Taxpayers after all were the local constituency to which members of Congress thought themselves responsible.

Today the opposite position obviously prevails. Parochial concerns and special interests now influence the important congressional committees to so great an extent that they have taken precedence over the clear national good in following sound fiscal policy. Congress, rather than the Chief Executive, now has a built-in bias toward higher and constantly higher spending. And since the budget process is constitutionally under the near total control of the legislative branch of government, it is the Congress which almost always prevails.

In fact, since I testified to this Committee in 1986, the Federal deficit problem has not gone away. In fact, it's gotten worse. I testified then that Congress legislatively adopted a legal deficit target under the Gramm/Rudman Bill that required by 1987 the deficit shrink -- if you can believe it -- to an astonishing \$144 billion -- not "m" million, but billion dollars. We're used to those figures in Washington. It's a good thing you're not used to them here.

ASSEMBLYMAN MARTIN: We generally use millions.

CONGRESSMAN COURTER: Yes, you generally use millions.

ASSEMBLYMAN MARTIN: It still sounds like a lot of money.

CONGRESSMAN COURTER: It certainly is. The actual deficit, however, for 1987 turned out to be not \$144 billion according to the Gramm/Rudman restraints, but \$150 plus billion, \$6 billion higher than actually was provided by the law. I testified then that the legal deficit target for Fiscal Year 1988 was \$108 billion. But I warned then in 1986, "That it will be doubly hard to reach that target." Since then, my

prediction unfortunately has proved correct, and Congress simply rewrote the law to target 1988 to \$146 billion. In other words, not only did Congress violate its legally mandated target by a total of \$38 billion, but it actually increased the legally targeted deficit over the previous targeted year.

On the issue of deficit spending -- in other words, Gramm/Rudman notwithstanding -- Congress is continuing to move in the exact wrong direction. I continue to support the Gramm/Rudman deficit reduction measure, but I'm compelled to point out that like all ordinary law, what Congress creates, Congress can amend, and Congress can destroy. What Congress gives one year, it takes back the next year. Gramm/Rudman cannot legally force Congress to control spending because Congress can simply change the law, and it does so all the time.

Thus there is a need for a paramount, constitutional law, which even the Congress cannot change or easily avoid. Now this Majority in Congress understands this. They know that a balanced budget amendment would reduce their control over the Federal budget, and so unfortunately the majority in Congress opposes it.

Let me add, by way of footnote, I urge passage of the Speaker's legislation, which I understand is a recommendation for Congress to pass a balanced budget amendment.

ASSEMBLYMAN MARTIN: That's correct.

CONGRESSMAN COURTER: But obviously it's simply not going to be done. Merely because the Assembly in New Jersey or the Senate in New Jersey recommend that the Congress do something, doesn't mean that the Congress is going to do it. We've been urging this for a long period of time, and we have not had that degree of success.

I prefer to see Congress pass a balanced budget amendment, but in the absence of any movement on this issue -- and there's been no movement in Washington -- I believe the American people will have to force Congress' hand by

threatening to call for a constitutional convention. That is why I support ACR-22, under which New Jersey would become one of the last states to pass this type of resolution. Many concerns have been raised about the constitutional convention; that it could circumvent the carefully public deliberation needed to amend the Constitution; or that it might result in dangerous or frivolous or irresponsible amendments. These concerns have some merit, but I do not find them persuasive at all.

I was in church -- as we all were, or most of were -- this past Sunday, and my minister was talking about fixing a problem a little too late. And he said there was a number of monks that had to get to the very top of a large building and there was no way to enter it because they would be there for many many years. So they climbed a rope to the bell tower. This one monk got on the rope and he started to climb. When he got to about 38 floors he saw that the rope was badly mangled and was coming apart. He yelled down, "When do you repair the rope?" The head of all the monks said, "Every time it breaks."

The problem however is that it's broken. We've got to do something about the amendment. We've got to do something about the frivolous way that the United States Congress spends money.

The constitutional convention procedure does not circumvent the democratic process of deliberation. It is a means of expressing the public interest when Congress refuses to do so. That is precisely the case with the balanced budget amendment. The people support it, but Congress refuses to act on it.

Nor is the constitutional convention a means for enacting frivolous amendments to the Constitution, I believe. It proposes amendments. It does not enact them. I think it's an important distinction that you, Assemblyman Martin, made in your introductory comments. It is only the beginning of a

process whereby 38 states would have to deliberate and ratify any change in the Constitution, just as they would if Congress itself passed the amendment. There is no difference in that process.

Further, a convention would be legally limited to the specific issue proposed by the Congress when it calls the convention. And moreover, if the convention tried to go beyond its legally mandated subject, it would be repeatedly challenged in the United States Supreme Court.

It is said that a convention might propose an amendment threatening the separation of church and state. I say, so might the Congress of the United States. Some say the convention might impose a censorship amendment, so might the Congress. The convention might try to reverse integration, so might the Congress; or equal rights, or impose abortion or gun control amendment -- regardless of what your position is on that -- so might the Congress do it. In either case, the requirement that 38 states must ratify an amendment before it becomes part of the Constitution, ensures that the American people have an opportunity to deliberate carefully and approve amendments by extraordinary majority.

To be excessively worried that a constitutional convention will lead to the subversion of constitutional liberty, one must have an extraordinary lack of faith in the good sense of our fellow citizens, and paradoxically, in the structure of the Constitution itself. The trouble, after all, is that there is no king to stop bad laws. Every constitutional issue is debatable by the people, because the people are ultimately sovereign. The only thing that opponents have to fear is democracy itself.

Finally, let's be candid, faced with the impending reality of a constitutional convention, the Majority in Congress is very likely to make a virtue of necessity, and pass the amendment; just as they did in 1911 when the states took

similar action to force an amendment for direct election of United States Senators. Let me just emphasize that point. Congress doesn't want to eliminate its authority. It doesn't want its authority to be eroded. It doesn't want its authority to be cast about all over the United States of America. You can bet your family fortune that if the Congress was about to see its authority eliminated in the drafting of the language, Congress would start drafting the language itself.

Today, there are a number of states which have called for a convention. Soon, with the support of the New Jersey Legislature, I hope we'll have one additional state. If I know my colleagues in the Congress, New Jersey hopefully will be the last; because if 31, 32, 33, or 34 states demand a convention, Congress will lose control of the subject matter. Not wanting to see that happen, Congress will start righting itself. Better, my colleagues will argue, for Congress to draft the wording than another body which Congress can not direct, and Congress can't control. So there's good reason to believe that once New Jersey passes a call for a constitutional convention, Congress will finally take the matter into its own hands and offer finally a balanced budget amendment for the states to ratify.

I urge the State Legislature to pass ACR-22, so we can get our Federal budget in order, and move on to the other important issues of governing this great country.

I want to thank the Chairman, Mr. Martin, and other members of the panel. And also I want to acknowledge once again that there are good minds that differ on this issue, but after having spent a decade in Washington, I'm convinced all we need is a little goading and we'll get the job done. Thank you very much.

ASSEMBLYMAN MARTIN: Thank you, Congressman. I want to note that Assemblywoman Marion Crecco has also joined us this morning, so the Committee is up to snuff as far as its membership.

At this time we'll hear from Mr. Lamberton, and then we can address any questions from the members.

~~Congress~~ ASSEMBLYMAN KAMIN: Mr. Chairman? If I might, in advance of Mr. Lamberton starting his remarks, I'd like to ask if we could have William Niskanen, who is the former President of the Council of Economic Advisors to President Reagan, if he could join us now in advance of Beryl Sprinkel's arrival. His plane was apparently delayed somewhat, but he's on his way too. Thank you.

CONGRESSMAN COURTER: Mr. Lamberton?

L A N C E L A M B E R T O N: Thank you. That's going to be a very hard act to follow, but I will do my best.

Mr. Chairman, and members of the Committee, Speaker Hardwick, I welcome this opportunity to testify on behalf of New Jerseyans for a Balanced Budget, and for the resolution now being considered by you, Assembly Concurrent Resolution 22. The last time I had a similar opportunity to testify before this Committee was in April of 1987. A great deal has happened since that time.

In October of 1987, the stock market experienced its single greatest plunge in one day. Although the magnitude of the drop was exacerbated by artificial market mechanisms, the underlying cause was an unwillingness by the Federal government to take decisive action to end deficit spending.

Since April of 1987, the Federal government has added \$276 billion to the national debt. This will cost each 1988 high school graduate \$9700 in additional taxes over his or her lifetime. It is on their behalf, and the millions of others born after them, that I and the members of New Jerseyans for a Balanced Budget take such an active interest in the measure now before you.

We want future generations of Americans to enjoy the same freedom and opportunity that we have enjoyed. However, in the face of continuing, unending, and perpetual multi billion

dollar deficits year after year after year, we face the growing prospect that the prosperity that we have now come to take for granted, will cease to exist. Logic dictates that this be so. No country can sustain the level of growing debt that we are imposing upon future generations without facing inevitable economic decline.

As matters stand now, more than 25 cents of every dollar we send to Washington in taxes goes towards interest payments on the national debt. If current trends continue, in 10 years half of what we pay in taxes will go towards interest on the national debt. And by the year 2000, the debt will be \$13 trillion, and interest on that debt will be \$1.5 trillion. American will not have the resources to adequately provide for the national defense, businesses will not have the capital needed to expand or even keep pace with an increasingly and competitive economy, and young families already pressed to the wall by suffocating debt we have thus far imposed upon ourselves, will not have the economic resources to realize the American dream of owning their own home, paying for their children's college education, or setting aside money for their retirement years.

Is this the legacy we wish to leave ourselves and our children? If the answer is no, then I strongly urge you to vote in favor of ACR-22. I can think of no more important measure that this Committee will ever have to consider than this resolution.

But despite the obvious seriousness of the debt crisis now facing us, there are some who will come before you today who will tell you that passage of a convention call is either inappropriate or unnecessary. They will tell you that Congress should pass balanced budgets without the prod of a convention call. That if Congress continues in its reckless abandonment of fiscal responsibility, then we should elect representatives who are more committed, both in action and deed, to the concept of spending no more than it takes in.

Believe me, I wish it were that simple. However, the sad reality is that the overwhelming majority of incumbents get re-elected year after year, regardless of their spending record. In the last congressional election, 98% of those who sought re-election got re-elected. So while I would like it if the American electorate would make our representatives more accountable, the fact remains that incumbents have political advantages over challengers which make it virtually impossible for them to be replaced simply because their spending record is an irresponsible one.

Others will tell you that while they support Congress passing a balanced budget amendment, they have misgivings about a convention being convened for that purpose. They maintain there is no guarantee a convention could be limited to the subject for which it is called; that a convention would somehow run away, and propose to the states for ratification amendments which are not germane to the balanced budget amendment.

Some of the more strident opponents of the convention call will even conjure up for you bizarre plots of evil power brokers waiting in the wings to completely rewrite the Constitution, abolish the Bill of Rights, or impose a one world government on us. These notions are based on a fundamental misunderstanding of the political and legal safeguards to prevent these dire scenarios.

First of all, if enough states call for a convention such that it appears imminent that a convention will be convened, then Congress will act. As Jim Courter mentioned, the prospect of a convention being convened takes power away from them, and that is not something that they look upon lightly.

However, without the real and tangible threat of a convention call, Congress simply will not act. The concerted efforts of citizens over the past 12 years, the doubling of the national debt in the past five years, the tremor of Black

Monday on Wall Street in October, and polls which show over 80% of the American people support a balanced budget amendment, have yet to prompt Congress to take action.

The reason is simple. A balanced budget amendment would restrict the ability of Congress to spend more than it takes in. A significant enough minority in Congress does not want that restriction, because it is through deficit spending that they are able to vote additional largess for their district, thereby helping to ensure re-election, while simultaneously ensuring the inevitable bankrupting of the nation. Only a constitutional convention poses an even greater threat to congressional power, through the threat to incumbency that I mentioned earlier. In addition, a convention could propose enforcement mechanisms that Congress would never impose upon itself; such as my personal favorite, withholding of congressional pay if it passes a budget which is out of balance.

The founding fathers anticipated there would be times when Congress would refuse to take action on its own if the general interest came into direct conflict with congressional interests. That is why the convention method of amending the Constitution was put in in the first place.

It was already mentioned, the passage of the Seventeenth Amendment, which called for the direct election of Senators. We owe the founding fathers, and the democratic process, a debt of gratitude that Article V was in there when congressional power and congressional interests came into conflict with the general interests.

ASSEMBLYMAN MARTIN: Lance.

MR. LAMBERTON: Yes?

ASSEMBLYMAN MARTIN: We've got to try and speed the process up.

MR. LAMBERTON: Okay. I don't want to take up any more time then. If you're really on a tight leash than I'll just conclude my remarks.

ASSEMBLYMAN MARTIN: Well, I think we want to at least-- have some people speak. I think we should have yet ASSEMBLYMAN KAMIN: Mr. Chairman, if I might? Dr. Beryl Sprinkel has arrived and I'd like to ask him to join us. I'll slip out of this chair so he can testify.

ASSEMBLYMAN MARTIN: Mr. Niskanen, while you're here, perhaps you could add your remarks?

W I L L I A M N I S K A N E N: Let's have Beryl go now because his timing is probably tighter than mine. (audience informs Committee they cannot hear witnesses)

ASSEMBLYMAN MARTIN: Yeah. Right now we are calling upon Beryl Sprinkel, Chairman of the Council of Economic Advisors, to come up and present testimony at the request of the sponsor of the legislation.

For those of you who may have joined us subsequent to the beginning of the Committee hearing, I just wanted to point out that we are attempting to have an open forum, one which is evenly balanced. And what we are doing is, in the first half hour we have invited the sponsor and several proponents of ACR-22 to speak at this time. After which we will immediately have several of those who are opposed to the measure come up and speak their remarks.

Mr. Sprinkel, nice that you could join us. I understand you came in from Washington.

D R. B E R Y L S P R I N K E L: Yes, sir.

ASSEMBLYMAN MARTIN: If you'd like to, proceed.

DR. SPRINKEL: Thank you, Mr. Chairman. I'm very happy to be here today to express the President's and the administration's support for the New Jersey State Assembly's proposed resolution, applying to Congress for a balanced budget and tax limitation amendment.

Amending the Constitution is a serious matter, and the President arrived at his position only after extensive consideration within the administration of the underlying issues.

In the early years of the Reagan administration, as you know, we were convinced that a balanced budget could be achieved under the leadership of a President firmly committed to reducing spending. Unfortunately, it hasn't worked out that way. During that time our top priority was getting the President's economic recovery program enacted. Getting the balanced budget amendment passed was a long-term goal. Nevertheless, during his tenure the President has fought hard to bring the Federal budget under control.

In Fiscal '87, the deficit fell a record 70 billion from its 221 billion level. And in Fiscal 1986, and for the first time in 14 years, the Federal government spent less than the year before in real terms. This represented what I hope will be an important turning point.

At the end of last year, more progress was made in controlling Federal spending. The President and congressional leaders concluded a budget agreement that calls for cuts of 76 billion from the deficit over the next two years. Unfortunately, it took the market crash of last October, and the threat of sequestration under the Gramm/Rudman/Hollings Act, to convince Congress that something needed to be done.

All of these steps, however, as important as they are, have not addressed the root of the problem. That problem can be simply stated. In spite of the best efforts of this administration to control spending, the Federal budget process is out of control. This is not the consequence of the administration's tax policies or defense policies. These policies have merely helped restore tax burdens and defense spending to levels as measured against GNP, that prevailed on average during the long period of national prosperity and strength from the end of World War II to the early 1970s.

Ronald Reagan assumed the presidency with a mandate to restore this nation's economic and military strength. Through tax reforms that have improved the incentives to work, save,

and invest, by cutting wasteful spending and regulation, and through defense programs that have bolstered our ability to defend ourselves and our allies, the President has fulfilled this mandate. With the Reagan tax reforms, the government's claim on income has been held to about 18.8%; one percentage point above the level of the postwar period. The average defense share of GNP has stabilized -- even with the expenditures necessary to restore our nation's defenses -- at about 6.2% of GNP. This is lower than the 8.4% average shared during the '46 to '80 period. The Fiscal '89 budget now being considered by Congress, allocates even less, 5.9% of GNP for defense, and collects 19.2% of GNP in revenues.

Any honest examination of the facts must conclude, in my opinion, that the driving force behind the present fiscal imbalance is non defense spending. These expenditures grew steadily during the '50s and the '60s, explosively during the '70s, and still carry enormous momentum that this administration has been able to slow but not stop.

Since 1971, non defense spending has grown by four percentage points as a share of GNP, from 12.4% to 18% in 1983, but down to 16.4% by 1987. This rapid growth has occurred in almost all categories of non defense spending. Discretionary spending for education, employment and training, social services, law enforcement, community development and the like, grew from \$45 billion in 1970 to \$164 billion in 1987.

Medical and means tested entitlements have grown even more explosively, from \$17 billion in 1970 to \$154 billion in 1987, a real growth rate of seven percent a year. From '81 to '87 this rate has been reduced to four percent. Even so, this rate still exceeds the real national income growth rate since 1981, which has averaged a little over three percent a year.

Finally, total non defense entitlement spending and mandatory spending, including Federal pensions and social security, has just gone through the roof. From 1970 to 1981

annual outlays as a share of GNP increased by an astonishing four percentage points, from 6.7% to 10.7%, representing an increase of almost a third of a trillion dollars. Since 1981, the share has remained constant.

As we approach the end of this administration, we can see in the light of experience that a more powerful and reliable mechanism of fiscal control is urgently needed. The experience of the last several years makes it clear that the congressional budget process is inherently biased towards excessive taxing and spending, and chronic deficits. The congressional tactic of amalgamating the entire terms worth of legislation into mammoth continuing resolutions and ominous bills has only aggravated this inherent bias by weakening the President's veto power.

For most of our history, a balanced budget was part of our unwritten Constitution. The deficits of the Civil War were paid off and followed by 28 years of surpluses. It's hard to imagine, but it happened; ten years of surpluses following the deficit of World War I. Once the balanced budget norm was given up, however, there seemed to be no going back. Like the man who decided one morning he would only take a drink because he needed it, the temporary lapse turned into chronic dependence. The budget has been in deficit 33 out of the last 38 years. And that's not something to be proud about, in my opinion.

Increasingly Federal government spending has become not a tool of rational economic policy -- if it ever was that -- but an expression of the political power of special interest groups. In the postwar era, the Federal government has become increasingly involved in health, education, and a variety of welfare services that would have been considered fundamentally inappropriate in earlier years. Consequently, Federal spending rose to 24.3% of GNP in 1983, compared to only 10% in 1940. In the last four years we have brought Federal spending as a share

of GNP back down to only 22.8%. This is progress, but we have a long way to go.

The mushrooming of the role of the Federal government in our lives has led to an enormous increase in the number of people who benefit from Federal largess. This creates an inherent and potentially increasing bias in the political process towards spending to satisfy the multiplicity of fiscal constituencies. It's therefore not surprising that the number of transfer payment beneficiaries has grown dramatically relative to the number of taxpayers. The ratio of people privately employed to transfer payment recipients was over 3.3 to one in 1950, but in 1983 this ratio has declined to only 1.2 to one. The direction and speed of this trend should be alarming to all those who believe -- as our founders did -- in limited government.

The inherent bias of the budget process towards spending results in part from asymmetry of the benefits awarded to the powerful special interest groups on the one hand, and the cost imposed on the general anonymous taxpayer on the other. Special interest groups have the money and time to promote particular programs. The cost of any one of which to the individual taxpayers is minuscule. The accumulation of all these costs, however, is devastating. Thus, members of Congress have the incentive to support the special interests, frequently as a matter of shortsighted political necessity -- they don't like to lose -- at the expense of the general taxpayer. Benefits are concentrated, while costs are dispersed widely. Let me mention a few examples.

Dairy subsidies give away about \$7000 annually per producer, but the individual taxpayer pays only about \$12 a year for these subsidies. In 1981, operating subsidies for the U.S. Merchant Marines were only about \$60,000 per merchant billet, about four dollars per taxpayer. The FAA provides services to private aviation worth more than \$5900 per aircraft

in excess of what users pay in fees, costing each taxpayer a little less than \$13. A prestigious university will receive \$285,000 for a study of milk consumption for only three cents per taxpayer.

It is therefore well worth the while of beneficiaries of Federal largess to fight to keep and increase their claim on taxpayers' income. The rational taxpayer, by contrast, can see that it's not worth the time and money he would have to invest to defeat any given program. He's better off just paying the his share of the subsidy to the dairy farmer, the merchant seaman, the private plane flyer, or university provost. By the same token, everyone is in favor of cutting someone else's subsidy. But putting together a coalition in favor of cutting subsidies across-the-board, has proven to be the political equivalent of squaring the circle.

As you can tell from the tenor of my remarks, I think the problem is not just deficit spending per se, but the size, scope, and process of government spending in general. Thus, the amendment we support is not just a balanced budget amendment, but a tax limitation amendment as well. The proposed amendment would prevent Congress from increasing taxes by more than the increase in the previous year's national income, unless a super majority of the national legislature voted to override this restriction. Obviously the amendment should make provision for national emergencies, such as war. The point is not merely to avoid the ills of deficit financing and the accumulation of national debt -- that in and of itself is bad enough -- but also to slow the growth of the relative size of the Federal government, because when it grows the private sector grows less.

Simply put, the proposed amendment would require that Congress raise the money it wants to spend out of revenues, and not postpone to an indefinite future the choices of financing its expenditures. And the amendment says that in relative

terms, the Federal government takes a big enough share of the nation's income already. The proposed amendment would force Congress to choose to set priorities among the expenditures that are demanded by its various constituencies. Under the present system, Congress simply appropriates public money for virtually all imaginable needs and desires, and leaves the obligation to pay for it to future Congresses, administrations, and generations.

The balanced budget/tax limitation amendment would give Congress a different, more disciplining set of incentives, and it would make it more difficult for our representatives to finance essentially political outlays out of earnings of our children. The amendment would require each year's spending to be limited by that year's expected revenues. Moreover, taxes could not be increased beyond the current level of national income without an explicit super majority vote. This would make Congress more accountable to the voters for spending increases.

By now there can be little doubt that the dynamic of taxing and spending a greater and greater portion of the nation's income has worked itself into the very fabric of our government. Efforts to curb this movement by statute -- such as Gramm/Rudman/Hollings mechanism -- holds some promise, but are obviously inadequate given the magnitude of the problem. We have unleashed a great leviathan that threatens to swallow up the nation's wealth and the liberties our founders assumed no free people would part with, at least not without a fight. It would take more than a statute to discipline Congress and end profligate Federal spending. What has been taken out of our unwritten constitution must now become part of our written constitution.

The State of New Jersey has an opportunity to help preserve our heritage of limited government, just as it had the privilege to be one of the original 13 states to bring our

unique form of government into the world more than 200 years ago.

Only a constitutional amendment that articulates the premises of fiscal responsibility that our founders took for granted, and makes them binding, can provide the bulwark against the steady enveloping of the private sector by the government. These are strong words, but as an economist I look at the facts, and here the facts support the conclusion that a constitutional change is necessary. I know the lawyers have various technical objections to this or that aspect of the amendment. But we can be confident that once the states have spoken, Congress will be able to sort out these difficulties. The states need to give Congress a reason to exercise the same ingenuity and energy in protecting the taxpayers that it has shown in figuring out ways to spend their money.

I urge you to approve the pending resolution on a balanced budget/tax limitation amendment. Thank you again for inviting me to testify before you today.

ASSEMBLYMAN MARTIN: Thank you, Mr. Sprinkel. At this time I would ask if any Committee members-- We're going to try to hold this to five minutes, at least for now, so that we can have the opportunity of the other panel; and ask any of the other members if they could possibly stay and pick up some further questions. But if you have an important question at this point please ask it. Yes, Mr. Schluter?

ASSEMBLYMAN SCHLUTER: Mr. Martin, thank you very much. I have several questions, and I'll be very brief and very quick.

Congressman Courter, is it correct, from the way you describe Congress, to conclude that institutionally Congress is incapable with balancing the budget? That's my belief. Would you concur?

CONGRESSMAN COURTER: Yeah. Assemblyman Schluter, that's precisely the point. That's your opinion. It's mine.

It's Mr. Sprinkel's, I believe. It's now the President's. It is simply the reality. I have given up long ago in thinking that all you had to do is vote--in 1435 reasonable and responsible people--and all would be well. There's institutional forces there that seem to take place, and therefore we need to -- and you're a great believer in changing the process when the process needs changing. In this particular instance we need to change it, because we are institutionally incapable of acting responsibly with taxpayers' money.

ASSEMBLYMAN SCHLUTER: Through you, Mr. Chairman. Mr. Sprinkel, you made some comments which would indicate that some of the reason for Congress being unable to face up to the situation is because of special interests and the fact that they have to get re-elected and these special interests contribute to campaigns and so on and so forth; like the dairy industry, and like the pilots and the maritime. Is that a proper assumption?

DR. SPRINKEL: Yes, sir. I think that's inevitable in our form of government, and I'm not proposing that we eliminate the right of special interest groups to communicate with their elected representatives. That's the way it works. On the other hand, we need some kind of a disciplinary force that requires choice as to which one, or something else, is the best way to spend the taxpayers' money. There isn't an endless amount of taxes out there to be levied. If you do that you'll stall out economic growth, jobs, and everything we want. I believe also that an institutional change is necessary to impose the required discipline. I'm not arguing that constituents shouldn't be able to contact their congressman. They should be able to do so.

ASSEMBLYMAN SCHLUTER: Well, I could not let that go. My colleagues here might suspect that I have an ulterior motive in suggesting that campaign spending might be a little bit too

high, might be a cause of the problem. I have two other quick questions. That's an inside sort of joke, Mr. Sprinkel. Pardon me. Mr. Courter, you say in your testimony, I read, "The only thing opponents--" opponents to the amendment "--have to fear is democracy itself." Could you explain the process, if a constitutional convention is held, if a proposal comes out of that convention to limit the budget, could you explain how the democratic process sees that that proposal is adopted?

CONGRESSMAN COURTER: Well, two things. It leads me just to amend my prior answer, Mr. Schluter. I think Beryl Sprinkel's testimony was particularly helpful by establishing or showing that some beneficiaries receive \$5000 worth of benefits, where the payer is paying five cents. And when the payer pays five cents and the beneficiary gets \$5000, it's not difficult to determine who's going to work harder. That happens every single day in Washington.

With regard to the process, obviously regardless of whether an amendment is crafted by Congress or comes out of a constitutional convention, it has to be ratified by the various states. That ratification process is a difficult one. It's a long one. It means the people of the various states have to look at it, read it, people can testify, and it goes through that long and difficult and arduous task that's one of the most difficult ones in an active democracy. So there's safeguards in the very beginning because, in my mind, by having the state legislatures get close to mandating a constitutional convention, Congress will draft the legislation. If Congress doesn't draft the language, then the constitutional convention would draft the language. Then that language is scrutinized by the various states. There's open hearings, and it has to be ratified by a lot more than the majority of the states. There are safeguards one right after the other, and it's pure democracy.

ASSEMBLYMAN SCHLUTER: By the state legislatures?

CONGRESSMAN COURTER: By the state legislatures.

ASSEMBLYMAN SCHLUTER: By the state legislatures.

CONGRESSMAN COURTER: Yes, by the state legislatures.

ASSEMBLYMAN SCHLUTER: I just want to make that point because I don't think everybody understands that.

CONGRESSMAN COURTER: It goes back to the state legislators. If they don't like the language that their own people crafted, it goes back.

ASSEMBLYMAN MARTIN: Technically, I think there's two methods of ratification. One, it requires three-quarters of the states either through their legislatures or through state conventions -- which are not the same as a national convention. Either way, I think the most fundamental point is that a national convention, in and of itself, cannot enact any legislation for this nation. It would require further action and an additional number of states beyond which the original proposal put forward, in order to arrive at having this amendment finally enacted.

At this point in time I would--

ASSEMBLYMAN SCHLUTER: Just one more quick one?

ASSEMBLYMAN MARTIN: You're on.

ASSEMBLYMAN SCHLUTER: Thank you. The comment was made that if New Jersey would pass this resolution, ACR-22, it would send a message to Congress, and the terms of several here, it would be such a threat that they would act themselves. Now, this is an observation from my point of view. If that result could be guaranteed, I might be very happy to vote for it right now. But I don't know that it can be guaranteed. And we are sitting here saying, what if Congress didn't act by itself to propose the resolution? So, I would just offer that I think that particular reasoning should not be really used in the forefront of advocating this particular result. Thank you.

ASSEMBLYMAN MARTIN: The Speaker has developed a question, and so has Mr. Charles.

ASSEMBLYMAN HARDWICK: Mr. Chairman, I'd like to follow up on what Mr. Schluter's question was, because I think it's the heart of this issue. When this panel leaves, there will be another panel of people just as patriotic, just as dedicated, just as smart, just as sincere, who are going to raise some fundamental questions. One that I have heard raised is, "What if you're wrong? What if you are wrong? We're risking more than the family fortune if you're wrong. We're risking more than the immediate dollars if you're wrong." The question is going to be raised that we're risking our Constitution. We could be imperiling what we stand for as a country, because we don't know what would happen. Mr. Sprinkel, what if you are wrong? What if you are wrong, and the damage that could be done--

DR. SPRINKEL: Well, if we're wrong and it turns out that the American public want to spend a higher percentage of their total production on government services -- and higher and higher -- they have a right under this provision to have a super override.

ASSEMBLYMAN HARDWICK: I don't think that's where you're going to be wrong.

DR. SPRINKEL: I don't think I'm wrong either, but you were suggesting that if I were.

ASSEMBLYMAN HARDWICK: But there's not a real debate on the desirability of a balanced Federal budget by most people. There are some that debate--

DR. SPRINKEL: You're talking about whether we do it by the Congress or whether we do it by--

ASSEMBLYMAN HARDWICK: Yes. What if you're wrong about having a constitutional convention? That's the question that I think is the fundamental question.

MR. LAMBERTON: May I respond to that just briefly? Congress, according to the American Bar Association, unanimously -- a Committee that studied this issue very carefully -- concluded that Congress has the power to limit a convention to the reason for which it was called. The Senate Judiciary Committee unanimously passed on two occasions a bill which states that if a convention goes beyond its call, Congress is prohibited from sending that amendment to the states for ratification. I think that's a pretty strong safeguard on top of what you already have.

ASSEMBLYMAN MARTIN: Mr. Charles?

ASSEMBLYMAN CHARLES: Yeah, just a question having to do with getting some information for my own consideration of the issue. In the Federal budgetary process, does the President submit a budget to the Congress?

DR. SPRINKEL: Yes, sir.

CONGRESSMAN COURTER: Yes. The President--

ASSEMBLYMAN CHARLES: Whoever wants to answer.

CONGRESSMAN COURTER: Go ahead, Beryl.

DR. SPRINKEL: I'll do it very quickly. He must by law, and he does. And it usually goes up in either January or February. It varies a little bit each year.

ASSEMBLYMAN CHARLES: Over the last seven or eight years that this President has been submitting his budget, has that been a balanced budget?

DR. SPRINKEL: No, sir. It has not, primarily because we can't even get the budget we submit through. They continue to add to it. And usually say when it arrives, "Dead on Arrival. We're going to do our own." Then they don't.

CONGRESSMAN COURTER: If I may--

ASSEMBLYMAN CHARLES: Well, the reason I asked that--

CONGRESSMAN COURTER: May I answer that as well?

ASSEMBLYMAN CHARLES: No. Let me finish my question and maybe you can answer it.

CONGRESSMAN COURTER: No.

ASSEMBLYMAN MARTIN: Let him ask the question, and we'll give you a chance, Congressman.

ASSEMBLYMAN CHARLES: The reason I asked that question -- those two questions -- is that I hear the speakers here this morning saying that the deficit is a matter of the Congress being unable to discipline itself, that the Congress has a bias in favor of spending. It would occur to anyone who is maybe not there, that if the President does not submit a balanced budget to the Congress to begin as a starting point, then perhaps the Congress is doing just what is happening in the executive branch. I think the Congress may have a concern that it is not they who are biased, but it may also be the executive branch that may not be doing its part. They may be saying it's not fair to cast the blame entirely on the legislative branch of government. It may be there is equal responsibility and blameworthiness in the executive.

ASSEMBLYMAN MARTIN: I think the question is now in understandable form. Congressman Courter?

CONGRESSMAN COURTER: Thank you very much. I hear that all the time, and I think the best answer -- it's a very good question -- the best answer is that no budget in one year, in my mind, can be balanced without wrenching increases in taxes, which will totally dislocate the economy. And when the President, under the Constitution, is required to place or recommend a budget in January, that budget is a budget for the subsequent fiscal year. It cannot, by virtue of being a one year budget, then to be debated and very quickly passed, be in balance.

What we're talking about is, if there were a gradual reduction over three or four years of the deficit, then the proffered budget by an administration in January could be in fact in balance. But it can't be when you start out with \$150 billion deficit spending.

ASSEMBLYMAN MARTIN: It's fair to say that this amendment would apply to the executive branch as well as the Congressional branch, so everybody would play under the same rules.

I thank the panel for adding their testimony. If you gentlemen could possibly vacate those seats, at this point in time we'd like to call Mr. Morris, Howard Phillips -- who I understand is now here -- former Governor Hughes, and Phyllis Schlafly, please, up to the witness table. Mr. Niskanen will have an opportunity to speak later.

Okay, if we can continue. We now have four additional speakers to testify. We were going to ask you each in turn if you will -- I know it hasn't been terribly successful -- but if you can limit your opening remarks to approximately five minutes, and then we will take 10 minutes of additional questioning by Committee members, so that all have an opportunity to hear what you have to say. We recognize the importance of each and every one of your individual testimony.

Perhaps we can begin to my left. We would ask our former Governor and Chief Justice, Governor Hughes, if he will begin.

G O V E R N O R R I C H A R D J. H U G H E S: Thank you very much, Mr. Chairman, members of the Committee, Speaker Hardwick. (Audience informs witness they can't hear him) I'm going to very brief. As a matter of fact, under the rules I see I have to be.

ASSEMBLYMAN MARTIN: Governor, these particular microphones are for recording so that we have the testimony. They are not to magnify individual voices. (responding to continual complaints by audience that they can't hear witness) To the extent that the former Governor can speak up-- There are many people in the rear of the audience who are interested in what you have to say, Governor.

GOVERNOR HUGHES: I'll try very hard. I see there are a great many witnesses, so I want to be brief.

I would like to say first that I am not a constitutional scholar, far from it; although I acknowledge my love and respect for the Constitution, as I know that I share with all you here in this room.

I think the central question on the Committee's action on Assembly Concurrent Resolution 22, is really the doubt announced by Speaker Hardwick. As much as people say about the ability of the courts or Congress or somebody to contain a constitutional convention from becoming a runaway convention, suppose we're wrong? What irretrievable damage could be done to the Constitution, which is the central soul of our country, our republic? It's too much to gamble on.

Our only precedent, a constitutional convention which formed this republic in 1787, was strictly instructed by the Continental Congress to hold its deliberations to bringing up to date, revising, the Articles of Confederation. And by the blessing of providence -- I always thought -- it disregarded that restriction, became a runaway convention, and went into all kinds of matters in order to form a new nation, and our Constitution. And while we thank the Lord that it did, since that is the only precedent of amending the American Constitution over a period of 200 years -- always amended by the alternative means of Article V of the Constitution, deliberation by Congress.

These recommendations by the 32 states have in no way amounted to deliberations. Sixteen of those states, Mr. Chairman, did not even have the kind of a deliberative hearing of both sides that we're witnessing today. Sixteen of them recommended it on the slogan, "Reduce Federal spending and balance the budget," as a kind of knee jerk response, without any deliberate consideration of any kind.

You may say, "Well, how did that happen on a subject so sensitive, so dangerous?" The American people, including myself, have always been gullible since the days of P.T.

Barnum, (laughter) who said there's one born every minute. We go for slogans. Mr. Speaker, you would be hard put to retain the New Jersey income tax, for instance, if you put before the people and the convention, "Let's get rid of the income tax." We go for slogans, and many times without considering the results. The results here could be an attack upon our Constitution, the basis of our liberties, our Bill of Rights, by every lunatic and concerned group, privileged group in the country; everything ranging from school prayer to many other subjects that I don't have to list. And if you want to see the reach of people of this type to the sympathies and the money of the American public, all you have to do is turn on your television tonight and watch one of the evangelists, who are supported so generously by the American people.

So, I'm here having no ax to grind, Mr. Chairman. I'm in the slow lane of life now. But I once swore -- many times swore -- an oath upon being inducted into office, the same as you have, to support and defend the American Constitution. I regard that promise as binding until death, and that's why I'm here.

I've had a lot of experience with the Constitution; as a Governor on many matters -- constitutionality of statutes and so forth -- coming before me; for many years as a trial judge; for years as an Assistant United States Attorney before Federal Judges who kept harping on the sanctity of the Fourth Amendment and rejecting some evidence that I had tried to offer; as a Chief Justice, when every matter coming before me seemed to have some constitutional quirk. All through that I developed a very large respect and a love for the Constitution, which makes me worry now.

If the State of New Jersey, with all of its revolutionary heroes, its signers of the Declaration of Independence itself, our great governors -- myself not included -- all the way from Wilson to Governor Tom Kean, to think that

this progressive and sensible and decent State would arrange itself on the side of those who would imperil the Constitution of the United States, and leave it naked to attack in an undisciplined convention -- which is our only precedent -- to attack by every special group in the country, I don't like it. I'm afraid for it. I don't have too much confidence in the assumptions that Congress, or a court, or anyone else, could control such a convention.

A constitutional convention seems to adopt a certain sovereignty of its own. Our first convention did. The one that is the reason why we're here today, speaking both sides in freedom of the way we feel about this issue.

So I ask you strongly to reject Assembly Concurrent Resolution 22. I'm indifferent as to 69. I have no objection of any kind to that. But on the other, it's so dangerous that it shouldn't be left to the mercy of people who are like the people, for instance, let their legislatures endorse -- 16 of the states -- endorse this thing.

Congressman Rodino was mentioned here today. During the Watergate tragedy I feared again for the Constitution. And Congressman Rodino, as Chairman of the House Judiciary Committee, led that Committee through the impeachment hearings with such manifest fairness and calmness, as a good judge would do, that I think the Congressman earned the gratitude and affection of the whole nation, not only New Jersey. So that I too, as Assemblyman Cimino, disassociate myself from any criticism or joy that he at the end of 40 distinguished years, is now retiring from Congress.

Thank you very much for the time, Mr. Chairman.
(applause from audience)

ASSEMBLYMAN MARTIN: Thank you, Governor Hughes.

GOVERNOR HUGHES: As I said at the last hearing, Chairman Martin, I didn't have anything to do with that.

ASSEMBLYMAN MARTIN: Just so we're clear, I think there's many of us who are not here to demean Congressman Rodino. I think one of the questions that can be fairly raised is to what extent, if any, have our individual Congress members tried to keep the budget within reasonable balance? But I'm certainly not one, at this point in time, to concur with the sentiment expressed earlier. I agree with you. I think especially at this point, and after his distinguished career, that this is not what his testimony is all about this morning.

At this point we would ask Mr. Phillips, who is the Chairman of the Conservative Caucus, to speak.

H O W A R D P H I L L I P S: Mr. Speaker, Mr. Chairman, distinguished members of the Committee, Governor Hughes. In 1981, the U.S. national debt was officially listed as totaling \$914.3 billion. By Fiscal Year 1989 that same national debt will have grown to exceed \$2.825 trillion -- more than three times the total of two presidential terms earlier.

In Fiscal Year 1981, the total Federal outlays amounted to \$678.2 billion. The amount proposed by the Reagan administration for Fiscal Year 1989 was \$1.094 trillion, an increase of \$416 billion per year. In no single year of the eight in which he has served as President did Ronald Reagan propose a balanced budget.

In Fiscal Year 1981, revenues collected by the Federal government totaled just under \$600 billion. Of that amount, \$286 billion came from individual income taxes, \$61 billion came from corporate taxes, and \$183 billion came from social security taxes. The remainder was raised through excise taxes, state and gift taxes, customs duties, and miscellaneous receipts. The Reagan administration estimates that during Fiscal Year '89, individual income tax collections will yield \$412.4 billion, corporate taxes \$117.7 billion, and social security taxes \$354.6 billion, as part of a revenue total now amounting to \$964.7 billion. While the Reagan administration

is not by itself responsible for these increased levels of taxation, it has supported several tax increases over the past eight years. Although it is certainly true that Congress provided no restraining influence, either with respect to Federal taxes or spending, and that indeed Congress actually would have been far more profligate if left to its own devices, it is nonetheless also the fact that President Reagan, like his predecessors, has possessed full constitutional authority to propose a balanced budget. However unlikely it would have been that Congress would comprehensively approve in all of their particulars the budgets put forward by President Reagan, it is clearly the case that if the President had chosen to submit balanced budgets, and to veto congressional attempts to disregard such budgets, he would have had at least a fighting chance to have some, if not all of such vetoes sustained.

The Constitution of the United States is a precious document. Even when honored in the breach, it has served to safeguard our liberties and advance our interests. That Constitution ought not to be tampered with lightly.

You are now considering Assembly Concurrent Resolution 22, and I will not read it. If enacted by the Congress of the United States, and ratified by three-fourths of the states under one of the procedures established under Article V of the Constitution, this proposed amendment would probably do no harm. Indeed, it might even do some good as an inducement for Congress to move in the direction of balancing the Federal budget and eliminating Federal deficits. As you will observe from considering the text of the amendment incorporated in Senate Joint Resolution 13, House Joint Resolution 27 -- referred to you in the matter before you -- there are no penalties should, for whatever reason, by a three-fifths vote Congress determine not to balance the budget in a given fiscal year. It is, to be sure, more difficult to gain 60% of the

vote as opposed to 51% in favor of profligacy, but the actual margins in support of deficit spending in recent years have far exceeded even the 60% level.

So to summarize my position thus far I would say that I regret that neither the President nor the Congress has seen fit to propose balanced budgets, and believe that if a balanced budget amendment -- such as that now being considered -- were in fact incorporated into the Constitution, it would not likely do any harm, and it might possibly, though not probably, do some good. That is not the issue before us this morning.

Today's question can be more narrowly defined as relating the wisdom of calling a constitutional convention to consider a balanced budget amendment. Let me at the outset set forth my concern that such a course of action is unwise and not worth the risk. I won't read you Article V, but let me go on to say that there may be circumstances in which it is fully warranted, despite the risks, to endorse a call for a second American constitutional convention. But I do not believe those circumstances are present in the issue at hand.

Nowhere in Article V, nor elsewhere in the Constitution, are limits placed on what might be considered or proposed at such a constitutional convention. Even if the agenda were somehow strictly limited to matters of taxes, spending, and deficits, the opportunity for mischief would be considerable; even though it would also be possible to introduce reforms of a highly constructive nature. My concern is that there exists the danger that some unforeseen decision which would be taken at such a convention, might without adequate consideration, lead amid enormous public pressure, to a fundamental alteration in our system of government, and consequent modification or abridgement of the laws which we enjoy.

While I believe that at their best our 50 state legislatures can exercise appropriate discretion and review,

all too often in the past, constitutional amendments considered by state legislatures have been whisked through without adequate debate and full consideration. I could give some examples, but let me go on to say that it is not simply the possibility that our lack of due consideration by state legislatures might enshrine the errors of a second convention which causes me to urge restraint, one other factor which is often overlooked, is the possibility that ad hoc state conventions, sufficiently accountable to the public as a whole, could be used as ratifying instruments. Who is to say what constitutes a state convention under Article V of the U.S. Constitution? There is no precedent to guide us. There is no requirement that delegates to such a convention be selected in a democratic, electorally accountable, manner. Extraordinary constitutional confusion could arise from the context of challenges to the legitimacy of our constitutional procedures.

If the object to be sought were of sufficient importance, I might be prepared to run risks of the kind that I have discussed. But given the fact that we do not need an amendment to achieve a balanced budget, and that we cannot be assured that we will have a balanced budget even with an amendment, I urge that this Legislature decide against actions at this time which might lead to a second U.S. constitutional convention. Thank you.

ASSEMBLYMAN MARTIN: Thank you. Phyllis Schlafly, the Chairman of the Eagle Forum? Nice to have you here.

P H Y L L I S S C H L A F L Y: Thank you very much, Mr. Chairman, Mr. Speaker, Governor, and others. I appreciate your willingness to hear me today. I would like to thank Congressman Courter for his kind remarks. Many of those urging a constitutional convention are my friends. We disagree, however.

If you listen to the arguments of those advocating this resolution, they talk almost exclusively about the threat

of Federal deficits and the need for a balanced budget. But they fail to show any way that calling for a constitutional convention will solve that problem. You know the last time a balanced budget amendment came up in the U.S. Senate it failed by one vote. With all due respect to Mr. Sprinkel, if he spent the same energy going to talk to Senators as he spent coming up to Trenton, I would think he could change one vote in the United States Senate.

We witnessed here today a bunch of people from the Federal government coming out to the New Jersey Legislature passing the buck to you, and trying to tell you that you have the power to force Congress to pass a balanced budget amendment. Unfortunately, you don't have that power. And they may tell you that this would be worth the risk, but it's not fair to use a bad means toward a good end.

I do support the balanced budget amendment, but not the constitutional convention. They have not shown any way that the constitutional convention will lead to a balanced budget amendment. It's like playing Russian Roulette. The odds are very good in Russian Roulette. You have five chances out of six of living to tell the tale. But we do call it suicide because you shouldn't take that kind of a risk with life, and I don't think you should take that kind of a risk with anything so precious as the United States Constitution.

The advocates of the "con con" will tell you that in 1911 the calls for a constitutional convention forced Congress to vote out the amendment calling for the direct election of Senators. But they always fail to mention that we had a similar situation in the 1960s when 32 states passed resolutions calling for Congress to have a constitutional convention to overturn the reapportionment decision, and Congress just simply thumbed its nose at the states. It went nowhere, as indeed these calls for a constitutional convention by state legislative resolution are going today.

Even if Congress did have the option -- which I don't believe it does because the word used in Article V is, "Congress shall call a convention when 34 states pass such resolutions" -- I don't believe Congress would. Have you talked to Jim Wright about it? I've talked to reporters who have talked to Speaker Wright, and I think it's pretty clear that that the kind of politics he plays would look at it like this. If they voted out a balanced budget amendment, it would set all speed records for ratification. I think it would be ratified by the state legislatures within six months. If they instead choose the so-called option of a constitutional convention, it would be an uncertain fate whether the nation involved in all sorts of controversies about the convention, and there isn't any evidence at all that such a convention would indeed vote out a balanced budget amendment.

There are all kinds of unanswered questions about a constitutional convention. They tell you it can be limited. In fact, somebody tried to cite the American Bar Association in saying it can be limited. That's just a bunch of lawyers who have a position. The most prestigious lawyers in the country say it absolutely cannot be limited; including Former Chief Justice Warren Burger, Gerald Gunther -- whose casebook is used as the constitutional law casebook in the majority of law schools -- and other constitutional lawyers of that distinction. One lawyer can say one thing, another lawyer another, but nobody can deny the risk. And that is our position, that the United States Constitution is not worth the risk.

That's why we're happy to stand with the American Legion and the Veterans of Foreign Wars, men who fought for this country, who don't want to risk the United States Constitution, in opposing a new constitutional convention.

Nobody has the least idea what the rules of a convention will be. We do know that there are all kinds of people who want major changes. One of the advocates talked about that we were conjuring up bizarre plots. You don't have to dream about these things. The New York Times on the front page of January 11, 1987, told all about the people who want to give us a parliamentary, European form of government. They're very aboveboard and open about it. And they've been saying that the best way to honor the founding fathers during this bicentennial era is to follow their example. And as Governor Hughes showed very well, their example was to throw out their mission and write on a new slate. Now we're very glad that George Washington and James Madison and Ben Franklin did that in 1787, but I don't see any George Washingtons and Ben Franklins and James Madisons and Alexander Hamiltons around today, and frankly, I'm very nervous about the people who think they're George Washington and James Madison. (laughter) And believe me, Mr. Chairman, I don't want my friends rewriting the Constitution any more than my enemies. I don't even trust my friends when it comes to rewriting the Constitution.

Now, you were told by several of the other speakers, "Oh don't worry, three-fourths of the states would have to ratify it." That is not necessarily true. One of the things the founding fathers did in 1787 was to change the mode of ratification so that they can get their new Constitution passed easier. They reduced the requirement from 100% to 75%. So, if a new constitutional convention can change other provisions, they indeed can change Article V too, and maybe say in this modern era we only need three-fifths of the states or perhaps a simple majority. Any proposal for change, I believe, should be addressed on its own merits in the traditional way, rather than through this device of a convention.

There is no public support for a constitutional convention. You've heard all about the support for a balanced budget amendment. There is no public support for a constitutional convention. Since Ronald Reagan became President only two states have passed these resolutions, and two other states have rescinded their previous resolutions, namely, Alabama and Florida. In fact, due to administration calls, they even got the new Republican governor of Alabama out on a big limb in trying to veto this rescision. He had to be overridden by the legislature with great loss of face, just because they absolutely misread what the public wants on this issue. Meanwhile, during the last seven years we have beaten resolutions just like this in Montana, Kentucky, Connecticut, Michigan, Maine, Vermont, and Wisconsin. And it doesn't pass anywhere any more.

This means that with all the millions of dollars that the advocates of this constitutional convention, and all their big names and political pressure have spent over the last seven years, they have zero to show for their goal. They got one. We rescinded two. And you look at a movement that can't show a net gain of one state in seven years, and I'll show you a movement that does not have the political smarts or the political power to elect a majority of delegates to a constitutional convention. The whole thing is a bait and switch act. You listen to them and they talk about nothing but a balanced budget amendment, never mention the constitutional convention, and that's the way they are presenting it.

Now they've come forth with a big long paper out of the Justice Department saying, "Don't worry. Everything is okay." And if you read that many pages in that document, you will find that what it does is set up some straw men and then attempt to knock those down. For example, their two main arguments are that Article V does permit a limited convention, and secondly that there are practical means permitted by the Constitution to enforce the limitations.

Well so what? Hardly anybody denies that. The crucial questions are, can a limited convention be constitutionally required under Article V, and secondly, can we rely on that requirement to be enforced? The answer to both those questions is a resounding, "no." In fact, this Justice Department document is really trying to argue by innuendo instead of fact. It has this very misleading statement that the convention delegates may be bound by oath to refrain from proposing amendments on topics other than those authorized under the charter of the convention. Well so what? Anything may be done.

But the real point is that delegates to a constitutional convention do not have to swear to uphold and defend the United States Constitution, and Article VI of the United States Constitution specifically exempts members of the constitutional convention from swearing to uphold and defend the United States Constitution. And as Governor Hughes said, he takes that oath seriously. Every member of the Federal government and state governments have to swear to that oath. The founding fathers knew what they were doing, and they exempted delegates to a constitutional convention from having to take that oath.

So in the absence of any public demand for a constitutional convention, what these people are doing is to resort to a very sneaky piece of chicanery in order to give us a constitutional convention anyway. What they have done in this constitutional convention implementation bill -- that was referred to but has been kicking around in Congress for 25 years and hasn't passed -- is to say that, "The normal time frame for states to pass these resolutions is seven years, but for this one we're going to give them 16 years." That means they want to lock in the old stale calls that were passed back in 1975 and say, "We got you," while they spend all their money trying to hammer away to get two more calls from the state

legislatures. I just don't believe that the United States Constitution should have that kind of trickery played with it. They cannot produce a constitutional convention call by a contemporaneous consensus, which is what should be required in order to change our United States Constitution.

We were told by one of the advocates, "Don't worry about a con con because it's really just like Congress." It isn't just like Congress. We know absolutely positively that a constitutional amendment cannot come out of Congress unless it has a two-thirds vote in both the Senate and House. We do not know that about a constitutional convention. We won't know its rules until it's called. We know that the constitutional convention delegates don't have to take the oath of office as Congressmen do. We know that the United States Congress has a Senate, which is another break, a bicameral body. The constitutional convention is not going to be a bicameral body. And the members of Congress have to run for re-election, but the members of a constitutional convention would be as free as these unelected Federal judges. They never have to run for election again. They can do anything they wanted.

So I conclude in agreement with James Madison, the father of our Constitution, that, "Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a second." And James Madison said that in an era when another convention could have been chaired by George Washington.

I urge you to reject any call for a constitutional convention. (applause)

ASSEMBLYMAN MARTIN: I think it would be pointless to tell everybody that this is not an audience, and we would ask you to refrain from expressing your pleasure or displeasure with remarks.

At this time I'd like to call Robert Morris, a former senatorial candidate if I do recall, and Chairman of the National Committee to Restore Internal Security. Mr. Morris?
R O B E R T M O R R I S: Thank you, Mr. Chairman. Mr. Chairman, I going to rather sum up some of the statements that have been made here and give my own emphasis to what has been said.

You know, I wonder how anyone can say that there is no risk involved in this undertaking. When we hear probably the number one expert in the country, former Chief Justice Warren Berger -- I mean, if anybody qualifies, a man who had been Chief Justice for a long period of time, should be considered as an expert. He has said there's no way you can muzzle -- that's not a judicial term but -- no way you can muzzle a constitutional convention. That's quite an authority. We've heard former Chief Justice Hughes say the same thing.

For many years I worked as Chief Counsel to one of the Subcommittees of the Senate Judiciary Committee. Then we had explored this thing. Jay Sourwine, who was the Chief Counsel for that Committee for many years, and whom former President Nixon said was the best constitutional lawyer in Washington, he said there's no way you can restrain a constitutional convention once you unleash this force. Now, not only that, the absurdity of contending there's no risk in face of that authority--

Stare decisis and following precedents are a very very important element of our judicial process. These things are followed. This is how we make up the law. We inherited this from our English forebears. Now, how can you then say, when the precedent has been established, when the Articles of Confederation -- which actually were the first convention-- That's the first Constitution we had. Once a constitutional convention was convened, these things were completely abolished. They would change fundamentally and altered, some

for the better or some for the worse. But then we had wise people making the changes.

Now what's happened now? Still following precedent, and a few other things have to be brought out here. Who were the people who made up the delegation? Who were the delegates to that constitutional convention? The existing legislators. Well today the existing legislators would be the Congress. Now I heard Jim Courter testify here today -- and I agree with him on this -- that we've seen Congress usurp the powers of the executive. We've seen them shuck off any kind of self-discipline. Now these are the people we're going to entrust to now frame a new Constitution?

Then also -- and Phyllis made this point very well -- these people are going to change the laws. You say we have a safeguard in the fact that three-quarters of the states will never agree. How do you know that's going to be the provision in the new Constitution? Maybe one-third of the states could approve it according to these people. When you say, "I don't believe it. It's unreasonable." Look at some of the unreasonable things our present Congress are doing right now.

Another thing I think we should think about -- and this may not be the immediate concern. I'm sure that not many people agree with me on what I'm about to say. But why do we insist on amending the Constitution to have a balanced budget? We've seen the Gramm/Rudman Bill pass. This puts some kind of restriction on spending. Now I'm a follower of our defense policies, and I'm something of a geopolitician, and I know that Gramm/Rudman has hurt our defense establishment greatly. The \$33 billion reduction imposed on the Defense Department, \$11 billion of which is borne by the Navy, has caused tremendous hardship and caused great risks to the security of our nation. For instance, the \$11 billion means that, if we wanted to allocate it to one thing alone, we would have no ship construction for Fiscal Year 1989. Think of that at a time we have a growing threat to the country.

Now right now when the stricture is congressional you can change it. When the congressmen begin to realize what damage it's done, it can change it by an act of Congress. But now you're going to nail this into the Constitution and make it all the more difficult to change when people begin to realize the enormity of the threat that we're facing today.

There are other problems too. The Supreme Court has mandated that there should be a "contemporaneous consensus" is the word they used. There's no contemporaneous consensus today as to the need for this thing. As Mrs. Schlafly has pointed out, in the last seven years -- which was the guideline that they had always proposed -- only two states have come up and supported this motion. You see, there are many things that are being overlooked here.

I think before we move ahead we should listen to the wisdom of people who have experience, who have achieved eminence. Also consider the fact that we are a nation of laws, governed by precedent stare decisis -- going back to the old common law -- and that we should be very very careful before we take this step which could lead to many many disasters. Thank you very much.

ASSEMBLYMAN MARTIN: Thank you. At this point in time we have some time for questions of the panel. I would call upon any members of the Committee? Mr. Schluter? (no response) Mrs. Crecco? (no response) Mr. Charles?

ASSEMBLYMAN CHARLES: I have none, Mr. Chairman.

ASSEMBLYMAN MARTIN: I just would like to ask one general question, and this I just throw out to you. As I said at the beginning of the meeting, there are two core questions, one of which is whether we need a Federal balanced budget in the first instance? I hear different comments about that. And then of course I think there's unanimity, at least among this panel, that whether we need it or not, this is not the method of which to achieve it. I would ask you -- and I think Mr.

Morris kind of alluded to it -- but what efforts can we make to bring to bear on the present Congress to at least adhere to their own standards? I think it was Congressman Courter who said earlier that he was dismayed by the fact that having Gramm/Rudman, Congress didn't even stick to its own rule. And as such, by follow-up legislation of course, can sort of amend its own legislation as they go along, without the strictures of a constitutional amendment. Are there any thoughts among any of you?

MS. SCHLAFLY: Well, I'd like to respond to that, Mr. Chairman. The last time the balanced budget amendment came up in the Senate it failed by one vote. The last time it came up in the House it failed by 46 votes. Now that means a shift of one vote in the Senate and 23 votes in the House would give us a balanced budget amendment. Now, if you talk about what conservatives and Republicans are doing, they all claim they're having a terrible time fund raising. But the one fund raising that has been very successful in recent years has been this balanced budget effort. I would guarantee that if I had the money they have had over the last five years I could have gotten one more vote in the Senate and 23 more votes in the House.

And why are they going this circuitous route? It's like my telling you I'm going to leave here today and go down to Washington, and you look at my ticket and it reads through San Francisco. You would conclude I'm not in any hurry to get there but I'm planning fun and games along the way. (laughter) I do come to the conclusion that they are planning fun and games along the way.

MR. PHILLIPS: Mr. Chairman, let me just add that in the final analysis, in order to achieve a balanced budget either spending must be cut or taxes must be raised. The reason we don't have a balanced budget today is that there is a lack of political will to do that which needs to be done.

My own view is that taxes are already much too high, and that both taxes and spending should be cut. But I believe that in order to achieve this change, the public has to focus its energy on its elected officials with respect to spending and taxes, in the same way that they have to some degree on this amendment. I would argue that Republicans have a responsibility to hold Ronald Reagan to the same standard to which Jimmy Carter was held and to which Michael Dukakis would be held.

I would argue that both Democrats and Republicans have an opportunity in the context of their upcoming party conventions in Atlanta and New Orleans to say, "Yes, we want a balanced budget, and we want it so badly that we're willing to cut the following programs," or, "to put a freeze on the total amount of Federal spending, with proportionate cuts in each of the following areas." But even if this amendment were without risk to the Constitution in terms of a convention to be added, in the final analysis our elected representatives would have to face up the questions, where are they going to cut spending or where are they going to raise taxes?

ASSEMBLYMAN MARTIN: Thank you. I just would point out, I think New Jersey has two features to its own Constitution, one of which is to require a balanced budget, and also we have a line item veto for the governor. I think both of those have served this State very well, and are part of the reasons we don't have some of the economic problems that are being experienced in Washington. Thank you very much for testifying.

GOVERNOR HUGHES: Thank you, Mr. Chairman.

ASSEMBLYMAN MARTIN: It's my intention to at least try and hear two more panels this morning. At this time I'd like to call Mr. Niskanen-- who was here earlier and deferred to Mr. Sprinkel -- Stephen Markman, Assistant Attorney General for the U.S. Department of Justice, Laura Giannotta, State Director of

the National Federation of Independent Businesses of New Jersey, and Senator Dick Zimmer, New Jersey State Senate. If those people are here--

REVEREND CLIFFORD MARLOWE: (from audience) There's a lot of regular, middle class people here from citizens' groups that were hoping to get to testify. All the heavy hitters are out from Washington and the Justice Department, and I don't know if that's-- I'm not trying to insinuate that you're saying that little people don't know what the hell they're saying, but we'd like to at least get a chance to say something because this isn't an issue that's just wrapped up for big people.

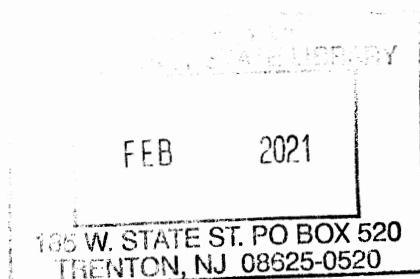
ASSEMBLYMAN MARTIN: Can I have your name for the record, sir?

REV. MARLOWE: Reverend Clifford Marlowe from Pennsylvanians to Protect the Constitution.

ASSEMBLYMAN MARTIN: And Reverend, have you heard anybody here this morning imply that little people wouldn't have a chance to participate?

REV. MARLOWE: Well, you said you had the time to hear two more groups, and it's eleven, and it was only supposed to go to eleven. I would just like to know if that is the intention of the Committee to cut it off as soon as you hear these next two groups?

ASSEMBLYMAN MARTIN: Reverend, I don't mean to engage with you in insults. I think what you've said is at least implicitly an insult to me. I've said that before we would take any action on this measure, everyone would have an opportunity to be heard. I fully intend to abide by that. It's obvious that not everyone will be heard. I think in deference to some people, like Mrs. Schlafly who flew in from Chicago, and Mr. Sprinkel who came in from Washington, that we would allow them to be heard. I know the sponsor of the measure had asked that he wanted to have some heavy hitters --



as you put it -- have an opportunity to be heard this morning. And we'll take as much testimony as we can, including yours. But if we spend all our time debating this issue we won't be able to take any more testimony. So, we'd ask you to be patient. Thank you.

We'll begin. On our path we've taken people to the left and asked them all to confine their remarks, if they will, to no more than five minutes, and then have an opportunity for questioning from members of the Committee.

We'll begin with Laura Giannotta, who's State Director of the National Federation of Independent Business of New Jersey.

L A U R A G I A N N O T T A: Mr. Chairman, members of the Committee, I appreciate the opportunity to present the views of the 7900 members of the National Federation of Independent Business here in New Jersey. They support ACR-22, which is legislation calling for a convention to propose a balanced budget amendment to the Constitution.

Just by way of background, the National Federation of Independent Business represents over 500,000 independent business owners nationwide. As I said, we have 7900 members here in New Jersey. NFIB and NFIB of New Jersey, develop their positions on legislation by individually polling each member.

The issue facing you today, and addressed by ACR-22, is one of the primary concerns of business owners nationwide. When polled in 1987, 71% of our members in New Jersey supported a call by the New Jersey Legislature to petition Congress for a limited constitutional convention.

The Federal budget has been balanced only once in the last 20 years. Federal spending continues to increase, and small business owners are fed up. They see Congress continuing to increase spending, and not taking into account the effect on individuals in this country as well as business owners. The conventional legislative approaches that have been tried have

not worked. The only alternative small business owners feel is left is a constitutional amendment. They feel that will provide the fiscal discipline necessary to balance the Federal government's budget.

Therefore we ask you to support ACR-22, and appreciate the opportunity to speak to you. I've submitted testimony that you can all read at your leisure.

ASSEMBLYMAN MARTIN: How many businesses is that?

MS. GIANNOTTA: Seventy nine hundred in this State, and 500,000 nationwide.

ASSEMBLYMAN MARTIN: Okay.

MR. NISKANEN: Mr. Chairman and members of the Committee, my thanks for this opportunity to address two core issues addressed by ACR-22.

My own involvement in these issues dates from 1972, when Governor Reagan asked me and a few others to draft a proposed amendment to limit the tax authority of the State of California. Since that time, as a founder of the National Tax Limitation Committee, I have contributed to the drafting and promotion of similar amendments in several other states, and several of the proposed amendments to the Federal Constitution.

The case for a limit on Federal borrowing has been recognized since the dawn of our republic, and was one of the few constitutional issues in which Alexander Hamilton and Thomas Jefferson agreed. In his last report on the public finances, Hamilton wrote, "There is a general propensity in those who administer the affairs of a government, founded in the constitution of man, to shift off the burden from the present to a future day; a propensity which may be expected to be as strong in proportion as the form of the state is popular." Jefferson later reflected on this issue in the following words, "I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our

government to the genuine principles of the Constitution. I mean, an additional article taking from the Federal government the power of borrowing." It is necessary to consider the Federal government. The primary problem that such an amendment would address is that our routine political processes in a democracy do not adequately represent the interest of future generations. Resolving this problem need not require an absolute prohibition on new borrowing, only that the decision to authorize additional borrowing be based on more restrictive criteria, or a broader consensus, than decisions on routine legislation.

The case for a limit on Federal taxation is more complex, but is no less important. For the first 150 years of our republic, the role of the Federal government was limited, with few exceptions, to the powers enumerated in Article I, Section eight of the Constitution. As late as 1929, the Federal budget, constrained by these powers, was about two and a half percent of our national output. Since that time, however, the range of Federal powers and the relative size of the Federal budget has expanded enormously, without any change in the spending powers authorized by the Constitution. The only constitutional basis for these expanded powers is an obscure 1936 ruling by the Supreme Court in U.S. v. Butler that: "The power of Congress to authorize appropriations of public money for public purposes is not limited by direct grants of legislative power found in the Constitution." Congress may now appropriate money for any activity that it defines as serving a public purpose. One may be confident in stating that our initial Constitution would never have been ratified if this later interpretation had been anticipated.

We may have reason to argue whether the enormous broadening of Federal powers during our lifetime is appropriate. For the moment, however, my argument is that many of these powers have no basis in the explicit Constitution.

The enumerated powers are no longer an effective limit on the scope of Federal activity in the Federal budget.

There is a reasonable case that it is better to limit the Federal budget by specific limits on Federal powers as the framers initially intended, rather than by limits on the authority to borrow and tax. It is probably too late, however, to put this genie back in the bottle. Most of the Federal budget now finances programs for which there is no explicit constitutional authority. The case for some type of limit on Federal taxes is to constrain the total fiscal effect of the exercise of these powers as a substitute for the constitutional limits on the specific enumerated powers that are no longer effective. The case for a balanced budget/tax limitation amendment to the Federal Constitution, thus, is to assure that the decisions to increase the Federal debt, or Federal taxes, reflects a broader consensus than that required for routine legislation.

Each of the several proposed amendments that have been considered by Congress would permit Congress to authorize any level of borrowing and taxes that commands broad consent, and would also suspend these rules on a declaration of war. My own preferred proposal would also provide a much needed stability to the structure of the tax code, that would not be achieved by the other proposals. Similar provisions in the constitutions of many states and of several other nations have proved to be most effective.

A balanced budget/tax limitation amendment is no substitute for the hard choices that will be necessary to reduce the Federal deficit and to constrain the growth of Federal taxes. The experience of many years, however, testifies to the importance of forcing these hard choices by a constitutional amendment that would authorize an increase in Federal debt or taxes only when approved by a broad consensus.

In 1982, a carefully crafted balanced budget tax limitation-amendment was approved by more than two-thirds of the Senate and by more than a majority, but by less than the required two-thirds of the House. Since that year, unfortunately, both the Federal debt and Federal taxes have increased sharply. But Congress has resisted approving an amendment that would constrain their authority to continue on this dangerous course. Additional pressure from the states -- including, I hope, New Jersey -- will be necessary to force Congress to approve such an amendment for ratification by the states. Such pressure must include a call for a constitutional convention as the only effective means to force Congress to address this issue.

May I now address the second core question, what I regard as the irresponsible and wholly unfounded charges that a constitutional convention presents the risk of a wholesale revision of our Constitution? The most outrageous of these charges, from the newsletter of the Liberty Lobby, is: "The drive for a constitutional convention is not simply an effort by conservatives to balance the budget, but is instead a covert attempt to destroy the U.S. Constitution and replace it with a Soviet or British parliamentary style constitution." You should recognize that the most vocal opposition to a convention call to force this issue now consists of a rather strange alliance of those who want to greatly expand Federal spending and Federal powers, and those who maintain an unfounded fear that a convention would destroy the Constitution.

There are at least four sequential protections against a radical change in the Constitution that should be recognized. And at two levels the legislatures of several states have a critical role:

- 1) In response to additional pressure from the states, Congress is most likely -- but not for sure, but is most likely -- to approve such a balanced budget tax limitation amendment

of their own design, rather than calling a convention and leaving the issue to their design. This was the effect of similar state pressure that led Congress to approve the Seventeenth Amendment providing for the direct election of U.S. Senators.

2) Most legal scholars, including those now in the Department of Justice, conclude that Congress may establish the procedures for a constitutional convention and may limit a convention to just one or more specific issues.

3) State legislatures have the authority to select members of a constitutional convention, or the rules by which such members are selected. The charge that a convention would act irresponsibly in effect is the charge that state legislatures -- including that of New Jersey -- would act irresponsibly in exercising this authority.

4) Most important, the only authority of a constitutional convention is to draft one or more amendments to the Constitution. Any such amendment or amendments approved by convention would become a part of the Constitution only after subsequent approval by the legislatures of 38 states. Again, the charge that a constitutional convention represents a threat to the Constitution, in effect is a charge that state legislatures -- again including that of New Jersey -- would approve a radical change of the Constitution.

These four and other protections assure that any change to the formal Constitution would be approved only by the broad consent of the American people and their representatives.

In summary, there is a legitimate basis for debate about whether a balanced budget/tax limitation amendment is necessary or desirable. On that matter my position is clear, but I respect those who have a different position. There is no legitimate basis, however, for a charge that a constitutional convention would destroy the Constitution, or that the broad majority of Congress and the American people have somehow

conspired with, or have been duped by, those few who may have more radical objectives. Thank you for your attention.

ASSEMBLYMAN MARTIN: Thank you, Mr. Niskanen. At this time, Mr. Markman?

STEPHEN MARKMAN, ESQ.: Thank you, Mr. Chairman. I'm pleased to be here to testify this morning. I would like to summarize my testimony, which itself is a summary of the report prepared by the Justice Department on whether or not a convention could be limited. I hope I might leave some copies with the Committee. (audience informs witness they can't hear him)

Mr. Chairman, I also want to stress that I'm not here to address the issue of whether a constitutional convention should be called at this time, or whether we need a constitutional amendment requiring a balanced Federal budget. I'm here only to discuss the meaning of Article V of the Constitution.

Although reasonable arguments can be made, and have been made on both sides, I think the far better reading of Article V supports the view that a constitutional convention can be limited to a single topic or several specific topics. Again, we go into this in much greater detail in the Justice Department report.

I think that the scholarly commentary, as well as the popular discussion on this subject, can be reduced to three basic themes: equality, consensus, and practice.

Let me talk first about equality briefly. A great deal, if not most of the public debate about Article V can be reduced to the question whether in initiating constitutional amendments the states and the Congress are peers or equals under Article V, or whether the Congress is superior to the states? Does Article V provide that the Congress can initiate constitutional amendments one by one, but restrict the states to initiating a process resulting in a wide open constitutional

convention that may result in one or several amendments, or a complete revision of the Constitution?

The answer to this question is, in my view, that under Article V the states are equal to the Congress. The purpose of Article V is to provide a constitutional power of amendment that makes the states equally able to initiate the amendment process, and equally able to limit the subject matter of proposed amendments. This conclusion I believe is supported by the language, the structure, and the history of Article V. The structure of Article V strongly suggests that each optional mode of amendment in Article V is different only in form. The Article is a single sentence that imposes an identical requirement of a two-thirds majority on the Congress and the states to begin the amendment process. It explicitly states that in either case -- that is, regardless of the method chosen to determine the necessity of an amendment in the text of a proposal -- a proposed amendment is valid if ratified in the required manner. It prescribes an identical super majority vote for either mode of ratification.

On the whole, the structure of the text indicates clearly that the optional modes of conducting each stage -- that is, congressional initiation versus state initiation -- are merely procedural alternatives. There is no suggestion in the language or the structure of Article V that the optional modes are substantively distinct, that one is subordinate to the other, or that the use of one mode is restricted to a particular topic or circumstances but not the other mode. I believe a fair reading of the text of Article V would make that clear.

Also, the historical record concerning the framing of Article V shows that the article contemplates an equal power of initiation between the states and the Congress, and that this basic equality was the intended result of a compromise of the 1787 convention. The debates about what became Article V

demonstrate clearly that the power of initiating the amendment process was to be granted to both the states and the Federal government equally. And the clear purpose of Article V, finally, would be undermined if a convention could not under any circumstances be limited, whatever the desire of the states applying for it. It would be undermined because Article V would no longer provide an equality between the states and the national government. The national government could be limited in this proposal to a single amendment, while the states if they wanted to change the Constitution even in a fairly narrow way, would have to place the entire Constitution up for grabs. This, in Madison's words, would not allow the states and the national government to be equally enabled in the origination of amendments by the states and by the Congress.

That's the argument that follows from equality.

The next argument is one that follows from consensus. The Supreme Court has made it clear that the trigger in Article V is that there be a contemporaneous consensus among two-thirds of the states proposing an amendment to the Constitution. Let's consider the convention applications that the Congress has already received, on June 20, 1988 in the past seven years.

The Congress currently has pending before it constitutional conventions from 39 of the states; from 39 states in the past seven years. Since Article V requires the Congress to call a convention when two-thirds or 34 of the states apply, why isn't the Congress already required to call an Article V convention? The answer is that there are not two-thirds calling for the same kind of convention. Some states have called for a convention on the subject of a balanced budget, others for a convention on abortion, others for a convention on prayer, and still others on other subjects. In other words, there is no present requirement that the Congress call a convention because it is well understood by

everybody that the Constitution requires consensus, and because practically everyone shares an intuition about the meaning of consensus.

Before a convention can be called, more is required than that two-thirds of the states apply for a convention. Rather there must be two-thirds of the states calling for a convention on the same subject at the same time. It then, I would respectfully submit, makes no sense on the one hand that Congress need not call a convention today because even though it has more than 34 applications, it doesn't have two-thirds on the same subject; but on the other hand that any convention called by the Congress after receiving the requisite number of applications on a single subject would not be limited to the subject that led to its creation. Either consensus on the subject of a convention is essential, in which there is no present requirement that the Congress call a convention, or such consensus is irrelevant, in which case a convention must be called immediately.

The third argument, Mr. Chairman, flows from the idea of past practice. And I simply point out the fact that in the 20th century alone there have been more than 300 applications for limited conventions coming from every one of the states of the Union, including New Jersey. What those legislatures were saying when they submitted those conventions, in my judgment, was they believe a convention could, and ought to be, limited to that subject matter. They were not saying we want to open up the Constitution for grabs; we want to repeal the First Amendment; we want to analyze the Constitution from the root on up. They were simply saying we have a narrowly focused grievance, and we would like to have the convention look at that narrowly focused grievance.

Mr. Chairman, I think, in summary, that the text of the Constitution, the historical practice of the Constitution, the legislative history of the Constitution, all make very

clear that both the Congress and the states would have equal authority in this process. And indeed the overwhelming scholarship -- almost the unanimity of scholarship -- suggested that a limited constitutional convention was appropriate until recent years when the balanced budget debate unfortunately injected a great deal of politics into this discussion.

What seems to me to be most runaway is simply the rhetoric. The Congress, if it wanted to, could be characterised as a runaway body just as much as a constitutional convention could be. The Congress, if it wanted to, could repeal the First Amendment tomorrow. The Congress, if it wanted to, could propose repealing the Fourteenth Amendment. It doesn't do that. It doesn't do that for the same reasons that a constitutional convention wouldn't do that. There is no sentiment in the country for those kinds of changes.

I'd like to conclude with a statement by one of the greatest constitutional scholars in the country, Professor Van Alstyne of the Duke University Law School, who says, "It's perfectly remarkable that some have argued for construction of Article V not merely limiting the power of state legislatures to have a convention, but limiting that power to its least expected, least appropriate, most difficult, and yet most dangerous use."

I would also say in conclusion that I find Mrs. Schlafly's remarks that those of us in Washington are now trying to pass the buck to the states, to be a remarkable proposition. Indeed what is happening is that there are some people in Washington, and a great many people outside of Washington, who would like to see the states reassert their sovereignty in our constitutional processes. The two forms of amendment in Article V were the underpinnings, the foundation of our system of dual federalism; and the fact that one of those methods of amendment has been dormant and extinct for 200

years is one of the reasons I would respectfully suggest that our system of federalism is in as dire straits as it is today. Thank you very much.

ASSEMBLYMAN MARTIN: Senator Zimmer, former Chairman of the Assembly State Government Committee. Good morning.

SENATOR RICHARD A. ZIMMER: Good morning, Mr. Chairman. As you just observed, I did sit at the other side of the table last year and the year before when this Committee considered a very similar concurrent resolution. For those of you who were not here then -- and that includes the two members of the Committee who are new to the Assembly this year, as well as those in the audience -- I would like to point out that those two hearings were very lengthy. They gave an opportunity for everybody who wanted to speak to do so. And combined with this hearing, and a hearing that I'm sure will follow, this legislation has been given as thorough and as thoughtful a review as any that I can think of in my years in the Legislature.

It's for that reason that I think it was particularly inapt for Governor Hughes to point out that this call for a constitutional convention has often in other states taken place in a hasty process. In fact, there is a great deal of due process involved in this consideration, and I'm beginning to think there may be perhaps too much due process if we can't actually get to a vote on the merits, on the substance of this important proposition.

I would urge you, Mr. Chairman, to hear out everyone, to take as much time as is involved. This was a very illuminating session this morning, and I'm sure that the session as it continued will continue to cast light on this subject. But I urge you, and I urge the members of this Committee, to press on, and after due process has been afforded to exercise your judgment on this important issue, and to report it out of Committee so that every member of the Assembly

can vote on this. This is an important enough subject. It's one that's been ventilated enough, and one that has received enough attention, so that I believe that it is one of those issues which demand an up or down recorded vote in both houses of our Legislature.

Mr. Chairman, that's my respectful suggestion, after the proceedings that took place in the last session when I was Chairman, and the proceedings that are taking place in this session with you as Chairman. And I might say, you're doing a better job than I did, and I commend you for that.

I would say in that connection that ACR-69, although well-motivated, is essentially a diversion from the business at hand. I would urge you to vote first in favor of ACR-22 because that is the only measure that is going to get the results that we're looking for.

Now, when I began to be interested myself in this issue, I had serious reservations about the consequences of a proposed constitutional convention. But the more I studied the issue, and the more I listened to the testimony -- such as the testimony that is being presented here today -- the more I became confident that this was the only way we could go.

Those you have heard, and those who you will hear who are opposed to this method of forcing an amendment to the Constitution, essentially distrust -- and in some cases are deathly afraid -- of the people themselves; the people who will be electing the delegates to the convention, and the people who would be involved in the ratification of any proposed amendment to the Constitution. I can't follow the reasoning of Mrs. Schlafly when she says that the proponents of a constitutional convention are too weak to elect delegates. If so, how can they impose their nefarious schemes, whatever they may be? I would urge you, Mr. Chairman, to ask the proponents who feel there's a hidden agenda here, to specify exactly what that hidden agenda is; because if you may recall, during the last

series of hearings they're all over the lot. They are as widely divergent as the imagination of the human mind. I think that's all they really are; products of imagination.

We are dealing, however, with a difficult reality. We are dealing with the fact that Congress is frankly unable to balance its own budget, as members of Congress and members of the Federal establishment are admitting to us today, and it will take more than will-- As Mr. Phillips asserted, it would only take will-- It will take more than that, to balance the budget. I think we at the State legislative level know that it takes more than will for us to balance our budget. If we did not have a balanced budget provision in our State constitution, I firmly believe that we would run deficits at the drop of a hat, and we would often drop the hat ourselves if given the opportunity.

Mrs. Schlafly has said this is Russian Roulette, by which I guess she means that only one of the chambers is loaded in a gun that is pointed to our head. The more I have studied this issue, the more I believe that this is not Russian Roulette, that the threat to the Constitution is negligible. A more apt analogy is that we as a nation have a gun pointed at us with all of its chambers full, and that's the gun that is the product of year after year of grossly excessive deficits that's ruining our economy, and depriving our posterity of their prosperity. To carry the theme a little further, what we need at this point is a shotgun pointed at Congress. That is the only thing that they will respect and respond to, and that shotgun is the threat of a constitutional convention.

Now, I have studied a great deal of learned writings in this connection. I've read the "Federalist Papers," and law review articles by professors and legal scholars. But I'd like to conclude by reading to you from the bottom of a box of herbal tea, Celestial Seasonings tea made in Boulder, Colorado. It's a new age type of tea. The reason I want to

quote from this is to show you to what a great extent this realization has permeated our society. The last place in the world you'd expect to see support for my thesis and the thesis of the proponents of this proposal would be on a box of herbal tea, but let me quote this. It's a quote by Thomas Jefferson, just so you'd know the source: "I place economy amount the first and most important virtues, and public debt as the greatest of dangers to be feared. To preserve our independence, we must not let our rulers load us with perpetual debt. If we run into such debts, we must be taxed in our meat and drink, in our necessities and in our comforts, in our labor and in our amusements. If we can prevent the government from wasting the labor of the people under the pretense of caring for them, they will be happy." That's Thomas Jefferson. Thank you.

ASSEMBLYMAN MARTIN: Members of the Committee? Mr. Cimino?

ASSEMBLYMAN CIMINO: A question, Ms. Giannotta is it? (mispronounces name)

MS. GIANNOTTA: Giannotta.

ASSEMBLYMAN CIMINO: Giannotta. Pardon me. I'm Italian and I didn't even get that right.

A question for you. You said that you had done a survey, and that you were representative of the 7900 members of the New Jersey Chapter of the NFIB. And you said that 71% of your members agree. How many of the people in your New Jersey chapter responded to that?

MS. GIANNOTTA: I don't have the figures with me, but I can provide them to you this afternoon.

ASSEMBLYMAN CIMINO: Okay, if you would please. As a member, I don't ever recall responding to that.

Secondly, if I could ask you, down in paragraph four you articulated that between 1965 and 1980, the Federal budget grew 400% while the private sector economy grew only 270%.

Could you articulate for me what the Federal budget grew from 1980 to 1987?

MS. GIANNOTTA: Again, I don't have those figures with me, but I will provide them to you.

ASSEMBLYMAN CIMINO: Okay. If you'd be kind enough to do that.

If I may continue, Mr. Chairman? (affirmative response) Thank you.

Through the Chair, to Mr. Markman. A question to you sir, so that I understand the Federal governmental apparatus properly. As a Deputy or Assistant Attorney General, or one of those in the Department of Justice, for whom do you work?

MR. MARKMAN: Well, I was appointed by the President, but I work directly for the Attorney General.

ASSEMBLYMAN CIMINO: And if I understand, is the Federal government apparatus not dissimilar to New Jersey's, in the sense of the term that the Attorney General is the chief law enforcement officer of the nation?

MR. MARKMAN: Yes, sir. That's correct.

ASSEMBLYMAN CIMINO: And as the chief law enforcement officer of the nation, is he also the attorney for the President when there is not a conflict between the President and himself? Does he also represent the President of the United States?

MR. MARKMAN: To a certain degree, yes he does. Certainly.

ASSEMBLYMAN CIMINO: To what degree does he represent the President of the United States? Is he not the President's attorney when in fact there is no conflict?

MR. MARKMAN: Generally that would be true. Yes, sir.

ASSEMBLYMAN CIMINO: Okay. Additionally, can I ask if in fact you are the author of the proposed constitutional convention implementation bill, or any section thereof?

MR. MARKMAN: You mean, me personally?

ASSEMBLYMAN CIMINO: Were you involved in the drafting of the legislation.

MR. MARKMAN: Yes, sir. I used to be with the Senate Judiciary Committee and I was active in that issue at that point.

ASSEMBLYMAN CIMINO: Okay. And then finally, some question about the amount of rhetoric that's going on with regard to whether there in fact ought to be a call or not. Could I ask the four of you that are sitting here, with all due respect -- and I don't mean this facetiously -- how each and everyone of you feels about the American Legion?

SENATOR ZIMMER: I have the highest regard for the American Legion as patriots, as soldiers, and as veterans, but not necessarily as constitutional scholars.

ASSEMBLYMAN CIMINO: As those that have served this country well, would you think that they are inappropriate then, Senator, in suggesting that the call for a constitutional convention of any purpose is inappropriate? They apparently opposed it back in 1987. That's why I'm asking. Would you think that people who have served this country in that kind of capacity are inappropriate in calling for opposition to the calling of a constitutional convention?

ASSEMBLYMAN MARTIN: I might have to say here -- just as you raised the issue before -- some of these groups' leaders, as you well know, don't always speak for the members, as I think you yourself were aware. And of that group that you just mentioned, I know I was not polled as far as taking a position.

SENATOR ZIMMER: That's right. Nor was Mr. Kamin, the sponsor.

ASSEMBLYMAN CIMINO: Well, that's fine, and I appreciate being made aware of that. The only reason I raise the issue, Mr. Chairman, is that the resolution was apparently passed at their 69th annual convention back in 1987. That's

the only reason I raised the issue. Thank you. I have no further questions or comments.

SENATOR ZIMMER: Mr. Chairman, just for the record, Assemblyman Kamin is a veteran, and I believe a member of the American Legion in good standing.

ASSEMBLYMAN MARTIN: I thought I was. In the interest of time -- I know the sponsor had asked for one other person to speak on this panel, and then we will have five persons immediately afterwards. I do not believe this morning we'll be able to have any other testimony. Let me just advise who those persons are. I might point out that I am going as close as I can to a list of those persons who has indicated they had prepared remarks. I haven't followed it absolutely, but I've tried to follow it very closely.

From those who had indicated previously their desire to speak we would include Marilyn Rosenbaum, the Chairwoman of the New Jersey Citizens Right to Protect the Constitution; Ronald Coun of the American Jewish Congress from New Jersey; Paul Smith, the Director of Government Affairs, the New Jersey State Chamber of Commerce; Seymour Reich of the B'Nai B'Rith; and also Reverend Dudley Sarfaty of the New Jersey Council of Churches.

Before they come up, I would ask the fifth member of the panel -- we only had four seats -- and that's Representative Halbrook from Mississippi, to address the panel.

ASSEMBLYMAN KAMIN: Mr. Chairman, if I might add before he starts. I very much appreciate the indulgence and patience of this Committee, and especially all of the members representing the different groups that have been here to testify to give you a balanced approach to this balanced budget amendment.

DAVID HALBROOK: Mr. Chairman, I thank you very much. I hope we don't lose the audience here. I've got something to say to everybody.

New Jersey State Library

I do have a prepared statement. In view of the testimony that we have heard this morning, I am going to deviate from that. I would like to submit the statement for the record. There are enough copies here for each Committee member. Copies of it can be distributed for anyone who wants them. I do want them distributed to the members of the Committee, however.

I am a member of the legislature in Mississippi. In politics, in the legislature, we spend a great deal of time prundersialing ourselves. I will do that first, very briefly.

I have been a member of the Mississippi House of Representatives for 21 years. This is my sixth term. As a member of the House of Representatives I have run in four different districts for those six terms. At the same time, I live in the house I started with, sleep in the same bedroom with the same woman I started with. The people have been very kind to me, and I do greatly appreciate it.

In business, I am a farmer, I'm in the real estate business, and my service in the legislature is just incidental to these other activities.

For the record, I am a Democrat. This, so far as I am concerned, is a bipartisan movement. It cuts across all political lines. It cuts across all lines of government. It is not anything that is aimed at Congress particularly, nor is it anything that is aimed at the executive particularly.

We have heard some reference to the little people. I would just like to say this in passing. In Mississippi, I represent more little people, I feel quite certain, than there are in the State of New Jersey. I know very well how the little people feel who have to meet the notes on the washing machine; very well how the little people feel who have to pay the rent; very well how the little people feel who wonder if their car is going to be repossessed. Let me assure you that the little people favor a balanced budget.

Speaking as a veteran, as a World War II veteran, a member of the Naval Air Corps, I don't know about the rest of us Legionnaires, but this Legionaire wants a balanced budget. I feel quite certain that if it were submitted to the membership of the American Legion, it would get the same response that it has always gotten from the public. Whenever it has been submitted to the public, a minimum of 60% of the electorate has favored a balanced budget amendment. It has run from that minimum up to a high of 85%. Eighty-five percent of the electorate have favored the balanced budget amendment.

I told you I am from Mississippi. Our motto is, "The Hospitality State." I would say that we do not have a corner on hospitality. I have appeared here in New Jersey before. I have appeared here on the same subject. There were some members sitting at these tables right here right now, who were here when I appeared before.

At that earlier appearance we had what I thought was a real window, a real break of light. One of the members of the Committee -- who is sitting at this table right now I believe -- gave an almost eulogy on the characters and attributes and the fine things of the members of Congress; and concluded saying that he did not think that people of this character could do anything, or would do anything, that would hurt the country. A little bit later on in that same meeting he said, "Why haven't they cut spending? Why haven't they raised taxes?" Then the window of light, he answered his own question. He said, "They don't want to get unelected." Now, being from Mississippi, and not in common with the terms in New Jersey, "unelected" was a new term to me. I had never heard that before. But that is the reason that Congress does not balance the budget. They do not want to get "unelected."

Now, I am going to deviate from the testimony that I had planned. I have given you copies of it. When I get through with my very brief remarks here I would like the opportunity to put an exhibit before you if I may.

I have been amazed -- amazed and appalled -- at some of the testimony I have heard, absolutely. I have been amazed and appalled that so many defenders of the Constitution do not want to see its provision used and followed. I have been amazed that the opposition has been based almost solely on fear. I do not think that fear as a basis for an argument like this, should be the overriding concern. If fear is the overriding concern, then we all need to leave the seats that we're sitting in.

We have had experts quoted. If you will look at the exhibit that I have given you, the testimony that I have planned, you will find that a great majority of the experts -- Sam Ervin, the Justice Department, the American Bar Association -- a great majority of the experts come down on the side of the fact that a constitutional convention can be limited. If you will read Article V you will find that Article V says Congress can set the rules for the constitutional convention.

We have had one constitutional convention. This may come as a great surprise to the people who have testified, but that constitutional convention did not amend the Constitution. That constitutional convention did no more than the one that could be convened now would do, that is, submit amendments to the states for ratification. Who can amend the Constitution? Congress can't do it. The convention can't do it. The only people that can amend the Constitution are you, and you, and you, and you, and you when you ratify the amendment that Congress or the convention might propose.

If we can't trust the people to run-- Excuse me. If we can trust. We have been told that we can trust the people to run the country. It's a little bit difficult for me to understand if we can trust them to run the country, why we cannot trust them to set up the rules by which they will submit something to us for our approval? They would have to submit this amendment to us for our approval. If we can trust them to

run the country, why can't we trust them to submit something to us? I do not understand it.

The course that we are on is one that is headed for disaster. I cannot name, and I challenge anyone here at this panel or anyone in this room, to name a single country that has achieved greatness following the fiscal course that we are currently on. I challenge anyone at this panel, or anyone in this room, to name a single country that has maintained greatness following the fiscal course that we're on. Now, I can tell you many of them who have crumbled under the weight of the debt. In fact, the weight of the debt is one reason that the last great conflict we had, World War II, came about. The weight of the debt on Germany. This, and the people it put in power in the weight of the debt, are something that we have a great deal more to fear from than we do from the possible actions of a convention, which would submit something to us for approval.

I wish I had known before today that this was Family Day. I really do. I am in Washington for a holiday. I'm up there on government business, but for a little holiday. I invited my oldest daughter up there, Ann, and I invited her to bring three of my grandchildren -- all three of her children -- Eric, he's 13, Jericho is seven, and then Hope who is two and a half.

REV. MARLOWE: (inaudible comment from audience)

ASSEMBLYMAN MARTIN: I have to apologize for the Reverend's rudeness. This is the fourth time he has interrupted.

REV. MARLOWE: He's over five minutes.

MR. HALBROOK: I take no offense, Mr. Chairman.

ASSEMBLYMAN MARTIN: Thank you. I can't speak for others.

MR. HALBROOK: The youngest of those, two and a half years old, the reason I brought this up is because it bears

directly on what we're talking about today. During her life, she has had \$1000 added to what she owes, and she's not but two and a half, by the deficit of the U.S. Congress. She has had every year of her life almost \$1000 added to what she owes from the interest on the debt. Now, if you want your children, if you want your grandchildren saddled with that debt, then you differ from me.

Now, if I may, Mr. Chairman, I do have a little exhibit. In order to present this I will have to leave the microphone, if I may. I'm going to ask this lady here (referring to woman in the audience) to hold the end of this ribbon for me.

UNIDENTIFIED MEMBER OF AUDIENCE: Excuse me, Mr. Chairman. Will there be an opportunity for some of the rest of us to submit our testimony since he's going to be taken the rest of 15 minutes? Those of us from New Jersey-- (inaudible)

ASSEMBLYMAN MARTIN: I already told you what the procedure will be.

UNIDENTIFIED MEMBER OF AUDIENCE: I didn't understand. Will we have an opportunity to at least hand in our testimony?

ASSEMBLYMAN MARTIN: You can always hand in your testimony and I'll--

UNIDENTIFIED MEMBER OF AUDIENCE: I resent the fact that a person from out-of-state is given so much precedence over-- (inaudible)

ASSEMBLYMAN MARTIN: I'm sorry if this doesn't please you 100%. We're trying to run this as fairly as we can. If you want to take up time in going back and forth-- We're going to continue. At least I'm going to show this gentleman from Mississippi respect, and if you would like to show this exhibit I would be more than happy to see it.

MR. HALBROOK: This will not take but a very short period of time. If you will hold this for me. (gives the end of a red-ribbon to woman in the audience) She is holding 1776, the year that this country started. Each inch on this ribbon represents a billion dollars. Now, one inch to a billion dollars that sounds fair enough to me. The blue ribbon there is for Thomas Jefferson. During Thomas Jefferson's administration we balanced the budget and even paid off the debt. Hold it tight now. (speaking to woman in the audience holding the end of the ribbon)

All right. We're down here at this first ribbon to 1945. This is at the end of Second World War. At that time we had a debt of \$217 billion. This is 18 feet, two inches. This is all just like it ought to be.

Here is Harry Truman, 1945 to 1953. He added \$4.6 billion to the ribbon, 4.6 inches. This is Eisenhower, 1953 to 1961. He added \$15.4 billion. This is Kennedy. He was in, as we all know, only 1000 days, three years. He added 11.8 inches, \$11.8 billion. (Mr. Halbrook continues around the room with ribbon)

This is Mr. Johnson, the Great Society, 41-and-a-half inches, \$41 billion. This yellow ribbon signifies an act of Congress, the first Congressional Budgetary Act. Mr. Bayh was in the Congress then. The reason I remember it so well is because I testified in Congress and he said, "We have passed this act, and this act is going to keep us out of trouble. We will not have any more problems with the debt. We know where we are now."

This is Mr. Nixon. As I told you, this is bipartisan. I don't think there's a party flavor to it. Sixty four point eight billion. Sixty four inches. Will you hold this for me? Let's see how far can we get here. And for the benefit of those who are in a hurry, I'm going to stretch it up. This is President Ford, \$125 billion. Will you hold that

for me please? This is Mr. Carter, \$226.6 billion. (inaudible as Mr. Halbrook walks around the room with ribbon)

This yellow ribbon represents Congress again. The Gramm/Rudman/Hollings Act? When the Gramm/Rudman/Hollings Act was passed they said that was going to get us out of trouble. They said that last year's debt could not exceed \$108 billion. It was something like \$176 billion. I don't trust Congress, myself.

This is Mr. Reagan in 1987. We're up to one trillion, one hundred eighty one million. We're bipartisan, I'll tell you that. That was in '87. Let me go a little further. This is '88, coming up to two trillion and still counting.

This is 1989 estimated deficits, \$136 billion. That has been raised. Today it's something like \$170 billion.

All right. I'm to the end of my rope now. I don't know about you all. These are just estimates here. What the total debt will be, what the total deficit will be, no one knows. If you think that your children are safe, if you think that your grandchildren are safe in the course that we're following, you have much more faith than I do.

I will be glad to answer questions if anybody wants to ask them. Thank you.

ASSEMBLYMAN MARTIN: Thank you. Any questions of the Representative from Mississippi? (no response) Thank you very much.

At this time we'd like to call Marilyn Rosenbaum, Chairwoman of the New Jersey Citizens to Protect the Constitution; Paul Smith, Director of Government Affairs, New Jersey State Chamber of Commerce; Ronald Coun, American Jewish Congress; Seymour Reich, International President of B'Nai B'Rith; and Reverend Dudley Sarfaty, New Jersey Council of Churches.

UNIDENTIFIED MEMBER OF AUDIENCE: Mr. Chairman, will this be the end? Do I understand you correctly that this will be the end of the testimony this morning?

ASSEMBLYMAN MARTIN: That is correct, yes.

UNIDENTIFIED MEMBER OF AUDIENCE: So that anybody else who has come will not get an opportunity -- but may submit it to you?

ASSEMBLYMAN MARTIN: They can submit it, and at the next hearing we will continue.

UNIDENTIFIED MEMBER OF AUDIENCE: You will be calling another hearing?

ASSEMBLYMAN MARTIN: Yes.

SECOND UNIDENTIFIED MEMBER OF AUDIENCE: Will the people who attended this morning be notified about the next hearing?

ASSEMBLYMAN MARTIN: If you will see Mr. Margeson afterwards, we will attempt to take a list of everyone who wishes to testify and your address, and we will notify you when we have the next hearing. Sir?

THIRD UNIDENTIFIED MEMBER OF AUDIENCE: Can you give me an estimate -- an approximate estimate -- when that might be?

ASSEMBLYMAN MARTIN: I would think it would be in July. I have to poll the members of the Committee to ascertain when they would be available.

THIRD UNIDENTIFIED MEMBER OF AUDIENCE: Okay. Thank you.

FOURTH UNIDENTIFIED MEMBER OF AUDIENCE: Excuse me, Mr. Chairman. If we submit our testimony will we be denied a chance to speak verbally the next time?

ASSEMBLYMAN MARTIN: No. You had asked before if you could submit it, and by all means I said you could.

FOURTH UNIDENTIFIED MEMBER OF AUDIENCE: No. I'm asking the question if we submit something in writing, could we still come back and talk about our testimony?

ASSEMBLYMAN MARTIN: Certainly.

FOURTH UNIDENTIFIED MEMBER OF AUDIENCE: Because some of us have--

ASSEMBLYMAN MARTIN: Certainly. Okay? Mrs. Rosenbaum?

M A R I L Y N R O S E N B A U M: Thank you. Mr. Chairman, and members of the Committee, my name is Marilyn Rosenbaum, and I am a resident of West Orange. I am the immediate past President of the New Jersey Region of the American Jewish Congress. I have been involved in encouraging organizations to join a broad based statewide coalition of groups which has actively opposed calls for a Federal constitutional convention.

I speak here on behalf of 53 groups -- civic, educational, labor, and religious -- a truly diverse coalition, where the organizations differ on any number of issues -- including whether or not it is desirable to have an amendment mandating a Federal balanced budget -- but who nevertheless concur on the vital matter before this Committee. The organizations are listed on the last page of my testimony. I am not about to read 53 names to you.

All of us agree that ACR-22 should not be enacted because we do not believe it's in America's best interest for the nation to be confronted with a second constitutional convention, and would hold to that position whatever the purpose of the convention might be.

I trust that the members of the State Government Committee recognize this particular resolution may well be the single most important issue facing the Legislature this year. The New Jersey Legislature's decision on this matter will have crucial nationwide implications.

The constitutional convention effort has clearly run out of steam, and it is almost running out of states. As more and more legislatures study the issues closely, hold public hearings, and calmly weigh the seriousness of this issue, they continue to reject the calls for a constitutional convention. Recently, both Alabama and Florida have demonstrated that the possibilities of a constitutional convention is a dangerous prospect, and as a result have withdrawn their requests and their calls upon Congress to convene a convention.

When North Dakota issued the convention call in 1975, it triggered a flurry of action in the state legislature, but by 1979 the pace has slowed considerably. In fact, only two states have passed the resolutions this decade. The last was Missouri which did so in 1983. I might add -- off my speech -- that a lot of what we're saying is repetitive. Everybody keeps giving you the same information, but perhaps if we keep giving it to you enough times you'll begin to put it together and realize that we're very serious about defeating this bill.

To begin with, one might ask what motivates these groups to oppose a measure which at first glance seems to resonate with the democratic spirit? After all, what is wrong with a democratically elected or selected group of people from throughout the nation getting together to draft a constitutional amendment, especially one which would bring the budget into balance?

I'll begin my answer by stating that a balanced budget -- even a balanced budget amendment -- is not the issue here. Some of our groups oppose such an amendment, but others, perhaps a majority, simply have no organizational position on that issue.

The issue before this Assembly State Government Committee is not the Federal budget or spending. The issue is this constitutional convention.

The members of our coalition are moved primarily by a sense of admiration for the vitality, the majesty, and the stability of the U.S. Constitution, and we fear that many of its most essential provisions -- especially the Bill of Rights -- could be put up for grabs should such a convention occur.

The twin pillars of our philosophy of government are majority rule and minority rights. While the majority may -- and should -- institute laws, there are certain areas where they are forbidden to tread, areas where the rights of individuals and minority groups are pre-eminent.

We are hesitant to put minority and/or individual rights up to vote, either by the public at large, or by a constitutional convention, and that is what could happen with a runaway convention. Where are the Jeffersons and Madisons -- as was asked earlier -- among us whom we could entrust with the business of rewriting our Constitution? Moreover, even if the people of comparable brilliance and wisdom were to attend a constitutional convention, I doubt that we would take a chance with any redrafting of the Bill of Rights. I would hope that we wouldn't.

Of course, ACR-22 supporters assure us that they are not really interested in a convention. They only wish to threaten the U.S. Congress into passing a balanced budget amendment, and then sending it to the states for ratification. They argue that it is a vital bludgeon to be employed on a recalcitrant or even cowardly U.S. Congress. This argument is both very dangerous and fallacious.

It is, first of all, predicated on the theory that bludgeon can work. But history shows us it really cannot.

In 1911, 30 applications were received from the states over the issue of direct election of the U.S. Senators while the Senate, after years of opposition, was considering a Congress initiated amendment -- the Seventeenth. At that time, only 31 state petitions were required before a convention could be called. Thirty applications had already been received, and a study of the Senate debate and the background at the time reveal that the constitutional convention was barely mentioned.

In fact, William R. Pullen's historical study of that debate reveals that the direct election of senators had been a major part of the populist progressive platform since the 1870s, and that by 1911 more than half of the state legislatures elected their U.S. Senate from one of the candidates selected in the early primaries or conventions. Therefore, it is widely acknowledged that the Senate's

acceptance of direct election of its members did not result as much out of a fear of a convention as it reflected the Senate's acceptance of what was already occurring. ~~that would happen with a~~ ~~runaway~~. The second occasion when applications from the states came close to the requisite two-thirds for calling a convention was in the "one man, one vote" controversy of the '60s. In 1964, the Supreme Court ruled that both houses of state legislatures had to be apportioned according to population. Senator Everett Dirksen, failing in an effort to have Congress propose an amendment, launched a campaign to convene a convention to propose an amendment allowing apportionment of one house of a state legislature on a basis other than population.

During this campaign, 33 states -- one short of the necessary two-thirds -- made application for a convention. If one subscribes to the bludgeon theory, this number should have been enough to stimulate Congress into submitting an amendment. In this instance, Congress took no action and in a short time some states rescinded their applications as interest in the issue faded.

The bludgeon argument also implies that the United States Congress has neglected its duty by refusing to deal with the budget balancing subject. This being precisely the kind of disastrous, congenital failure they believe that the founding fathers envisioned when they wrote the second part of Article V.

Of course, nothing is further from the truth. Gramm/Rudman/Hollings and the endless debate concerning budget deficits indicate that this is not so, and Congress' willingness to tackle the most difficult fiscal issues imaginable was best illustrated most recently when both political parties joined forces to enact a historic tax reform bill.

Still it is argued that we need an amendment in order to lock in any budget balancing fix that may be passed. But,

the Congress dealt with the subject in 1982, in 1984, and in 1986.

In 1982, following extensive hearings and public debate, press editorials, and op-ed pieces, the House voted an amendment down after the Senate had passed it.

Two years later, an effort was made to force an amendment out of the House Judiciary Committee. A concerted public effort was undertaken by amendment advocates, but it fell 46 voters short on a discharge petition.

Then the Senate, which had approved a balanced budget amendment in 1982, failed passage by exactly one vote and the amendment had been beaten again.

The Congress then has not been guilty of recklessly ignoring a crucial matter which threatens every fiber of this republic. It has done its duty. It has acted. It has decided. If we do not like the decisions, let's vote our elected representatives out of office, but let us not repeat the canard that the process is not working, the ship is sinking, and we must chance a constitutional convention or else the ship of state will indeed sink. We simply have not fallen into that kind of constitutional quagmire the framers probably envisioned when they agreed to the second part of Article V of the Constitution.

There are numerous problems and unanswered questions -- in addition to the fear of the runaway convention -- which we must face, and we should consider this constitutional convention, should this effort succeed.

Can Congress overrule a convention after the convention meets on a procedural matter? Should elected state legislators or members of Congress be precluded from serving as convention delegates, and if so, will this mean that only representatives of special interest groups, unattached to the organized parties and political process would run as delegates?

While the answers to such questions are elusive, and are widely disputed among constitutional experts, convention proponents reassure us that no matter what craziness occurs at a convention, we are protected from a runaway because three-quarters of the state legislatures must ratify amendments before they become law.

This safe harbor argument provides small comfort. Presumably, almost half of the needed 38 would include those same legislatures which passed constitutional convention resolutions without benefit of hearings, discussions, debate, or recorded votes.

Let us not forget that three-quarters of the states does not necessarily mean 38 legislatures. It can mean 38 state ratifying conventions.

In 1787, the constitutional convention avoided state legislatures by sending the 16 representatives to state conventions. Who will be delegates to these 50 conventions? Will they be a reflection of the democratic will of the people or will they consist of individuals most closely connected to narrow, self-interest groups?

Also, even if the state legislature ratification process is used, a Federal convention is likely to have a large body of state legislators in attendance. These delegates would presumably have a vested interest in seeing to it that the newly proposed constitutional changes would in turn, be ratified by their own legislatures.

We thus conclude that the only certainty we face should be the magic number of 34 ever be attained, is the cold, dark, and uncharted waters of constitutional crisis.

As one United States Senator has observed, "If we are foolish enough to spend our children's monetary inheritance that's not too gutsy because the kids can probably survive it. But we cannot afford to squander their inheritance of constitutional ideals. Such currency can never be replaced."

Please vote against this resolution. Thank you.

R A L P H W A G N E R: I'm Ralph Wagner. I'm representing the National Council of Churches for Reverend Dudley Sarfaty, who could not be here today. Also, I'm representing specifically the American Lutheran Church and the American Baptist Churches of the U.S.A.

ASSEMBLYMAN MARTIN: If I just may say. I meant to include a representative from the American Association of University Women. Did they leave? (negative response) I would ask if one of you could come up, you'll have an opportunity too to speak.

I'm sorry, Mr. Wagner. Please go ahead.

MR. WAGNER: Mr. Chairman and Committee members, I am not an authority in this area. I've been asked to be a substitute and to merely give the feeling of the people, the constituents of the National Council of Churches of New Jersey, and of the two individual churches I mentioned, in opposition to a constitutional convention; not out of fear, but out of respect for the wisdom of the original creators of our Constitution; and because we have in the past been able to make amendments to the Constitution in such controversial areas as women's rights -- at least at the time -- and civil rights, and other areas, by doing it with great enthusiasm and with great dedication. I feel that this is circumventing the natural ways that we have to change our Constitution that have proven to be very effective in the past. What is needed is more ardor, more commitment.

And it also will protect such groups as our individual churches from ever having to face a time when they will be asked to curtail their beliefs. Thank you.

R O N A L D I. C O U N: Chairman Martin, members of the Assembly State Government Committee, I want to thank you for providing the opportunity for me to represent my group's position here today. My name is Ronald I. Coun. I'm the President of the New Jersey Region of American Jewish Congress.

I might just add, in speaking against ACR-22, that I also agree that we're not here out of fear. Frankly, the only fear I've had relevant to this issue was tripping over the ribbon on the way up to the desk to give my testimony. But we are here in defense, and I can happily say we're proud to be here on defense.

American Jewish Congress has repeatedly stated its opposition to this bill, and previous bills relating to the calling for a constitutional convention. It is the issue of the convention, and not the balanced budget, that has drawn out attention and our negative reference to ACR-22.

We live in a country that operates under due process of law, which means that the means must justify the ends. And it is the means to which we are here today to testify against.

It was less than a year ago that we were all engaged in a national celebration of our bicentennial of the Constitution. We are concerned for the preservation of our document, which is our nation's life blood, and its Bill of Rights. Whatever stated purpose this action, ACR-22 could lead to the prospect of a convention that could rewrite our national document, which is fundamental to the conservation of our hard won basic liberties.

We are proud that American Jewish Congress has been involved in this issue early on, and has been a part of the coalition, which has grown to 53 diverse groups.

Our reasons are well-known to you. Since Article V of the Constitution does not include any details with regard to a convention, we have no knowledge as to what procedures and rules to govern such a convention would be adopted. There is serious doubt among constitutional scholars that the U.S. Congress has the power to control the constitutional convention, or even create its ruler. There is a legitimate reason to be concerned that a convention could not effectively be limited to single issue, once convened, or even a set of similar issues. I would also like to add to that the certainty

that the unanswered questions pertaining to a constitutional convention will result in an endless stream of litigation on the local and national level, which will present serious enforcement problems that could spur a constitutional crisis of profound dimensions.

We have talked about this issue since it started. I might add that in 1987, at the American Jewish Congress National Domestic Conference in Washington D.C., Governor Kean, in an address on the national deficit, indicated his opposition to a convention, expressing the point that while he favors a balanced budget, he does not see the need for a convention that could open the entire United States Constitution for an amendment: "We must now be more vigilant about the Constitution than ever before, because the pressure from the deficit may lead to the legislation of political expedience, which may threaten our individual freedoms, particularly amendments to the Bill of Rights."

In conclusion, if the intent of this issue is for a balanced budget, as we are all aware there is a 200 year old mechanism for amending the Constitution. Let us not celebrate the first year past the bicentennial of the very heart of our democracy by throwing open all of its provisions to the pervasions of special interest groups and their disparate philosophies. Once a convention is called, anything can be changed that may forever change the character of our pluralistic society. It's worked for 200 years.

Governor Hughes cited a homily by a con man of the last century, and I don't mind citing a homily by a con man of this century. Bert Lance, in referring to government issues indicated "If it ain't broke, don't fix it." That's our position. Thank you.

A N D R E W L. D E M C H I C K: Mr. Chairman, members of the Committee, my name is Andrew Demchick. I'm the Director for B'Nai B'Rith for New Jersey. Seymour Reich, our

International President, sends his regrets. He was unable to be with us today. He is out of the country.

In order to give people who come after me more time to express their views, I would just like to enter in the record Mr. Reich's testimony in strong opposition to ACR-22. Thank you.

B E T T Y A. L I T T L E: Mr. Chairman, I am Betty A. Little of the American Association of University Women. I am a public policy analyst, a tax economist, an environmental economist, and I am here to give you a point of view that I think you've not yet seen.

The processes of government are very complex. The American Association of University Women has been interested in equality for women, and for a quality environment for the State of New Jersey. It takes a long time before citizens learn how to work with government, and through government. I think what we need in this whole problem is a broadening of the participatory processes.

I think a lot of people here today have been frustrated because there seems to be no way in which to dialogue with government. We get a man from Mississippi with a little red tape running around the room telling us what we all know. And some of us, including myself, because we happen to live in New Jersey, don't get a chance to speak. And quite frankly, I came up from Maryland, and I'm going back to D.C., for this hearing. I think some precedent ought to be given to the people who have made an effort to come here, and who have something to say about the State of New Jersey. I thank you.

ASSEMBLYMAN MARTIN: Well, you can say that, Ms. Little, but again I have to tell you that I do take exception to that. I think that we have tried to allow a lot of people an opportunity to speak. We have followed, as I said before, as closely as we can to an agenda of people who had previously indicated a willingness to speak. You are speaking now. I'm

perfectly willing to listen to you, as well as I am to everyone else here. I think your point is out of line.

MS. LITTLE: Well, perhaps you'll have to do what they used to do at the environmental hearings. They let the out-of-state people speak one day and the in-state people speak the other--

ASSEMBLYMAN MARTIN: I'm here to try to get a full point of view.

MS. LITTLE: --because I think there's a lot of resentment here from people in the audience who gave up time -- some of it job time -- to come here. I'm not going to argue that with you here.

What I am going to say about the call for a constitutional convention is that that is a disruptive process in a society that needs an opportunity to get itself better organized. I think that you have to recognize that just stopping to consider that is going to slow processes which are already in the works for improving public participation, for improving the dialogue between government and the people, for the accountability that could be brought here.

Quite frankly, my Association is making this a national effort. We are trying in every way we can to rescind those that have been passed, because we see it as disruptive of meeting the needs of this society. Stopping to have a convention is going to be a disruptive factor in trying to resolve our problems.

And most particularly, in this State, not only the question of women and women's right, but the question of environmental quality-- We have just now begun the 303 Process along the oceanfront. And if we have to stop here and say, "Do we have the right to do this?"

Now, from the point of view of a balanced budget I might also say to you that as an economist I do not see how you can attack that question with a process solution -- that means looking at the Constitution -- without making some very

definite changes in the way the whole Constitution operates. That is to say, I heard here today a discussion of the fact that Congress cannot control itself. So that if we call a constitutional convention, and Congress cannot control itself, then we will have to change Congress, and we will have to change the powers of the President in order to do that. So we are changing then, perhaps, everything in this society.

We can easily come down to the same solutions for the Bill of Rights; that we have to give up certain rights in order to control the financial aspects.

I think that the budget strikes at the very heart of the government. I think there have got to be better ways in which to do this.

I would encourage you and hope that someday you would hold a hearing on how citizens can better participate in everything from public hearings to the way in which councils are establishing, and the way in which authorities are designated in this State and in this nation. And when that time comes, when you're willing to discuss those issues with us, that we get some academics out here that are truly working in these issues, like Benjamin Barber from Princeton University. Thank you.

ASSEMBLYMAN MARTIN: Are you sure that's it? I don't want to cut you off. You may not have taken all your time.

MS. LITTLE: Actually, I'm pretty good at the three minutes.

ASSEMBLYMAN MARTIN: You had five. Are there any questions from the remaining Committee members? (no response)

At this point in time I would call the hearing to a close, with a recognition that those who wish to, will speak to Mr. Margeson. We will take your names and addresses. We'll contact you about the next hearing. At that point in time we will continue to try and take all points of view on this issue. Thank you very much.

(HEARING CONCLUDED)

