A P P E N D I X

for

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

A P P E N D I X

APPENDIX

REPRESENTATIVE
JIM COURTER
NEWS RELEASE
12th Congressional District, New Jersey

2-225-5801 ⸗ 2422 Rayburn H.O.B. ⸗ Washington, D.C. 20515

FOR IMMEDIATE RELEASE

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COURTER TESTIFIES IN FAVOR OF ASSEMBLY BILL TO CALL CONSTITUTIONAL CONVENTION TO BALANCE THE FEDERAL BUDGET

TRENTON, NEW JERSEY, June 20, 1988: Congressman Jim Courter (R-Hackettstown) today told the New Jersey Assembly's State Government Committee that passage of ACR22, calling for a constitutional convention, "is needed to force Congress' hand to pass a balanced budget amendment that will require it to live under the same financial realities that American families face every day."

Thirty-four states must pass legislation calling for a constitutional convention before Congress must accede to the demand. Currently, there are thirty-two states that have passed the legislation; if New Jersey's legislation passes, it will become the thirty-third state to issue the call for a convention.

"Faced with the impending reality of a constitutional convention, I believe those in Congress who have ignored the strong support for a balanced budget amendment among the citizens of the United States will reconsider their opposition," Courter said. "Passage of this legislation by New Jersey can be the impetus needed to break the deadlock in Congress and lead to the passage and ratification of a balanced budget amendment to the Constitution."

"A balanced budget amendment to the Constitution is needed to force Congress to meet its obligations to the taxpayers to keep both federal taxes and federal spending down. I support passage of ACR22 and look forward to voting in the U.S. House of Representatives in favor of a balanced budget amendment to the Constitution in the near future."

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TESTIMONY OF LANCE LAMBERTON

PRESIDENT, NEW JERSEYANS FOR A BALANCED BUDGET

ON ACR-22

A RESOLUTION CALLING FOR A CONSTITUTIONAL CONVENTION

TO PROPOSE A BALANCED BUDGET AMENDMENT TO THE U.S. CONSTITUTION

BEFORE THE ASSEMBLY STATE GOVERNMENT COMMITTEE

MONDAY, JUNE 20, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I WELCOME THIS OPPORTUNITY TO TESTIFY ON BEHALF OF THE MEMBERS OF NEW JERSEYANS FOR A BALANCED BUDGET AND FOR THE RESOLUTION NOW BEING CONSIDERED BY YOU THAT CALLS FOR A CONSTITUTIONAL CONVENTION TO PROPOSE A BALANCED BUDGET AMENDMENT TO THE CONSTITUTION.

THE LAST TIME I HAD A SIMILAR OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE WAS IN APRIL OF 1987, AND A GREAT DEAL HAS HAPPENED SINCE THEN. 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 DOLLARS TO THE NATIONAL DEBT. THIS WILL COST THE AVERAGE AMERICAN BORN AT THAT TIME NINE THOUSAND SEVEN HUNDRED DOLLARS IN ADDITIONAL TAXES OVER HIS OR HER LIFETIME; INDIVIDUALS LIKE MY SON, WHO WAS BORN DURING THIS PERIOD. IT IS ON HIS

2X

BEHALF, AND MILLIONS OF OTHERS LIKE HIM, 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 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 TWENTY FIVE CENTS OF EVERY DOLLAR WE SEND TO WASHINGTON IN TAXES GOES TOWARD INTEREST PAYMENTS ON THE NATIONAL DEBT. IF CURRENT TRENDS CONTINUE, IN TEN YEARS HALF OF WHAT WE PAY IN TAXES WILL GO TOWARD INTEREST ON THE DEBT. IF THAT IS ALLOWED TO HAPPEN, AMERICA 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 COMPETITIVE WORLD ECONOMY, AND YOUNG FAMILIES, ALREADY PRESSED TO THE WALL BY THE SUFFOCATING DEBT WE HAVE THUS FAR IMPOSED ON 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 AND HEALTH CARE NEEDS AS THEY REACH THE TWILIGHT OF THEIR YEARS.

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IS THIS THE LEGACY WE WISH TO LEAVE TO 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 A 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 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, FULLY 98 PERCENT OF THOSE WHO SOUGHT RE-ELECTION GOT RE-ELECTED. SO WHILE I WOULD LIKE IT IF THE AMERICAN ELECTORATE WOULD MAKE OUR FEDERAL REPRESENTATIVES MORE ACCOUNTABLE, THE FACT REMAINS THAT INCUMBENTS HAVE POLITICAL ADVANTAGES OVER CHALLENGERS WHICH MAKES 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 WAS CALLED. THAT A CONVENTION WOULD

SOMEHOW "RUNAWAY" AND PROPOSE TO THE STATES FOR RATIFICATION, AMENDMENTS WHICH ARE NOT GERMANE TO A 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 AND IMPOSE A ONE WORLD GOVERNMENT UPON US.

AND WHILE I DO NOT QUESTION THE SINCERITY BY WHICH THESE NOTIONS ARE HELD, I SUBMIT TO YOU THEY ARE BASED ON A FUNDAMENTAL MISUNDERSTANDING OF THE POLITICAL AND LEGAL SAFEGUARDS THAT EXIST TO PREVENT ANY OF THE DIRE SCENARIOS THAT THEY IMAGINE.

FIRST OF ALL, IF ENOUGH STATES CALL FOR A CONVENTION, SUCH THAT IT APPEARS IMMINENT THAT ONE WILL BE CONVENED UNLESS CONGRESS ACTS, THEN CONGRESS WILL ACT. THE PROSPECT OF DELEGATES RETURNING FROM A CONVENTION TO CHALLENGE CONGRESSIONAL INCUMBENTS WHO FAILED TO PASS AN AMENDMENT ON THEIR OWN, WOULD BE AN INCUMBENT'S NIGHTMARE. CONGRESS HAS NO INTEREST IN PUTTING ITSELF IN A SITUATION WHERE THE CHANCES OF GETTING RE-ELECTED ARE REDUCED, ESPECIALLY IF IT CAN AVOID THAT PROSPECT BY SIMPLY PASSING AN AMENDMENT BEFORE IT BECOMES NECESSARY TO CALL A CONVENTION.

HOWEVER, WITHOUT A REAL AND TANGIBLE THREAT OF A CONVENTION CALL, CONGRESS 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 LAST OCTOBER ON WALL STREET AND THE POLLS WHICH NOW SHOW OVER EIGHTY PERCENT 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 OF A 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 THEIR RE-ELECTION WHILE SIMULTANEOUSLY ENSURING THE INEVITABLE BANKRUPTING OF THE NATION. ONLY A CONSTITUTIONAL CONVENTION POSES EVEN A GREATER THREAT TO CONGRESSIONAL POWER, THROUGH THE THREAT TO INCUMBENCY WHICH I MENTIONED EARLIER. IN ADDITION, A CONVENTION COULD PROPOSE ENFORCEMENT MECHANISMS THAT CONGRESS WOULD NEVER IMPOSE ON ITSELF, SUCH AS WITHOLDING 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, PEROGATIVES AND POWER. THAT IS WHY THE CONVENTION METHOD OF AMENDING THE CONSTITUTION WAS PUT IN IN THE FIRST PLACE.

A CASE IN POINT IS PASSAGE OF THE 17TH AMENDMENT WHICH CALLED FOR THE DIRECT ELECTION OF SENATORS. THE SENATE WAS UNDERSTANDABLY RELUCTANT TO CHANGE THE MANNER IN WHICH IT WAS ELECTED THROUGH THE STATE LEGISLATURES, BUT WHEN A CONVENTION CALL WAS ONLY ONE STATE AWAY FROM BEING CONVENED, THE SENATE FINALLY RELENTED, WITH THE RESULT THAT WE CAN NOW DIRECTLY ELECT OUR

SENATORS. THIS WAS A GREAT TRIUMPH FOR DEMOCRACY, AND WE OWE THE CONVENTION CALL METHOD OF AMENDING THE CONSTITUTION, AND THE FOUNDING FATHERS WHO PUT IT IN THERE, I DEBT OF GRATITUDE.

IN ADDITION TO THIS HISTORICAL EXAMPLE OF HOW THE IMMINENT PROSPECT OF A CONVENTION CALL PROMPTED CONGRESS TO ACT, PLEASE CONSIDER THAT THE SENATE ALREADY PASSED A BALANCED BUDGET AMENDMENT BY THE NECESSARY TWO THIRDS IN 1982, WITH A MAJORITY IN THE HOUSE DOING LIKEWISE, BUT FALLING ONLY 47 VOTES SHORT OF THE TWO-THIRDS NEEDED FOR PASSAGE. THEREFORE, THERE ARE NOT A WHOLE LOT MORE VOTES NEEDED TO GET AN AMENDMENT OUT OF CONGRESS. IN FACT, A MAJORITY OF HOUSE MEMBERS ARE NOW CO-SPONSORS OF AN AMENDMENT.

HOWEVER, LET'S SAY THE IMPOSSIBLE HAPPENED AND CONGRESS STILL DID NOT PASS AN AMENDMENT WHEN THE REQUIRED TWO-THIRDS OF THE STATES WERE ON THE VERGE OF CALLING FOR ONE. WOULD A CONVENTION THEN RUN AMUCK, AS DETRACTORS CLAIM, OR ARE THERE LEGAL AND POLITICAL SAFEGUARDS TO PREVENT THAT FROM HAPPENING?

TO ANSWER THAT QUESTION YOU NEE TO CONSIDER THE FOLLOWING: 1.) A NUMBER OF STATE RESOLUTIONS DECLARE THEMSELVES NULL AND VOID IF A CONVENTION GOES BEYOND ITS CALL. 2.) CONGRESS HAS THE POWER TO PREVENT ANY PROPOSAL GOING BEYOND ITS CALL FROM BEING SUBMITTED TO THREE QUARTERS OF THE STATES FOR RATIFICATION. AND DOES ANYONE DOUBT THAT CONGRESS WOULD NOT EXERCISE THAT POWER? LEGISLATION HAS ALREADY PASSED UNANIMOUSLY OUT OF THE SENATE JUDICIARY COMMITTEE WHICH STATES THAT IF ANY PROPOSED AMENDMENT DRAFTED BY A CONVENTION "RELATES TO OR INCLUDES SUBJECT MATTER DIFFERENT FROM OR NOT INCLUDED IN THE SUBJECT MATTER SPECIFIED BY CONGRESS WHEN THE CONVENTION WAS CONVENED THEN CONGRESS MAY NOT SUBMIT THE AMENDMENT TO THE STATES FOR RATIFICATION."

3.) THERE IS NO POPULAR MOVEMENT, EITHER IN OR OUT OF CONGRESS, WHICH DESIRES OR WOULD WANT AN UNLIMITED CONVENTION. WITHOUT SUCH A MOVEMENT, WHERE WOULD THE POLITICAL SUPPORT EXIST FOR NON-GERMANE AMENDMENTS?

4.) DELEGATES THEMSELVES RUNNING FOR ELECTION TO THE CONVENTION, WOULD RUN ON THE PLEDGE TO STAY ON THE TOPIC OF A BALANCED BUDGET. CAN YOU IMAGINE MANY OR EVEN ANY DELEGATES WINNING ELECTION TO A CONVENTION ON THE PROMISE TO OPEN IT UP?

5.) THE CONVENTION WOULD ALSO BE SUBJECT TO JUDICIAL REVIEW BY THE SUPREME COURT. THE OVERWHELMING MAJORITY OF LEGAL SCHOLARS, INCLUDING THE AMERICAN BAR ASSOCIATION, HAVE CONCLUDED THAT CONGRESS AND THE SUPREME COURT HAS THE CONSTITUTIONAL AUTHORITY TO REQUIRE THAT A CONVENTION ONLY PROPOSE AMENDMENTS GERMANE TO THE STATE RESOLUTIONS CALLING FOR IT.

6.) EVEN IF SOME DELEGATES TO A CONVENTION WANTED TO OPEN THE CONVENTION UP TO CONSIDERING OTHER ISSUES, SUCH AS ERA, SCHOOL PRAYER OR ABORTION, IT IS HIGLY IMPROBABLE THAT THEY COULD GET A MAJORITY OF DELEGATES TO AGREE ON ANY ONE ITEM. THEIR CHARGE WOULD BE A BALANCED BUDGET AMENDMENT ONLY, AND THAT IS ALL THEY WOULD CONSIDER.

7.) THREE-QUARTERS OF THE STATES MUST RATIFY ANY PROPOSAL COMING OUT OF A CONVENTION, AND THE FATE OF SOMETHING AS POPULAR AS THE ERA SHOULD TELL US HOW DIFFICULT A TASK THAT IS.

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GIVEN THESE SAFEGUARDS, I AM THEREFORE ASKING YOU TO MAKE A CHOICE BETWEEN THE UNFOUNDED FEARS OF CONVENTION OPPONENTS VERSES THE VERY REAL, UNIMAGINARY THREAT TO OUR OWN LIVES AND FUTURE IF YOU FAIL TO TAKE DECISIVE ACTION TO BRING ABOUT A BALANCED BUDGET AMENDMENT.

THE LESSONS OF HISTORY ARE ALL TOO CLEAR IF WE CHOOSE TO LEARN FROM THEM. IF WE ARE REALLY CONCERNED ABOUT THREATS TO OUR PERSONAL AND ECONOMIC LIBERTY, WE ONLY HAVE TO LOOK NO FURTHER THAN THE DEBT RIDDEN LATIN AMERICAN NATIONS, WHERE FLEDGLING DEMOCRACIES PERISH UNDER THE BOOT OF BRUTAL DICTATORS, ALL IN THE NAME OF RESTORING ORDER OUT OF THE CHAOS, UNCERTAINTY AND VERY REAL HUMAN SUFFERING THAT COMES FROM BANKRUPT ECONOMIES.

THE HORRIBLE EXAMPLE OF THE RISE OF NAZI GERMANY OUT OF THE ASHES OF THE BANKRUPT WEIMAR REPUBLIC OR THE DECLINE OF ONCE GREAT, RICH AND POWERFUL EMPIRES LIKE ROME AND SPAIN WHOSE RULERS THOUGHT THEY COULD PUSH OFF THE DAY OF RECKONING THROUGH UNBRIDLED DEFICIT SPENDING SHOULD GIVE US CAUSE FOR SERIOUS REFLECTION.

THIS IS THE THREAT WE NEED TO ADDRESS OURSELVES TO, AND NOT THE MACHINATIONS OF CONSPIRACY, OR UNFOUNDED CLAIMS OF OUR CONSTITUTION BEING RENT APART IF WE THE PEOPLE EXERCISE THE POWER WHICH OUR FOREFATHERS GAVE US TO CONTROL A CONGRESS NOW GONE OUT OF CONTROL.

I'VE TAKEN ENOUGH OF YOUR TIME, AND SO I NOW WELCOME ANY QUESTIONS YOU MIGHT HAVE OF ME.

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DON'T CALL FOR A CONSTITUTIONAL CONVENTION

STATEMENT TO THE NEW JERSEY STATE LEGISLATURE

By Phyllis Schlafly, President, Eagle Forum

June 20, 1988

Others may come before you and predict that, if you pass a resolution calling for a Constitutional Convention, you will force Congress to pass a Balanced Budget Amendment.

That's not a good argument because a good end does not justify a bad means. Even though we assume a Balanced Budget Amendment is a good end (and I do), it does NOT justify plunging our nation into the constitutional chaos, confusion, and controversy of an unprecedented Constitutional Convention, for which there are no rules or guarantees, thereby causing the risk that the Convention might rewrite major portions of our Constitution and change our structure of government.

The advocates of a Constitutional Convention say the odds are against that happening. That's like playing Russian Roulette. The odds are really very good in Russian Roulette; you have five chances out of six you will not kill yourself. But society calls it suicide because reasonable people don't take that kind of risk with life. We should not take that kind of risk with something so precious as our Constitution.

You may be told that your vote for a Constitutional Convention will force Congress into making a choice between voting out a Balanced Budget Amendment and calling a Constitutional Convention. That is NOT true. Congress does NOT have this option. The language of Article V is mandatory. It states that Congress "SHALL" call a Constitutional Convention if 34 states request it.

Even if Congress did have an option, I don't believe the current Congress would choose a Balanced Budget Amendment. The current House Democratic leadership is adamantly opposed to a Balanced Budget Amendment if it has any tax-limitation, and those men play hard-ball politics. Rather than passing a Balanced Budget Amendment that would be speedily ratified by the states, they would prefer to toss it to the "wolves" of a Constitutional Convention where a Balanced Budget Amendment would meet an uncertain fate. Reporters who have asked House Speaker Jim Wright for his views have confirmed to me that this is, indeed, his view.

Let's consider some of the unanswered questions involved in a Constitutional Convention. Can a Constitutional Convention be limited to a single issue? The advocates of a Constitutional Convention say that the agenda can be limited -- but, no matter how many lawyers they cite, there is absolutely no way they can guarantee a single-issue agenda. Article V of the Constitution says that Congress "shall call a Convention for proposing Amendments." The word "amendments" is used in the plural.

The most prestigious constitutional authorities in the country say it is impossible to limit the agenda. Retired Chief Justice Warren Burger has said repeatedly, "There is no way to put a muzzle on a Constitutional Convention." The Stanford Law School Professor whose textbook is used in most of U.S. law schools, Gerald Gunther, said that, even if Congress tried to limit the Convention to one subject, the delegates could decide for themselves that the Convention "is entitled to set its own agenda."

The advocates of a Constitutional Convention try to deny that

a runaway Convention could happen -- but they canNOT deny the RISK of a runaway Convention. We don't think our great Constitution should be exposed to that risk, and that's why so many organizations who care about America's freedom and future, such as the American Legion and the Veterans of Foreign Wars, oppose a Con Con.

How would the delegates be elected? The most frequently talked about method is to follow the same apportionment as Congress, with one delegate from each Congressional district, and two at large from each state. The probable result would be the same liberal big-spending majority that exists in Congress today. Political reality means that all the special-interest groups would organize to elect their friends. Anybody who thinks that delegates would be elected solely on the Balanced Budget issue just doesn't understand grassroots politics. The NEA would work for those who support the liberal NEA agenda. Pro-life groups would vote for candidates on the basis of their single issue, abortion; no one could deny them that right.

Then, when the Constitutional Convention is convened, the factions could bargain with each other: "You support our amendment and we'll support yours."

Nobody has the least idea what the rules of a Constitutional Convention would be. As a practical matter, there would be no way to keep the delegates from bargaining with each other to make their own rules and set their own agenda.

Groups on both the right and the left are proposing major constitutional changes. As reported by the NEW YORK TIMES on January 11, 1987, a powerful group called the Committee on the

Constitutional System wants to eliminate our Separation of Powers and change us into a European parliamentary-style government. These men are openly saying that "the best way to honor the framers of the Constitution during this Bicentennial era is to follow their example."

And what is that example? The Constitutional Convention of 1787 was called for the exclusive purpose of amending the Articles of Confederation and, once the Founding Fathers assembled in Philadelphia, they threw out the Articles of Confederation, wrote an entirely new Constitution, and even changed the procedure for ratification so they could get it adopted more easily. If a Constitutional Convention can change provisions of Article I or II, it can also reduce the ratification requirement from three-fourths of the states to a simple majority, as well as bypass the State Legislatures altogether. Remember, the 1787 Convention is the only precedent we have for a Constitutional Convention.

We are glad the Founding Fathers did what they did, but we don't want to do it again because we already have a marvelous Constitution that has preserved our freedom for 200 years. I don't see any James Madisons, George Washingtons, Ben Franklins, or Alexander Hamiltons around today who could do as good a job as was done in 1787, and I'm not willing to risk making our Constitution the political plaything of those who think they are today's Madisons, Washingtons, Franklins, or Hamiltons.

Any proposal for constitutional change should be addressed on its own merits, not made hostage to contention and compromise at a Convention whose delegates would bear no responsibility to the

people because they never have to run for re-election.

There is NO public support for a Constitutional Convention. Since Ronald Reagan became President, only two states have passed Con Con resolutions, while many other states, including Michigan, Montana, Kentucky, Connecticut, Maine, and Vermont have rejected such resolutions. Two states, Alabama and Florida, this year rescinded their previous pro-Con Con resolution.

That means that the advocates of a Constitutional Convention have zero to show for their last seven years of fund-raising and political efforts in behalf of their goal. A movement that can't even show a net gain of one state in seven years is a movement that does not have the political smarts or strength to elect a majority of delegates to a Constitutional Convention. The Con Con movement is a Paper Tiger, built on raising funds from people who want to balance the budget, and then, in a bait-and-switch act, spending the funds to promote a Constitutional Convention.

Last year, the Con Con advocates got some lawyers in the U.S. Department of Justice to write a paper supporting a Con Con. The weight of this paper, however, is just in its paper, not in its arguments. Instead of confronting the arguments against a Con Con honestly, the paper sets up strawmen and spends many pages knocking down phony arguments. Its two main points are: (1) that "Article V does permit a limited convention," and (2) that "there are practical means permitted by the Constitution to enforce the limitations."

But, so what! Hardly anyone denies that those things are "permitted." The crucial questions are: (1) Can a limited

convention be constitutionally required under Article V?, and (2) can we rely on that requirement to be enforced? The answer to both those questions is a resounding NO.

Indeed, a careful reading of the artfully chosen words in the Justice Department document shows that its writers are trying to persuade by innuendo rather than by substance. For example, the document says 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." The issue is not whether delegates "may" take an oath but whether they must take an oath, and the answer to that question is NO because Article VI of our Constitution specifically exempts delegates to a Constitutional Convention from the requirement that binds every other federal and state officeholder to swear to "support this Constitution."

In the absence of any public demand, the advocates of a Constitutional Convention have resorted to a remarkable piece of legislative chicanery. The proposed Constitutional Convention Implementation Bill in the current Congress prescribes a time limit of seven years during which state resolutions calling for a particular Constitutional Convention can be validly passed, BUT would give the CURRENT series of Constitutional Convention resolutions the special privilege of 16 years. This would "grandfather in" all the old, stale calls for a Constitutional Convention for a Balanced Budget Amendment passed as long ago as 1975, and would prop them up on an artificial life-support system until 1991, while an attempt is made to round up two additional states.

How can we believe that a Constitutional Convention will be limited to a Balanced Budget Amendment when the whole procedure of calling one is based on tricking us about the rules?

James Madison, the father of our Constitution, said it best when he wrote: "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." Madison said that in an era when a second convention could have been chaired again by George Washington.

I urge you to reject any resolution calling for a Constitutional Convention. It's not worth the risks.

Phyllis Schlafly
68 Fairmount
Alton, IL 62002
618-462-5415

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Chicanery about the Constitution

or

How can we believe that
a Constitutional Convention
will be limited to
a Balanced Budget Amendment
when the whole procedure of calling one
is based on
tricking us about the rules?

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The Constitutional Convention Implementation Bill, originally written by Senator Sam J. Ervin in 1967 (which has floundered in Congress since then but has never passed), called for a time limit of 7 years BOTH for the ratification of constitutional amendments in the usual way AND for state resolutions calling for a Constitutional Convention. This is because the Constitution may be changed ONLY if there is a "contemporaneous consensus" in support of the change.

EFFECTIVE PERIOD OF APPLICATION

SEC. 5. (a) An application submitted to the Congress by a State, unless sooner withdrawn by the State legislature, shall remain effective for the lesser of the period specified in such application by the State legislature or for a period of seven calendar years after the date it is received by the Congress,

BUT the current version of the Procedures Bill in the U.S. Senate provides that the current series of calls for a Constitutional Convention would have the special privilege of a time limit of 16 years. This one-time exception to the general rule would "grandfather in" all the old state calls for a Constitutional Convention (purportedly for a Balanced Budget Amendment):

Provided however, That those applications which have not been before the Congress for more than fourteen years on the effective date of this Act shall be effective for a period of not less than two years.

14 + 2 = 16 years

This is the same type of chicanery about procedure -- playing games with the Constitution -- that we endured with the Time Extension of 3 years and 3 months voted by Congress for the Equal Rights Amendment. That Extension enabled the ERA advocates to exert enormous political and financial pressure on four states in 1982 while "counting" the 23 states that passed ERA in 1972 (10 years earlier).

18x

If we apply the 7-year rule to the calls for a Balanced Budget Amendment Constitutional Convention, they have only 2 states (of the 34 needed).

1975 Mississippi	1979 Alabama
Louisiana	Arizona
Alabama	Arkansas
	Florida
1976 Delaware	Idaho
Georgia	Indiana
South Carolina	Iowa
Virginia	Louisiana
	Maryland
1977 Maryland	Nebraska
Tennessee	New Mexico
	North Carolina
1978 Colorado	North Dakota
Kansas	Oregon
Louisiana	Pennsylvania
Oklahoma	South Dakota
South Carolina	Texas
Tennessee	Utah
Wyoming	
	1980 Nevada

From 1975 to 1987, a total of 32 states passed BBA/ConCon resolutions. Several states passed the same resolution more than once.

The only 2 states that have passed a call for a Constitutional Convention for a Balanced Budget Amendment within the last 7 years are:

1982 Alaska
1983 Missouri

Since then, Michigan, Connecticut, Kentucky, Montana, Maine, Vermont and Wisconsin have rejected a call for a Constitutional Convention for a Balanced Budget Amendment.

Two states have repealed (rescinded) their Con Con resolutions:

April 1988 Alabama
May 1988 Florida

SO, the SAME Constitutional Convention Implementation Bill which Constitutional Convention advocates tell you will "limit" the Convention to a Balanced Budget Amendment would ALSO manipulate the rules to achieve their political goal. They want to lock in the old state calls while they exert political and financial pressure on a few remaining states and then claim they can count 34 states. Clearly, there is NO "contemporaneous consensus" in behalf of a Constitutional Convention.

69th ANNUAL NATIONAL CONVENTION
OF THE AMERICAN LEGION
SAN ANTONIO, TEXAS
AUGUST 25,26,27,1987

RESOLUTION NO: 63

SUBJECT: UNITED STATES CONSTITUTION

COMMITTEE: AMERICANISM

WHEREAS, The American Legion is dedicated to the defense of the Constitution, and this defense must be conducted by any and all means against all enemies, whatever may be their nature; and

WHEREAS, There are intensive attacks on the Constitution by persons challenging the continued validity of the Constitution, which has adequate provision for orderly amendment, stating that it does not meet the requirements of modern society and that the original precepts of the founders were flawed; and

WHEREAS, Efforts are underway to convene a Constitutional Convention ostensibly for the purpose of effecting a balanced budget amendment, yet this could result in radical change or destruction of our current form of government by extending consideration to the Constitution's entire structure; and

WHEREAS, Special interests have already made proposals for a substitute Constitution, therefore it is apparent that a dire threat exists to that Constitution The American Legion is bound to support; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in San Antonio, Texas, August 25,26,27,1987, That it states its opposition to efforts to convene a Constitutional Convention for any purpose and specifically opposes the rewriting of the United States Constitution.

20X

Resolution No. 449

CHANGING THE CONSTITUTION

WHEREAS, every serviceman takes an oath to "FIGHT FOR, UPHOLD AND DEFEND THE CONSTITUTION OF THE UNITED STATES OF AMERICA AGAINST ALL ENEMIES, FOREIGN AND DOMESTIC"; and

WHEREAS, we, of the Veterans of Foreign Wars of the United States, need to keep faith with those who fought and died to preserve our freedoms guaranteed by our United States Constitution; and

WHEREAS, attempts are being made to change the Constitution by covert political factions which are not working in our best interests as a Nation; now, therefore

BE IT RESOLVED, by the 85th National Convention of the Veterans of Foreign Wars of the United States, that we oppose any attempt to a call for a Constitutional Convention as this would give our enemies from within and without the opportunity to destroy our Nation.

Adopted by the 85th National Convention of the Veterans of Foreign Wars of the United States held in Chicago, Illinois, August 17-24, 1984.

Resolution No. 449

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1) BETWEEN THE BLUE PAGES - a legal brief

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22x

PENNSYLVANIANS TO PROTECT

THE CONSTITUTION

Box 137, Danboro, Pa. 18916

23x

Dear Representatives,

It is not a matter of budget balances vs. non-budget balances, as the National Taxpayer Union would like to make it sound, spending millions trying to convince legislators only to have Alabama and Florida recind their calls. Why did these states back out of an issue that seemed so right? Why are there 10 states seeking to recind their calls? Noble though this cause may be it is destine for ruin.

We have all been made to see the reality of cutting back and limiting spending by "Black Monday". We believe as a nation many have been made to see this, especially Congress. But the real issue is, what is the safest way to go inorder to balance the budget without putting the most precious, sacred and honorable document up for grabs. You may laugh,but the A.B.A dosn't! On March 11,1988 I received the following letter from the Director of the Governmental Affairs Office for the American Bar Association,his name is Robert D. Evans: " If we fail to deal now with the uncertainties of the convention method, we could be courting a constitutional crisis of grave proportions."

In the Constitutional issue of the A.B.A. Journal magazine (Sept. '87 pg.42) it reads that 78% of the Lawyers polled are against a Constitutional Convention and 94% believe our Constitution is not out of date. Also on pg. 42 and we quote " The main item on the agenda of the proposed convention would be the balanced budget amendment, but the Bill of Rights is always controversial and there is already talk of adding new amendments and getting rid of the old ones."

Getting rid of"old ones" the first 10 are old yet they are as new to the newest babe born yesterday. Yet even the A.B.A. sees such things on the horizen. Do we yet! It is our desire to give the reader enough light to find his way.

On pg.54 of the same issue Derrick Bell, Professor of Harvard Law School said, " Let me just amplify my concerns a little. It's certainly a possibility that a constitutional convention might repeal the Bill of Rights."

We believe as does the Editor and Publisher of the A.B.A. Journal, Laurence Bodine (Sept.'87 pg.8)

" Here's what to do. There is a highly appropriate way to celebrate this bicentennial and to give the document the respect it deserves. It takes less than half a chargeable hour and you can do it in your easy chair. Read it. I found the Constitution in my old Con Law casebook, which reminded me of the law professor's first assignment. That was to read the Constitution, and when we had finished it, to read it again. It w s a good idea then, and it's a good idea now."

The biggest problem we are having with understanding Article V is just that, people are not taking time to individually "read it". Some are to busy listening to so-called experts. Let us put all prejudice aside and just "read it".

Rev.Clifford J. Marlowe

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CONSTITUTIONAL CONVENTION UPDATE

Wednesday May 25th, 1988 the state of Florida became the second in withdrawing their call for a convention for a balanced budget amendment. The vote in the Senate according to our sources was 37 to 3 and in the House it was unanimous.

On April 19th, Alabama officially rescinded its' call for a Constitutional Convention for a Balanced Budget Amendment. The Governor, who according to Article V has no role in a convention, vetoed it, but on the night of April 25th, the legislators of Alabama overrode the Governor's veto as follows: House, 82 to 12 and in the Senate, 27 to 2. Thus, the official number of states is now 30. Alabama, being one of the first to call for a Balanced Budget Amendment convetion in 1976, now drops from the list. Why? Because a "runaway" convetion was in sight.

Since January 1st of 1988, the following ten (10) states have resolutions filed to withdraw their participation in a Constitutional Convention for a BBA: Idaho, South Carolina, Maryland, Virginia, Oklahoma, Wyoming, Pennsylvania, Nebraska, New Hampshire, and Indiana. Out of the ten (10) mentioned above, four (4) have recinded in the House : South Carolina, Virginia, Oklahoma, and New Hampshire.

Of the Eighteen (18) states that have not applied for a convention, not a single committee of the House or Senate of any of them have voted favorably for a Constitutional Convention. These states are: California, Connecticut, Hawaii, Illinois, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New York, Ohio, Rhode Island, Vermont, Washington, West Virginia, and Wisconsin.

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The day before Alabama rescinded, on April 19th, the sponsor of a Constitutional Convention resolution (SP798) in Maine, Sen. John Kerry, withdrew his resolution. Meanwhile, the previous week, on April 13th, Vermont's House committee voted to postpone its resolution JRH95 indefinitely, by a vote of 6-0. On Feb.18,1988 HCR61 was tabled in Kentucky by a vote of 13-6.

While the dirt is being shoveled on the coffin to bury this issue in numerous other states, there are continued attempts being made to revive a dead convention issue which the people do not want.

The Con-Con is DEAD,let's bury it!

The issue should be allowed to rest in peace.

PRESIDENTIAL APPROVAL

e approval or disapproval of the President applies only to ordinary cases of
ılation; he has nothing to do with the proposition or adoption of amendments to the
stitution. Hollingsworth v. Virginia, 1798, 3 U.S. 378, 3 Dall. 378, 1 L.Ed. 644.

not mentioning presidential participation, this article which sets forth procedure
ımending Constitution makes clear that proposals for constitutional amendments are
ɔressional actions to which presentation reqirement dose not apply. Consumer
:gy Council of America v. Federal Energy Regulatory Commission, 1982, 673 F.2d
App.D.C.34, affirmed 103 S.Ct. 3556,463 U.S. 1216, 77 L.Ed.2d 1402, 1403,1413,
:aring denied 104 S.Ct. 40, 463 U.S.1250, 77 L.Ed.2d 1457.

GOVERNORS APPROVAL

e lieutenant governor, not being a member of the State Senate, may not vote on a
l disposition of such resolutions. State ex rel. Sanstead v. Freed, N.D. 1977, 251
.2d 898.

J.S. (3 Dall.) 378 (1798). See also Omaha Tribe of Nebraska v. Village of Walthill,
F. Supp. 823 (D. Neb. 1971), aff'd, 460 F.2d 1327 (8th Cir. 1972), cert. denied, 93
:. 898 (1973) (governors approval not required in order for a stste to cede
sdiction over Indian residents); Ex parte Dillon, 262 F. 563 (1920) (when the
islature is designated as a mere agency to dischargesome duty of a non-legislative
:acter, such as ratifying a proposed amendment, the legilative body may act alone).

ickfield, supra note 61, at 11-12.
6 U.S. 368, 375 (1921).
7 U.S. 433, 453-54 (1939).

ELECTORAL COLLEGE

ays no role! Only in election of president.

27x

CAN APPROPRIATE WORDING OF A CALL BIND CONGRESS

Let us turn back to the 18th, 20th, 21st, and 22nd amendments where Congress included in the text of those amendments a section stating, " within seven years " was the reasonable time for ratification.

In 1939 Coleman v. Miller the courts established that Congress has the right to exceed that time limit if it deems so because the amendment process is a "political issue " to be decided by the Congress and not the courts.

In 1939 Coleman v. Miller it was challenged that because Kansas ratified in 13 years and not 7 it did not count. The courts upheld the legitimacy of their grievance but ruled it was out of their jurisdiction to reder a decision.

Thus even though there was protectionist wording that everyone thought would bind Congress to 7yrs,it didn't work. And mind you, this was the established and accepted thought of there time. Both accrding to Constitutional Law and in the very wording of the Constitution itself.

What is to stop the Congress from ignoring the very wording adopted by the states if it has been known to violate the Constitution itself? Nothing! By including in a call for a Constitutional Convention for a BBA wording to the effect of, " for the sole and exslusive purpose of a Balanced Budget Amendment and if not then our call is rescinded " while it may sound good wont work. Mostly all Constitutionalist agree that Article V only makes mention of calling not rescinding or withdrawing.

" on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments," Article V who shall call a convention " THE CONGRESS,".

as been brought out that even if the convention, at worst, was a runaway, that st be ratified by 3/4th of the states and they would never agree to that or act so ponsible.
egard to ratification we must tread lightly. Once you ratify and 3/4 are ved, you can never back out. Just read the history of the 18th and the 19th dments. Also according to Constitutional law, Article V makes no mention of drawing once a convention is called. That is the Historic position.

do not believe, on the whole, that most of the 7,461 legislators will act ponsible. Just as Alabama and Florida didn't, and withdrew this year 1988. But we lieve that because of the irresponsible men in Washington D.C. that one must look e lesson to be learned from dealings that the states Ohio and New Jersey had, regard to the 14th Amendment.

e question arose in respect to the validity of the 14th amendment. The latures of Georgia, North Carolina, and South Carolina had rejected the dment in November and December, 1866. New governments were erected in those es (and in others) under the direction of Congress. The new legislatures ratified mendment, that of North Carolina on July 4, 1868, that of South Carolina on July 68, and that of Georgia on July 21, 1868. Ohio and New Jersey first ratified and passed resolutions wihtdrawing their consent. As there were then 37 States, 28 needed to constitute the requisite three-fourths. On July 9, 1868, the Congress ted a resolution requesting the Secretary of State to communicate " a list of the es of the Union whose legislatures have ratified the fourteenth article of dment," and in Secretary Seward's report attention was called to the action of and New Jersey. On July 20th, Secretary Seward issued a proclamation reciting atification by 28 States, including North Carolina, South Carolina, Ohio and New ey, and stating that it appeared that OHIO and NEW JERSEY had since passed utions withdrawing their consent and that " it is deemed a matter of doubt and rtainty whether such resolutions are not irregular, invalid and therefore fectual."

en though he knew that Ohio and New Jersey had withdrawn and the total was 26 states not 28, the Secretary and Congress disregarded what the States of Ohio New Jersey had done. The Congress knew that they had received the withdrawals ne. The 14th amendment was added to the Constitution none the less.

ntention that it was never constitutionally proposed to several of the states d as ratifying, in that they had been deprived at that time of their equal suffrage e Senate in contravention of this article. U.S. v. Gugel, D.C.Ky. 1954, 119 F.Supp.

e 11 states that were denied to constitutionally (June 16,1866) ratify or reject Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Texas, siana, Florida, Tennessee and Arkansas.

tes that rejected were 14 in total: Texas, Georgia, Florida, Alabama, North lina, Arkansas, South Carolina, Virginia, Mississippi, Louisiana, Kentucky, ware, Maryland, and California all between 10/13/1866 to 3/4/1867.

Would Todays Congress do such a thing.!!!?

ONE FAULT

D.C.D.C. 1976. The Constitution is supreme but no one portion of the Constituton is
ıcrosanct.
U.S. v. American Tel& Tel Co., 419 F.Supp. 454, cause remanded 551 F.2d 384,179
.S.App.D.C.198, appeal after remand 567F.2d 121, 185 U.S.App.D.C. 254.
While the Constitution is man-made, it has a fault. That is the lack of rules to
ɔvern a convention. Other than that, I think it's God's gift for physical freedom.

30x

CONVENTION OF MORE THAN ONE ISSUE

It has been suggested by some that a " runaway convention " could never happen because of the various bills that have been passed in the Senate (have never passed the House) in the past. Lets examine them in 1971 there was the Ervin's bill passed 84-0 but the House took no action. In 1977 Helms ,Goldwater and Schweiker, and in the House, Hyde sponsored a bill identical to Ervin's but died in committee. More recently (D-NY) Charles Schumer introduced, during the first session of the 100th Congress, H.R.2964:

" To prescribe the procedures for state applications to Congress for a Federal Constitutional convention...etc."

"Section II b1) the general purpose of considering amendments to the Constitution, or b2) considering of amendments to the Constitution relating to one or more specified subjects."

Also more recently Hatch introduced a bill to control a convention. But what do they all have in common? They all mention one or more.

SUPREME COURT

Where the Constitution defines what belongs to Congress and that which belongs to the courts needs no interpretation. In all courts, they must follow common law, the U.S. Code of Laws. There are two basic questions a judge must ask himself before trying a case: 1) is it justiciable? 2) is it non-justiciable? . If it is termed non-justiciable then it becomes what is known to judges as a " political issue ". The way this is determined is where the Constitution clearly defines what belongs to the Congress or the Executive branch there it is not within the jurisdiction of the Courts to interfere. Examples:(Limited Immunity granted by Congress can not be nolified by the courts neither the Presidents pardon.)

In 1939 COLEMAN V. MILLER it was decided that even tho Kansas ratified in 13yrs the Child Labor Amendment by-passing the traditional thinking of Dillon v. Gloss 1920 (reasonable time for ratifing was 7yrs). It was decided that because it was a " politicl issue " it should be left up to Congress. Thus every case can be heard. That is their job, but to render a decision that is not in their juridiction is impossible. Any law suit that was ever filed to nolifiy any amendment never worked because of this.
Also it is unconstitutional for the Supreme Court to give opinions no matter how great the national emergency.

It is interesting to note that when the Supreme Court in 1939 Coleman v. Miller decided that the Amendment process was a"political issue" it can also be said that Article V in its entirity is political.

RATIFICATION BY VOTERS

Referendum provisions of state Constitution and statutes cannot be
plied in the ratification or rejection of amendments to the Federal
istitution without violating the requirements of this article, that
ch ratification shall be by the legislatures of the several states,
by conventions therein, as Congress shall decide.

vk vs. Smith, Ohio 1920
tional Prohabition Cases 1920
rlotti vs. Lyons 1920
ior vs. Noland 1920
rson vs. Sullivan 1920

reopinion of the Justices 1933, 167 A. 176, 132 Me. 491.

endment to Federal Constitution is valid only when ratified in accor-
ice with this Article, and ratification by referendum vote would be in-
lid.

WEST PUBLISHING CO.
ST. PAUL, MINN.

me of book where information was obtained from.

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Law Poll
ABA JOURNAL/SEPTEMBER 1,1987

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Method under Article V"(1973)

Personal Correspondence from American Bar Association
Robert D. Evans , Director of Governmental Affairs Office/ABA
letters June 14,1984 and March 11,1988

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March 11, 1988

Pastor Clifford Marlowe
P.O. Box 137
Danboro, PA 18916

Dear Pastor Marlowe:

You have asked me to clarify the position of the American Bar Association regarding the calling of a national constitutional convention on the issue of a federal balanced budget amendment.

The American Bar Association has not considered the issue of a balanced budget amendment, and has taken no position on that issue, pro or con.

In 1974, the Association considered recommendations of its Special Constitutional Convention Study Committee and adopted them as Association policy. Attached is a copy of those adopted recommendations. Perhaps the most frequently cited recommendation is that which states:

> "Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislature."

The report which accompanied these recommendations, "Amendment of the Constitution by the Convention Method under Article V," makes clear the Association's view that congressional action to establish procedures should be taken well in advance of the call for a convention:

38x

> If we fail to deal now with the uncertainties of the convention method, we could be courting a constitutional crisis of grave proportions. We would be running the enormous risk that procedures for a national constitutional convention would have to be forged in time of divisive controversy and confusion when there would be a high premium on obstructive and result-oriented tactics."

Congress has not enacted any legislation establishing procedures for a national constitutional convention. The Association was unable to support legislative proposals introduced in recent Congresses to establish such procedures because the proposals did not conform to the "one person, one vote" principle in their provisions relating to delegate selection and lacked adequate provisions for judicial review.

You indicated that there is consideration being given to rescinding a call for a national constitutional convention previously made. You may find of interest the discussion of this issue in the ABA's 1974 report. Report language is not official ABA policy but is part of the "legislative history" of the ABA's adoption of its resolutions on the constitutional convention issue.

I hope this information is helpful. Please let me know if I can provide a copy of our report or any other information.

Sincerely,

Bob Evans

Robert D. Evans

RDE:dc-m
Enclosure

WARREN B. RUDMAN
NEW HAMPSHIRE

COMMITTEES
PROPRIATIONS
VERNMENTAL AFFAIRS
DGET
MALL BUSINESS
LECT COMMITTEE ON ETHICS,
VICE-CHAIRMAN

United States Senate

WASHINGTON, DC 20510

April 12, 1988

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Pastor Marlow
Post Office Box 137
Danboro, Pennsylvania 18916

Dear Pastor Marlow:

Thank you for bringing to my attention your views on H.C.R. 11, the bill passed by the New Hampshire House to repeal New Hampshire's call for a constitutional convention.

At the outset, let me say that I strongly support a constitutional amendment to require a balanced federal budget and voted in favor of such an amendment the two times it was considered by the Senate. However, it has been my policy, since being elected to the United States Senate, not to get involved in matters pending before the New Hampshire state legislature.

Personally, I would only support a constitutional convention if it can be guaranteed that the scope of the convention can be limited to a balanced budget amendment. In my view, the best way to enact a balanced budget constitutional amendment is to elect a Congress which will pass one.

I appreciate being apprised of your views on this matter.

Sincerely,

Warren B. Rudman

Warren B. Rudman
United States Senator

WBR/rs

40x

FIB New Jersey

al Federation of
ndent Business

Testimony on ACR-22, submitted to the Assembly State Government Committee on June 20, 1988.

Mr. Chairman and members of the Committee, my name is Laura Giannotta, Government Relations Director for the National Federation of Independent Business, New Jersey chapter (NFIB/NJ). I appreciate the opportunity to present the views of the 7,900 NFIB/NJ members on ACR-22, legislation calling for a convention to propose a balanced budget amendment to the constitution.

By way of background the National Federation of Independent Business (NFIB) represents over 500,000 small and independent and business owners in the country. In New Jersey, as I mentioned, there are 7,900 members. NFIB and NFIB/NJ develop positions on legislation by individually polling each member.

The issue facing you today, and addressed by ACR-22 sponsored by Assemblyman Richard Kamin, is one of the primary concerns of business owners nationwide. When polled in 1987, 71% of NFIB/NJ members wanted the New Jersey Legislature to petition Congress to call a limited constitutional convention for the sole purpose of requiring a balanced federal budget.

Many will tell you today that a constitutional convention will enable special interests to gut the constitution. You will hear from others who say there are enough safeguards to prevent that. You will also hear differing views on where the blame lies for the hugh deficit the nation is facing. Some put the blame on Ronald Reagan's defense buildup. Others will blame it on Congress. But the federal budget has been balanced only once in the last 20 years. Federal spending has increased rapidly. Between 1965 and 1980 the federal budget grew 400%, while the private sector economy grew only 270%.

Just a decade ago, the budget deficit averaged about $35 billion annually. Today we are facing a $200 billion deficit and a $2 trillion debt, incomprehensible figures. Yet that could cripple the nation's economy in a recession. We are spending more money than ever before to finance that debt, money that could be better spent creating jobs and stimulating lasting economic growth. We are the world's largest debtor nation and there is no end in sight. Clearly, no nation, no matter how rich and powerful, can afford to maintain this level of debt before a serious decline sets in. Economic growth will end as the capital needs of the federal government continue to compete with the needs of private citizens and independent business owners.

fice
t State St.
NJ 08618
39-8777

Small business owners from every county in New Jersey and every line of work are alarmed. Their blood boils as Congress debates further budget increases. They see Washington losing control of the economy. They are demanding that government operate more like a business.

Conventional legislative approaches to curb excessive spending have failed. Even new approaches to budgeting haven't worked. The only alternative left -- to provide the necessary fiscal discipline to balance the federal government's budget -- is a constitutional amendment.

Therefore the 7,900 NFIB/NJ members request you favorably report ACR-22.

rdian of
siness

Thank you for the opportunity to speak in support of this measure. It is an issue on which action is long overdue. 102x

U.S. Department of Justice

Office of Legal Policy

Washington, D.C. 20530

LIMITED CONSTITUTIONAL CONVENTIONS

UNDER ARTICLE V

OF THE UNITED STATES CONSTITUTION

(September 10, 1987)

Table of Contents

LIMITED CONSTITUTIONAL CONVENTIONS UNDER ARTICLE V

INTRODUCTION

Article V of the United States Constitution provides two methods by which constitutional amendments may be proposed: by the Congress, or by a convention called by the Congress on the application of the legislatures of two-thirds of the States. The former method has been employed in the case of each of the first twenty-six amendments to the Constitution. The latter method has never been used, although numerous applications for a convention have been made by the states over the years on a variety of topics.

In this paper, the Office of Legal Policy examines the following issues: (1) whether Article V permits a constitutional convention limited to one or more topics; and (2) if so, whether there are practical means permitted by the Constitution to enforce the limitations. 1/

We conclude that Article V does permit a limited convention. This conclusion is premised on three arguments. First, Article V provides for an equality of the Congress and the states in the power to initiate constitutional change. Since the Congress may limit its attention to single issues in considering constitutional amendments, the states also have the constitutional authority to limit a convention to a single issue. Second, consensus about the need for constitutional change is a prerequisite to initiating the amendment process. The consensus requirement is better met by the view that Article V permits limited constitutional conventions than by the view that it does not. Third, history and the practice of both the states and the Congress show a common understanding that the Constitution can be amended issue by issue, regardless of the method by which the amendment process is initiated.

We also conclude that there are four possible methods of enforcing the subject matter limitation on the convention. First, and foremost, the states, who exercise ultimate control over the ratification of all constitutional amendments, may

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1/ Although this paper does recommend that the Department of Justice support the need for legislation establishing procedures for a limited convention, it does not treat all the details which would be involved in such legislation.

withhold ratification of a proposed amendment which is outside the scope of the subject matter limitation. Second, the Congress may enact legislation providing for such limitations as the states request and it may be that the Congress may decline to designate the mode of ratification for those proposed amendments that it determines are outside the scope of the subject matter limitation and therefore beyond the authority of the convention to propose. Third, the courts may review the validity of the constitutional amendment procedure, including whether a proposed amendment was within the subject matter limitation. Fourth, the delegates to a convention may be bound by oath to refrain from proposing amendments on topics other than those authorized under the charter of the convention.

The issues discussed in this paper are of significant practical importance. The possibility that a convention will be called is greater today than ever before in our history. While only ten applications for a convention were received by the Congress from 1788 to 1893, since that time over 300 such applications have been made. 2/ Both the initiative for an apportionment amendment and the initiative for a balanced budget amendment received thirty-two of the required thirty-four applications. 3/

As the prospect that a convention would be called loomed larger, debate was conducted in both the popular and the academic press over whether Article V permits a limited convention. 4/ Some of this literature expressed fear of a "run-

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2/ Constitutional Convention Implementation Act of 1985, S. Rep. No. 99-135, 99th Cong., 1st Sess. 13 (1985) [hereinafter Senate Report].

3/ Id. at 12-13.

4/ A large amount of both popular and academic writing is collected in Constitutional Convention Procedures, Hearing before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 96th Cong., 1st Sess. (1979) [hereinafter Hearing]. Some of the scholars who conclude that Article V permits a limited convention are Professor William W. Van Alstyne, Professor (now Judge) Grover Rees III, and Professor (now Judge) John T. Noonan. See, e.g., Van Alstyne, The Limited Constitutional Convention - The Recurring Answer, 1979 Duke L.J. 985; Rees, Constitutional Conventions and Constitutional Arguments: Some Thoughts About Limits, 6 Harv. J. L. & Pub. Policy 79 (1982); Noonan, The Convention Method of Constitutional Amendment - Its Meaning, Usefulness, and Wisdom, 10 Pac. L.J. 641 (1979). In addition, the American Bar Association,

(continued...)

away" convention, one that might propose amendments fundamentally altering cherished constitutional liberties or basic institutions of government. 5/ The participants in this debate included some of the most prominent constitutional scholars of our time, and the debate was largely characterized by serious attempts on the part of all concerned to remain faithful to the text of the Constitution. The arguments marshalled in opposition to limited conventions are by no means implausible, and we wish to state at the outset that we do not urge that those arguments are self-evidently wrong. Rather, we believe the interpretation urged here is the more defensible view in light of the language, the framing history, and the purpose of Article V.

Based on our conclusions that the Constitution permits limitations on the subject matter of a convention and permits effective enforcement of those limitations, we believe that fears of a "run-away" convention are not well founded. Since those fears may inhibit the states in exercising their prerogative to apply for a limited convention, we suggest that the Department of Justice endorse the appropriateness of legislation implementing

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4/(...continued)
after conducting its own study, has concluded that limited conventions are permissible under Article V. See American Bar Association, Amendment of the Constitution by the Convention Method Under Article V, reprinted in Hearing, supra, at 69. Some of the scholars who conclude that Article V permits general conventions only are Professor Charles Black, Professor Walter Dellinger and Professor Gerald Gunther. See, e.g., Black, Amending the Constitution: A Letter to a Congressman, 82 Yale L.J. 189 (1972); Dellinger, The Recurring Question of the "Limited" Constitutional Convention, 88 Yale L.J. 1623 (1979); Gunther, Constitutional Brinkmanship: Stumbling Toward a Convention, 65 A.B.A.J. 1046 (1979).

5/ See, e.g., Senate Report, supra note 2, at 2 ("Concern has frequently been expressed about the possibility of a 'runaway' convention, unfaithful to the mandate with which it was charged by the States and the Congress."); Gunther, The Convention Method of Amending the United States Constitution, 14 Ga. L. Rev. 1, at 25 (1979) ("It is a road that promises controversy and confusion and confrontation at every turn. It is a road that may lead to a convention able to consider a wide range of constitutional controversies."); Statement by the National Board of Directors, Americans for Democratic Action, March, 1979, reprinted in Hearing, supra note 4, at 411 ("[A] constitutional convention will surely plunge us into a crisis of mammoth proportions").

the Congress' power to call a limited constitutional convention. 6/ We further suggest that, in speeches, the Department might provide reassurance to the states that they need not risk putting the entire Constitution at stake in order to apply for a convention to consider a given issue.

I. ARTICLE V AUTHORIZES LIMITED CONSTITUTIONAL CONVENTIONS

In its entirety, Article V provides:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several states, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the States, or by Conventions in three-fourths thereof, as the one or other mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth clause in the Ninth section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

While the text of Article V does not explicitly address the question of limitations on the subject matter of the convention, the structure and purpose of the text, as well as the interpretation of it by the States, the Congress, and the majority of scholars who have taken up the question, all support the view that Article V permits limitation of the subject matter of the convention.

The structure of Article V provides for equality, as between the States and the Congress, in initiating the process of amending the Constitution. This interpretation of the text is supported by the records of the framing of Article V and by other contemporaneous historical sources, as well as by the weight of

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6/ The most recent attempt to pass a Constitutional Convention Procedures Act occurred in 1985 when the Senate Judiciary Committee unanimously approved S. 40. The full Senate took no action on the bill. See Senate Report, supra note 2.

modern day scholarly opinion. Since the Congress is clearly able to limit its own initiated amendments to a single topic, the "equality argument" leads to the conclusion that the states are equally able to limit the subject matter of initiated amendments. In Part I.A. of this paper, we examine the "equality argument" in detail, showing its fidelity to the text and support in historical sources.

A crucial requirement of Article V, consensus, also supports the interpretation allowing for limited constitutional conventions. Article V requires a broad consensus at two stages in the amendment process: the stage at which those authorized to make a determination that change is necessary decide to initiate the amendment process, and the stage at which a concrete proposal for change is subject to ratification. The first stage implements the consensus requirement by making a supermajority vote of either the Congress or the states a prerequisite to initiation of the amendment process. In Part I.B. of this paper, we will show that authorization of a limited convention is more in harmony with the consensus requirement than the alternative interpretation, which would permit only unlimited conventions. We also show that the "consensus argument" is supported by legal precedent and historical evidence.

In Part I.C. of the paper, we review the historical practice of both the states and the Congress under Article V to show that these bodies have consistently interpreted that Article as authorizing a limited convention.

A. The "Equality" Argument: Under Article V, The Congress and the State Legislatures are Equally Able to Initiate the Amendment Process

1. The Congress and the States Are Equal

No one has ever questioned the Congress's authority to propose amendments limited to a single topic or group of topics. The "equality argument" takes it as a given that Congress is free to propose single amendments limited to a single topic. Each of the first sixteen amendments to the Constitution after the adoption of the original ten has been proposed by the Congress in a manner consistent with this authority. If the States are equally able to initiate the amendment process, the States should be equally able to limit the subject matter of proposed amendments. The structure and history of Article V fully support the basic premise of the equality amendment.

a. The Structure of Article V

The procedure for amending the Constitution set forth in Article V consists of three stages: a determination that amendment is necessary, formulation of a concrete proposal for amending, and ratification. Each stage may be carried out in two ways. The determination of necessity may be made either by the Congress or by the states; the concrete proposal may be formulated by the Congress or by a convention; ratification may be granted either by state legislatures or state conventions. 7/

The structure of Article V strongly suggests that each optional mode of conducting each stage of the process is different only in form. The Article is a single sentence with parallel constructions. It 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" -- i.e., regardless of the method chosen to determine the necessity of an amendment and the text of a proposal -- a proposed amendment is valid if ratified in the required manner. It prescribes an identical supermajority vote for either mode of ratification. On the whole, the structure of the text indicates clearly that the optional modes of conducting each stage 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 use of one mode is restricted to particular topics or circumstances.

b. The Framing of Article V and Contemporaneous Commentary

The historical record concerning the framing of Article V shows that Article V contemplates an equal power of initiation between the states and the Congress and that this basic equality was the intended result of a compromise at the Federal Convention of 1787 in Philadelphia. Furthermore, it is clear that the compromise was to give Congress power to initiate the amendment process equal to the power of the States: the delegates first agreed that the States should have a power to amend that was not dependent for its exercise on the national legislature; only

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7/ If the determination of necessity for change is made by the states, the concrete proposal for change must be formulated by a convention. If the determination of necessity is made by the Congress, the concrete proposal must also be formulated by th Congress. However, even though the "initiation stage" and the "formulation stage" are linked in this fashion, the two stages are distinct activities, as evidenced by their division in the state-initiated amendment process.

later did they add a provision giving the Congress equal authority to initiate amendments.

The first issue about the amending power debated in the Federal Convention was whether any method of amendment should be included in the Constitution. When the initial proposition regarding amending the Constitution was brought up at the Federal Convention on June 5, 1787, Charles Pinckney of South Carolina objected that such an amending provision in the Constitution was neither proper nor necessary. Almost immediately, a vote was taken to postpone debate. 8/

When the issue was brought up again on June 11, the proposition debated was that a method of amending the Constitution ought to be provided and "that the assent of the National Legislature ought not to be required thereto." 9/ Several delegates criticized the proposition because it made "the consent of the National Legislature unnecessary." 10/

It is clear that the advocates of including an amendment provision wanted to provide the states with a method of curbing Congressional power. With fellow Virginian Edmund Randolph in concurrence, George Mason argued:

> It would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their consent on that very account. The opportunity for such an abuse may be the fault of the Constitution calling for amendment. 11/

The amendment process was taken up again on September 10. A draft of Article V was debated that provided only for a state-initiated convention and excluded the alternative method of the Congress itself proposing constitutional amendments to the states. Under this version, the Congress was required to call a convention upon the application of two-thirds of the states. Any amendment proposed by the convention would immediately become part of the Constitution. There was no ratification process. Elbridge Gerry criticized the draft because it seemed to him that it presented the danger that two-thirds of the states could band together and bind all the states to "innovations" that could

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8/ 1 The Records of the Federal Convention of 1787, at 121 (M. Farrand, ed., rev. ed. 1937) (hereinafter cited as "Farrand").

9/ 1 Farrand 202.

10/ Id.

11/ Id.

possibly include the complete subversion of all the state constitutions. 12/

Alexander Hamilton criticized the draft for different reasons. In general he approved of the amending power and thought that the experience of the Articles of Confederation showed that there should be "an easy mode" for amending the Constitution. The current draft was inadequate, Hamilton said, because it presented too much of a danger to the national government -- which would be at the mercies of the states. He then proposed to the Convention that the Congress be allowed to propose amendments as well. Hamilton argued that the Congress would "be the first to perceive and will be most sensible to the necessity of amendments." 13/ With Hamilton's voice added to Gerry's, the Convention voted to reconsider. At this point, Roger Sherman of Connecticut introduced the idea that amendments -- proposed either by the Congress or by the states -- should be "consented to" (i.e. ratified) by the states. 14/

After further discussion, James Madison proposed new language that summarized and reformulated the discussion so far. His new draft was predominantly what became the final version of Article V. However, his new draft also changed the substance of what had been discussed up to that point. Hamilton's proposal -- a compromise position -- had been to establish equal powers of initiating the amendment process in the states and in the national legislature. Madison's draft provided that the national legislature alone could propose amendments either on its own initiative or upon the applications of two-thirds of the state legislatures. He left out completely the mandatory requirement that Congress call a convention upon the applications of two-thirds of the states. A convention was not even mentioned. Madison's draft passed. 15/

On September 15, Madison's draft, slightly altered by the Committee on Style and Arrangement, was brought up again for debate:

> The Congress, whenever two-thirds of both Houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states shall propose amendments to this Constitution, which shall be valid to

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12/ 2 Farrand 557.

13/ Id.

14/ Id.

15/ Id.

> all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the 1st and 4th clauses in the 9th section of Article I. 16/

Clearly, this draft refers to both single and multiple amendments. Madison's unification of the proposing power in the Congress makes that evident. No one would read this formulation to mean that the Congress cannot propose single amendments. In fact, it contains the exact language under which the Congress has been proposing single amendments for almost 200 years. Since the Madison draft provides that only the Congress can propose, it must also mean that the Congress can propose single amendments regardless of whether the necessity for amendment is determined by Congress or by an application of the states.

As explained by Professor (now Chief Justice of the High Court of American Samoa) Grover Rees III,

> It seems crystal clear that this provision referred to such particular amendments as were desired by the states. I cannot imagine anyone suggesting that the states were expected to say to Congress, "We think it is about time for you to propose some amendments. Any amendments will do." Indeed, another part of the same sentence would have rendered such a state "power" superfluous as well as inadequate, since it gave Congress the power to propose amendments at its own discretion. Thus the whole provision was perfectly symmetrical: Such amendments would be proposed as were desired either by two-thirds of both houses of Congress or by two-thirds of the state legislatures. 17/

Madison's draft stimulated a debate that led to the final version:

16/ 2 Farrand 629.

17/ Rees, supra note 4, at 87.

> Colonel Mason thought the plan of amending the Constitution exceptionable and dangerous. As the proposing of amendments is in both the modes to depend in the first immediately, and in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.
>
> Mr. Govr. Morris and Mr. Gerry moved to amend the article so as to require a Convention on application of two-third of the states. * * * *
>
> The motion of Mr. Govr. Morris and Mr. Gerry was agreed to * * *. 18/

Thus, the Gerry/Morris revision providing for the calling of a convention seems to have been made to respond to Mason's concern that the states not be dependent on the national legislature for proposing amendments. The delegates evidently thought that they were restoring the terms of Hamilton's compromise. 19/ There was no discussion to the effect that this restoration deprived the states of the power to initiate particular amendments, a power they clearly had under the Madison formulation. Instead, it appears that restoring the convention provision was viewed solely as a way of providing an effective alternative means for the states to initiate constitutional change, including change on a single topic. The clear meaning of the penultimate draft on this point, as pointed out by Rees, obviously obtained in the final draft as well. It obtains in Article V today.

In summary, the debates about what became Article V demonstrate that the power of initiating the amendment process was initially to reside only in the states. The language of the final draft permitting the Congress to initiate the amendment process was a compromise to allow the Congress as much power as the states to initiate the amendment process. Like the text of

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18/ 2 Farrand 629 (emphasis added).

19/ Taking away the Congress' exclusive control over the proposing power and dividing it between a convention and the Congress seems to be a clear victory for state prerogatives. Arguably, Madison was wrong when he noted just before the vote on the Gerry-Morris motion that the Congress would "be as much bound to propose amendments applied for by two-thirds of the States [under the penultimate draft] as to call a Convention on the like application [under the Gerry/Morris revision]." 2 Farrand 630.

Article V itself, the history of Article V is devoid of any indication that the convention mode is substantively different from the congressional mode of initiating the amendment process.

This interpretation is supported by contemporaneous accounts of the amending power. Concerning the structure and purpose of Article V, Madison was able to offer this simple but precise explanation:

> That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other. 20/

And in explaining why single amendments to the Constitution would be easier to accomplish than the initial ratification of the entire Constitution, Hamilton clearly assumes that the amending power would be used for single amendments and just as clearly makes no substantive distinctions between the two methods of initiating amendments:

> Every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise in relation to any other point -- no giving or taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment and that of establishing, in the first instance, a complete Constitution. 21/

20/ The Federalist No. 43, at 286 (J. Madison) (Modern Library ed. 1937) (emphasis added).

21/ The Federalist No. 85, at 572 (A. Hamilton) (Modern Library ed. 1937).

c. Scholarly Commentary

A review of the academic literature reveals that a majority of commentators have concluded that Article V equally empowers the states and the Congress to initiate such particular amendments as they desire. It is noteworthy that most of this commentary was written without regard to contemporary amendment controversies such as the balanced-budget amendment. The Appendix is a compendium of authorities who support the permissibility of limited conventions under Article V.

It is no coincidence that many of those scholars who have concluded that Article V permits limited constitutional conventions base their conclusions substantially on the debates at the Federal Convention of 1787. 22/ These scholars emphasize the purpose of Article V, and typically they view Article V as a provision governing federal-state relations, or, more pointedly, federal-state antagonisms. Viewed as such, Article V takes its place with the many other provisions of the Constitution that divide and balance governmental power between the states and the national government.

Accordingly, in summarizing the overall meaning and purpose of the Article V debates at the Federal Convention, Professor Paul Bator has remarked:

> The central purpose of the convention provision of Article V was to give the states recourse in the event that intransigent central authority refuses to consider a grave constitutional infirmity or defect. 23/

Professor William Van Alstyne finds that Article V gives the states a ready means to check any "surprising and alarming" actions of the national government:

> The most expected use of Article V was to permit the states a reasonably efficient and

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22/ It is also no coincidence that some of those academics who deny the equality of the states and the Congress under Article V likewise deemphasize the importance of the framing history. Charles Black, whose views are examined in the next subsection, has said that the framing history proves "next to nothing." Black, Amendment by National Constitutional Convention: A Letter to a Senator, 32 Okla. L. Rev. 626, 637 (1979) [hereinafter A Letter to a Senator].

23/ Forum, A Constitutional Convention: How Well Would It Work? at 11 (American Enterprise Institute, 1979).

> prompt means of perfecting amendments occasioned by particular developments, e.g. omissions by Congress or Acts of Congress both surprising and alarming in view of what had been supposed would be the case, and/or decisions by the Supreme Court reflecting unexpected interpretations of the Constitution. 24/

In its Report of the ABA Special Constitutional Convention Study Committee, the American Bar Association agrees:

> From this history of the origins of the amending provision, we are led to conclude that there is no justification for the view that Article V sanctions only general conventions. Such an interpretation would relegate the alternative method to an "unequal" method of initiating amendments. Even if the states legislatures overwhelmingly felt that there was a necessity for limited change in the Constitution, they would be discouraged from calling for a convention if that convention would automatically have the power to propose a complete revision of the Constitution. 25/

Professor Kauper sees the convention method as giving the states the power to act when they are "deeply troubled":

> If the requisite majority of legislatures is directed solely to the end of calling a convention to propose amendments on a given subject matter, it is in keeping with the underlying purpose of the alternative amendment procedure for Congress to limit the convention to such proposals. The general purpose of the alternative amendment provision is to provide something of a safety valve in case the state legislatures are deeply troubled about a matter which Congress

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24/ Hearing, supra note 4, at 295 (Statement of William Van Alstyne).

25/ American Bar Association, Report of the ABA Special Constitutional Convention Study 16 (1973).

> refuses to correct by invoking its own power to propose amendments. 26/

And Professor Kurland concurs about this fundamental purpose of Article V:

> The intention of Article V was clearly to place the power of initiation of amendments in the State legislatures. The function of the convention was to provide a mechanism for effectuating this initiative. 27/

The debates of the Federal Convention do not give us a detailed record of the intent behind every word of Article V. We can learn nothing from the debates about the details of a convention, for instance. 28/ But those debates do give us a clear record of the purpose of Article V and what critical issues of constitutional principle were resolved by Article V's final draft.

The clear purpose of Article V would be undermined if a convention could not, under any circumstances, be limited, whatever the desires 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 in the power to initiate constitutional change or, in Madison's words, to "equally enable" the origination of amendments by the states and by the Congress.

2. Mistaken Views of the Equality of Article V

Contrary to the analysis above, some commentators have reached a different result by adopting other ideas about the envisioned role of a convention under Article V. The problem with these approaches, as discussed below, is that they reflect a misunderstanding of the role of the states and would effectively preclude the states from initiating the amendment process, contrary to the language and purpose of Article V.

26/ Kauper, The Alternative Amendment Process: Some Observations, 66 Mich. L. Rev. 903, 912 (1968).

27/ Hearing, supra note 4, at 1223 (1968 Memorandum of Philip B. Kurland).

28/ See Section II.B. of this paper, pp. 36-43 infra.

a. Equality Between the Congress and a Convention

The leading and longstanding opponent of the notion that Article V permits a limited constitutional convention is Professor Charles Black of Yale Law School. He reads Article V to require an equality of the Congress and a constitutional convention:

> [A] convention, as one of the two "proposing" bodies under Article V, would stand exactly on an "equal footing" with Congress, the other "proposing" body under Article V. The equality to be sought, as to national concerns, is an equality between the two national bodies to which the proposing function is given. 29/

i. The Congress and a Convention as Equally Independent

Professors Bickel, Dellinger, and Gunther agree with Black that it is the Congress and a convention that are equal under Article V, not the Congress and the states. 30/ All four maintain that this basic equality obtains for the purpose of protecting the independence of a convention.

The argument behind their view is that the Congress exercises an absolute discretion when it deliberates and proposes amendments. Deliberating and proposing presuppose discretion. Therefore, these scholars argue, the other Article V proposing body, a convention, must also possess such discretion and independence of mind. Thus, there can be no limitations on the agenda of an Article V convention. The states may not attempt to impose limitations by means of their applications, nor may the Congress through its call of the convention. Article V, according to this argument, contemplates an equality of discretion and of independence.

29/ Hearing, supra note 4, at 191 (Statement of Charles L. Black, Jr.).

30/ Federal Constitutional Convention: Hearings Before the Subcommittee on Separation of Powers of the Committee on the Judiciary, United States Senate, 90th Cong., 1st Sess. 62 (1967) [hereinafter Federal Constitutional Convention] (Statement of Alexander Bickel); Dellinger, supra note 4, at 1630; Hearing, supra note 4, at 310-311 (Prepared Statement of Gerald Gunther)

For example, the late Professor Alexander Bickel contended that:

> A fair reading of the language would seem to indicate that the other body authorized by Article V to propose amendments -- and that other body is the convention convened by the states, not the states -- that other body, the convention, is also free to propose one or seven or 17 amendments. 31/

The argument that a convention must be as free as the Congress to propose amendments, and therefore must be unlimited in its authority, is based on a confusion about the Congress' dual role under the congressionally-initiated mode of amendment. When the Congress initiates the amendment process, it undertakes two logically distinct functions: it determines that a need for change exists, and it proposes a specific amendment. Although these two steps are taken virtually simultaneously, they are in fact separate stages in the amendment process. It is only the former step, the determination of necessity, that necessarily implies unlimited scope in the congressional power to consider any topic. The latter step, formulating a proposed text, is necessarily limited by the topic that led to the determination of necessity.

The parallelism these scholars overlook is that the convention is equal to the Congress as the drafting body but is not equal to the Congress as the body that decides that there is a need for change. Under the convention mode, the states have already determined that there is a need for change; this determination manifests itself in their applications. Thus, the states are equal to the Congress in the determination of necessity stage, the stage that is necessarily unlimited in scope. But the convention is equal to the Congress in the formulation stage, the stage that is limited in scope.

ii. A Convention as a Check on the States

Black, Bickel, Dellinger, and Gunther further believe that an independent convention is essential as an extra check on the states. 32/ Whether the Congress or a convention proposes

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31/ Federal Constitutional Convention, supra note 30, at 62. See also Dellinger, supra note 4, at 1630-31 (emphasis added).

32/ See Black, supra note 4, at 204; Dellinger, supra note 4, at 1632; Federal Constitutional Convention, supra note 30, at 62 (Bickel); Hearing, supra note 4, at 310 (Prepared Statement of Gerald Gunther).

amendments, the states retain the power to disapprove the amendment before it becomes valid, these scholars argue. If the convention had been intended merely as a tool for the states, then they would have been given complete control over the process, from applying for and conducting the convention to ratifying the amendments proposed by their own conventions.

For example, Professor Dellinger argues that the framers of Article V

> created an alternative method free of congressional or state legislative control; a constitutional convention free to determine the nature of the problem, free to define the "subject matter" and free to compromise the competing interests at stake in the process of drafting a corrective amendment. State legislatures may call for such a convention, but neither they nor the Congress may control it. 33/

This argument has a certain constitutional plausibility to it. It appears to be another "check" on governmental power in a charter full of such checks. The argument's drawback, however, is that the framing history itself directly refutes it. Essentially, it is the argument of Sherman who thought that the penultimate draft of Article V (that lacked only the critical "shall call a convention" language) gave the states too much power in the amendment process. Sherman wanted more checks on the collective power of the states, and he proposed several amendments, including the equal suffrage clause, to that effect. 34/ He might well have adopted the convention-as-check argument and proposed that Article V be written so as to provide that conventions once applied for by the states and called by the Congress were totally independent of the states. He did not, however. Neither he nor any other delegate proposed or discussed this additional check on the states. A convention as an independent body was never discussed.

Furthermore, the September 15 vote, inspired by Mason, to re-insert the "shall call a convention" language was an emphatic endorsement of the argument for more, not less, state power. The last two clauses of Article V -- concerning slavery and equal suffrage in the Senate -- are <u>specific</u> limitations (or checks) on what a supermajority three-fourths of the states can do to any particular state or states. We have the record of the

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33/ <u>Hearing</u>, <u>supra</u> note 4, at 262 (Statement of Walter E. Dellinger).

34/ 2 Farrand 557, 629.

debates about the purposes of these limitations. There is no record, however, of any other general limitations -- a convention-as-check provision, for instance -- on the states' role in the amendment process. In fact, such a general check, Madison's granting of the proposing power solely to Congress, was removed from the final version.

If this convention-as-check or some further limitation on the power of the states had prevailed at the Federal Convention, arguably we would have an overchecked Article V. The states would be effectively checkmated in their power to initiate constitutional change, which is an essential purpose of Article V. In fact, under this view of Article V, the states have no viable role outside of the power to ratify. As the late Senator Sam Ervin correctly pointed out, the states would never attempt to initiate constitutional change under this theory:

> This construction would effectively destroy the power of the states to originate the amendment of errors pointed out by experience, as Madison expected them to do. 35/

In agreement with Ervin is Professor Brickfield who, writing for the House Judiciary Committee, charges that general and independent conventions would reduce the convention method of amending the Constitution to "an unworkable absurdity." 36/ Noonan says that it would leave the states "helpless," 37/ and the Senate Judiciary Committee argues that it would "undermine" Article V itself by rendering the convention method "a constitutional dead-letter." Van Alstyne calls such an interpretation "peculiar and hostile," 38/ and goes on to observe the folly in contending that the States may apply for only an unlimited convention, the kind least consistent with the limited purpose of Article V:

> I do find it perfectly remarkable that some have argued for a construction not merely limiting the power of state legislatures to have a convention, but limiting that power to

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35/ Ervin, Proposed Legislation to Implement the Convention Method of Amending the Constitution, 66 Mich. L. Rev. 875, 883 (1968).

36/ C. Brickfield, Problems Relating to a Federal Constitutional Convention, 85th Cong., 1st Sess. 20 (Comm. Print 1957).

37/ Noonan, supra note 4, at 644.

38/ Van Alstyne, supra note 4, at 990.

its least expected, least appropriate, and yet most dangerous use. 39/

Of course, a convention does serve as a check on the states -- but only of a certain kind. The state legislatures do not implement all three stages of the convention method. They set the agenda by initiating and amend the Constitution by ratifying. But they do not deliberate; they do not craft the language of an amendment; most critically, they do not decide whether an amendment is to be proposed at all. Regardless, it is erroneous to conclude that because the proceedings of a convention are independent of state control that the agenda is likewise independent of the purposes for which the states caused the convention to be called.

The convention is itself subject to checks and balances, as a temporary fourth branch of government. It is no more "independent" of the influences of the other branches of government than are the executive, legislative, or judicial branches. With their applications, the states indirectly check the authority of the convention by causing the Congress to call into being a convention, but only one of a certain type. The Congress directly exercises this check by means of its power to call such a convention into existence.

b. The "Second Philadelphia" Argument: Article V Does Not Contemplate Equality

Many of those who argue for general and independent conventions frequently take their arguments a step farther by urging that the two methods of amending the Constitution have different purposes and are therefore unequal. According to this school of thought the workable and normal method of amending the Constitution is the one that has always been used. The convention method is to be reserved for rare and exotic occasions. The key feature of this argument is the way its proponents misconceive a convention.

For instance, Alexander Bickel described the convention method as an opportunity for "a national forum" on the Constitution, which should be open and not predetermined by the states. 40/ Dellinger says that a constitutional convention is "an awesome device" to be used in times of crisis. 41/

39/ Id. at 991-92 (emphasis in original).

40/ Federal Constitutional Convention, supra note 30, at 62 (Bickel).

41/ Hearing, supra note 4, at 254 (Testimony of Walter E. Dellinger).

Black has said that the convention method looks to "a general dissatisfaction with the national government or a breakdown thereof." 42/ Professor Ackerman would restrict the convention method to occasions "when the states are willing to assert the need for an unconditional reappraisal of constitutional foundations." 43/

Professor Tribe of Harvard Law School has said that:

> Such a convention would inevitably pose enormous risks of constitutional dislocation -- risks that are unacceptable while recourse may be had to an alternative amendment process (the congressional initiative) that can accomplish the same goals without running such serious risks. 44/

As noted above, the most reasonable interpretation of the text is that Article V provides for an equality of initiation and that both methods of initiation are designed to be useful and equal in purpose. The history of the framing of Article V is devoid of any details that might provide support for the "second Philadelphia" argument. In addition, Madison's and Hamilton's references to the amending power in The Federalist indicate that the Article V process is designed for "useful alterations" rather than merely for "sweeping revisions." The "second Philadelphia" argument is an interesting theory, but no evidence can be marshalled to show that it has anything to do with an Article V convention.

B. The Consensus Argument: Article V Requires That the Constitution be Amended If and Only If A Supermajority Agreement Exists

The word "consensus" is used here to mean an agreement based on more than a bare majority, or, in the words of one commentator, a "manifest agreement." 45/ As already pointed out, Article V requires a consensus -- a supermajority -- when the

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42/ Black, supra note 4, at 201.

43/ Ackerman, Unconstitutional Convention, New Republic, March 3, 1979, at 8.

44/ Hearing, supra note 4, at 502 (Statement of Laurence H. Tribe).

45/ Hearing, supra note 4, at 293 (Statement of William W. Van Alstyne).

Congress deems amendment necessary, when the states likewise deem amendment necessary by applying for a convention, and when amendments proposed to the states are ratified. According to the consensus argument, the Constitution requires that a consensus be identified before constitutional change can take place.

The consensus requirements of Article V reflect a clear constitutional presumption in favor of permanency and stability. They serve as hurdles to those who would change the Constitution, and Article V is designed to make clear that the necessary hurdles have been jumped before the Constitution is amended. Only the view that Article V permits limited conventions allows for the necessary clarity about the existence of a consensus. This is perhaps best shown by the arguments that ignore the consensus requirement, as will be seen below.

The text of Article V requires that a consensus be identified at two stages: at the initiation stage and at the ratification stage. The barrier to constitutional change provided by the three-fourths ratification consensus is not a sufficient barrier according to Article V. A prior consensus at the initiation stage must occur before proposing and ratification can even be considered. Without this required prior consensus, there would be no Article V impediments to a "runaway" convention. If the ratification consensus were to be accepted as the only necessary barrier to facile constitutional change, then there would be no reason for Article V to provide for a two-thirds vote of the Congress or an agreement of two-thirds of the applications of the states. In view of the multi-layered consensus requirements provided by the text of Article V, one should be wary of interpretations that ignore them.

Consensus serves to discourage notions about sweeping revisions of the constitutional system. Two hundred years of constitutional experience has shown that it is quite difficult to achieve such a consensus. Every one of our constitutional amendments has been a consensual response to a specific problem. If the states are equal to the Congress in the power to originate amendments, they must have equal power to take action based on the only kind of consensus that in practice ever occurs: a consensus about a particular issue or set of issues. The conclusion that Article V permits limited conventions is consonant with the consensus requirement of Article V.

1. Limited Conventions Uphold the Consensus Requirement

a. Dillon v. Gloss

The Supreme Court has agreed that consensus is a

crucial theme of Article V. In Dillon v. Gloss, 46/ the Court was faced with a plaintiff who was seeking to nullify a constitutional amendment. Dillon, a convicted bootlegger, was seeking a writ of habeas corpus on the ground, among others, that the Eighteenth Amendment should be declared invalid because the Congressional resolution that had proposed it to the states contained a provision declaring that the amendment must be ratified within seven years. Dillon argued that the Congress' attempt to limit the time had voided the proposal because "Congress has no power to limit the time of deliberation or otherwise control what the legislatures of the states shall do in their deliberation." 47/

In a short and unanimous opinion, the Court generally endorsed the power of the Congress, "as an incident of its power to designate the mode of ratification," 48/ to set the time for ratification. However, the power of the Congress was not unqualified in this matter, the Court said. There were "reasonable limits," 49/ and governing these reasonable limits was a principle derived from the "general purport and spirit of the Article:" 50/

> [I]t is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently * * * [A]s ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. 51/

46/ 256 U.S. 368 (1921).

47/ Id. at 369.

48/ Id. at 376.

49/ Id. at 375-76.

50/ Id. at 375.

51/ Id.

Thus, according to the Supreme Court, an Article V consensus is a super-majority agreement on the same subject at the same time that has been made manifest and clear by the procedures of Article V.

b. Under the Convention Method, the Congress Carries Out the Consensus of the States

With respect to the congressional method of initiating amendments, the consensus of the Congress is expressed in the approval of an amendment by two-thirds of the members. With respect to the convention method, the consensus of the states is expressed in the convention applications of two-thirds of them. This necessary consensus then requires the Congress to call ("shall call") a convention. Here the Congress is the servant of the states. It adds nothing to the consensus; it takes away nothing from it. The Congress did nothing to create the consensus, but it must recognize the fact of its existence and respond by calling a convention.

If the states choose to condition their application for a convention to discussion of a particular amendment or subject, then the Congress must call a convention of that kind if the principle of consensus is to be vindicated. This is all the more obvious when the equality argument is considered in conjunction with the consensus argument. Under Article V, both the states and the Congress are equally able to vindicate a consensus of their own discretion.

c. There Is an Intuitive Understanding of the Importance of Consensus

The Congress currently has pending before it constitutional convention applications from well over two-thirds of the states. There is at present a total of thirty-nine convention applications. 52/ 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 the abortion issue, others for conventions on entirely different subject matters.

In other words, there is no present requirement that the Congress call a convention because it is well-understood 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

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52/ Since 1977 alone, 36 states have submitted convention applications. See Senate Report, supra note 2, at 57.

must be two-thirds of the states calling for a convention on the same subject at the same time.

It makes no sense to argue, on the one hand, that the Congress need not call a convention because, though it has more than thirty-four applications, it does not 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 case there is no present requirement that the Congress call a constitutional convention; or such consensus is irrelevant, in which case a convention must be called immediately. 53/

2. Arguments Against Consensus

In a series of influential articles, Black has argued that the phrase "a convention for proposing Amendments" in Article V prohibits the convening of a limited constitutional convention. 54/ He "tracks" the language of Article V to derive the following hypothetical application for a convention by a state legislature:

53/ Because he thinks that applications must specifically call for a general convention (pp. 24-27 infra), Black argues that "most or all of the pending applications are invalid." See Hearing, supra note 4, at 188 (Black). According to their arguments that limited applications should be counted toward the calling of an unlimited convention (p. 27 infra), it might seem that Gunther and Dellinger agree that the Congress is required to call a convention at this time. However, Dellinger answers that certain state applications cannot be lumped together to form the necessary two-thirds "if based on the erroneous assumption that Congress is empowered to impose subject-matter limits." State applications are permitted to "recommend," however, that a convention consider only a particular subject, "provided that it is clear that the suggested limit is only a recommendation." See Dellinger, supra, note 4, at 1234. Since the states have been basing their applications on this "erroneous assumption," it can be seen that the practical result of both the Black view and the Gunther/Dellinger view is the same: virtually all of the current applications are invalid; and there is no present requirement that a convention be called.

54/ See, e.g., Black, A Letter to a Senator, supra note 22; Black, The Proposed Amendment of Article V: A Threatened Disaster, 72 Yale L.J. 957 (1963); Black, supra note 4.

> Application is hereby made that Congress call "a Convention for proposing Amendments."

He then asserts that this application would

> of course, be valid. . . . How could it be that an application for the very thing the Article mentions, in the very words of the Article, would not be valid? 55/

And such an application would necessarily be one for a general convention "to 'propose' such amendments as it thinks proper." 56/ A convention, at its discretion, could propose only a single amendment, of course, but it could not be called for that purpose. Black concludes that to suggest that Article V permits a limited convention imposes a meaning beyond the "plain" meaning established by his hypothetical state application. 57/ In reaching this conclusion, he does not say that state applications must track the precise language of Article V in order to be valid; only that, because an application that does track the language is an application for a general convention, all applications, however worded, must be for a general convention.

The first response to Black's tracking argument is that it does not prove as much as he suggests. Black has proven that Article V permits unlimited conventions, but he has not shown that Article V also prohibits limited conventions. His hypothetical application may well be one valid possibility, but his argument does nothing to show that it is the only possibility. The tracking technique is not inherently wrong, but it is used here in a wrong way.

Furthermore, Black's argument is based on a misunderstanding of the consensus requirement. The consensus requirement provides assurance that the process of constitutional change cannot even begin unless a broad-based agreement on the need for change is clearly expressed. Because Black's model permits only formal applications sanitized of the real motivations behind the applications, it provides no such assurance. It would be impossible to determine from the face of such applications whether two-thirds of the states agreed that any issue was sufficiently important to warrant the submission of amendments. Black's model leaves open the possibility that the

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55/ Black, A Letter to a Senator, supra note 22, at 628-29.

56/ Id.

57/ Id.

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process of constitutional change could start even if less than two-thirds of the states believed any specific issues merited an amendment. Under Black's model, an important constitutional safeguard is lost. The first Article V requirement that acts as an impediment to change, namely, the two-thirds consensus at the initiation stage, is no longer functional.

Black's textual analysis is seriously flawed in several additional respects. His argument results in a strained and narrow reading of the plural word "Amendments" in Article V. In the Constitution (as in everyday discourse), plural nouns are used to denote both the singular and plural meaning of those nouns. For example, the executive authority "to make Treaties" clearly includes the power to make a single treaty. 58/

Elsewhere in Article V itself, the congressional authority "whenever two-thirds of both Houses shall deem it necessary, [to] propose Amendments," plainly includes the power to propose an individual amendment. If one were to track this clause as Black tracks the convention clause, however, the Houses would "deem it necessary" for the Congress "to propose Amendments," and (under Black's logic) the Congress would be required to propose at least two amendments, plainly an absurd result.

If a "convention for proposing Amendments" were a permanent branch of government, the phrase "for proposing Amendments" could be read to leave the subject matter and number of amendments to the discretion of the convention itself. Because, however, the phrase "for proposing Amendments" is used n in the very clause that empowers the states to require the creation of a convention, the more natural interpretation is to view the phrase as dependent on the purpose for which a convention was created. If the states desire and apply for a limited convention, the Congress then must call a limited convention. 59/

Rees' observations that the penultimate draft of Article V clearly included the singular ("particular amendments") and the plural in the word "Amendments" and that this inclusiveness was not changed in the transition to the final draft have already been mentioned. 60/

In addition, Rees has provided another counterargument

58/ See Article II, Section 2, Clause 2 of th Constitution.

59/ See Senate Report, supra note 2, at 26.

60/ See page 9 supra.

to Black's reading of Article V. Black asserts that the singular cannot be included in the plural word "amendments," because

> a general convention and a limited convention are different in kind. They are as different in kind as (1) the freedom to marry; and (2) the freedom to marry one of two or three people designated by somebody else. 61/

Rees takes up Black's marriage metaphor and neatly refutes it in the following fashion:

> The power to call a convention to consider the amendments you desire, and the power to call a convention to consider any and all amendments, are as different as (1) the freedom to marry a person of your own choosing; and (2) the freedom to marry, provided you commit yourself in advance to marry one or more persons selected by somebody else on the day of the ceremony. 62/

Gunther and Dellinger argue that a convention's agenda cannot be limited but that the states are permitted to submit applications referring to or recommending a specific issue or issues. In Gunther's words:

> To me, the most persuasive interpretation is that states may legitimately articulate the specific grievances prompting their applications for a convention; that Congress may heed those complaints by specifying the subject matter of the state grievances in its call for a convention; but that the congressional specification of the subject is not ultimately binding on the convention. 63/

At bottom, the Gunther/Dellinger view is even more extraordinary than Black's. Under Black's view, it would be unclear whether a genuine consensus had been reached. The general applications would hide the specific intentions. Under

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61/ Black, A Letter to a Senator, supra note 22, at 630.

62/ Rees, The Amendment Process and Limited Constitutional Conventions, Benchmark, March-April 1986, at 77. To get the full flavor of the elaborate metaphor that Rees develops to counter Black's marriage argument, the reader should refer to the citation.

63/ Gunther, supra note 5, at 12.

Gunther's and Dellinger's view, on the other hand, it would be absolutely clear that a consensus had not been reached. According to their scenario, the Congress is allowed to collect different kinds of applications, for instance, ten abortion applications, fifteen balanced-budget applications, and a few other odd applications, and forge them together into a coalition sufficient to trigger a constitutional convention. Indeed, because the language of Article V is mandatory (the Congress "shall call a convention"), it may be that, under the Gunther/Dellinger view, the Congress is required to lump together unrelated applications for a convention in just this manner. If so, one may question why the Congress is not presently required to call such a non-consensual convention, because the Congress presently has applications from well over two-thirds of the states.

Clearly this scenario is a prescription for a genuinely runaway convention. No delegation would arrive at such a convention with enough of a consensus or a mandate to accomplish anything. Vote-swapping easily could become the order of the day. If any amendment were proposed by the convention, then several amendments might be proposed as part of "logrolling" deals by delegates. The states might be faced with a smorgasbord of unrelated amendments to ratify.

The arguments of Black, Gunther, and Dellinger concerning consensus effectively cause the convention method to become a constitutional dead-letter. Absent the "complete breakdown" scenario, the states would never apply for a convention. No state interested in a specific issue would apply for a convention whose agenda was required to be open to all issues. No state with a limited grievance would be willing to apply for a convention at which a multitude of grievances could be addressed.

C. The Argument by Practice: Both the States and the Congress Have Interpreted Article V As Providing for Limited Conventions

The argument by practice points out that the state legislatures have consistently been interpreting Article V as permitting limited conventions and that the U.S. Senate has twice unanimously passed a Constitutional Convention Procedures Act that contained the same interpretation.

This experience under Article V, although by itself not dispositive of the issue, is entitl i to great weight. It indicates that Article V has a plain meaning that is cognizable by elected officials at both the state and national levels, representing diverse parts of the country, carried out over a long period of time.

Likewise, this experience under Article V is based on the important principle that branches of government at all levels have the right and duty to interpret the Constitution. This principle does not challenge judicial review. It merely asserts that, in addition to court decisions, the practical application of the Constitution has the effect of establishing constitutional precedents.

1. Elected Officials Have Been Interpreting Article V as Allowing for Limited Conventions

a. The Experience and the Interpretation of the States

The practicality and the utility of the amending power anticipated by its framers is more a phenomenon of the Twentieth Century than either the Eighteenth or Nineteenth. 64/

The experience of the Eleventh Amendment, ratified in 1795, demonstrated that the national government was not at the time the kind of unresponsive and intransigent central authority that required the invocation of the convention method. The Congress quickly responded to the national furor over the increase of the power of the federal judiciary caused by the Supreme Court's decision in Chisholm v. Georgia 65/ by proposing the Eleventh Amendment. It was just as quickly ratified.

Only four amendments were ratified in the Nineteenth Century. The Twelfth Amendment was strictly an administrative measure occasioned by the unexpected and unwanted "tie" vote for the Presidency in the 1800 election. The next three, the Thirteenth, Fourteenth, and Fifteenth, were all occasioned by the extraordinary circumstances of the Civil War.

Forty-three years elapsed between the ratification of the Fifteenth Amendment in 1870 and the ratification of the Sixteenth Amendment in 1913. In the Twentieth Century, a new constitutional amendment has been ratified every eight years on the average.

64/ Our analysis excludes the Bill of Rights the passage of which was politically obligatory on the First Congress because so many of the states had conditioned their ratification of the Constitution on the addition of a list of rights.

65/ 2 U.S. (2 Dall.) 419 (1793).

Like the use of the amending power itself, state invocation of the convention clause of Article V is a phenomenon of the Twentieth Century. This phenomenon is becoming increasingly important in the latter half of the Twentieth Century. From the ratification of the Constitution in 1787 until 1893, only ten convention applications were received by the Congress, and all were received before the Civil War. Since 1893, each of the fifty states has sent in a convention application, and a total of more than 300 applications have been received. In the period 1975-1985 alone, thirty-six of the states applied to the Congress for a convention, and some states applied more than once. 66/ Thus, the history of the interpretation of the convention mode of amendment by elected officials in the states is being written in our time.

All ten of the Nineteenth Century applications were submitted for the purpose of convening a general constitutional convention. In the Twentieth Century, however, the states have, with few exceptions, applied for conventions limited to a single issue, often expressly limiting the convention for the "sole and exclusive" purpose of considering that issue, and occasionally asserting that, if the convention goes beyond this issue, the application would automatically be withdrawn. Some applications have also expressly stated that the authority to limit the subject of an Article V convention cannot be contravened by congressional action. 67/

Limited State applications increasingly have become an effective lobbying tool in efforts to encourage the Congress to propose amendments on its own concerning various issues. Indeed, applications often specifically include a request that the Congress propose an amendment on the relevant issue and assert that the application becomes effective only if the Congress fails to act. 68/

In the Twentieth Century, six major issues have come close to receiving enough applications to warrant a convention call. By 1912, the drive of the Progressives to require direct election of U.S. Senators received thirty of the necessary thirty-one applications. This convention drive prompted the Congress to propose the Seventeenth Amendment, which was quickly ratified. Also starting at the turn of the Century, a movement to prevent polygamy received twenty-five applications by 1930. Over an eighteen-year period, 1939-1957, a movement to limit the taxing authority of the national government collected twenty-

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66/ Senate Report, supra note 2, at 10.

67/ See Hearing, supra note 4, at 263 (Dellinger).

68/ Id.

seven applications. A campaign to partly nullify the Supreme Court's apportionment decision in Reynolds v. Sims 69/ received thirty-two of the necessary thirty-four applications in a short period of time from the late 1960's to the early 1970's.

In the late 1970's, nineteen states applied for a convention to prohibit abortion or alter the right to an abortion promulgated by the Supreme Court's decision in Roe v. Wade. 70/ And since 1973, thirty-two states have applied for a convention to propose an amendment to balance the budget of the national government. 71/

b. The Experience and the Interpretation of the Congress

Prompted by the drive to convene a convention on the issue of apportionment, the Senate in 1967 began to consider legislation providing procedures for the calling of a limited constitution convention. It has been considering such legislation continuously ever since. The Senate has twice (1971, 1973) unanimously passed a Constitutional Procedures Act, and the Senate Judiciary Committee has unanimously reported out bills on two other occasions (1984, 1985). The two earlier bills occured in a Senate controlled by the Democratic Party, while the latter two occurred when the Senate was controlled by the Republican Party. 72/

All four of the bills were based on the conclusion that the Congress must call a limited constitutional convention if the requisite number of states apply. Thus, the Senate has repeatedly affirmed the same Article V interpretation articulated by all fifty of the states throughout this century. The U.S. House of Representatives has never taken any action on constitutional convention procedure bills, although Professor Brickfield's study concluding that Article V permits limited conventions was printed by the House Committee on the Judiciary in 1957. 73/

69/ 377 U.S. 533 (1964).

70/ 410 U.S. 113 (1973).

71/ Senate Report, supra note 2, at 13.

72/ Id. at 13-15.

73/ Supra note 36.

2. The Arguments of Proponents of an Unlimited Convention Cannot Be Squared With This History

The views of Black, Bickel, Dellinger, and Gunther reviewed throughout this paper, if true, would point to a wide gulf between the correct meaning of Article V and the meaning that the states and the Congress have understood and acted upon. Such a gulf may be possible, but it must bear a heavy burden of proof, especially with respect to the interpretation of a constitutional provision that directly grants elected officials specific powers.

a. The Relevance of the Early State Applications

Black has decided that the early practice under Article V must be taken as definitive. The ten early applications, all of which called for a general convention, demonstrate the "original understanding" 74/ of Article V, Black says. Those ten pre-Civil-War applications were based on the correct "assumption that the provisions in Article V authorized the legislature to apply only for a general convention." 75/ The other more recent 300 applications are "obviously convenient for the state legislatures." They are based "on their own implied claims, which are obviously in the nature of self-serving declarations." 76/ Furthermore, Black asserts that the general neglect of the Article V convention mode itself during the early period demonstrates that it is not to be understood as a vehicle to respond to specific political problems.

While not implausible, Black's argument demonstrates only that calls for a general convention were consistent with the "original understanding" of Article V, but it does not clearly show that any kind of limitation was thought to be inconsistent. One can legitimately question the argument that the first ten applications reflect the definitive construction of Article V, while the subsequent 300 applications that reflect a different understanding are to be ignored in determining Article V's proper construction. In addition, it can be considered predictable that more radical constitutional alterations were proposed closer in time to the original Constitution rather than after the passage of time had institutionalized the document more deeply in the national fabric.

74/ Hearing, supra note 4, at 177 (Testimony of Charles L. Black).

75/ Id.

76/ Id. at 177-78.

Moreover, Black's argument does not take into sufficient account the differing political and legal needs of the early Nineteenth Century and the post-Civil War period. Prior to our era, constitutional adjudication ordinarily did not involve federal intervention in particular legislative and administrative fields traditionally reserved to the states. The growth in the number of topic-specific calls for a convention may be attributable in part to disagreement with particular congressional and judicial decisions viewed as intrusions on state regulatory authority. In addition, until the New Deal and the concomitant expansion of the federal role in daily life, particular federal activities and programs may not have been perceived as sufficiently important to warrant ad hoc constitutional modification by the convention mode.

b. Limited State Applications as "Self-Serving Declarations"

Black's claim that the modern practice of the states in requesting limited conventions is no more than the convenient assertion of self-serving declarations is particularly unpersuasive. It is quite clear from the framing history of Article V that the power to initiate constitutional change (including change by single-subject amendments) was originally to be vested exclusively in the states; the grant of a like power to the Congress was the result of a subsequent compromise. The states' assertion of the right to a limited convention cannot be compared fairly with an unsupported self-serving declaration; the convention method, after all, is the explicit constitutional means of effectuating the interests of the states.

Moreover, the states' assertion of interests has commanded the assent of a body which under Article V may often be the natural adversary of those interests. The Senate has concurred several times in the states' assertion of the right to a limited convention; this suggests that the states' view on the matter is shared by federal elected officials whose own political power would in theory be diminished by acceding to state claims to initiate amendments on a single topic.

c. The Federal Convention of 1787 Is Not Analogous to an Article V Convention

It is frequently said that the only constitutional convention with which we have experience, the Federal Convention of 1787, was itself a "runaway convention." 77/ After all, the argument goes, the delegates to that convention were charged to

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77/ C. Herman Pritchett discusses this in Pritchett, Why Risk a Constitutional Convention? The Center Magazine, March, 1980, reprinted in Hearing, supra note 4, at 515.

consider amendments to the Article of Confederation. Instead, the delegates proposed an entirely new charter of government.

This argument is not persuasive for the simple reason that the Philadelphia convention occurred under the aegis of the Articles of Confederation, not Article V of the Constitution. Not only did the Articles of Confederation not provide a convention method of initiating amendments, they provided no amendment power at all.

It is also somewhat misleading to say that the Philadelphia Convention was "runaway," for the "call" for that convention by the Continental Congress 78/ did speak in broad terms. There were "defects in the present Confederation," and "alterations and provisions" 79/ seemed necessary. No specific defects were enumerated.

II. THE LIMITATIONS OF A LIMITED CONVENTION CAN BE ENFORCED

As set forth in Part I, we believe that Article V clearly contemplates limited constitutional conventions. A separate but related question is whether the Constitution provides for or permits effective enforcement of limitations imposed on a convention. In this Part, we conclude that the Constitution provides authority for the enforcement of limitations through the States, the Congress, the courts, and the delegates. We also conclude that political constraints would provide an additional means of enforcement.

A. The States

Article V provides that three-fourths of the states must ratify constitutional amendments proposed either by the Congress or by a constitutional convention. This is the ultimate and most important constitutional "check" on the amendment process. Neither a convention nor the Congress can accomplish any constitutional changes by itself. Only the states cause the Constitution to be amended by the act of ratification.

Of the four agents who have power to enforce the limitations of a limited constitutional convention, the state legislatures are likely to be the most vigilant. A convention is called for the purposes of the states. The agenda of a con-

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78/ Resolution of Congress, February 21, 1787.

79/ Id.

vention is prescribed by them. It is their consensus that causes the convention to come into being. Thus, the states can be expected to be most intolerant of any proposals from a convention that violated the terms of its convening. The states, having previously demonstrated a consensus about a certain subject at the initiation stage, would in all likelihood not suddenly ignore that consensus at the ratification stage.

Historical experience demonstrates the role of the states' ratification power in preventing the amendment of the Constitution without a broad national consensus. In this century, three constitutional amendments proposed by the Congress have failed of ratification by the states -- the Child Labor Amendment, the Equal Rights Amendment, and the District of Columbia Voting Rights Amendment. This experience demonstrates that, even where a substantial consensus may exist temporarily in the proposing body, the Congress, a constitutional amendment cannot achieve ratification unless it is in accord with an enduring national consensus of three-fourths of the states.

B. The Congress

Article V explicitly grants two powers to the Congress under the convention mode. The Congress has the power to "call" a convention and the power to choose between the two methods of ratification: by state conventions or by state legislatures. In addition, the Congress always has the power to make laws "necessary and proper" 80/ to carry into effect its other powers.

The authority of the Congress to enforce the limitations of a limited convention arises from the first of these two powers, the power to call. That power imposes a duty ("shall call") on the Congress to call a convention when the states' consensus has been made manifest. Thus, the power to call is actually a duty to call. 81/ There is no conflict between the congressional power to call and the desires of the states, as Black, among others, has argued 82/ because the power to call is not a discretionary power. It is exercisable at the behest of the states and only at the behest of the states.

80/ See Article I, Section 8, Clause 18.

81/ Of course, the duty to call a convention arises only if the Congress determines that it has received the required number of applications pertaining to a given issue or group of issues to trigger the duty.

82/ See Black, A Letter to a Senator, supra note 22, at 627.

Since the power to call is a power in the service of the states' objectives, the Congress' ancillary authority under the necessary and proper clause is also authority to effectuate the objectives of the states. If one accepts the conclusion of Part I that the states are free to apply for a limited convention, then the Congress' power to call includes a power to call a limited convention; that would be the only way to exercise the power so as to effectuate the states' wishes. Thus, when the requisite number of states have requested a convention limited to a given topic, the Congress has the power to take all steps necessary and proper for such a limitation. This ancillary power includes the power to set the limitations in advance and to ensure that the limitations have been adhered to. Arguably, one way of ensuring that the limitations have been adhered to is to provide that proposals emanating from the convention which stray from the subject matter limitation are not submitted to the states for ratification.

1. Congressional Power to Legislate

a. The Need for Legislation

Article V leaves unanswered a host of practical, legal, and constitutional questions about constitutional conventions. Where do the states send their applications? How soon must Congress act after the two-thirds consensus has been achieved? Where and when will a convention be held? Who will be the delegates and how will they be appointed or elected? How many delegates shall each state have? According to what parliamentary rules will the convention be conducted? There are many others.

There have been uncertainties even about the collecting and counting of applications. At a 1979 Senate Judiciary Committee hearing, the following exchange took place:

> Senator Hatch. * * * There are 30 states that have called for a Constitutional Convention on the subject of the balanced budget amendment, or something approximating that. Yet, your list contains the names of only 24 States * * * If I could ask, why is there this discrepancy?
>
> Mr. Kimmit [Secretary of the Senate]. I can only assume, Senator Hatch, that those petitions that are not on our list are in the possession of the committee. The previous procedure that I outlined was not a tight one and our office apparently dropped the ball in not keeping track of those petitions. 83/

83/ Hearing, supra note 4, at 46-47.

The Federal Convention of 1787 deliberately left procedural and administrative questions unanswered. The records show that only Madison addressed these questions:

> Mr. Madison remarked on the vagueness of the terms, "call a convention for the purpose," as sufficient reason for reconsidering the article. How was a Convention to be formed? by what rule decided? what the force of its act?. . . . He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided. 84/

Madison saw the "difficulties" inherent in the lack of detailed provisions for a convention. The sense of his statement about "constitutional regulations" for a convention seems to be that Article V should have laid out in detail the "form," the "rule," the "quorum," etc., for possible conventions. Madison's views did not prevail, however.

Since 1967, the Senate has sought to articulate in legislation the constitutional powers of the Congress under a limited Article V convention. 85/ The purpose of the Senate has been to permanently settle all questions of procedure with respect to the application, calling, and ratification stages of the convention method; to separate its own authority from a convention's with respect to the convention's internal rules and procedures; and to separate these procedural issues from any ongoing drives to call a convention. In the early 1970's, the Senate attempted to enact legislation before the drive for a re-apportionment convention required the Congress to call the required convention. Likewise, in the early 1980's, the Senate attempted to enact legislation before the drive for a balanced-budget convention was successful.

The late Senator Sam Ervin, the original sponsor of convention legislation, said that the renewed state interest in

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84/ 2 Farrand 557.

85/ Virtually all of the opponents of a limited convention, including Dellinger, Gunther, and Bickel, agree that the Congress has the authority to legislate in this area. See Hearing, supra note 4, at 261 (Dellinger) and at 310 (Gunther); Federal Constitutional Convention, supra note 30, at 59 (Bickel). But see note 93, infra.

the convention mode coupled with the lack of any precedents had raised "perplexing constitutional questions" that required "orderly and objective consideration," because

> only bad precedents could result from an effort to settle questions of procedure under Article V simultaneously with the presentation of a substantive issue by the two-thirds of the states. 86/

In the 1971 committee report that served as the basis of the first unanimous Senate passage of a procedures bill, the Senate Judiciary Committee said that its purpose was to "effectuate" Article V and make it "meaningful" by providing the appropriate "machinery" for a limited constitutional convention. 87/ Furthermore, the Committee urged passage of the bill

> in order to avoid an unseemly and chaotic imbroglio if the question of procedures were to arise simultaneously with the presentation of a substantive issue by two-thirds of the State legislatures. Should Article V be invoked in the absence of this legislation, it is not improbable that the country will be faced with a constitutional crisis the dimensions of which have rarely been matched in our history. 88/

In 1985, the Committee summarized its conclusion about the need for enabling legislation for Article V in these terms:

> The principal objective of S. 40 is to ensure that the Congress has clear standards and criteria by which to judge convention applications before it, and that any convention which ultimately results is conducted in an orderly and clearly defined manner * * * Much of the credibility in the assertion that a convention would lead to a "constitutional crisis" derives from the fact that so many procedural uncertainties exist with respect

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86/ Ervin, supra note 35, at 878, 879.

87/ Federal Constitutional Convention Procedures Act, S. Rep. No. 92-336, 92d Cong., 1st Sess. 1, 2 (1971).

88/ Id. at 2.

to the convention process -- uncertainties that S. 40 is intended to resolve. 89/

b. The Power to Legislate

As stated above, the power of the Congress to legislate is an incident of its two explicit Article V powers, the power to call and the power to prescribe the mode of ratification, and of its constitutional power to make laws "necessary and proper" for executing its other powers.

The power to call is properly regarded as a power at the service of the states' power to initiate the amendment process. Article V says that Congress "shall call" a convention whenever the requisite two-thirds consensus has been achieved. This is mandatory on the Congress. It is not a legislative power which includes the discretion not to act. It must be done. In Federalist 85, Hamilton explained this duty:

> By the fifth article of the plan the Congress will be obliged, "on the application of the legislatures of two-thirds of the states . . . to call a convention for proposing amendments. * * * The words of this article are peremptory. The congress "shall call a convention." Nothing in this particular is left to the discretion of that body.

And in a 1789 letter on the subject, Madison stated that the question whether to call a convention "will not belong to the Federal Legislature. If two-thirds of the states apply for one, the Congress cannot refuse to call it: if not, the other mode of amendments must be pursued." 90/

On the other hand, the Congressional power to prescribe the mode of ratification, in state conventions or in the state legislatures, is an independent and discretionary power not subject to the control or demands of the states.

If the Congress has an explictly-granted constitutional power, it also has the ancillary power to "make all laws which shall be necessary and proper for carrying into execution" this power. 91/ This is the holding of McCulloch v. Maryland, where Chief Justice Marshall wrote:

89/ Senate Report, supra note 2, at 2.

90/ Cited in Ervin, supra note 35, at 885.

91/ See Article I, Section 8, Clause 18.

> [B]ut that instrument [the Constitution] does not profess to enumerate the means by which the powers it confers may be executed. * * * [T]he powers given to the government imply the ordinary means of execution. * * * The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means. 92/

The Federal Convention deliberately omitted consideration of the means to execute the power to call. The Congress, therefore, because it is charged with that power, is also charged with the means to execute that power, including the power to legislate in a way that it thinks is necessary and proper to effectuate specifically-granted powers. 93/

92/ 17 U.S. (4 Wheat) 316, 408, 409, 409-410 (1819).

93/ Because he desires to avoid judicial review of Article V matters and because he thinks that federal legislation with respect to Article V would inevitably lead to court decisions, Tribe opposes the necessary and proper enactment of legislation and proposes, instead, that Article V itself be amended. Hearing, supra note 4, at 506.

Black also opposes any congressional legislation, arguing principally that no Congress can presume to bind its successor Congresses on these issues. Black, supra note 4, at 191. The Senate Judiciary Committee answered Black with the following:

> The Committee also notes the suggestion that legislation such as S. 40 is inappropriate since 'no Congress can bind its successors'. Cf., however, 3 U.S.C. 15 (relating to electoral college procedures). While it is unquestionably true that no such legislation can bind any Member of Congress (whether of a present or future Congress) to vote for a measure he or she believes to be unconstitutional, it nevertheless serves extremely important purposes: (a) such legislation can effectively establish an operative legal rule until affirmatively amended by a future Congress; (b) such legislation can effectively apprise the States of their rights and obligations and inform them of the likely constitutional consequences of their actions; (c) such legislation establishes at least a

(continued...)

2. Powers Under Legislation

In its various attempts to enact legislation pursuant to its powers under Article V, the Senate has included provisions concerning, inter alia, the contents of applications, the transmittal of applications, the effective period of applications, the procedures in the Congress for issuing the call, the number of delegates and their mode of voting at the convention, and judicial review.

This paper is not a review of the provisions of those bills and will not attempt to discuss whether each provision decided upon in the past was within the proper scope of the Congress' power to call a convention. Two provisions do merit discussion here, however.

There may be two different points at which the Congress, in the proper exercise of its power, has the duty and the opportunity to enforce the two-thirds consensus of the states.

The first point is the point at which the Congress evaluates state applications for content and validity and determines that a super-majority agreement exists on the same subject at the same time and that, consequently, a constitutional convention is required.

Much has been said about the duties of the Congress at this juncture. Black tells us that the Congress in adding up applications may count only applications for a general convention and must ignore all the others. 94/ Dellinger says that convention applications may include a nonbinding "recommendation"

93/(...continued)
presumptive constitutional interpretation by the Congress that is not likely to be overturned in the absence of a strongly held view by a subsequent Congress that it incorrectly interpreted the Constitution, and (d) such legislation increases the likelihood that convention applications will be scrutinized on the basis of neutral constitutional procedures rather than through a series of result-oriented policy judgments.

Senate Report, supra note 2, at 23.

94/ Hearing, supra note 4, at 185 (Prepared Statement of Charles L. Black).

of a specific subject. 95/ Gunther concurs with Dellinger and says that the states in their applications may articulate "a specific grievance" that is not binding on either the Congress or the convention. 96/

All of these arguments are not really arguments about the enforcement power of the Congress. They are, instead, aspects of the question of whether Article V provides for a limited or unlimited convention. Once that question is decided by the force primarily of the equality argument and the consensus argument, then it can be seen that it is the duty of the Congress only to determine if a true consensus has been reached, regardless of the wording of the individual applications. The Congress has no independent power to police the content of state applications. It decides only whether enough of them agree.

According to Noonan:

> The language of the Constitution is clear. Congress is to call a Convention on the application of the legislatures of the States. Congress is not free to call a Convention at its pleasure. It can only act upon the States' application; and if it can only act upon their application it cannot go beyond what they have applied for. If they apply for a Convention on a balanced budget Congress must call a Convention on a balanced budget. It cannot at its pleasure enlarge the topics. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of Congress on the subject which the States have set out and Congress has called the Convention for. 97/

S. 40 provided an example of procedures and criteria that the Congress might use for this task. Among other provisions, the bill required a state to specify the "subject matter of the amendment or amendments" it desires to have considered at a convention. An application must have specifically requested Congress to call a convention, not merely expressed an interest in having a convention. In addition, the

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95/ Dellinger, supra note 4, at 1636.

96/ Gunther, supra note 63.

97/ Noonan, supra note 4, at 642-643.

bill required the President of the Senate and the Speaker of the House to report to each House when a state application was received and to send a copy of each received application to each member of Congress and to every other state legislature.

S. 40 was based on the premise that, although Article V does not explicitly provide for it, the Congress would have a second opportunity to enforce the consensus of the states. The bill declared that a convention would have reported any amendments to the Congress which would then have submitted them to the states along with its decision about the mode of ratification or, in the alternative, would have refused to submit them

> because such proposed amendment relates to or includes subject matter which differs from or was not included in the subject matter named or described in the concurrent resolution of the Congress by which the convention was called. 98/

This provision was not intended as the creation of a new congressional power -- some novel "transmittal power" 99/ -- but was based on the notion that, because Article V expressly empowers the Congress to choose the mode of ratification by the States, it may refuse to do so where an amendment has not been proposed in accordance with the terms set out in its previously-exercised power to call. Alternatively, refusing to choose the mode of ratification can be viewed as an explicit function of the power to call.

C. The Courts

There has been a vigorous debate concerning the question whether there should be judicial review of issues arising under the convention method. Although almost everyone has rejected the extreme view, based on the Supreme Court's

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98/ S. 40 (99th Congress), § 11(b)(ii), reprinted in Senate Report, supra note 2, at 20.

99/ A formal "transmittal power" of the Congress would appear to conflict with the language and history of Article V, which reflect that the convention mode was adopted as a substitute for direct congressional action on application of the states. See pp. 7-10 supra (reflecting Mason's view that the states not be entirely dependent on the Congress for proposing amendments.).

confusing plurality decision in Coleman v. Miller, 100/ that the Congress has an absolute and nonreviewable control over every aspect of the amending processs, sharp differences remain about both the wisdom and the proper reach of judicial review. 101/

This paper concludes that there is ample precedent for judicial review of Article V matters, that there are no persuasive reasons for insulating Article V convention procedures from the usual jurisdiction of the federal courts over federal and constitutional questions, and that, in a proper case where the requirements of ripeness and standing are met, judicial review can serve as a desirable and important check on the convention process.

1. The Availability of Judicial Review

The starting point for discussion of judicial review of Article V matters is Coleman v. Miller. In Coleman, the issue on appeal was whether Kansas had validly ratified the proposed Child Labor amendment. 102/ The Supreme Court held that the issues in the case concerning the validity of state ratification were non-justiciable questions which were for the Congress alone to answer.

Four members of the Court -- Black, Roberts, Frankfurter, and Douglas -- joined in a sweeping opinion which stated that "[u]ndivided control of [the amendment] process has been given by the Article exclusively and completely to Con-

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100/ 307 U.S. 433 (1939).

101/ For a comprehensive statement of the view that amendment matters are justiciable and should be resolved by the courts see Dellinger, The Legitimacy of Constitutional Change: Rethinking the Amendment Process, 97 Harv. L. Rev. 386 (1983). For the view that judicial review should be confined to "the outer boundaries" of the amendment process see Tribe, A Constitution We Are Amending: In Defense of a Restrained Judicial Role, 97 Harv. L. Rev. 433, 434 (1983).

102/ The Congress proposed the child labor amendment to the states in 1924, but the amendment never received the requisite three-fourths ratification. Though the Court ruled by a 5-4 margin in Coleman that the petitioners had standing to sue, it seems that there is still a question whether disputes over a single state's action on an unratified constitutional amendment would be ripe for judicial consideration given the Constitution's requirement that the federal courts may only decide "cases or controversies."

gress." 103/ These four justices believed that judicial review had no part whatsoever to play in the amendment process. Chief Justice Hughes authored a more limited opinion which was designated the "opinion of the Court" but which commanded only plurality support. This opinion addressed only the issues of the timeliness of state ratification and the effect of the state's prior rejection of the amendment. The Court held that both issues were non-justiciable. Instead, they posed "a political question, pertaining to the political departments." 104/

The rationale of Coleman, while widely cited, is not accepted by anyone as an adequate resolution of the question of judicial review. For instance, even Tribe, an opponent of judicial review, has said

> Could anyone really believe, for example, that a court would feel bound to treat the Equal Rights Amendment as part of the Constitution if Congress determined that the thirty-five states that had ratified the amendment as of July 1, 1982, constituted the "three-fourths" of fifty required by Article V? 105/

In addition, the authority of Coleman is limited, first, because it is only a plurality opinion, and second, because both earlier and subsequent decisions of the Court call into question the sweeping prohibition of judicial review promulgated in the plurality opinion.

The first Supreme Court case dealing with the amendment process was Hollingsworth v. Virginia. 106/ In Hollingsworth it was argued that the Eleventh Amendment to the Constitution had not been validly adopted because the resolution proposing the amendment was never submitted to the President for his signature, as required by Article I, Section 7 for "every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary." The Court decided that constitutional amendments were not the "ordinary cases of legislation" and held that the amendment had been properly adopted. Nowhere in the opinion did the Court suggest that the determination of the question was one to be left to Congress.

103/ Id. at 459.

104/ Id. at 450.

105/ Tribe, supra note 101, at 433.

106/ 3 U.S. (3 Dall.) 378 (1798).

It was not until a series of cases early in the 20th century that the Court again passed on the validity of certain aspects of the amendment process. In Hawke v. Smith No. 1, 107/ the Court held that a state's ratification of an amendment cannot be undone by a subsequent referendum of its voters. In the National Prohibition Cases, 108/ it was decided, inter alia, that under Article V two-thirds of a quorum of each House, instead of two-thirds of the entire membership, was sufficient to propose an amendment. A year later in Dillon v. Gloss, 109/ the Court held that the Congress had the power to set a reasonable time limit for ratification when it proposed an amendment. Finally, in United States v. Sprague, 110/ the Court held that the method of ratification of a constitutional amendment is completely dependent on congressional discretion. Even though the Court upheld the power of Congress in National Prohibition Cases, Dillon, and Sprague, the Court did not treat these cases as non-justiciable; and in Hawke the role of the Congress was not at issue. The cases demonstrate none of the deference later accorded the Congress in Coleman.

Moreover, the "political question" doctrine itself has been severely weakened since Coleman, primarily by the effects of two major cases. In Baker v. Carr, 111/ the Supreme Court ruled that the political question doctrine did not bar Supreme Court resolution of legislative apportionment questions. And in Powell v. McCormack, 112/ the Court held that the Congress could not refuse to seat Representative Adam Clayton Powell, despite clear constitutional language commanding that the Congress shall judge the qualifications of its own members.

On the whole, then, there seems to be strong and recent precedent in favor of broad powers of judicial review. Coleman v. Miller, the only precedent contra, is a dubious and isolated case that has been unable to command the wholehearted allegiance of any scholar -- or of the Court itself. Disputes under Article V have proven to be justiciable, and the Supreme Court has issued significant decisions construing the Constitution's amendment power. We believe that disputes under Article V ought

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107/ 253 U.S. 221 (1920).

108/ 253 U.S. 350 (1920).

109/ 256 U.S. 368 (1921).

110/ 282 U.S. 16 (1931).

111/ 369 U.S. 186 (1962).

112/ 395 U.S. 486 (1969)

to be and are justiciable under the federal-question jurisdiction of the Supreme Court.

2. Convention-Procedures Legislation and Judicial Review

Some have argued that under its Article III powers and pursuant to various judicial precedents, the Congress may have the power to exclude almost all judicial review of the convention method. 113/ But there does not seem to be any persuasive reason why the Congress should do so. Article V and any enabling legislation passed pursuant to it present the kind of constitutional and federal questions over which the Supreme Court normally has jurisdiction.

S. 40, the 1985 bill of the Senate Judiciary Committee, granted any state a cause of action with respect to disputes concerning the Congress' calling of the convention and the Congress' transmittal of a convention's proposed amendment to the states. Suit could have been filed directly in the Supreme Court 114/ and would have been entitled to "priority" consideration. The Committee advised that it contemplated declaratory relief as the judicial remedy and stated that it expected "that the Court will utilize as a standard in overturning congressional decisions one evidencing some deference to the Congress." 115/

In addition to this newly-created cause of action, however, the bill explicitly preserved the right of judicial review of other federal and constitutional questions relating to a convention and did not foreclose the routine avenues of access to the federal courts.

113/ The Congress would have a variety of options under its power over the jurisdiction of the lower federal courts, its power over the appellate jurisdiction of the Supreme Court, and under settled precedents construing the original jurisdiction of the Supreme Court and the Eleventh Amendment. See U.S. Const. art. III, sections 1 and 2. See also C. Wright, Law of Federal Courts, §§ 109-110 (4th ed. 1983).

114/ The Senate Judiciary Committee, citing South Carolina v. Katzenbach, 383 U.S. 301 (1966) and Article III, Section 2 of the Constitution, found no constitutional impediments to such a suit under the original jurisdiction of the Supreme Court. We do not deal with that issue in this paper.

115/ Senate Report, supra note 2, at 45

Standing and ripeness questions with respect to a suit under Article V procedures legislation might present some difficult judgments as to when a controversy had matured into justiciable form. Clearly, the courts cannot be asked to resolve any issue relating to the calling or conduct of a convention until there arises a specific "case or controversy" involving concrete interests of the parties. In S. 40, the Senate Judiciary Committee attempted to give some guidance to the Court about ripeness by declaring that all claims under the legislation were barred unless they were filed "within sixty days after such claim first arises." 116/ Claims "first arise," the Committee advised,

> normally . . . at the point at which Congress has passed final judgment on some question or at which the time period has expired within which they were to render such judgment. 117/

3. The Judiciary as a Check on the Congress

Professor Tribe has warned of the danger of having the Supreme Court oversee the use of a constitutional process that might be invoked to reverse its own decisions. 118/ His point is valid, of course, but it is not conclusive. The Supreme Court has decided a number of important procedural matters with respect to different amendments proposed under Article V, as reviewed above, without illegimately considering the substance of the amendments involved. Furthermore, it is much too speculative to attempt to think about the judicial politics with respect to any cases that might in the future be heard under Article V. An "activist" Court today might not be so in the future. Of the six significant campaigns to call a convention in this century, only two were provoked by a Supreme Court decision. The most recent convention drive -- on behalf of a balanced budget -- has been inspired by the actions of the Congress, not the Supreme Court.

As noted in Part I of this paper, the framers of Article V provided the convention mode as a means for the states to correct the actions of the Congress. In creating a cause of action for the states at the calling and submission stages, S. 40 sought to provide a judicial check on any inclinations of the Congress to obstruct the convention process. Disputes between the states and the Congress seem more likely under Article V,

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116/ S. 40 (99th Congress), § 15(b), reprinted in Senate Report, supra note 2, at 21.

117/ Senate Report, supra note 2, at 46.

118/ Tribe, supra note 101, at 435.

with its built-in competition over the power to initiate amendments, than disputes between either of them and the courts.

The judicial deference counseled by the Senate Judiciary Committee seems a likely scenario. But in the case of an impasse between the states and the Congress, the involvement of the Supreme Court might in the end be sought in a proper case to determine such questions as whether the Congress has failed its constitutional duty to call a convention after receiving the requisite number of applications and whether the Congress can prevent state ratification of a convention-proposed amendment by failing to decide the mode of ratification. There are legitimate constitutional questions that are properly within the authority of the Court to address.

D. The Delegates

The supermajority ratification requirement would be a significant restraint on the plans of convention delegates. Delegates would not want to waste time and energy deliberating possible amendment proposals that were outside of the consensus and, thus, had virtually no chance of being ratified.

In addition, the people of the states who choose the delegates would be able to identify and elect those persons who pledge to respect the subject matter limits contained in the state applications. Just as delegates to a political convention are selected based on their predisposition to effect the will of the people, delegates to a limited convention presumably would be elected with respect to their views on those issues that the states desired to be addressed.

As another check, the states or the Congress could require delegates to take an oath of office to remain faithful to the Constitution, including the authority of the states to limit an Article V convention. Such an oath, similar to the oaths of other public officials, would be based on the premise that the invocation of the Constitution itself carries a certain moral authority. S. 40 provided for an oath of this kind.

In summary, we think that American political customs, as well as respect for the Constitution itself among the American people, should not be underestimated in their ability to provide additional enforcement on the propriety of the convention process. In a recent analysis, political scientist Paul J. Weber has concluded that there are so many political constraints on a Article V convention that it is, in fact, "a safe political option." He puts his own characterization on some of the principles already discussed in this paper and adds others:

> What Professor Tribe ignores are the political constraints which insure that no convention is likely to get out of control. There are a number of such constraints: the previously cited character of the delegates elected; the media attention which will be given to discrepancies between the campaign statements and promises and the delegates' actual words and actions; the number of delegates and divisions within the convention itself which would make it extraordinarily difficult for one faction or a radical position to prevail; the delegates' awareness that the convention results must be presented to Congress which might not forward any amendment that went beyond the convention mandate; the Supreme Court which might well declare certain actions beyond the constitutional powers of the convention; and most important of all, the need to get the proposed amendment ratified not only by the 34 states that called for the convention, but by 38 states. More effective constraints on a constitutional convention can hardly be imagined. * * *
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> The original Constitution was not only a legal document; it was a political document. It set out not simply legal principles but legal principles hammered out of political compromise and anchored in political realism. The primary safeguards of democracy envisioned by the Framers were political, not legal. 119/

CONCLUSION

Because the convention method has never been successfully invoked, and despite the collection of potential enforcement devices reviewed above, there will still be political uncertainties the first time that two-thirds of the states apply for a limited convention. But allowing for such uncertainties, we are convinced that Article V was designed to permit limited conventions and that a variety of legal and political means are

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119/ Weber, The Constitutional Convention: A Safe Political Option, 3 J. L. & Politics 51, 65-66, 69 (1986) (emphasis in original).

available to help to enforce such limits. The successful triggering of the convention method would be an extraordinary political event. Precedent and tradition are important in constitutional democracies such as ours, and there is no precedent to guide us here. But we also think that uncertainties should not lead to a questioning of the legitimacy of the convention method nor to a shirking of the duties of the various parties to put into effect, despite difficulties, the meaning of the various clauses of Article V. And we find persuasive the view that convention-procedures legislation would greatly minimize the uncertainties and potential chaos that might be encountered in the Article V convention process.

Appendix

Limited Constitutional Conventions Under Article V

(A Compendium of Selected Authorities) a/

"In The Federalist James Madison urged ratification of the Constitution on the ground that Article V equally enables the General and State Governments to originate the amendment of erros as they may be pointed out by the experience on one side or the other.' Professor Black finds this observation fully consistent with his view that limited conventions are unconstitutional, since Madison 'simply points out that amendment may be set in train by the State Legislatures as well as by Congress -- and so it may, whether the convention they may petition for be limited or not.' But Congress can propose such amendments as its requisite majorities desire, without thereby creating an organism that is empowered to propose amendments that Congress opposes. If the state legislatures' power to initiate amendments is not free from the juridical condition and political risk posed by a general convention, then Madison was wrong to say that Congress and 'the state Governments' were 'equally' enabled to originate amendments." -- Professor Grover Rees III, Constitutional Convention and Constitutional Arguments; Some Thoughts About Limits, 6 Harv. J. L. and Pub. Policy 79, 90 (1982).

"The usefulness of the alternative amendment procedure as a means of dealing with a specific grievance on the part of the States will be defeated if the States are told that it can be invoked only at the price of subjecting the Nation to all the problems, expense, and risks involved in having a wide-open constitutional convention." -- Professor Paul Kauper, University of Michigan Law School, The Alternative Amendment Process: Some Reflections, 66 Mich. L. Rev. 903, 912 (1968).

"This construction [that a convention cannot be limited] would effectively destroy the power of the States to originate the amendment of errors pointed out by experience, as Madison expected them to do. Alternatively, under that construction, applications for a limited convention deriving in some States with a dissatisfaction with the school desegregation cases, in others because of the school prayer cases, and in still others by reason of objection to the Miranda rule, could all be combined to make up the requisite two-thirds of the States needed to meet the requirements of Article V." -- U.S. Senator Sam Ervin, Chairman,

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a/ All but one of these authorities were compiled by the Senate Judiciary Committee. See Senate Report, supra note 2, at 58-62.

Subcommittee on the Constitution, The Convention Method of Amending the Constitution, 66 Mich. L. Rev. 875, 883 (1968).

"It is our conclusion that Congress has the power to establish procedures governing the calling of a national constitutional convention limited to the subject-matter on which the legislatures of two-thirds of the States request a convention . . . there is no justification for the view that Article V sanctions only a general convention. Such an interpretation would relegate the alternative method of an 'unequal' method of initiating amendments." -- American Bar Association, Amendment to the Constitution by the Convention Method Under Article V, at 9, 16 (1973).

"The reason for including the convention system in Article V seems to have been perfectly clear to provide a means for correcting errors: that is, specific concrete errors or abuses by the National government. Moreover, the language of Article V speaks specifically of 'amendments' . . . Surely it was not thought that by petitioning for an innocuous amendment, for example, on daylight savings time, the State would open up the way for a constitutional convention that would be free to revise the entire taxing authority of the United States or to abolish the House of Representatives." -- Professor Wallace Mendelson, University of Texas, Testimony Before United States Senate Judiciary Committee, October 31, 1967.

"If the subject matter of amendments were to be left entirely to the convention, it would be hard to expect the States to call for a convention in the absence of a general discontent with the existing construction of the Constitution . . . The intention of Article V was clearly to place the power of initiation of amendments in the State legislatures. The function of the convention was to provide a mechanism for effectuating this initiative." -- Professor Phillip Kurland, University of Chicago Law School, Memorandum to U.S. Senate Judiciary Committee (1967), 1979 Hearings, p. 1222.

"It is perfectly remarkable that some have argued for a 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." -- Professor William Van Alstyne, Duke University Law School, The Limited Constitutional Convention, 1979 Duke L. Journal 985-98.

"If the States apply for a Convention on a balanced budget, Congress must call a convention on a balanced budget. It cannot at its pleasure enlarge the topics. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of Con-

gress on the subject which the States have set out and Congress has called the Convention for." -- Professor John Noonan, University of California School of Law, Testimony Before California State Assembly, February 15, 1979.

"The constitutional convention is the representative of sovereignty only in a very qualified sense and for the specific purpose and with the restricted authority to put in proper form the question of amendment upon which the people are to pass." -- Professor Thomas Cooley, A Treatise on Constitutional Limitations 88 (1927).

"A constitutional convention has no authority to enact legislation of a general sort, and if the convention is called for the purpose of amending the Constitution in a specific part, the delegates have no power to act upon and propose amendments in other parts of the Constitution." -- Professor Henry Campbell Black, Handbook of American Constitutional Law 45 (1927).

"The Constitutional Convention is . . . as its name implies, constitutional not simply as having for its object the framing of constitutions, but as being within, rather than without, the pale of fundamental law: as ancillary and subservient and not hostile and paramount to it . . . it always acts under a commission, for a purpose ascertained and limited by law or by custom. Its principal feature is that, at every step and moment of its existence, it is subaltern -- and it is evoked by the side and at the call of a government preexisting and intended to survive it, for the purpose of administering to its especial needs." -- Professor John Alexander Jameson, A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding 10 (1887).

"On the strict legal question, the better view is that there is nothing in Article V to prevent the Congress from limiting the constitutional convention to the subject that made the States call for it." -- Professor Paul Bator, Harvard Law School, A Constitutional Convention: How Well Would it Work" at 7-8 (American Enterprise Institute Forum, 1979).

"The power of amendment in Article V is itself constitutionally limited . . . Thus Congress should have the power to restrict the convention to those amendments that deal with the general issue or problem that had inspired two-thirds of the States to call for a convention." -- Amendment by Convention: Our Next Constitutional Crises?, 1975 N.C. L. Rev. 491, 508.

"The two amendment processes, therefore, must be viewed as equal alternatives. The reports of the Convention do not rebut this conclusion and provide no indication that the Framers intended for State legislatures to concern themselves only with total constitutional revision, while Congress alone would

initiate specific amendments." Robert M. Rhodes, A Limited Constitutional Convention, 26 U. Fla. L. Rev. 1, 9 (1973).

"I think the convention can be limited. * * * [T]he fact is that the majority of the scholars in America share my view." -- Hon. Griffin Bell, Attorney General of the United States, Issues and Answers, February 11, 1979.

"While this question then has never been directly decided by the Congress or by the courts, it seems that the whole scheme, history and development of our government, its laws and institutions, require the control of any convention and the most logical place for exercising that control would be in the enabling act convening it, or in some other federal statutory law. Under Article V, Congress calls the convention after the required number of states have submitted petitions. It has the duty to announce the will of the state legislatures in relation to the scope of the convention's business and, under the necessary and proper clause, it may set the procedures and conditions so that the convention may not only function, but that it may control the convention's actions to make certain that it conforms to the mandates and directives of the Congress, the state legislatures, and ultimately the people. This does not mean that the convention may not exercise its free will on the substantive matters before it; it means simply that its will shall be exercised within the framework set by the Congressional act calling it into being." -- Cyril Brickfield, Problems Relating to a Federal Constitutional Convention, reprinted by House Judiciary Committee, 85th Congress, 1st Session (1957), p. 18.

"The argument that an Article V convention is sovereign and therefore beyond control is specious. The convention is but a constitutional instrumentality of the people, deriving all its powers from Article V . . . an agreement that a convention ought to be held is required among two-thirds of the state legislatures before Congress is empowered to convene such a body. If the agreement contemplates a convention dealing only with a certain subject matter, as opposed to constitutional revision generally, then the convention must be logically limited to that subject matter. To permit such a body to propose amendments on any other subject would be to recognize the convention's right to go beyond that specific consensus which is absolute prerequisite for its creation and legitimate action." -- Professor Arthur Earl Bonfield, The Dirksen Amendment and the Article V Convention Process, 66 Mich. L. Rev. 949, 994 (1968).

"It would seem to be consistent with, if not compelled by, the article for Congress to limit the convention in accordance with the express desires of the applicant states. If Article V requires that a convention be called by Congress only when a consensus exists among two-thirds of the states with regard to the extent and subject matter of desired constitutional change,

then the convention should not be free to go beyond this consensus and address problems which did not prompt the state applications." -- Note, The Proposed Legislation on the Convention Method of Amending the United States Constitution, 85 Harv. L. Rev. 1612, 1628 (1972).

"The most natural reading of the history behind Article V supports the view that the framers wished to assure the people that even if the central government were unresponsive to defects in the Constitution, the people have another option . . . This [constitutional convention] check on the central government . . . is not effective if people have only the option of an all or nothing approach. The convention method was supposed to be an equal means of amending the Constitution." -- Professor Richard Rotunda, University of Illinois Law School, Letter to Subcommittee on Constitution, Sept. 27, 1979, Hearing Record, p. 507.

TESTIMONY OF
STATE REPRESENTATIVE DAVID HALBROOK
NATIONAL DIRECTOR
AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Before the New Jersey State Government Committee
June 20, 1988

Mr. Chair, Distinguished Committee Members, Ladies and Gentlemen:

My name is David Halbrook and I am a State Representative from the great state of Mississippi and National Director and First Vice-Chairman of the American Legislative Exchange Council. For those of you who are not familiar with ALEC, we are the nation's largest individual membership organization of state legislators. Nationwide more than 1,800 state legislators belong to ALEC.

ALEC's commitment to a Balanced Budget Amendment to the U.S. Constitution is an historic one and a successful one. This commitment dates back to 1975, when Georgia State Representative John Linder -- who would later become an ALEC National Director -- was among the leaders, along with former Maryland Senate President Jim Clark and others, of the initial drive to pass a constitutional amendment mandating a balanced federal budget. Faced with a Congress that was as intransigent then as it is today, Representative Linder began to consider the concept of having the states exercise their power under Article V of the Constitution to call a limited Constitutional Convention to propose such an amendment.

To implement this strategy, he turned to Illinois Representative Donald Totten, ALEC's first National Chairman. Together, they drafted a model resolution calling for a limited Constitutional Convention and distributed it to ALEC members.

Two of these members were among the first state legislators to act on the idea. In Mississippi, I sponsored the first successful convention call based on the ALEC model resolution. And, in Louisiana, former ALEC National Chairman, Representative Louis "Woody" Jenkins sponsored and led the fight for his state's convention call. Thus in two of the first state's to call for a limited Constitutional Convention to propose a Balanced Budget Amendment.

As the years have passed and 30 states have joined the convention call, ALEC Members have remained in the forefront of the fight for such an amendment. Perhaps this is because, as state legislators, our members are faced with statutory or constitutional requirements for a balanced

budget in 49 states and have found it to be a workable -- indeed an invaluable -- tool for maintaining fiscal discipline.

Still, I am not hear today to try to make the case that this country needs a Balanced Budget Amendment. Others, far more eloquent than I, will testify today as to that need, which I believe is paramount to the continued economic health of this country. Rather, I would like to address a fear that I have heard raised here in New Jersey and by other state legislators across the country -- a fear that I believe erroneously lies at the heart of the bill we are discussing today; the question of whether a Constitutional Convention could be limited to the subject for which it is called or whether it could "run away" and threaten the very foundations of our government.

The American Legislative Exchange Council has conducted an extensive study of the convention process and concluded that "the safeguards are in place to limit the topic of the convention exclusively to the subject matter of the state applications." /1 In short, the idea of a "runaway convention" is a myth that should not be allowed to stand in the way of the drive to limit Congress' ability to continue its profligate spending of our tax dollars. (For make no mistake, if ACR 22 passes, the drive for a Balanced Budget Amendment is dead.)

Article V of the Constitution clearly provides two methods of amending the constitution. First, Congress through a two-thirds vote of each house could propose an amendment. Alternatively, a constitutional convention could be called upon application of two-thirds of the states. In both cases, Article V specifically states that any amendment proposed must ratified by three-fourths of the states.

To date, of course, all amendments to the Constitution have originated from Congress. However the state-called convention was not some sort of historical typo on the part of the Constitution's authors. Rather, the history of the debate on Article V clearly shows that the founding fathers intended for the states to have equal power with the Congress in proposing an amendment to the Constitution. James Madison stated that Article V "equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience of one side or the other." /2 While Congress was thought to be generally more responsive in proposing amendments, delegates worried that Congress might become oppressive or stalemated and unwilling to propose an amendment desired by the people. Delegate George Masson articulated this fear when he said, "It would be improper to require the consent of the National Legislature {to all amendments} because they may abuse their power and refuse their consent on that very account." /3 The final language of Article V was a carefully crafted arrangement which does indeed grant the power to propose amendments to the states.

As state legislators, ALEC Members take their responsibilities under Article V very seriously. That is why ALEC began its examination of the convention process and whether it could be limited to a single subject. We have concluded that there are four specific safeguards to ensure that such a convention can and will be limited.

Safeguard # 1: The Delegates. The people of the states who chose the delegates to any Constitutional Convention would be able to identify and select those individuals who pledge to respect the limitations on subject matter contained in the state's application for a convention. In addition, while the First Constitutional Convention was conducted in secrecy, a second Convention would be conducted under the glare of television lights and subjected to constant oversight by the press. Any deviation from the convention's limitations would be instantly brought to the attention of the American people. How many delegates could be expected to risk their political futures by ignoring the wishes of their constituents and attempting to "rewrite" the constitution under such circumstances.

In addition, delegates to the convention having been selected on the the basis of their views on a Balanced Budget Amendment would presumably represent a wide diversity of viewpoints on other issues. Therefore how likely would it be for any group, whether right-to-lifers or one-world-socialists to obtain the majority necessary to radically alter the constitution. And, again, remember this would all be done under the closest press scrutiny.

Safeguard # 2: Congress. Article V specifically grants to Congress the power to call the Convention into being. Congress would provide for the selection of delegates, establish an oath of office, provide the time limitations for meetings, set the location for any meetings and arrange all the other details. In calling the convention Congress can be expected to draft the limitation called for by the state's into the concurrent resolution establishing the Convention.

Indeed, The U.S. Senate Judiciary Committee in 1985 approved legislation limiting any future constitutional convention in precisely this way. Section 10 of the proposed legislation stated, "no convention called under this Act may propose any amendment or amendments of the subject matter different from that stated in the concurrent resolution calling the convention." /4

Were the convention to ignore such strictures and propose extraneous amendments, Congress could then refuse to transmit them to the states for ratification. This power is clearly granted to Congress under Article V. As the United States Justice Department has documented, "because Article V expressly empowers the Congress to choose the mode of ratification by the states, it may refuse to do so where an amendment has not been proposed in accordance with the terms set out in previously exercised power to call." /5

Safeguard # 3: The Courts. Article III, Section 2 of the Constitution gives the U.S. Supreme Court original jurisdiction in all cases "in which a state shall be a party." Very clearly, if a convention were to propose an extraneous amendment, any of the states which had applied for a convention limited to the Balanced Budget Amendment would have the right to bring suit directly to the Supreme Court asking that such an extraneous amendment be thrown out. Most legal and constitution scholars, including the U.S. Department of Justice and the American Bar Association, recognize that no amendment that exceeded either the limitations expressed in the states'

applications or the Congressional resolution calling the convention could survive judicial scrutiny. /6

It should also be noted that several states have requested that Congress seek judicial review of the limited convention question, thereby setting to rest any lingering fears. Pending convention call resolutions not only in this state but in Kentucky and Rhode Island contain specific language calling for such a review and holding their applications void should the Supreme Court ever hold that a convention could not be limited . /7 Congress, as could be expected, has not sought judicial review, because Congress counts on fears -- such as those expressed today -- to stop the pressure for them to act on a Balanced Budget Amendment.

Safeguard # 4: The Ratification Process. Perhaps the most important safeguard of all is the simple fact that under the Constitution any proposed amendment must be ratified by three-fourths of the states. As demonstrated in the recent past by the failure of the Equal Rights Amendment and the District of Columbia Voting Rights Amendment, passage by thirty-eight independent state legislatures is a difficult hurdle to overcome. If these two proposals, with all their attendant media sympathy and establishment support, could not achieve ratification, does any one really believe that the state's will accept amendments to dismantle our form of government? I submit that such fears place little confidence in the ability or integrity of America's state legislators.

As I have previously written, "If the worst fears of critics were realized and somehow an amendment not germane to the call of the states were to be transmitted back to us for ratification, I would be the first to argue that {my state} refuse to ratify it." /8 Across the nation, with ALEC Members in the lead, state legislators would do likewise. No such amendment could be ratified in the face of such opposition.

It is this respect for the ratification process that has restrained Congress for more than 200 years. For it should be noted that Congress is a potential constitutional convention every day it meets. Congress can propose any amendments it desires. Yet, it understands that any truly radical proposal would not be ratified by three-fourths of the states. A Constitutional Convention could do nothing that Congress cannot do.

The ability to limit a constitutional convention is amply demonstrated by the history of the nearly 240 limited constitutional conventions called and held by the states since 1787. Throughout all these conventions, widely disparate in time and place, there are few examples of a convention even attempting to exceed its mandate. And, in every one of those rare instances where extraneous amendments were proposed, action by the state legislatures or the courts struck down those proposals. Not a single one of those extraneous amendments has made its way into a state constitution. /9

Let me conclude by saying that ALEC's Members do not wish to take chances with the Constitution. However after extensive study we have

concluded that a limited Constitutional Convention poses no danger to our form of government. The safeguards are in place to assure that such a Convention can and will be limited to the subject matter contained in the convention call.

Therefore, in the face of the very real danger of a runaway national debt, it would be a mistake to allow misguided fears of a mythical runaway convention to kill the drive for a Balanced Budget Amendment to the U.S. Constitution.

I would be happy to answer any questions.

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NOTES

1. The American Legislative Exchange Council (Carolyn Miller, ed.), "The Myths Surrounding a Limited Constitutional Convention". April, 1987.

2. See generally Max Farrand, ed., The Records of the Federal Convention of 1787, New Haven, 1911. See also The Federalist, number 43, 85.

3. Farrand at 121.

4. Senate Report No. 95-293, Federal Constitutional Procedures Act.

5. United States Department of Justice, "Limited Constitutional Conventions Under Article V of the United States Constitution". September, 1987.

6. See ibid generally. See also generally The American Bar Association, Special Constitutional Convention Study Committee, "Amendment of the Constitution by the Convention Method Under Article V". 1974. For additional views that a Constitutional Convention can be limited, see Dr. Paul J. Weber, "The Constitutional Convention: A Safe Political Option". 3 Journal of Law and Politics 51. Winter, 1986. and Paul G. Kauper, "The Alternative Amendment Process: Some Observations". 64 Michigan Law Review 5. 1968.

7. For additional information on these bills, contact ALEC Kentucky State Chairman, Representative Tom Riner, at 502/564-2500, ALEC Vermont State Chairman, Representative Peter Sarty, at 802/828-2228, or Kymberly Messersmith, Director of ALEC's State Legislator Task Force on Legislative Procedures and Administrative Rules, at (202) 547-4646.

8. Representative David Halbrook. "States Have a Legitimate Role in Balanced Budget Debate". Governing Magazine. January, 1988.

9. John Armor. "A proud But Neglected History: The State Experience with Constitutional Conventions". January, 1988.

Testimony on ACR-22

A Call for a Federal Constitutional Convention

State Government Committee
General Assembly

State of New Jersey

Testimony by

MARILYN ROSENBAUM

for

NEW JERSEY CITIZENS TO PROTECT THE CONSTITUTION

testifying specifically on behalf of

B'Nai Brith District #3
National Federation of Temple Sisterhoods District #4, The New Jersey Federation
B'Nai Brith Women, Jersey Region
Association of Jewish Federations of New Jersey
The Jewish Federation of Greater Middlesex County
The Jewish Community Relations Committee of the Jewish Federation of Southern New Jersey
The Jewish Community Relations Committee of Central New Jersey
The Jewish Relations Committee of Northern New Jersey
Na'Amat U.S.A.
Union of American Hebrew Congregations and Harsinai Temple of Trenton

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My name is Marilyn Rosenbaum. I am a resident of West Orange. I am the immediate past president of the New Jersey Region of the American Jewish Congress and 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 then 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 nonetheless concur on the vital matter before this Committee. The organizations are listed on the last page of my testimony.

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 we would hold to that position whatever the purpose of such a convention might be.

Some of our coalition members are testifying independently so that they may provide you with their own organizational or institutional insights. I am testifying specifically on behalf of those organizations which have chosen not to deliver separate independent testimony and have authorized me to speak for them.

These groups are: B'Nai Brith District #3, National Federation of Temple Sisterhoods District #4, the New Jersey Federation, B'Nai Brith Women, Jersey Region, Association of Jewish Federations of New Jersey, The Jewish Federation of Greater Middlesex County, The Jewish Community Relations Committee of the Jewish Federation of Southern New Jersey, The Jewish Community Relations Committee of Central New Jersey, The Jewish Community Relations Committee of Northern New Jersey, Na'Amat U.S.A., Union of American Hebrew Congregations and Harsinai Temple of Trenton.

I trust that the members of the State Government Committee recognize that 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 issue closely, hold public hearings, and calmly weigh the seriousness of this issue, they continue to reject calls for a constitutional convention. Recently, both Alabama and Florida have demonstrated that the possibility of a constitutional convention is a dangerous prospect and as a result have withdrawn their calls upon Congress to convene a convention.

When North Dakota issued a convention call early in 1975, it triggered a flurry of action in state legislature but by 1979, the pace had slowed considerable. In fact, only two states have passed resolutions this decade - the last was Missouri which did so in 1983.

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To begin with one might ask just 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 the issue.

The issue before the Assembly's State Government Committee is not the federal budget or spending. The issue is a 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 among us whom we would entrust with the business of re-writing our Constitution? Moreover, even if people of comparable brilliance and wisdom were to attend a constitutional convention, I doubt that we would take a chance with any re-drafting of the Bill of Rights.

Of course, ARC-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 dangerous and fallacious.

It is, first of all, predicated on the theory that bludgeon can work. History, however, shows us it really has not.

In 1911, thirty applications were received from the states over the issue of direct election of U.S. Senators while the Senate, after years of opposition, was considering a Congress-initiated amendment (the 17th). At that time, only 31 state petitions were required before a convention would be called. Thirty applications had already been received. A study of the Senate debate and the background at the time reveal that the constitutional convention matter 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 1870's and that by 1911 more than half of the state legislatures elected their U.S. Senator from one of the candidates selected in the party 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 fear of a convention as it reflected the Senate's acceptance of what was already occuring.

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 1960s. In 1964, the Supreme Court ruled that both houses of state legislatures had to be apportioned according to population. Senator Everett Dirksen (R-Ill), 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, thirty-three 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 farther 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 an 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 has dealt with the subject - in 1982, 1984 and 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 the very fiber of this republic. It has done its duty. It has acted. It had 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 the 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 major one - fear of a runaway convention) which we must face should this constitutional convention effort succeed.

Can Congress over-rule 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 3/4's of the state legislatures must ratify amendments before they become law.

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

Let us not forget that 3/4's of the states does not necessarily mean 38 <u>legislatures</u> - it can mean 38 state <u>ratifying conventions</u>.

In 1787, the constitutional convention avoided state legislatures by sending thel6 constitution 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.

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

American Association of Retired Persons, N.J. State Legislative Committee
American Civil Liberties Union of New Jersey
American Federation of State, Community, and Municipal Employees
American Association of University Women
American Baptist Churches of New Jersey
American Jewish Committee, New Jersey Area
American Jewish Congress, New Jersey Region
Americans for Democratic Action of New Jersey
Anti-Defamation League of B'Nai Brith, New Jersey Area
Association of New Jersey Federations
B'Nai Brith, District #3
B'Nai Brith Women, New Jersey Region
Common Cause of New Jersey
Communication Workers of America
Congregation Agudath Israel of West Essex
Conservative Caucus, New Jersey
Community Relations Committee of MetroWest
Eagle Forum, New Jersey
Family Planning Advocates of New Jersey
United Jewish Federation of Southern New Jersey
Federation of Temple Sisterhoods, District #4, New Jersey
Jewish Community Relations Committee of Bergen County
United Jewish Federation of Central New Jersey
United Jewish Federation of Monmouth County
United Jewish Federation of North Jersey
John Birch Society of New Jersey
League of Women Voters of New Jersey
Lesbian and Gay Coalition of New Jersey
Lutheran Office of Governmental Ministry in New Jersey
New Jersey Bar Assocation
Na'Amat USA
National Association of the Advancement of Colored People
National Council of Jewish Women

National Organization for Women of New Jersey
National Society of the Sons of the American Revolution
New Jersey Chapter of Americans for Religious Liberty
New Jersey Council of Churches
New Jersey Industrial Union Council, AFL-CIO
New Jersey Education Association
National Federation of Temple Sisterhoods District #4, The
New Jersey Federation of Temple Sisterhoods
New Jersey State Federation of Teachers
People for the American Way
Pro America of New Jersey
Teamster Joint Council 73
Union of American Hebrew Congregations, West Hudson Valley Region
United Auto Workers of America
Urban League of New Jersey
New Jersey AFL-CIO
United Jewish Federation of Greater Middlesex County
Harsinai Temple of Trenton
National Association for the Preservation of the Constitution
Conference of Jewish Communal Service Workers, New Jersey

B'NAI B'RITH
DISTRICT THREE

EXECUTIVE BUILDING - SUITE 610 2201 ROUTE 38 CHERRY HILL, NJ 08002 (609) 779-7200

The Honorable Robert Martin
Chairman, Assembly State Government Committee
State House Annex
Trenton, NJ 08625

Dear Assemblyman Martin:

Attached please find testimony to the Assembly State Government Committee on ACR-22 from Seymour Reich, President of B'nai B'rith International, indicating our organization's opposition to the ammendment calling for a constitutional convention.

While Mr. Reich is unable to personnally deliver this testimony, he wanted it to be entered into the official proceedings of this hearing.

Sincerely,

Andrew L. Demchick

Andrew L. Demchick
Eastern Regional Director

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TESTIMONY OF SEYMOUR D. REICH

PRESIDENT, B'NAI B'RITH INTERNATIONAL

BEFORE THE COMMITTEE ON STATE GOVERNMENT OF

THE NEW JERSEY STATE ASSEMBLY

MONDAY, JUNE 20, 1988

Mr. Chairman:

I am grateful for the invitation to appear before this committee to testify on an issue of great moment not only in your state of New Jersey but across this country.

I am here representing the tens of thousands of B'nai B'rith members in the United States, including nearly 14,000 members in New Jersey. We are concerned that the convening of a new national constitutional convention poses a potential threat to our pluralistic democracy, and indeed, to our American way of life.

The measure before your committee would call on the United States Congress to sanction a constitutional convention for the purpose of considering an amendment requiring a balanced federal budget. Our members, in New Jersey and elsewhere, are of more than one mind about the need and desirability of mandating a balanced budget in the U.S. Constitution. But our membership is single-minded that opening the Constitution to change, through the extraordinary method of a convention -- the first since 1787 -- carries unacceptable risks because it invites tampering with our basic freedoms. Many constitutional experts fear that even the Bill of Rights -- the cornerstone of American democracy -- would not be secure.

Contributing to our concern is the nature and agenda of the groups pressing for a new convention. Many of these groups are seeking more than a balanced budget amendment. Some of them have made no secret that they are looking for fundamental changes in the document that has served our nation so well for nearly 200 years, including revisions of Articles One and Four of the Bill of Rights.

A great many legal scholars are convinced that once a convention begins, there are no restraints on what it can consider, even if the reason for convening was as specific as a balnced budget amendment. In theory, the delegates to a convention could rewrite the Constitution altogether, just as the first Convention, mandated to rewrite the Articles of Confederation, decided to recommend a radically different document, which was then ratified by the states. Even if a convention could be limited to one general subject -- fiscal matters -- practically any manner of amendment could be introduced because ultimately everything is relatable and reducible to budget.

Nevertheless, B'nai B'rith has been working with members of Congress to strengthen the constitutional convention procedures bill in an effort to limit a convention to the specific subject for which it was called. But despite our efforts, and the efforts of other groups like the American Bar Association, the principal sponsors of theat legislation have resisted stronger language. However, a tough procedures bill would still be no guarantee that a convention would operate within certain parameters. Despite the attempt by the

Continental Congress and the States to bind the original 1787 convention, that convention recognized and operated under no limitations. It did so because it saw itself...as a new convention is likely to see itself...as the highest and ultimate expression of the people's will.

It is true, of course, that a convention can do nothing more than recommend change. Its recommendations must go back to the states for their approval. But that ratifying process could easily be dominated by those states and individuals with the least experience with pluralism. They may accept changes that strengthen the majority and its interests at the expense of the minority. A healthy democracy is one that keeps in balance majority and minority interests and rights. That is the American way.

The safer and more traditional way of amending the Constitution is for Congress to consider constitutional amendments. This is the way the Constitution has been amended all 26 times. To call a constitutional convention for the ostensible purpose of considering one proposed amendment is to abuse a process which the framers of our Constitution clearly intended as a last resort.

I urge this committee to reject the call for a national constitutional convention. Such a convention would put our freedoms at risk when a far more conservative process--initiating an amendment in Congress--is available and time tested. If New Jersey and the rest of the country want a balanced budget amendment to the Constitution, let it be done by that traditional method. Only in this way can we protect our American Constitution. Only in this way can we be assured that no extreme and willful segment of our body politic will be in a position

to undermine our fundamental liberties as a free and tolerant people.

I would point out that other states which previously endorsed the Constitutional Convention concept are now reconsidering their actions. The legislatives of Florida and Alabama have already formally withdrawn their support.

We the people..the member of B'nai B'rith and many millions of others in this country..do not want a new constitutional convention. The political opportunities, however, do. Since this is still a nation of the people, I would hope that the people's will would prevail. Your committee can help see that this happens.

Thank you, Mr. Chairman, for allowing me to present the views of B'nai B'rith.

Seymour Reich,
President,
B'nai B'rith International

American Association of University Women

New Jersey Division, Inc. (201) 228-5244

Testimony regarding ACR22 before the New Jersey Assembly State Government Committee Trenton, NJ June 20, 1988, presented by Betty A. Little, Public Policy Analyst, Legislative Committee, New Jersey Division of the American Association of University Women; Coordinator, Middle Atlantic Region, AAUW Environmental Network.

Thank you for this opportunity to speak in strong opposition to this legislation.

Founded in 1882, the American Association of University Women promotes equity for women, education and self development over the life span, and positive societal change.

Under this directive we have worked in New Jersey for women's rights through the establishment of a Division on Women, committees to investigate the laws relating to women and for the development of County Commission on Women to address local and domestic needs. Our achievements in this areas could be errased by ACR22.

On environmental issues, we have advocated the application of existing rights guaranteed in the United States Constitution to environment rissues---particularly the right of self protection through the concept of the 'right to know.' We have urged the formation of advisory councils to mediate conflicts and have served on planning committees to assure a quality future for New Jersey. These rights and processes would all be disrupted by a call for a Constitutional Convention.

Attached are three document for your consideration:

1)The AAUW, New Jersey Division Program which defines the areas in which we are seeking change.

2)An article in our national journal, The Graduate Woman describing our active involvement across the nation to defeat and rescind legislation calling for a constitutional convention.

3)And a resolution passed unanimously on June 5, 1988 at our NJ Division Convention at William Paterson College which specifically opposes ACR22.

The freedom and rights which we enjoy in the United States are unique in the world today. No other issue in contemporary society is as important as securing these rights for ourselves and others. We realize that a statement of rights is not a guarantee but without that statement, and the body of law which has been developed to give them meaning, we would have no ethic around which to rally. And without the court system developed

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under the present constitution we would have no final recourse for our grievances but violence.

The New Jersey Division of AAUW has opposes ACR22 and has all previous legislation of this type because we hold Bill of Rights within our existing constitution as the most important mark of a democratic society. These rights should not be tampered with for every issue in the nation. We may not agree on what must be done in the United States but we have a good and workable process for change. This process allows conflict within consensus. If a Constitutional Convention is called this system will be in chaos.

I would rather be here today working with you to develop better ways in which citizens can participate in government, as suggested by Professor Benjamin Barber in Strong Democracy, and which is the subject of a dissertation I am writing, On the Eighth Day: An Environmental Ethic.

The development of good public participation processes and advisory councils representative of the people served is a proven effective way to share power and responsibility in this society. This extension of government can and has been successful under the existing constitution.

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American Association of University Women

New Jersey Division, Inc. 1-609-678-3020

RESOLUTION ON

OPPOSITION TO NJ-ACR 22
A CALL FOR A CONSTITUTIONAL CONVENTION

WHEREAS: The American Association of University Women and the New Jersey Division have vigorously opposed a call for a Constitutional Convention and support existing means for amending the Constitution of the United States and has repeatedly testified on this issue at public hearings;

WHEREAS: NJ-ACR 22 is essentially the same piece of legislation which we have historically opposed;

WHEREAS: If NJ-ACR 22 is passed by the NJ Legislature and signed by the Governor it will make this the 33rd state to call for a convention;

WHEREAS: A Constitutional Convention opens the door for a complete revision of the United States Constitution including the Bill of Rights;

and places the rights of women, minorities, the disabled and the aged in jeopady;

and gains which have been made by women in achieving equality may be lost;

and the processes for achieving social justice and environmental protection which have been developed over two centuries will be disrupted and may be lost; therefore be it

RESOLVED: That the NJ Division of AAUW reaffirm its opposition to the call for a Constitutional Convention and urge each branch to ask its members to write their NJ Assemblyman in opposition to NJ-ACR 22;

and that a copy of this resolution be sent to Governor Thomas Kean and every member of the New Jersey Legislature.

Prepared by: Sally Ann Goodson
Chair of NJ Division Legislative Committee, AAUW
203 Whitford Avenue
Nutley, NJ 07110

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June 5, 1988

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June 20, 1988 Testimony before the NJ Assembly State Government Committee in Opposition to ACR 22.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM ELIZABETH H. SCHUYLER, MEMBER OF NEW JERSEY BRANCH OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN AND THE LEGISLATIVE CHAIRMAN OF TRENTON BRANCH, AAUW. AS STATED IN PREVIOUS TESTIMONY BEFORE THE NJ ASSEMBLY STATE GOVERNMENT COMMITTEE, THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN IS A NATIONAL ORGANIZATION OF 150,000 WOMEN COLLEGE GRADUATES FROM EVERY STATE IN THE UNION, PUERTO RICO, THE AMERICAN VIRGIN ISLANDS AND GUAM. WE SUPPORT MEASURES TO PROTECT BASIC CONSTITUTIONAL RIGHTS FOR ALL INDIVIDUALS, INCLUDING PROTECTION FROM DISCRIMINATION BASED ON RACE, SEX, ETHNIC ORIGIN, CREED, MARITAL STATUS, AGE AND DISABILITY. WE STONGLY SUPPORT THE PRINCIPLE OF SEPARATION OF CHURCH AND STATE.

IT IS A PRIVILEGE TO SPEAK BEFORE THIS COMMITTEE AND TO GIVE AAUW'S POSITION IN OPPOSITION TO ACR 22 ON BEHALF OF THE 46,00 MEMBERS OF THE NEW JERSEY AAUW, AS WELL AS THE NATIONAL MEMBERSHIP. I WISH TO THANK YOU FOR THIS OPPORTUNITY.

IN PREVIOUS HEARINGS, AAUW HAS GIVEN TESTIMONY STRONGLY OPPOSING ACR 22 WHICH PROPOSES A CONSTITUTIONAL CONVENTION TO CONSIDER AN AMENDMENT CALLING FOR A BALANCED BUDGET. WE ARE HERE TODAY TO REQUEST THAT THE COMMITTEE NOT VOTE ACR 22 OUT OF COMMITTEE.

IT IS IMPORTANT TO POINT OUT THAT AAUW DOES NOT OPPOSE A BALANCED BUDGET PROPOSAL PER SE. AAUW CLEARLY AND SIMPLY OPPOSES THE MEANS BEING ATTEMPTED TO ARRIVE AT SUCH A GOAL - NAMELY TO CALL A CONSTITUTIONAL CONVENTION TO AMEND THE UNITED STATES CONSTITUTION AS A MEANS OF REACHING

THAT OBJECTIVE.

SINCE 1975, 32 STATES HAVE PASSED LEGISLATION ASKING CONGRESS TO CONVENE A CONVENTION TO ADOPT AN AMENDMENT REQUIRING A BALANCED BUDGET. IT IS OF INTEREST TO NOTE THAT RECENT EVENTS HAVE TRIMMED THAT NUMBER TO 30.

RECENTLY, THE STATE OF ALABAMA OVERRODE A VETO WHICH WOULD HAVE DEFEATED A RECALL PETITION. THE STATE OF FLORIDA HAS BECOME THE SECOND STATE TO WITHDRAW ITS CALL FOR A FEDERAL CONSTITUTIONAL CONVENTION BY A UNANIMOUS VOTE IN BOTH THE HOUSE AND SENATE. IF 4 MORE LEGISLATURES PETITION ACCORDING TO ARTICLE V OF THE CONSTITUTION, CONGRESS WOULD BE FORCED TO CALL THE CONVENTION. THE EVENTS IN THE ABOVE TWO STATES ARE THEREFORE OF PARTICULAR IMPORTANCE TO AAUW.

BECAUSE THE PROVISIONS IN ARTICLE V OF THE CONSTITUTION HAVE NEVER BEEN EXERCISED, THERE ARE NO GUIDELINES IN PLACE AS TO WHO CAN CONTROL THE OPERATION OR EVEN THE OUTCOME OF THE CONVENTION.

TWO LEGAL SCHOLARS RECENTLY TOLD A HOUSE SUBCOMMITTEE THAT CONGRESS CANNOT CONTROL THE AGENDA OF A CONSTITUTIONAL CONVENTION CALLED BY THE STATES TO PROPOSE A BALANCED BUDGET AMENDMENT.

STANFORD LAW PROFESSOR GERALD GUNTHER AND DUKE LAW PROFESSOR WALTER DELLINGER SAID THAT CONGRESS LACKS THE CONSTITUTIONAL AUTHORITY TO CONTROL A CONVENTION WHICH HAS BEEN DESIGNED TO FUNCTION INDEPENDENTLY OF CAPITOL HILL.

ACCORDING TO DELLINGER OF DUKE, "STARTING IN 1975, GROUPS ADVOCATING A CONSTITUTIONAL CONVENTION SAID, OF COURSE A CONVENTION CAN BE LIMITED TO ONE ISSUE. NOW, EVEN THE SUPPORTERS OF THE CONVENTION PROCESS ARE BEGINNING TO LOOSEN UP THEIR DEFINITION OF ONE ISSUE." THIS IS OMINOUS.

GUNTHER, ON THE OTHERHAND TESTIFIED THAT ATTEMPTS BY CONGRESS TO BIND A CONVENTION TO ONE ISSUE WOULD BE "PROFOUNDLY UNCONSTITUTIONAL"

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AND THAT STATEMENTS DECLARING CONGRESSIONAL AUTHORITY ARE MISLEADING.

SOME TROUBLING QUESTIONS COME TO MIND THEREFORE ABOUT THE CIVIL, FINANCIAL AND POLITICAL CONSEQUENCES IF THE FIRST CONSTITUTIONAL CONVENTION IN 200 YEARS SHOULD TAKE PLACE. ONE IS FORCED TO ASK THE QUESTION:

WHO WILL THE DELEGATES BE, AND HOW WILL THEY BE CHOSEN?

WILL THE STATES CONTROL THEIR DELEGATES?

WILL CONGRESS CONTROL THE CONVENTION?

WILL THE COURTS?

WHAT INFLUENCE OR PRESSURE WILL SPECIAL INTEREST GROUPS EXERT?

THE ANSWER TO THESE QUESTIONS IS: NO ONE KNOWS.

"THE CONVENTION IS A THREAT," WARNS KEVEN G. FOLEY, A WASHINGTON, D.C., LAWYER, "BECAUSE NO ONE KNOWS WHERE IT WILL LEAD."

THE ONLY PRECEDENT WE HAVE TO GO ON WAS SET BY THE FIRST CONSTITUTIONAL CONVENTION IN 1787, AND THAT "BROKE EVERY LEGAL RESTRAINT DESIGNED TO LIMIT ITS POWER AND AGENDA." WHILE ABOLISHING THE ARTICLES OF THE CONFEDERATION, THE OLD BINDING CONSTITUTION THAT WAS SUPPOSED TO RESTRICT THE CONVENTION PROCEEDINGS.

"IF OUR 1787 CON-CON COULD IGNORE ITS MANDATE AND PRODUCE A RADICALLY DIFFERENT CONSTITUTION, SAYS ED DOER, FORMER EDITOR OF CHURCH AND STATE MAGAZINE, "WE CAN BE CERTAIN THAT IF A NEW CON-CON IS CALLED, MANY SPECIAL INTEREST GROUPS, SUCCESSFUL AND OTHERWISE, MAY TRY TO CONTROL THE PROCESS AND THE CONVENTION ITSELF." THUS, THERE ARE NO ASSURANCES THAT DELEGATES COULD BE PREVENTED FROM A WHOLESALE REVAMPING THAT COULD UNDERMINE THE RIGHTS AND TRADITIONS OUR CONSTITUTION NOW UPHOLDS. MANY FELLOWSHIP ACROSS THE COUNTRY ARE COMMITTED TO BUILDING AND PROTECTING THIS NATION'S CONSTITUTIONAL TRADITIONS.

MANY AMERICANS TAKE THEIR CONSTITUTIONAL RIGHTS FOR GRANTED. THEY FIND

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HARD TO BELIEVE THAT A CONSTITUTIONAL CONVENTION COULD HAVE SUCH AN IMPACT ON INDIVIDUAL LIBERTIES. BUT THE LIBERTIES BROADLY OUTLINED IN THE BILL OF RIGHTS HAVE BEEN DEFINED LARGELY THROUGH THE CONSTITUTIONAL PROCESS OF JUDICIAL REVIEW. THAT VERY PROCESS COULD BE DRAMATICALLY CHANGED, OR EVEN ELIMINATED, BY A CONSTITUTIONAL CONVENTION.

JAMES MADISON, A DELEGATE AT THE FIRST CONVENTION FEARED A SECOND: "HAVING WITNESSED THE DIFFICULTIES AND DANGERS EXPERIENCED BY THE FIRST CONVENTION WHICH ASSEMBLED UNDER VERY FAVORABLE CIRCUMSTANCES, I SHOULD TREMBLE FOR THE RESULT OF A SECOND....."

WITH THIS IN MIND, IT IS VITAL TO REALIZE THAT UNDER ARTICLE V OF THE CONSTITUTION WE HAVE A CHOICE. THERE ARE TWO PROCEDURES FOR AMENDING THE CONSTITUTION OF THE UNITED STATES. UNDER THE ONLY PROCEDURE USED IN OUR HISTORY, CONGRESS CONSIDERS, PASSES AND SUBMITS A PROPOSED AMENDMENT TO THE STATES FOR RATIFICATION. IF RATIFIED BY 3/4 OF THE STATES, THE AMENDMENT BECOMES PART OF THE CONSTITUTION.

SINCE THE CONSTITUTION WAS ADOPTED IN 1789, IT HAS BEEN AMENDED 17 TIMES - TO ADD TO THE BILL OF RIGHTS, OUTLAW SLAVERY, APPLY THE BILL OF RIGHTS TO STATE AND LOCAL GOVERNMENTS, ALLOW WOMEN TO VOTE, ETC. IN EACH CASE THE AMENDMENT WAS PROPOSED AND WAS RATIFIED BY THE REQUIRED NUMBER OF STATES. THIS METHOD OF CONSTITUTIONAL REVISION HAS SERVED OUR NATION WELL AND HAS ALLOWED FOR CAREFUL AND THOUGHTFUL DELIBERATION IN DRAFTING AMENDMENTS.

THE SECOND PROCEDURE REQUIRES THE CONVENING OF A FULL CONSTITUTIONAL CONVENTION WHOSE SCOPE AND AUTHORITY REMAIN TO BE DEFINED. IF 34 STATES SUBMIT VALID PETITIONS TO CONGRESS FOR A CONVENTION, IT MUST BE CONVENED. ANY AND ALL AMENDMENTS CONSIDERED AND PASSED BY SUCH A CONVENTION ARE FORWARDED TO THE STATES FOR RATIFICATION. A SERIES OF AMENDMENTS

WOULD NOT BE SUBJECT TO RATIFICATION OR REJECTION BY THE PEOPLE, BUT RATHER BY THE STATE LEGISLATURES OR SPECIAL STATE CONVENTIONS, WHICHEVER CONGRESS MIGHT CHOOSE. CLEARLY, THIS WOULD BE AN INTERFERENCE OF PERSONAL RIGHTS.

THE FIRST CONSTITUTIONAL CONVENTION PROVIDED A LESSON WE CANNOT AFFORD TO IGNORE. DELEGATES GATHERED IN 1787 TO CONSIDER ONLY MINOR REVISIONS TO THE ARTICLES OF THE CONFEDERATION, WHICH GOVERNED THE COLONIES AT THAT TIME. INSTEAD, THAT CONVENTION THREW OUT THE ARTICLES AND CREATED A NEW DOCUMENT.

THE UNITED STATES WAS LUCKY THAT TIME, BUT WE MAY NOT BE SO LUCKY THE SECOND TIME AROUND. THE POSSIBILITY OF OVERHAULING A DURABLE DOCUMENT THAT HAS SERVED THIS NATION WELL IS RISKY AT BEST. MADISON KNEW THIS, AND WE ARE FORTUNATE TO HAVE A RECORD OF HIS FIRST-HAND EXPERIENCE.

MEMBERS OF THIS COMMITTEE ARE FAMILIAR, I AM SURE, WITH THE OLD SAYING, "IT IS A LOT EASIER TO STAY OUT OF TROUBLE THAN TO GET OUT OF IT." AAUW FIRMLY BELIEVES THAT VOTING THIS PIECE OF LEGISLATION IS ASKING FOR A LOT OF TROUBLE. TROUBLE FOR INDIVIDUALS AS WELL AS A STATE THAT HAS A NATIONAL REPUTATION FOR LEADERSHIP IN THE AREA OF LEGISLATION.

THE NEW JERSEY DIVISION OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN STRONGLY URGES THIS COMMITTEE NOT TO VOTE ACR 22 OUT OF COMMITTEE. INSTEAD, WE URGE YOU TO JOIN THOSE STATES WHO HAVE DEFEATED CON-CON. IN DOING SO, WE FIRMLY BELIEVE YOU WILL HAVE SERVED OUR CONSTITUTION WELL. THANK YOU.

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TESTIMONY
WAYNE DIBOFSKY
ASSOCIATE DIRECTOR OF GOVERNMENT RELATIONS, NJEA
N.J. ASSEMBLY STATE GOVERNMENT COMMITTEE
"RESOLUTION TO CALL FOR A CONSTITUTIONAL CONVENTION"
JUNE 20, 1988

Mr. Chairman and Members of the Committee:

I am Wayne Dibofsky, Associate Director, of the 125,000 member New Jersey Education Association. We appreciate the opportunity to speak to you today on an issue of central importance to the future of the United States of America.

Recently a young man walked into the National Archives and smashed the case containing the original U.S. Constitution. None of us can conceive of his motives for this shocking act, and yet the move to call for a second constitutional convention at this point in history may be as reckless and unconscionable an act.

As a basic document granting powers to the national government and protecting the rights of its citizens, the U.S. Constitution has stood the test of time. It has served the nation well as the framework for a government system that has had to deal with many varied events and crises in our history. So sound was the work of the framers that the Constitution has been amended only 26 times in its 200 year history.

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The amendment process has also served us well. All 26 amendments thus far adopted have been proposed by a vote of two-thirds of both Houses of Congress and ratified by the legislatures of three-quarters of the states.

The alternative procedure for proposing amendments - a constitutional convention called by Congress on application of two-thirds of the states - has never been used. Since the Constitutional Convention in 1787, no subject has been deemed so grave a threat as to warrant a convention call.

Our founding fathers had the wisdom to establish a system of government flexible enough to survive 200 years of enormous commercial, technological, and cultural change. Of the 16 amendments since the Bill of Rights, seven dealt with the structure of the government, five expanded voting rights, two expanded civil rights. All previous constitutional amendments, with the disastrous but instructive exception of Prohibition have been enacted to achieve goals which could not have been accomplished by statute.

The present call for a constitutional convention - driven by the effort to pass an amendment requiring a balanced federal budget - does not fit within the scheme of the constitution. As Justice Oliver Wendell Holmes said, "A constitution is not intended to embody a particular theory."

The Dangers of a Constitutional Convention

The prospect of a runaway constitutional convention is not to be taken lightly.

The framers of the current Constitution met in 1787 for the sole and express purpose of revising the Articles of Confederation. They had **no** mandate or authority to re-structure the government, and yet they did. They even established an extra-legal procedure for ratifying their actions. In a quiet, second Revolution, the Constitutional Convention of 1787 overthrew the existing government.

Former Justice Arthur Goldberg states, "History has established that the Philadelphia Convention was a success, but it cannot be denied that it broke the restraints intended to limit its power and agenda." Logic therefore compels one conclusion: "Any claim that the Congress could, by statute, limit a convention's agenda is pure speculation."

If, by precedent, Congress cannot limit the convention's agenda, can the states? The framers of the constitution considered and rejected language that would have allowed the state legislatures to propose specific constitutional amendments. In its place, as a protection in extraordinary circumstances, the framers of the constitution provided for a constitutional convention, free of the control of both Congress and the state legislatures.

Do not doubt that they were well aware of the grave consequences of such a provision. As James Madison wrote, "Having witnessed the difficulties and dangers experienced by the first Convention which assembled under very propitious circumstance, I should tremble for the result of a second."

A Constitutional convention would be nothing less than a fourth branch of government.

The Dangers of a Balanced Budget Amendment.

Can those who support this movement to call for a convention for the sole and express purpose of considering a balanced budget amendment be assured that such an amendment would be passed. They cannot. The worst possible forum for deliberating on critical, sensitive, technical economic policy matters is the kind of constitutional convention being proposed one which could be uncontrollable and subject to emotional and demagogic appeals.

Consider that a proposed constitutional amendment requiring a balanced budget has been brought before Congress several times, most recently in the 99th Congress where it was defeated in the US Senate. In recent years, proposals to call for a constitutional convention for this purpose have been defeated by Republican and Democratically controlled state legislatures in Connecticut, Michigan, Hawaii, Illinois, Maine, Minnesota, Montana, Washington, Missouri, and Kentucky. In fact, Alabama recently became the first state to rescind its vote calling for such a convention.

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Is a balanced federal budget amendment desirable?

When the first state legislative resolution calling for a constitutional convention to pass a balanced federal budget amendment was passed, conventional wisdom stated unequivocally that the only way to lower the devastating inflation rate was to balance the federal budget. Ten years later, what do we see? The federal deficit for fiscal year 1988 is estimated at some $146 billion, the highest ever, and yet the annual inflation rate for FY'88 is estimated at three percent.

Over the past seven years, the annual budget deficits rolled up by the Reagan Administration have added more red ink to the national debt than all the debts accumulated by every President from George Washington to Jimmy Carter.

This huge - and growing - national debt has become a pressing problem that directly threatens our nation's capacity to adequately fund education. The federal government, in fact, now spends over seven times more for interest on the national debt than for helping students learn.

How can we best cut the annual budget deficit and start cutting the national debt down to size? There is no simple answer. Reducing the deficit will take a willingness to make some hard choices about our national priorities.

Unfortunately, many people feel there is a simple answer to the deficit problem: a balanced budget amendment to the U.S. Constitution.

Annual federal deficits have been at or above $200 billion in five of the past six years. The national debt doubled in five years. And yet the inflation rate throughout this period continued to decline. This fatal flaw in the economic theory which drove this movement - more than anything else - points up the folly of attempting to establish a simplistic, rigid, unrealistic, arbitrary constitutional amendment which can not possibly meet the specific exigencies of economic fluxions.

This is not to underestimate the crisis of the national debt. The problems of fiscal and monetary policy can and should be addressed through the legislative process provided by the Constitution. In fact, there is in effect now a law requiring Congress to establish a balanced budget by 1991, "The Balanced Budget and Emergency Deficit Control Act of 1985."

If, however, states demand a balanced budget amendment, they would impose a fiscal straight-jacket upon Congress that would handcuff the ability of the legislative branch to use its taxing and spending powers to address national needs in time of economic crisis.

Experts tell us that during a recession, a balanced budget requirement would make such downturns far more severe. Unemployment compensation and social welfare assistance would be choked off. It would be virtually impossible to secure the legislation needed to create jobs and stimulate the economy or to fund new defense needs. Incomes would erode and investment would be discouraged, resulting in deeper recessions, deeper budget cuts, lower revenues, and higher unemployment. Ultimately, this balanced budget straightjacket would destroy federal programs in education, housing, health, transportation, job creation and training, unemployment assistance and public works; prevent adequate enforcement of labor, antitrust, civil rights, and other laws; undermine regulatory programs protecting health, the environment, and consumers; and wipe out federal research and development funds for health, science, energy, and agriculture.

The necessity of maintaining fiscal flexibility is best judged against the worst economic disaster of this century -- the Great Depression. President Roosevelt used the federal budget and deficit spending to create programs to help put the country back to work. In 1937, when the economy began to show signs of recovery, Roosevelt and the Congress cut expenditures to eliminate the deficit. An economic relapse resulted. Unemployment went from 14 percent to 19 percent by 1938. When Congress reversed the gears and widened the deficit, economic recovery began again.

A study done by the Council of Economic Advisors in 1979 showed that if the federal budget had been balanced during the 1974-75 recession, the real GNP would have plunged by 12 percent rather than 2.5 percent, and unemployment would have shot up to 12 percent rather than 8.5 percent.

A more recent study showed that if a balanced federal budget were required for FY'85, unemployment would have increased by nearly five million, the GNP would have declined by approximately $700 billion, federal expenditures would have had to be cut by $400 billion, and state and local tax revenues would have dropped by $80 billion - due to a drop in employment and output.

Federal budgeting is a complex, subtle, and evolving process that cannot and should not be constrained within the straitjacket of several immutable paragraphs in the U.S. Constitution.

Conclusion

The Declaration of Independence states, "Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes." Let us heed this advice.

In 1787, New Jersey was the third state to ratify the present U.S. Constitution. This is a source of great pride for the citizens of our state. In 1988, let us preserve that tradition and abandon the proposition of its dissolution.

Thank you.

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Testimony of Gardiner Rogers
Chairman, Board of Policy
Liberty Lobby

Asking the New Jersey Assembly State Government Committee
to reject the call for a Constitutional Convention
by voting against ACR-22

20 June 1988

> "That in the opinion of Congress, it is expedient that on the second Monday in May next, a Convention of Delegates, who shall have been appointed by several states, be held at Philadelphia for the sole purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures, such alterations amd provisions therein,---"
>
> --Resolution of Congress in February, 1787

The foregoing instructions pertained to the last Constitutional Convention. Did the delegates do only what they were orlered to do? No! In fact, they did not do one thing that even resembled revising the Articles of Confederation. That is the precedent that was set two centuries ago. As you all know, precedents are very important in law. Are we so naive as to believe that the 1787 precedent will not be exploited to the fullest, if a new Constitutional Convention is called?

That, Representatives, is why I am here again on behalf of the 25,000 members, nationwide, of the Board of Policy of Liberty Lobby, the nation's citizens' action lobby which stands in defense of the United States Constitution, for American national independence, and for United States' citizens' interests first and foremost.

I urge you, once again, to reject the call for a Constitutional Convention. Last year it was ACR-54; now it is ACR-22. Proponents are advocating the camouflage of a convention, attempting to beguile you and other state legislatures into believing that it is the only way to force a balanced budget amendment to the Constitution. Their <u>real</u> objective is to change our form of government from a limited, constitutional republic--as given to us by the Founding Fathers--to a parliamentary democracy, as in England, where there is no separation of powers. Now, our forefathers came here to escape the tyrannies of Europe, to establish a better way of life. As a result, America is the envy of the world. Let's not regress to the tyrannies of Europe. While we strongly support the end of Congress' criminal spending and borrowing practices, a Con-Con would open a Pandora's box of many unknowns.

For instance, who would be the delegates at a Convention? Who would choose them and how? Even if a Con-Con could be, and were,

limited to a balanced budget amendment, imagine how the Money Power (as Abraham Lincoln called it) would exploit the power of taxation for its own benefit at even greater expense to the people than now!

In October of last year, I heard that a National Assessment Corporation had been established under the United Nations. It is to become an international corporation for extracting more earnings of American citizens to send to other areas of the world. According to a recent news article, "A new treaty likely to be passed by the Organization for Economic Cooperation and Development will link the tax collectors of the top 28 industrialized nations for 'enforcement'. This giant step towards world government is strongly endorsed by the Reagan Administration." Representatives, this ties in with President Reagan's and Senator Dole's behavior in February when they pressured New Hampshire's Majority Leader, Representative Vincent Palumbo into trying to table New Hampshire's House of Representatives' resolution to rescind that state's call for a Con-Con. Those wonderfully independent people, though, stood on their own and voted not to table and then passed their resolution. (The state Senate voted to "study" it until the next session, so maybe it will pass later.)

But what about this push for global government, global taxation? If a convention is called, will a new amendment or a new constitution include such a power? Could it make world government finally official? After all, we hear more and more about world banking and world taxation, even a world army. If such comes to pass, what do you think will happen to our Bill of Rights? What about your right to a trial by a jury of your peers?

The intent of the Constitution's framers was for a Con-Con to be an autonomous body, independent of Congress and the states. Some will argue that Congress has the option to approve or reject the product of a convention. Certainly, members of Congress can say anything they want as individuals and they can pontificate as a body about "this or that", but the ONLY power Article V of our Constitution gives to Congress is to choose whether the product of a convention is to be ratified by three-fourths of the state legislatures or three-fourths of state conventions. In fact, even the U.S. Supreme Court is powerless to confirm or deny the product of a constitutional convention. Furthermore, the convention delegates could write entirely different ratification requirements into a new constitution or into our present one. The precedent for this was set by the 1787 convention when the delegates stipulated that only nine states had to ratify the Constitution; the Articles of Confederation required all thirteen states must ratify any changes in order to be official.

Some U.S. representatives and senators have argued that even if 34 states call for a convention, it would not pass because of different reasons among the states. This is nonsense, because no reasons for calling a convention are a requirement in Article V, the only requirement being that on "the application of the legislatures of two-thirds of the several states," Congress "shall call a convention."

Why must Americans always be exploited to benefit foreigners? Somehow, we are told, it's our fault if other countries are poor. Why doesn't Congress ever stand up for Americans? If a convention is called, do you honestly think the powers in control of it, the Money Power, will stand up for American citizens, considering the Money

ower's Marxist assertions to "share the wealth"--our wealth, that s, not theirs?

If a convention agrees on amendments to our Constitution, or ven on a new constitution, what will be the ratification procedure? ill the product of a convention come back to you, the New Jersey egislators, or will it be submitted to state conventions? If state onventions are called, how will delegates be chosen? Will you eople choose them or will some wealthy special interest groups, such s tax-exempt foundations of international loyalties? Those founda- ions would hardly be loyal to you and your constituents, those who oted you into office.

If the foundations and other organizations controlled by the oney Power choose the convention delegates, don't you think those rganizations will use their money to control the delegates? If that appens, how much influence do you think "the people" will have?

We hear much propaganda that in our modern technology our Con- titution is out of date, that it was designed for an agrarian socie- y. Now, any serious and honest student of political science knows hat the amendment procedure built into the document allows it to be ept up to date, also that technology has nothing to do with citi- ens' rights and with freedom. What the propagandists conveniently eave out is that most of our nation's ills are a result of disobedi- nce of our Constitution by our public servants rather than a defi- iency in the document itself. While solving our fiscal and monetary roblems is vitally important, far more dangerous than another year r two of deficits is the possibility of losing our Constitution. LEASE DON'T LET THIS HAPPEN ! PLEASE VOTE AGAINST A CONSTITUTIONAL ONVENTION BY VOTING NO ON ACR-22 !

Tragically, most Americans have a superficial understanding of he Constitution, their birthright. It is poorly taught in school. t comes as no surprise that few, including members of Congress, ealize that the issue of balancing the budget was already debated by he delegates at the convention of 1787. They gave us the solution n the Constitution, and the subject is covered in the debates of the onvention, the Federalist Papers, and the states' ratifications of he Constitution. Packets containing these documents were sent to ach of you on the State Government Committee.

This method of balancing the budget was first used in 1798 to xtinguish the Revolutionary War debt. The same method was later sed during the War of 1812 and again during the Civil War. SO LET'S O IT AGAIN ! The method and the authority are right in Article I, o we don't need to consult with fuzzy-minded lawyers or pseudo- conomists, AND WE SURELY DON'T NEED A CONVENTION ! All we must do s follow that "greatest document struck by the mind of man:" all we ave to do is to obey our God-given Constitution which our represen- atives in government have promised to preserve, protect, and defend gainst all enemies, both foreign and domestic.

If you representatives of New Jersey citizens stand proudly in efense of our Constitution by rejecting this call for a constitu- ional convention, the American people will be indebted to you for reserving their birthright, the Constitution. You will neutralize hose constitution-changers and Anglophiles who hope to get rid of our separation of powers, which James Madison said was the only ssurance against a tyrannical government. 208X

As some of you know, several Orwellian constitutions have already been written. One example is the "Newstates Constitution". Written by Rexford Tugwell under the sponsorship of the Center for Democratic Institutions, it concentrates more power in the central government, the very concept the Founding Fathers feared. Two samples of the Newstates Constitution: (1) The practice of religion shall be a privilege, not a right. (2) All firearms shall be in the hands of the military, the police, and only certain licensed individuals. Apparently, our God-given rights to worship and to keep and bear arms are to be infringed, perhaps even denied. I understand that you now have a bill before your legislature which, if passed, will deny New Jersey citizens the right to own handguns. Surely, you people don't want to allow this step toward tyranny! But if a new constitution is passed, the subject won't even be up for debate, as a constitution like the "Newstates Constitution" wouldn't even hint a "Second Amendment".

We could never expect delegates to a convention now to be as united in thought and concepts as were the men who met in 1787. Why? For one very glaring reason, as pointed out by John Jay in the Federalist No. 2:

> "With equal pleasure I have as often taken notice, that Providence has been pleased to give this one connected country, to one united people; a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs..."

Can you imagine what a heyday the news manipulators would have as they used the news channels to distort the facts as they set faction against faction and race against race! Don't let this happen!

The 32 states that have passed Con-Con calls did so with little public notice and few hearings. Over the last few years information exposing the dangers of a Con-Con has been put into the hands of the constituents of the legislators in states like Michigan, Montana, Wisconsin, and Vermont, and they have overwhelmingly urged their state representatives and senators to oppose a Con-Con. Significantly, of the 18 states which have <u>not</u> called for a Con-Con, five have said "NO" while the remaining 13 have not seen fit to take a vote on the issue. Even more significantly, of the 32 states which have called for a convention, Alabama and Florida have rescinded theirs and more states are starting action, realizing that their earlier calls for a convention were ill-advised. Let us listen to these states before stumbling through the Con-Con trap door. You legislators in New Jersey can join the growing number of patriots throughout America by voting NO to a convention. In the name of all you hold dear, including your families and posterity, please vote NO on ACR-22 and preserve the birthright of all Americans, which has served us so well for two centuries.

Contrarily, if you vote for ACR-22 and we have a convention which cancels the Bill of Rights among other American blessings, what will you tell your children and your grandchildren when they ask you why you jeopardized their birthright?

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You have heard J. Pierpont Morgan's famous quotation: "The usiness of America is business." No doubt citizens of New Jersey, s do all loyal Americans, believe that the business of America is reedom.

I ask you to live free. Vote to save our Constitution. Vote NO n ACR-22 !

To quote I Corinthians 7:23:

> You were bought with a price; do not become slaves of men.

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NOW - NJ

NATIONAL ORGANIZATION FOR WOMEN OF NEW JERSEY

110 W. State Street, Trenton, New Jersey 08608
(609) 393-0156

TESTIMONY OF LINDA B. BOWKER, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN OF NEW JERSEY, BEFORE THE ASSEMBLY STATE GOVERNMENT COMMITTEE, JUNE 20, 1988, OPPOSING ACR-22

My name is Linda Bowker. I am the State President of the National Organization for Women of New Jersey, with members in all 21 counties of the state.

The National Organization for Women has had a great deal of experience in trying to amend the constitution. The fight for the Equal Rights Amendment, which will ultimately be won, taught many people a great deal about amending the United States Constitution.

Changing our constitution is not a matter to be taken lightly. By using the traditional Congressional method, there is a forum for discussion of a very specifically worded amendment. There is no ambiguity. The public knows what the amendment says.

The calling of a constitutional convention is not even worded exactly the same in each state legislature. So the whole process begins with ambiguity. The members of the convention can bring up any wording and the public is left out of the process.

There is no guarantee that the Constitutional convention will deal with only one issue. This is a particularly troublesome question. Of course, I would like to see a constitutional convention that would pass the Equal Rights Amendment, but I wouldn't want that same convention to have the ability to outlaw abortion. Once Pandora's box is opened, how can it be closed again?

At a constitutional convention, the delegates do not have any accountability to constituents as state legislators do. The people of the United States would have little way to affect the outcome of the constitutional convention. The people do have the power to affect the positions of legislators who represent them. For this reason I believe the Congressional method of amending the constitution is more democratic.

Since Article V of the Constitution does not include procedures for a convention, years of time and millions of dollars would very likely be spent in haggling and litigating over the answers to procedural questions.

For these reasons, I urge you to vote against ACR-22, which would call for a constitutional convention.

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LEAGUE OF WOMEN VOTERS OF NEW JERSEY

204 WEST STATE STREET, TRENTON, NEW JERSEY 08608 / TELEPHONE 1-800-792-VOTE / 609-394-3303

TESTIMONY ON ACR.22 BEFORE
ASSEMBLY STATE GOVERNMENT COMMITTEE

Presented by Marie Curtis, Legislative Vice President
League of Women Voters of New Jersey

June 20, 1988

Good morning. I am Marie Curtis, Legislative Vice President of the League of Women Voters of New Jersey. We appreciate the opportunity to address the committee on ACR.22. The League of Women Voters of New Jersey opposes ACR.22. We believe this measure, if passed, could threaten the democratic framework of our country. But the League of Women Voters also opposes ACR.22 for fiscal reasons.

All of us are concerned that the federal deficit has grown out of all proportions. The League of Women Voters of the U.S. believes that the current federal deficit, as projected to 1990, **should**, and must, be reduced. To accomplish this, our members believe that government should rely primarily on reductions in defense spending through selective cuts and the elimination of waste and duplication. The League opposes across-the-board federal spending cuts.

We recognize that deficit spending is sometimes economically appropriate and necessary. The League, therefore, opposes a constitutionally mandated balanced budget for the federal

government. We could support deficit spending, if necessary, for stimulating the economy during recession to avoid depression, for meeting social needs in times of high unemployment, or for meeting defense needs in times of national security crises. When survival is at stake, for instance, as in World War II, government needs flexibility.

ACR.22 also seeks a constitutional convention. This concept is dangerous to our way of life. The League of Women Voters believes in representative government, in the individual liberties established in the Constitution of the United States, and in the balance of powers set up by the Constitution. We believe that the system for amending our Constitution, as set up by our fore-fathers, has functioned well for two centuries. If a constitutional convention were to be called, our governmental system, could be in jeopardy. Although this resolution refers only to a balanced budget amendment, once the convention is called, anything could happen. We recognize that legal and governmental experts disagree on the extent of the authority such a body would have. Professionals differ on the interpretation of the constitutional provisions for such a convention. We believe delegates to such a gathering could jeopardize our individual liberties.

Our Constitution has functioned admirably for 200 years, through prosperity and adversity. We have just celebrated the bicentennial anniversary year of our great Constitution. Please, let us not tamper with this most remarkable and successful document.

THE JEWISH FEDERATION OF GREATER MIDDLESEX COUNTY

SUITE 101 • 100 METROPLEX DRIVE • EDISON, NEW JERSEY 08817-2699 • (201) 985-1234

Testimony of Lawrence Grossman
June 20, 1988
Public Hearing on ACR-22

Mr. Chairman, Members of the Committee:

My name is Lawrence Grossman. I am here today representing the Jewish Federation of Greater Middlesex County. I am a member of the Federation's Board of Directors and co-chairman of the Jewish Community Relations Council. I am a lay participant with the Federation and am here, rather than at my business because of my community's strong feelings in opposition to ACR-22.

The Jewish Federation of Greater Middlesex County is the central administrative body for the entire organized Jewish community in our region. It conducts the general fundraising campaign, distributes those funds to our constituent agencies, and represents the community on public affairs issues, such as today concerning ACR-22. We also publish a biweekly newspaper, The Jewish Star, which goes into almost every Jewish home in our region.

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We represent approximately 50,000 individuals and 16,000 families in the 13th, 14th, 17th, 18th, 19th and 20th legislative districts. The federation is also comprised of the area's synagogues and other Jewish organizations, such as the Jewish War Veterans, Jewish Family services, Hadassah, B'nai B'rith, the "Y"'s, and the day schools.

Our community is opposed to ACR-22. Our focus is not a balanced budget nor even a constitutional amendment; it is the mechanism of a constitutional convention to amend the constitution. Accordingly, in addition to coming here today, we have to date met with four of our Assemblymen, have held one meeting on the subject with one of our Congressmen, and have passed a formal resolution by our Board of Directors and Community Relations Committee expressing the Federation's views on the subject. In view of our constituents' interest in this issue, these activities have been widely covered by our local paper.

So far, there has been not one word of dissent from any quarter in our community where this issue has already been tested at the grass roots. There is a strong and overwhelming unanimity of views to our Federation's position in opposition to ACR-22.

In 1987 the United States celebrated the 200th anniversary of the Constitutional Convention which created our nation's Constitution. Of necessity it provides a framework to govern our country and defines

the respective roles of the Federal government and the states. Of equal or even greater significance is the fact that our Constitution has provided protection for the individual rights, liberties and privileges of all Americans. These safeguards, principally contained in our Bill of Rights, have served as bulwarks against arbitrary governmental action and the whims of transient majorities.

It is because of our Constitution that Americans cannot be imprisoned without trial, cannot be denied reasonable bail; cannot be subject to the third degree; cannot be deprived of the services of an attorney in a criminal case; cannot be denied their vote because of a poll tax or because of their race, religion or national origin; cannot be forced to go to separate schools, eat at separate restaurants or drink at separate fountains, because of their color; cannot be deprived of where they can live by restrictive deed covenants; and cannot be denied equal access to housing, employment and education, because they are not of the majority color, creed or religion.

A majority may detest the views expressed by certain Americans and disapprove of the religious practices of others; but under our First Amendment the government cannot forbid free speech and a free press; nor can it interfere with religious practices or establish religion in this country. Because of religious freedom

guaranteed by the First Amendment the Jewish Community and any other religious minority group can feel safe and secure under the Constitution's protection. Who can maintain that the Constitution as construed by our Supreme Court has not played a major role in making our country a great, noble and successful experiment in promoting the highest aspirations of human kind. Dare we risk the possibility of wholesale change in this magnificient document known as the Constitution by approving the call for a Constitutional Convention as set forth in Assembly Concurrent Resolution No. 22 of 1988? The Jewish Federation of Greater Middlesex County answers with an unequivocal no.

The Resolution asks Congress to call a Constitutional Convention to mandate a federal balanced budget. However, none of the twenty-six amendments to the United States Constitution has ever been enacted by that method--only the traditional method of congressional action and ratification by the states has been used.

Can a Constitutional convention be limited to the issue of a balanced budget or is the whole Constitution up for grabs?--<u>Legal opinion is divided, and no one really knows.</u> If anything, the fact that the only Constitutional Convention we have ever had in Philadelphia ignored its mandate only to amend the Articles of Confederation and fashioned a wholly new document is certainly not a comforting precedent for those who want to preserve the rights, liberties and

privileges contained in our Constitution.

The American Bar Association resolution of 1974, stating that Congress has the power to establish procedures limiting a convention was qualified by the ABA Governmental Affairs Group in 1985 which pointed out that Congress should establish such procedures well in advance of any call for a convention and that no such legislation has been enacted; nor could current proposals for such before Congress be supported by the Group. A well known Constitutional scholar, among many others, has expressed doubts over such Congressional power as follows:

> "In my view the test, history and structures of Article V make a congressional claim to play a substantial role in setting the agenda of the Convention highly questionable. If the state initiated method for amending the Constitution was designed for anything, it was designed to minimize the role of Congress. Congress was given only two responsibilities under that portion of Article V, and I believe that, properly construed, these are extremely narrow responsibilities. First, Congress must call the convention when 34 valid applications are at hand (and it is of course a necessary part of that task to consider the validity of the applications and to set up the machinery

for convening the convention). Second, Congress has the responsibility for choosing a method of ratification once the convention submits its proposals. I am convinced that is all that Congress can properly do."
(Professor Gerald Gunther, Stanford Law School)

No one can give absolute assurance that either Congress, the states, or the Supreme Court could limit the convention; and the possible confrontation among all those entities and the convention could create chaos in our system. Is a Constitutional amendment for a balanced budget so vital and fundamental to the existence and future success of our noble experiment to subject to possible debate and revision all facets of American law, government and the civil rights and civil liberties of U.S. citizens by a runaway convention? Again, we say the convention route is not worth the risk. ACR-22 should be defeated.

NAL COUNCIL OF JEWISH WOMEN
ATION • SOCIAL ACTION • SERVICE

JERSEY STATE PUBLIC AFFAIRS COMMITTEE

June 20, 1988

**STATEMENT OF THE NEW JERSEY STATE PUBLIC AFFAIRS COMMITTEE,
NATIONAL COUNCIL OF JEWISH WOMEN
TO THE
GENERAL ASSEMBLY STATE GOVERNMENT COMMITTEE**

SUBJECT: ASSEMBLY CONCURRENT RESOLUTION NO. 22

I am Sherry Zowader, New Jersey State Public Affairs chairwoman of the National Council of Jewish Women, a non-profit volunteer organization dedicated to advancing human welfare through a multi-faceted program of education, advocacy and community service.

On behalf of the 10,000 member families of NCJW in 13 New Jersey Counties, I appreciate this opportunity to express our strenuous opposition to Assembly Concurrent Resolution No. 22 which calls for a convention for the purpose of proposing an amendment to the Constitution of the United States.

The 100,000 members of the National Council of Jewish Women in 200 communities across the country believe that individual liberties and rights guaranteed by the Constitution are keystones of a free society. Inherent in these rights is our responsibility to protect them.

For almost 100 years, NCJW has been involved in monitoring and advocating for the protection of constitutional rights. At the 33rd NCJW National Convention held in Dallas, Texas in March, 1979, the delegates expressed their deep concern over the growing movement calling for a Constitutional Convention to amend the United State Constitution.

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In our history there has been only one constitutional Convention, called for the express purpose of revising the Articles of Confederation. It is important to note than an attempt was made to strictly control that convention's agenda by both the Continental Congress and the Articles of Confederation, which at that time was the prevailing charter of government. Those attempts to control that convention failed.

There are no contemporary precedents for procedure at such a convention. While the Constitution states the process for calling a Convention, it does not clarify whether or not the Convention can be limited to one issue; who has the final authority over the Convention's rules and regulations; or even what criteria would be established for delegate selection.

The National Council of Jewish Women believes that the most effective method for amending the Constitution continues to be the congressional method, whereby an amendment is initiated by a two-thirds majority of both Houses of Congress and then submitted to the states for ratification. All 26 amendments to the Constitution have been passed this way.

In the words of James Madison:

> "...having witnesses the difficulties and dangers experienced by the first convention, which assembled under every propitious circumstance, I would tremble for the result of a Second."

Holding a Constitutional Convention at this point in our history would set a dangerous precedent. The 10,000 member families of NCJW in the State of New Jersey vigorously oppose ACR 22 and urge you to do the same.

Thank you.

Sherry Zowader, Chairwoman
NJ State Public Affairs
Committee
97 Lamington Road
Somerville, NJ 08876

COMMUNITY RELATIONS COMMITTEE - UNITED JEWISH FEDERATION OF METROWEST
TESTIMONY ON ACR - 22 CALL FOR A CONSTITUTIONAL CONVENTION

NEW JERSEY ASSEMBLY STATE GOVERNMENT COMMITTEE, JUNE 20, 1988

GOOD MORNING. MY NAME IS DAVID MALLACH, AND I AM DIRECTOR OF THE COMMUNITY RELATIONS COMMITTEE OF THE JEWISH FEDERATION OF METROWEST. THE METROWEST JEWISH FEDERATION IS A MULTI-SERVICE INSTRUMENT REPRESENTING THE ORGANIZED JEWISH COMMUNITY IN ESSEX, MORRIS, SUSSEX, WARREN, AND PARTS OF OF UNION AND SOMERSET COUNTIES.
THE COMMUNITY RELATIONS COMMITTEE IS THE PUBLIC AFFAIRS ARM OF THE JEWISH FEDERATION. OTHER COMPONENT PARTS OF THE UNITED JEWISH FEDERATION OF METROWEST INCLUDE OUR OUTSTANDING NETWORK OF COMMUNITY SERVICES AND ORGANIZATIONS WHICH REPRESENT THE VOLUNTARY EFFORTS OF OVER 120,000 MEMBERS OF OUR COMMUNITY.

I AM HERE TODAY IN THE PLACE OF JOHN KAUFMAN WHO IS UNABLE TO TAKE PART BECAUSE OF AN ILLNESS IN THE FAMILY. HE EXTENDS HIS APOLOGY TO THE COMMITTEE.

THE CONSTITUTION OF THE UNITED STATES IS ONE OF THE MOST REMARKABLE CREATIONS OF THE HUMAN MIND. WHEN ONE CONSIDERS THE PROFOUND CHANGES THAT THE WORLD HAS UNDERGONE IN THE PAST TWO CENTURIES, THE FACT THAT THE UNITED STATES IS STILL GOVERNED BY ESSENTIALLY THE SAME DOCUMENT AS WE HAD IN 1789 IS A RATHER POWERFUL TESTAMENT TO THE GROUP OF MEN WHO GATHERED IN PHILADELPHIA THAT HOT SUMMER SOME TWO HUNDRED AND ONE YEARS AGO.

THOSE PRESENT AT THE CONSTITUTIONAL CONVENTION RECOGNIZED THE NEED TO MAKE AMENDMENT OF THE DOCUMENT A POSSIBILITY, BUT AT THE SAME TIME PROVIDE ENOUGH DIFFICULTY SO THAT IT WOULD NOT BE DONE IN A FRIVOLOUS MANNER. UP TO THE FINAL DAY OF THE CONVENTION, THE CONSTITUTION ONLY INCLUDED THE AMENDMENT PROCEDURE THAT EMANATED FROM CONGRESS AND REQUIRED THE APPROVAL OF TWO THIRDS OF THE STATES. ON THE LAST DAY THE POSSIBILITY OF CALLING A CONVENTION AS OUTLINE IN ARTICLE V WAS INCLUDED. IT APPEARS THAT MANY DELEGATIONS ONLY AGREED TO ITS INCLUSION BECAUSE THEY FELT THERE MAY BE A NEED IN FIVE OR TEN YEARS FOR ANOTHER CONVENTION TO REVIEW AND POSSIBLY MODIFY THE WORK OF THE FIRST ONE. WITH THIRTEEN STATES THIS WAS A RELATIVELY SIMPLE CONCEPT.

THE NEED FOR THIS SECOND CONVENTION WAS SIGNIFICANTLY REMOVED WITH THE PASSAGE OF THE BILL OF RIGHTS AND THE XII AMENDMENT ON THE ELECTION OF THE PRESIDENT AND VICE PRESIDENT. AS A NATION WE HAVE NEVER MADE US OF THE CONVENTION METHOD OUTLINED IN ARTICLE V.

ONE YEAR AFTER THE CONVENTION, JAMES MADISON WROTE TO A FELLOW VIRGINIAN OUTLINING HIS THOUGHTS ABOUT SUCH A CONVENTION:

> IF A GENERAL CONVENTION WERE TO TAKE PLACE FOR THE AVOWED AND SOLE PURPOSE OF REVISING THE CONSTITUTION IT WOULD NATURALLY CONSIDER ITSELF AS HAVING A GREATER LATITUDE THAN THE CONGRESS APPOINTED TO ADMINISTER AND SUPPORT AS WELL AS TO AMEND THE SYSTEM; IT WOULD CONSEQUEN LY GIVE GREATER AGITATION TO THE PUBLIC MIND; AN ELECTION INTO IT WOULD BE COURTED BY THE MOST VIOLENT PARTIZANS ON BOTH SIDES; IT WD. PROBABLY CONSIST OF THE MOST HETEROGE-NEOUS CHARACTERS; WOULD BE THE VERY FOCUS OF THAT FLAME WHICH HAD ALREADY TOO MUCH HEATED MEN OF ALL PARTIES; WOULD NO DOUBT CONTAIN INDIVIDUALS OF INSIDIOUS VIEWS WHO UNDER THE MASK OF SEEKING ALTERATIONS POPULAR IN SOME PARTS BUT INADMISSIBLE IN OTHER PARTS OF THE UNION MIGHT HAVE DANGEROUS OPPORTUNITY OF SAPPING THE VERY FOUNDATIONS OF THE FABRIC. UNDER ALL THESE CIRCUMSTANCES IT SEEMS SCARCELY TO BE PRESUMABLE THAT THE DELIBERATIONS OF THE BODY COULD BE CONDUCTED IN HARMONY, OR TERMINATE IN THE GENERAL GOOD. HAVING WITNESSED THE DIFFICULTIES AND DANGERS EXPERIENCED BY THE FIRST CONVENTION WHICH ASSEM- ASSEMBLED UNDER EVERY PROPITIOUS CIRCUMSTANCE, I SHOULD TREMBLE FOR THE RESULT OF THE SECOND...

THE WISDOM OF JAMES MADISON HAS BEEN OUR GUIDE AND FOR SOME OF THE REASONS I WILL OUTLINE BRIEFLY BELOW, SHOULD CONTINUE TO BE OUR GUIDE.

AMERICANS HAVE BEEN CONSISTENTLY AWARE OF THE GREAT MANY LEGAL PROBLEMS THAT WOULD BE CREATED BY THE CALLING OF A CONSTITUTIONAL CONVENTION. WOULD THE SUPREME COURT HAVE THE RIGHT TO RULE ON ISSUES THAT MAY ARISE FROM IT OR WOULD THERE BE AN INHERENT CONFLICT OF INTEREST THAT WOULD DIS-QUALIFY THAT BODY. COULD THE CONGRESS HAVE ANY CONTROL, OR WOULD IT BE POWERLESS AS JAMES MADISON HAS SUGGESTED.

IF, AS IS VERY LIKELY, VARIOUS LEGAL CHALLENGES ARISE, WHO WOULD BE ABLE TO RULE ON THEM. IF THE CONVENTION FEELS IT HAS THE RIGHT TO REDEFINE THE ROLE OF THE FEDERAL COURTS, SOMETHING LEFT VERY VAGUE IN THE ORIGINAL DOCUMENT, CAN ANY FEDERAL COURT RULE ON THAT.

IF THE CONVENTION CHOSES TO UNDERTAKE THE DISCUSSION OF VARIOUS ISSUES WHICH WERE NOT INCLUDED IN THE CALLS FOR IT THAT WERE ENACTED BY VARIOUS STATE LEGISLATURES, DOES ANY BODY HAVE THE LEGAL AUTHORITY TO LIMIT THIS ACTION?

THE QUESTIONS ARE ALMOST ENDLESS, AND THE LIKELIHOOD OF A GREAT MANY LEGAL CHALLENGES IS CLOSE TO ABSOLUTE. THE RESULT WOULD BE A NATIONAL CONSTITUTIONAL CRISIS OF MAJOR PROPORTIONS THAT COULD PARALYZE THE FUNCTIONING OF GOVERNMENT, THE DECISION MAKING OF THE CONGRESS AND SERIOUSLY UNDERMINE THE SECURITY OF OUR COUNTRY.

WE HAVE SUCCEEDED IN AMENDING THE CONSTITUTION ON NUMEROUS PREVIOUS OCCASSIONS THROUGH THE CONGRESSIONAL INITIATED PROCESS. THE COMMUNITY RELATIONS COMMITTEE HAS NOT POSITION ON THE VALUE OF A BALANCED BUDGET AMENDMENT. IT IS A TOTALLY LEGITIMATE SUBJECT FOR DEBATE AND COULD BE INTRODUCED IN CONGRESS AS AN AMENDMENT AND DEBATED IN THE LEGISLATURES OF THE VARIOUS STATES AS SUGGESTED BY OUR FOUNDING FATHERS. THE DEBATE WOULD THEN BE ON THE MERITS OF THAT ISSUE -- A BALANCED BUDGET AMENDMENT -- AND IT WOULD BE VOTED UPON. IT WOULD NOT BE MIXED WITH THE OTHER, VITAL QUESTION, OF A FUNDAMENTAL CONSTITUTIONAL NATURE, WHICH IF ENACTED, WOULD VERY POSSIBLY CAUSE SERIOUSLY HARMFUL RESULTS TO OUR REPUBLIC.

IN CLOSING I WOULD LIKE TO NOTE THAT WHILE THE METHOD OUTLINED IN ARTICLE V IS PERFECTLY LEGAL, IT IS NOT NECESSARILY GOOD PUBLIC POLICY. ECHOING THE SENTIMENTS OF THE PRIMARY AUTHOR OF THE CONSTITUION, JAMES MADISON, WHAT WE MUST BE CONCERNED WITH TODAY IS THE GENERAL GOOD. I TRUST THAT YOU WILL PLACE THAT UPPER MOST IN YOU THOUGHTS.

THANK YOU.

ARTICLE V:
The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year 1808 shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

JUNE 17, 1988

WHY is it that after 32 State Legislatures within a 12 year period had been told by THE NATIONAL TAXPAYERS UNION that the convention was "just a ploy" to pressure Congress that we NOW FIND OUT DIFFERENTLY ?

For the first 32 state calls everyone was led to believe in the supposed "limited" view.

WILL YOU STOP IT NOW ?

NATIONAL TAXPAYERS UNION (NTU) James Dale Davidson, Chairman

At the Wisconsin hearing on 10/7/87, the following question was proposed to Mr. Davidson: "Is it the position of your organization that the convention should be limited or is it your position that it should be open to other matters?"

Answer: "All right - several thoughts on that - I'll answer it as briefly as I can. First of all, I don't think it makes any difference whether it is limited or not. I do favor a limited convention but I don't think that I would be opposed to a convention even if it could be proven it couldn't be limited, because I know the Congress can't be limited and I'm not in favor of stopping Congress from meeting."

THE BILL OF RIGHTS AND THE U.S. CONSTITUTION ARE HANGING IN THE BALANCE.

69th ANNUAL NATIONAL CONVENTION OF THE AMERICAN LEGION

SAN ANTONIO, TEXAS

AUGUST 25, 26, 27, 1987

RESOLUTION NO. 63

SUBJECT: UNITED STATES CONSTITUTION

COMMITTEE: AMERICANISM

Whereas, The American Legion is dedicated to the defense of the Constitution, and this defense must be conducted by any and all legal means against all enemies, whatever may be their nature; and

Whereas, There are intensive attacks on the Constitution by persons challenging the continued validity of the Constitution, which has adequate provision for orderly amendment, stating that is does not meet the requirements of modern society and that the original precepts of the founders were flawed; and

Whereas, Efforts are underway to convene a Constitutional Convention ostensibly for the purpose of effecting a balanced budget amendment, yet this could result in radical change or destruction of our current form of government by extending consideration to the Constitution's entire structure; and

Whereas, Special interests have already made proposals for a substitute Constitution, therefore it is apparent that a dire threat exists to that Constitution The American Legion is bound to support; now, therefore, be it

Resolved, By The American Legion in National Convention assembled in San Antonio, Texas, August 25, 26, 27, 1987, That it states its opposition to efforts to convene a Constitutional Convention for any purpose and specifically opposes the rewriting of the United States Constitution.

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An Article V Convention = A Constitutional Convention
A Constitutional Convention = An Article V Convention

38 STATE RATIFICATION SAFEGUARD TO BE BY-PASSED ACCORDING TO CCS/NTU CONNECTION

LOBBYIST LEADER, THE INCREDIBLE JAMES DALE DAVIDSON AND CHAIRMAN OF THE NATIONAL TAXPAYERS UNION.(NTU) AS REPORTED IN THE NTU PUBLICATION "DOLLARS AND SENSE" (DEC/JAN 1988), ASKED COMMITTEE ON THE CONSTITUTIONAL SYSTEM DIRECTOR (CCS), DICK THORNBURGH TO SERVE AS THE COMMITTEE CO-CHAIRMAN OF THE NTU'S "CITIZENS FOR A BALANCED BUDGET AMENDMENT".

THORNBURGH'S CCS PUBLICATION, REFORMING AMERICAN GOVERNMENT OPENLY ADMITS ON PAGE 330:

> "ONLY A HANDFUL OF BOOKS HAVE SET FORTH FULL-BLOWN PLANS FOR CONSTITUTIONAL REVISION.
>
> . . . . . .HENRY HAZLITT, A CONSERVATIVE JOURNALIST, ARGUED IN A NEW CONSTITUTION NOW (WHITTLESEY HOUSE, 1942) THAT THE EXIGENCIES OF WAR DEMANDED A PARLIAMENTARY FORM OF GOVERNMENT."

THE NATIONAL VETERANS COMMITTEE ON THE CONSTITUTION
1560 SHEFFIELD ROAD
BALTIMORE, MD 21218

230x

LOBBYIST LEADER, THE INCREDIBLE JAMES DALE DAVIDSON HAS THE AUTHOR OF THIS BOOK, A NEW CONSTITUTION NOW, AS HIS ADVISOR.

MR. DAVIDSON'S ADVISOR HAS PROPOSED A NATIONAL REFERENDUM AMENDMENT AS "THE INTERMEDIATE STEP" IN HIS "FULL-BLOWN PLANS FOR CONSTITUTIONAL REVISION", THE EXACT DESCRIPTION BY THE CCS IN REFORMING AMERICAN GOVERNMENT OF HIS BOOK, A NEW CONSTITUTION NOW.

ON PAGE 273, MR. HAZLITT SAYS:

> "I HAVE RECOMMENDED THE INTERMEDIATE STEP OF AN AMENDMENT OF THE AMENDING PROCESS BEFORE UNDERTAKING A MORE EXTENSIVE DIRECT REVISION OF THE CONSTITUTION."

MR. HAZLITT DESCRIBES HIS AMENDMENT TO THE AMENDING PROCESS:

> "IF AN AMENDMENT IS SUBMITTED DIRECTLY TO THE QUALIFIED VOTERS OF THE STATES, IT SHALL BECOME PART OF THIS CONSTITUTION IF APPROVED BY A MAJORITY OF ALL THE VOTERS OF THE NATION IN A MAJORITY OF THE STATES." (PG. 267).

IN THE 1988 NTU CONFIDENTIAL (FOR USE OF NTU ADVISORY GROUP - ONLY), $930,000 IS BUDGETED FOR HIS "NATIONAL REFERENDUM AND OFFICIAL PETITION CAMPAIGN". AND, $350,000 IS BUDGETED FOR HIS "TELEVISION/RADIO CAMPAIGN FOR NATIONAL REFERENDUM".

ALSO, THE NATIONAL TAX LIMITATION COMMITTEE (NTLC) IN THEIR "CONFIDENTIAL PLAN AND STRATEGY" STATES:

> "IMMEDIATELY UPON RECEIPT OF THE FIRST 10 MILLION PETITIONS, NTLC, ON BEHALF OF THESE CONCERNED AMERICANS, WILL REQUEST THAT THE PRESIDENT DEMAND A JOINT SESSION OF CONGRESS AT WHICH TIME THE PETITIONS WILL BE PRESENTED."

In addition, among the dozen already prepared amendments by CCS Director Dick Thornburgh's group in their papers published in 1985 as REFORMING AMERICAN GOVERNMENT, pages 258-259, is the National Referendum Amendment which provides that a President shall have power to proclaim a National Referendum.

Another CCS Director, author of the book, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT, James L. Sundquist says on page 233:

> "If the branches of government reach an impasse on a single crucial issue at a time when their relations are otherwise reasonably effective, a means of overcoming the checks and balances that produced the deadlock could be made available through constitutional amendment. That is the device of the referendum, by which the people themselves vote yes or no on a legislative or constitutional proposition."

BYPASSING THE SAFEGUARD

> The Three Methods of Amending the U.S. Constitution must be acknowledged although usually the discussions by proponents of a convention always include the two methods under Article V. The third method (that used in 1787) is never mentioned.

Recall how the convention of 1787 ignored the provisions of the Articles of Confederation stipulating that the Articles be observed unless any alteration be confirmed "by the legislatures of every state."

Neither that convention nor Congress ever submitted the Constitution to the State legislatures.

INSTEAD, THE CONVENTION WROTE INTO THE NEW DOCUMENT THAT:

> "THE RATIFICATION OF THE CONVENTIONS OF 9 STATES, SHALL BE SUFFICIENT..."

THIS METHOD OF AMENDMENT WHICH BY PRECEDENT PROVIDES THE POSSIBILITY OF AMENDING THE AMENDING DEVICE ONCE A CONVENTION IS CONVENED. HOWEVER, A CONGRESS MAY DECIDE TO PROCEED WITH A CONSTITUTIONAL REVOLUTION PACKAGE SUCH AS THE CCS PROPOSES AND INCLUDE IN THE PACKAGE AN AMENDMENT TO THE AMENDING DEVICE. (ART. V). THIS THIRD METHOD THEN, IS THE AMENDMENT OF THE AMENDING DEVICE TO FACILITATE CHANGES NOT FEASIBLE UNDER THE EXISTING CONDITIONS AT A GIVEN TIME.

CCS DIRECTOR SUNDQUIST ON PAGES 243-244 OF CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT ACKNOWLEDGES HOW TO BY-PASS CURRENT SAFEGUARDS:

> "A SIMPLIFIED AMENDMENT PROCEDURE WOULD NEVER BE CONSIDERED IN THE ABSTRACT, SIMPLY AS A THEORETICAL PROPOSITION IN THE INTEREST OF GOOD GOVERNMENT. TO WIN ANY SIGNIFICANT BACKING, IT WOULD HAVE TO BE SEEN AS MAKING THE COURSE EASIER FOR ONE OR MORE SPECIFIC, POPULAR AMENDMENTS WHOSE SUPPORTERS COULD THEN BE MOBILIZED BEHIND IT."

ALSO, ON PAGE 287 OF REFORMING AMERICAN GOVERNMENT BY AUSTIN RANNEY UNDER THE TITLE "WHAT CONSTITUTIONAL CHANGES DO AMERICANS WANT", THE CCS BOOK STATES:

> "THEY APPROVE PROPOSALS TO REQUIRE A BALANCED FEDERAL BUDGET AND TO GIVE THE PRESIDENT THE POWER TO VETO INDIVIDUAL ITEMS IN APPROPRIATIONS BILLS, BOTH OF WHICH ARE INTENDED TO RESTRAIN FEDERAL SPENDING."

THUS, IN SUMMARY NTU ADVISOR HENRY HAZLITT IN HIS BOOK, A NEW CONSTITUTION NOW STATES WITH REGARD TO BY-PASSING CURRENT SAFEGUARDS:

> "ONCE THIS IS DONE, WE SHALL BE IN A POSITION TO CONSIDER CONSTITUTIONAL REVISION REALISTICALLY, AND WITH CLEAR MINDS." (PG. 276).

BE AWARE OF A PROPOSED JOINT SESSION OF THE BIG-SPENDING CONGRESS BY LOBBYIST LEADER, THE INCREDIBLE LEWIS UHLER, CHAIRMAN OF THE NATIONAL TAX LIMITATION COMMITTEE WANTS THE PRESIDENT TO CALL A JOINT SESSION OF THE BIG-SPENDING CONGRESS (THE SAME CONGRESS THAT HAS WORKED WITH REAGAN TO RUN UP A TWO TRILLION DOLLAR DEBT AND NOW IS DISARMING U.S. DEFENSES WITH REAGAN BY FLATTENING, CUTTING, BURNING AND EXPLODING OUR WEAPONS UNDER RUSSIAN INSPECTION AND VERIFICATION).

BE AWARE OF A PROPOSED NATIONAL REFERENDUM AS PROPOSED BY NATIONAL TAXPAYERS UNION CHAIRMAN IN HIS CONFIDENTIAL 1988 BUDGET. HENRY HAZLITT, AUTHOR OF THE BOOK A NEW CONSTITUTION NOW AND ALSO JIM DAVIDSON'S ADVISOR PROPOSES THIS IN HIS BOOK AS "THE INTERMEDIATE STEP" WHICH ENABLES "A MORE EXTENSIVE DIRECT REVISION OF THE CONSTITUTION." NTU ADVISORS HAZLITT'S EXACT WORDS ARE: "I HAVE RECOMMENDED THE INTERMEDIATE STEP OF AN AMENDMENT OF THE AMENDING PROCESS BEFORE UNDERTAKING A MORE EXTENSIVE DIRECT REVISION OF THE CONSTITUTION." (page 273)

PERVERTING

We The People

MANY now FEAR that since the Council on Foreign Relations (CFR), the organization whose members founded the Committee on the Constitutional System (CCS) whose members also fill every responsible position in the administration of Ronald Reagan that the CFR will be able to manipulate and manage the President into promoting the CFR/CCS constitutional changes specifically by calling this "joint session of Congress".

In addition, the 1987 CFR Annual Report lists every one in ten CFR member as being a journalist, correspondent, or communications executive heading up all media aspects of the American mass news media. Would these members who are in the leadership positions of the mass news media expound the CFR agenda in a tremendous one-sided news media blitz?

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"Our present system of government, in sum, is anachronistic, inflexible, and irresponsible." - Page 14

"Article V, the amendatory article to the Constitution, makes one exception even to the extremely difficult general method of amendment that it permits. It provides in its final clause that "no State, without its consent, shall be deprived of its equal suffrage in the Senate.' Thus there is embedded in the Constitution one clause that . . . protects a fantastic rotten-borough system, and so far as one can see it protects it <u>forever</u>." - Page 172

"What are the alterations in our Constitution that experience has suggested . . . Congress should have power at any time to vote a lack of confidence in the Executive, who would then have the choice of resigning or of dissolving Congress. There is no use trying to disguise the fact that a complete reform of this sort would involve a very extensive change in our whole method of government." - Page 9

"The real need is to reduce the powers of the Senate." - Page 104

"Under our Constitution, the power to ratify treaties not only belongs to the Senate alone, but requires a vote of two-thirds of the Senate. Obviously, to permit the ratification of treaties by a majority vote of both the House and Senate would be a much more satisfactory arrangement." - Page 222

"The normal term of members of the House (I shall consider this question at more length later) might be profitably extended to four years, but there should be no constitutional assurance of such a term. - Page 105

"Members of the cabinet chosen from outside the legislature should, once accepted by the legislature, have the same right to vote as if they had been elected." - Page 128

"Special provision, it seems to me, should be made where a party majority would otherwise be a very narrow one. It could be provided, for example, that any party that had won more than 50 percent but less than 55 percent of the seats in the legislature should have the priviledge of appointing representatives at large to bring its majority up to 55 percent of the original legislature." - Page 153

"Another reform that has been urged by Mr. Roosevelt is one that would permit the President to veto individual items in appropriation bills. This reform is desirable in itself if we are going to retain the presidential system." - Page 260

". . .a constitutional convention that could submit its results directly to the people for approval and not to Congress." - Page 273

"The proposed amendments are then submitted to a direct vote of the people, and adopted if they are approved by a majority of the voters in a majority of the States." - Page 261

"Obviously Congress itself should have the power to name the date of the vote on the referendum. This would not only expedite the amendment process, but remove all the present possibilities of doubt concerning when an amendment issued will be settled." - Page 263

"The premier will probably, in fact, choose mainly members of the legislature itself; but like the legislature in choosing the premier, the premier in choosing the cabinet should be free to go outside the legislature for members." - Page 128

"When the premier - or, as we might more accurately call him up to this point, the man asked to form a government - had chosen his cabinet, he would present it to the legislature, which would then vote whether to accept or reject it as a body." - Page 129

WILL YOU STOP IT NOW ?

NATIONAL TAXPAYERS UNION (NTU) James Dale Davidson, Chairman

At the Wisconsin hearing on 10/7/87, the following question was proposed to Mr. Davidson: "Is it the position of your organization that the convention should be limited or is it your position that it should be open to other matters?"

Answer: "All right - several thoughts on that - I'll answer it as briefly as I can. First of all, I don't think it makes any difference whether it is limited or not. I do favor a limited convention but I don't think that I would be opposed to a convention even if it could be proven it couldn't be limited, because I know the Congress can't be limited and I'm not in favor of stopping Congress from meeting."

238X

MARSHALL PETERS
21602 NORTH RUHL ROAD
FREELAND, MD 21053
—
TEL. (301) 343-1273

1988

Dear Representative:

I am writing in opposition to calling a constitutional convention. Let us examine the proponent and ask "Who is the Jim Davidson who advocates this convention?"

If I had been educated in England, and I lived under the parliamentary system, and then came to your country and founded an organization dedicated to calling a constitutional convention, you may have been surprised.

If I had declared myself chairman and named as my advisor, Mr. Henry Hazlitt, author of A New Constitution Now which outlines a new constitution for your country, replacing your Republic with a British parliamentary form of government, you may have been surprised.

If I had held a press conference in Washington, DC at the National Press Club on December 3, 1987 to announce as my organization's co-chairman, Dick Thornburgh, who is one of the Directors of the Committee on the Constitutional System (the parliamentary government group), you may have been surprised.

If I had told you of Mr. Thornburgh's testimony at Trenton that the balanced budget amendment is the "key" to obtaining the twelve structural changes outlined in his CCS organization's book Reforming American Government to implement Mr. Hazlitt's new constitution, you may have been surprised.

If I had co-authored Blood In The Streets (with the former editor of The London Times) on an investing strategy based on "raw power" during a crisis or more than one crisis and that I am a co-director of an investment firm "Cross Market Mutual Fund" with former Rothschild bank president Gilbert de Botton and other international figures, you may have been surprised.

If I had given you a copy of my 1988 "confidential" budget with $405,000 to "pressure state legislatures" to call a convention, and my plans to spend $50,000 to swing four Kentucky votes this March, plus $930,000 for a "Referendum" and $350,000 for TV/radio advocacy of "Referendum", you may have checked your Constitution in surprise. (The "Referendum Amendment" proposal is found on p. 258 of Mr. Thornburgh's CCS group's book, Reforming American Government.)

If I had neglected to supply you and all other state legislators with a copy of my advisor Hazlitt's book A New Constitution Now and my co-chairman Thornburgh's CCS publication Reforming American Government, both of which extol the merits of

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the Old World System of parliamentary government discarded by your founding fathers, the oversight could be corrected as soon as my convention convenes.

If I had pointed out that your National Budget should be balanced and my group desires to call a "limited" convention, you may have trusted me, joined my group and supported my efforts as chairman of the National Taxpayers Union which many international businesses have done, and I would not have been surprised.

Of course, I am not the "Jim Davidson" above and do not desire to find out if his convention will be "limited". I ask that you table Mr. Davidson's convention.

Sincerely,

Marshall Peters

Marshall Peters

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NATIONAL TAXPAYERS UNION COMMITTEE CO-CHAIRMAN AND COMMITTEE ON THE CONSTITUTIONAL SYSTEM (CCS) DIRECTOR DICK THORNBURGH TESTIFIES FOR TWO CONSTITUTIONAL AMENDMENTS AT THE N.J. HEARING ON ACR 54 CALLING A CONVENTION. ON PAGE 2 HE SAYS THE BBA "IS THE KEY" TO MAKING THE STRUCTURAL CHANGES TO THE CONSTITUTION.

EXTREMELY URGENT

TESTIMONY BEFORE THE NEW JERSEY

GENERAL ASSEMBLY STATE GOVERNMENT COMMITTEE

ON THE NEED FOR A BALANCED-BUDGET

AMENDMENT TO THE U.S. CONSTITUTION

BY GOVERNOR DICK THORNBURGH

OF PENNSYLVANIA

STATE HOUSE ANNEX

TRENTON, NEW JERSEY

OCTOBER 21, 1986

2:30 P.M.

24/1

need for a constitutional amendment to impose long-overdue fiscal discipline on Washington's "credit card" budget process.

It is a constitutional, not legislative, change that is needed.

You can no more expect Congress to balance the budget without a constitutional mandate, than you could expect a chocoholic to ignore a Hershey bar, or a Mets fan to ignore the World Series, or a long-distance swimmer to ignore the English Channel.

This is a step which must be impelled.

The time has come to provide Congress and the President with the same structural tools and constraints that have proved invaluable to states in balancing our budget. During the 1982-83 recession, for example, 43 states cut costs and 44 raised taxes to keep budgets in balance. It is doubtful that these actions would have occurred without constitutional requirements mandating balanced budgets, and without the executive and legislative discipline those provisions impose.

At the same time, the Federal budget process, lacking any such discipline, has been out of balance in twenty-five of the last twenty-six years and national debt has more than doubled in the 1980s alone. The executive and legislative branches at the federal level are, in truth, caught up in a system badly in need of structural adjustment. The balanced budget amendment is the key element in such an adjustment.

It is not without significance that the nation's governors are on record in favor of a balanced budget constitutional

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NTU co-chairman

Coordinator: Peter Schauffler
Editor and Director of Research: Donald Robinson, Professor, Smith College
Consultants: Thomas Burnard, Carl Stover

TC TRILATERAL Commission
CFR Council on Foreign Relations 243X

DOES ANYONE REALLY BELIEVE THAT A CONSTITUTIONAL CONVENTION WILL BE LIMITED TO ONE AMENDMENT?

Testimony

of

Marshall Peters

Concord, New Hampshire

1988

248X

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Congressman Mickey Edwards of Oklahoma says, "the Congress would determine the rules regarding such critical matters as selection of delegates." "there is a considerable and respected body of opinion which holds that a convention once convened even if convened for a specific purpose, would have the authority to determine its own agenda." He suggests a scenario: "The Congress would determine that the House rules, in fact, would be the rules to be followed in such a convention (as they are now followed in conventions of the national parties), putting laymen without a knowledge of Roberts Rules of Order at a disadvantage, and members of Congress at an advantage. The Congress could then either rely on precedent to broaden the agenda of the convention, once convened, or state in the rules establishing such a convention that it shall consider the question of a balanced budget amendment, but not include language which would restrict the convention to that purpose."

Reagan admits it: "Well, constitutional conventions are kind of prescribed as a last resort, because then once it's open, they could take up any number of things." (Public Papers of President Ronald Reagan, Jan 1 - July 2, 1982).

Warren Burger admits it: "There is no way to put a muzzle on a constitutional convention." 16

Senator Jack Faxon of Michigan summed it up well when he stated, "Constitutional conventions are, by their very self-definition, sovereign bodies."

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So you see it's the politics of uncertainty - no one knows for sure what onvention would do, but we all know what they could do. Mrs. Schlafly said in ntana Testimony March 16, 1987, "The testimony of the lawyers can be summed as telling us that a Constitutional Convention can be limited to one issue. But .t isn't the issue. The issue is, will it be limited to one issue, and they cannot sure us of that any more than when somebody plays Russian Roulette and tells a that you will surely live if you pull the trigger."

Does anyone really believe that a Constitutional Convention will be limited to Balanced Budget Amendment?

Consider this example of BBA supporter, former Gov. Dick Thornburgh of PA ho is a CCS Director). He testified at Trenton NJ for a Con-Con on Oct. 21, 1986 at a substantive BBA is the "key" to the CCS Agenda for structural changes desired his CCS Co-Chairman Lloyd Cutler: "The executive and legislative branches at e federal level are, in truth, caught up in a system badly in need of structural ljustment. The balanced budget amendment is the key element in such an adjustment."

Parliamentary Government radicals such as Thornburgh, Hazlitt, and Cutler are ading conservatives to a convention for their own hidden agenda. And the safety net of 3 states required to ratify the numerous possible proposals is perhaps to be replaced r the alternate Art. V method of state conventions favored by CCS Director James acGregor Burns and CCS Director James Sundquist and recommended by both in eir writings. Meanwhile the Lewis Uhler types hold our leaders spellbound who hould be aware of the convention Plot.

Sincerely, Marshall Peters

250x

TEACHERS SAVING CHILDREN, Inc.
PO BOX 55103 TRENTON, NJ 08638
(609) 298-4843

Robert W. Pawson
Executive Director

Larry Bacchi
National Secretary

June 24, 1988

Mr. Donald Margeson
State House Annex
Room 363
CN - 068
Trenton, New Jersey 08625

Dear Mr. Margeson,

Enclosed is the testimony of Teachers Saving Children which would have been read at the June 20 committee meeting concerning the call for a Constitutional Convention. Please append this to the committee's hearing proceedings.

Thank you very much.

Sincerely,

Larry Bacchi
TSC National Secretary

257x

TEACHERS SAVING CHILDREN, Inc.
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ıbert W. Pawson
:ecutive Director

Larry Bacchi
National Secretary

June 20, 1988

Teachers Saving Children is a national organization composed of ·ofessional educators most of whom are National Education Association ·mbers.

We favor a Balanced Budget. However, we are opposed to a resolution :questing Congress to call a Constitutional Convention for the purpose of ɔnsidering a Balanced Budget Amendment for reasons listed at the end of ıis statement. (See ** below.)

Teachers Saving Children favors a Balanced Budget Amendment - but not ırough a Constitutional Convention. The wisest and safest method of ıoice must be a proposed amendment passed by a 2/3 vote of both Houses of ɔngress and ratified by at least 3/4 of the states. This will ensure both ıe freedoms Americans have enjoyed since 1787 and America's credibility in ɔday's foreign affairs.

Teachers Saving Children also recommends the adoption of a Line Item eto possibly as an alternative to or in conjunction with a Balanced Budget nendment.

It has been proposed by 32 other states that a Constitutional ɔnvention be held for the express purpose of passing a balanced budget nendment. The true issue and message here has been lost. These thirty-two tates do not, in fact, want a Constitutional Convention. What they are eally saying is that they want a balanced budget.

The New Jersey Legislature can lead the way by rephrasing the problem nd solution in a dynamic way.

TSC recommends that the New Jersey Legislature not call for convening Constitutional Convention. We also suggest passing a resolution which ill petition and demand that Congress do the right thing for the economic ecurity of our nation. That is, the passing of a balanced budget nendment by 2/3 of both Houses to be put before the states for atification.

Such a move would constitute not only good politics, but excellent ivics and great statesmanship. New Jersey was the "Crossroads of the evolution." This would establish New Jersey as the "Crossroad of the ıudget Revolution".

** TSC opposes a Constitutional Convention for the following reasons:

1) This method of passing amendments is very risky to the hard won and hard kept freedoms all Americans now share.
2) Another Constitutional Convention could jeopardize the American form of Government which our Forefathers fought and ied for.

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3) Gerald Gunther, Stanford Law School professor, whose casebook is used in the majority of U.S. law schools said that if Congress tried to limit the convention to one subject - the delegates could decide for themselves that the convention " is entitled to set its own agenda "

4) No one can guarantee that a Constitutional Convention will be limited to one issue or open to many; including a change in the form and powers of our government.

5) Those advocating a Constitutional Convention deny that a runaway Convention would occur, but they can't deny the risk of a runaway Convention. We don't believe our Constitution, which has withstood the test of time, should be exposed to that risk.

6) There are no precedents to this method - therefore no rules or guidelines to follow.

7) The Constitutional Convention of 1787 was called for the exclusive purpose of amending the Articles of Confederation. Once the delegates convened in Philadelphia, they threw out the Articles of Confederation and wrote an entirely new Constitution. That Convention is the only precedent we have for a national convention. Any proposal for Constitutional change should be addressed on its own merits.

8) It is particularly abnormal, peculiar, and unusual that a Constitutional Convention is proposed as the route to a balanced budget amendment.

9) There is no evidence or guarantee that a Constitutional Convention would be able to pass a Balanced Budget Amendment. It too, could become as "deadlocked" as any other avenue.

10) Former Secretary of Defense Melvin Laird wrote in the Washington Post, "The mere act of convening a Constitutional Convention would send tremors through all those economies that depend on the dollar; would undermine our neighbors' confidence in our constitutional integrity; and would weaken not only our economic stability, but the stability of the free world."

John Kucek
650 Somerset Street, A-11
North Plainfield, NJ 07060

June 22, 1988

Mr. Donald S. Margeson, Committee Aide
N.J. Assembly State Government Committee
State House Annex, CN-068
Trenton, NJ 08625

Re: ACR 22

Dear Mr. Margeson:

I was scheduled to give oral testimony at the June 20 public hearing on ACR 22 as a representative of the Citizens Committee of Somerset County.

However, I did not get an opportunity to speak due to the crowded agenda. Therefore, I am enclosing a written copy of my testimony which I would like to have included in the record of the hearing.

I also would like an opportunity to give oral testimony when the public hearing is continued. Please reschedule me and send me a copy of the agenda when it becomes available.

Sincerely yours,

John Kucek

John Kucek

Enclosure

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NEW JERSEY STATE GOVERNMENT COMMITTEE
PUBLIC HEARING ON ACR 22 - JUNE 20, 1988

SCHEDULED ORAL TESTIMONY BY JOHN KUCEK OF
CITIZENS COMMITTEE OF SOMERSET COUNTY

I BELIEVE IT WAS WILL ROGERS WHO SAID "THE NATION IS IN JEOPARDY WHENEVER CONGRESS IS IN SESSION." I WONDER WHAT HE WOULD SAY ABOUT A CONSTITUTIONAL CONVENTION? PERHAPS HE WOULD SAY, "IF IT AIN'T BROKE, DON'T FIX IT."

THIS COUNTRY STARTED OUT AS A CONSTITUTIONAL REPUBLIC - SINCE THE CIVIL WAR THE FORM OF GOVERNMENT IN THESE UNITED STATES HAS BEEN GRADUALLY TRANSFORMED INTO WHAT WE HAVE NOW - A SOCIALIST DEOMOCRACY. ON PAPER THE UNITED STATES IS A CONSTITUTIONAL REPUBLIC BUT, IN FACT, THE UNITED STATES IS A SOCIALIST DEMOCRACY.

WE HAVE LEGISLATORS WHO TAKE OATHS TO UPHOLD THE U.S. CONSTITUTION BUT HAVE NO IDEA WHAT IT CONTAINS. THEY CONTINUOUSLY PASS LAWS WHICH ARE REPUGNANT TO THE VERY DOCUMENT WHICH THEY ARE SWORN TO UPHOLD. ONE OF THE MOST BLATANT EXAMPLES ARE GUN CONTROL LAWS. THE EXECUTIVE IN CONCERT WITH THE LEGISLATIVE HAS MANAGED TO GET A SELECTED GROUP OF PEOPLE CALLED A SUPREME COURT TO RENDER 5 TO 4 DECISIONS IN FAVOR OF ANYTHING THEY WANT TO BE CALLED "CONSTITUTIONAL."

WHEN GOVERNMENT OFFICIALS SUCH AS THESE CAN TAKE A SIMPLE PHRASE SUCH AS "THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED" AND TWIST IT AROUND TO MEAN THE DIRECT OPPOSITE OF WHAT IT SAYS, I SHUDDER TO THINK OF WHAT MAY HAPPEN AT A CONSTITUTIONAL CONVENTION. I SHUDDER TO THINK OF WHAT PEOPLE MAY DO WHO PLEDGE ALLEGIANCE TO OUR FLAG AND TO THE REPUBLIC FOR WHICH IT STANDS AND THEN IN THE VERY NEXT BREATH REFER TO THESE UNITED STATES AS A DEMOCRACY.

THERE IS NOTHING WRONG WITH OUR PRESENT CONSTITUTION. THE PROBLEM IS IN OUR GOVERNMENT OFFICIALS. WE NEED PEOPLE WITH CHARACTER AND INTEGRITY WHO KNOW THE DIFFERENCE BETWEEN A REPUBLIC AND A DEMOCRACY AND HAVE THE COURAGE TO GUIDE THEIR OFFICIAL ACTIONS ACCORDINGLY.

WE DON'T NEED A CONSTITUTIONAL CONVENTION! EVEN IF A CONSTITUTIONAL CONVENTION DID RESULT IN A BALANCE BUDGET AMENDMENT, ANY GOVERNMENT WHICH CAN GIVE A 180^{o} TWIST TO THE MEANING OF THE SECOND AMENDMENT, WILL DO ANYTHING IT PLEASES WITH THE INTERPRETATION OF ANY OTHER AMENDMENT. THEREFORE, I BELIEVE A CONSTITUTIONAL CONVENTION WOULD BE A WASTE OF TIME AND EFFORT.

JOHN KUCEK
650 SOMERSET STREET, A-11
NORTH PLAINFIELD, NJ
(201)753-7347

262X

Miss Gertrude E. Unsel
231 Hamilton Avenue
Elmwood Park, N.J. 07407

2 pages
+ attachments

STATEMENT OPPOSING ACR-22

Balanced Budget/Constitutional Convention

Mr. Chairman and members of the Committee, I wish to thank you for this opportunity to express my opinion on this important issue. My name is Miss Gertrude Unsel of Elmwood Park. I am president of the New Jersey Unit of Women for Constitutional Government, a member of the New Jersey Eagle Forum and a member of the Board of Policy of Liberty Lobby.

The question before us today is not that of a balanced budget but rather that of the safety of the United States Constitution in this year of its Bicentennial.

Article V of the Constitution requires Congress to call a Constitutional Convention when two-thirds (34) of the States propose an amendment. Thirty-two States have already passed such legislation. Two have recently rescinded their resolutions.

Since there are no specifications as to rules of the Convention, no limitation as to the issues placed on the agenda and no guarantee that the Balanced Budget Amendment would even be discussed, Hence, it behooves us to pay attention to the warning signals to stop, look, and listen.

It is fairly well known that there are a number of organizations and "think tanks" involved in plans to scrap our Constitution and replace it with an entirely new one. It could be easily accomplished at such convention. For instance, the Committee on the Constitutional System (CCS) has been promoting a change of our government to the European parliamentary system and the elimination of our Constitutional separation of powers ("checks and balances").

(more)

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Another outfit working for a "New World Order" is the Council on Foreign Relations founded by David Rockefeller, the originator of the Trilateral Commission. Also, there is the "New States Constitution" drawn up by the late Rexford Tugwell which would establish a tyrannical dictatorship.

While governments all over the world have been rising and falling during the past 200 years, our Constitution has provided us with stability and freedom over that same period of time. Thomas Jefferson called it "the ark of our safety", and British Prime Minister Gladstone described it as "the most wonderful work ever struck off at a given time by the brain and purpose of man."

There are other means by which fiscal responsibility in our Federal budget could be obtained. Article I, Section 2, Clause 3, requires a balanced Federal budget and described the method to secure it. Why gamble away our most precious possession?

Daniel Webster said over 100 years ago: "Hold on, my friends, to the Constitution of the United States. Miracles do not cluster; what happened once in 6,000 years may never happen again. Hold on to your Constitution, for if the American Constitution should fall, there will be anarchy throughout the world." *

* * * * * *

*(White Paper on the Constitutional Convention, Liberty Lobby)

STATEMENT OF: Anne Melson Stommel - legal residence: Middletown Township, mailing address: Red Bank, in Monmouth County, New Jersey

TO: New Jersey State Government Committee

DATE: June 20, 1988

SUBJECT: Assembly Concurrent Resolution (ACR) No. 22

Introduction - I am Anne Melson Stommel of Monmouth County, New Jersey, speaking as a private citizen. I thank the members of the State Government Committee for the opportunity to present this statement on ACR #22.

Item - I was reassured to see the actual wording of ACR #22 when I obtained copies at Senator Gagliano's office in West Long Branch on Wednesday, the 15th of June. Particularly significant are the words: "the calling of a convention" (line 2). Article V of the Constitution of the United States of America contains the words: "call a Convention for proposing Amendments". Neither document has the word "Constitutional" before the word "convention".

Therefore, I acknowledge that ACR #22 literally is not proposing a Constitutional Convention.

Item - However, if a convention were to be called to amend the Constitution, there is no assurance that deliberations would be confined to a balanced budget.

The danger in setting the precedent of calling conventions to amend the Constitution is that the delegates could decide to revise or rewrite the entire Constitution without our knowledge or consent. How would such delegates be chosen or appointed? Who would they be?

Item - Today, we have no Thomas Jefferson or James Madison, no Benjamin Franklin -- patriots well versed in the good and bad features of all previous forms of government back to ancient Greece and Rome. We have no George Washington at the helm to set the tone of any such convention. When asked what he had given us, Benjamin Franklin replied, "A Republic if you can keep it." About our Constitution:

The British Prime Minister, William Gladstone, called it, "the greatest piece of work ever struck off at a given time by the brain and purpose of man."

The great French writer, Alexis de Toqueville, pronounced it "the most perfect Federal Constitution that ever existed."

The popular contemporary author, James Michener, had this to say: "The writing of the Constitution of the United States is an act of such genius that philosophers still wonder at its accomplishment and envy its results ... They fashioned a nearly perfect instrument of government ... What this mix of men did was create a miracle in which every American should take pride ... The accumulated wisdom of mankind speaks in this Constitution."

Item - Today, there are powerful, elite internationalists who propose to:

- Erode the separation of powers between the executive and legislative
- Remove the president from office by methods short of impeachment
- Permit the president to dissolve Congress
- Facilitate treaty ratification by requiring a simple majority rather than two-thirds majority of the Senate
- Reform federal and state powers and regional organization, keeping in mind "the need for regional forms of government in metropolitan areas that cross state lines"
- Mold public policy and construct a framework for an international world order
- Adopt their design in piecemeal fashion lessening the chance people will grasp their overall scheme and organize resistance

Item - Two hundred years ago this week, the Constitution we have now became official when the ninth state, New Hampshire, ratified it. November 1989 will be two hundred years from when New Jersey became the first state to ratify the Bill of Rights or the first ten amendments.

The Tenth Amendment is also known as States Rights because in that one all powers not specifically granted to the federal government are reserved to the states and to the people.

Just think that if some elite organization were permitted to change our basic document and form of government -- and regional government and a world order were to hold sway -- there might be no state government as we know it ... might be no New Jersey or State Government Committee meeting in Trenton today!

Item - I hope that ACR No. 22 may be allowed to die in Committee and that New Jersey will be one of the first states to start reversing the trend of calling conventions to change our Constitution — until not one state is left that would even consider such a thing!

I pray that New Jersey may be the first state to put specific language into any such bill, that might be submitted to the Assembly as a whole, to spell out the fact that we decidedly are not petitioning Congress to call for a Constitutional convention.

Item - Elected officials take an oath to preserve and uphold the Constitution of the United States of America.

I live by the closing words of The American's Creed. I believe "it is my duty to my country to love it; to support its Constitution; to obey its laws; to respect its flag; and to defend it against all enemies.

I beg you not to take the chance of ever selling our heritage or birthright for a mess of pottage.

Thank you.

REFERENCES

Assembly Concurrent Resolution, No. 22, State of New Jersey, 1988

Constitution of the United States and of New Jersey — distributed by the Constitutional Bicentennial Commission of New Jersey, 1987

Press conference of the Committee on the Constitutional System (CCS), Washington, DC, May 30, 1984

The American's Creed, by William Tyler Page, 1917

Trilateralism, by Holly Sklar, South Bend Press, Boston, 1980

We the People, 35mm slide program officially recognized by National Commission on the Bicentennial of the United States Constitution, 1987

June 22, 1988

J.A. Morris
53 Barrett Lane
Wyckoff, NJ 07481

New Jersey Assembly
State Government Committee
Trenton, NJ 08625

The New Jersey Assembly State Government Committee:

My wife and I urge you to join with other states in calling for a constitutional convention and amendment requiring the U.S. Congress to balance our national budget on an annual basis.

Sincerely,

J.A. Morris

270x

DODGE-NEWARK SUPPLY CO., INC
198 Route 46
Fairfield, New Jersey 07006
PHONE 575-7033
Distributors of Power Transmission and Pneumatic Equipment

June 15, 1988

Committee Chairman Robert Martin
% Don Margeson
State Government Section
Office of Legislative Services
Statehouse Annex
Trenton, NJ 08625

Subject: Concurrent Resolution No. 22
Balanced Federal Budget

Gentlemen:

I strongly support a Constitution Amendment requiring a balanced Federal budget, and I urge the NJ Legislature to quickly pass a resolution calling for a Constitutional Convention to consider this matter.

Sincerely,

Richard A. Seggel
PRESIDENT

RAS/mip

c: New Jersey State Chamber of Commerce
315 W. State Street
Trenton, NJ 08618

Outstanding Service to New Jersey Industry

SINCE 1928

271X

THE PROVIDENT
SAVINGS BANK

INETH F.X. ALBERS
airman of the Board
hief Executive Officer

June 17, 1988

Chairman Robert Martin
c/o Don Margeson
State Government Section
Office of Legislative Services
Statehouse Annex
Trenton, New Jersey 08625

Dear Chairman Martin:

One of the most serious problems facing the country today is the continuing massive Federal budget deficits. Debt is rising in virtually every category; commercial, consumer and government. This dangerous trend, in my view, must be curtailed before it does serious damage. Many states have operated successfully under a balanced budget amendment and I believe that the only way to instill fiscal discipline at the Federal level is a balanced budget. I strongly support Concurrent Resolution No. 22 calling for this.

Very truly yours,

Kenneth F.X. Albers
Chairman of the Board &
Chief Executive Officer

KFXA/mlf

272x

SAMPERI RESTAURANT SERVICES, INC.
2300 RAMSHORN DRIVE • ALLENWOOD, NEW JERSEY 08720 — 201-223-3940

June 16, 1988

Assemblyman Robert Martin, Chairman
c/o Don Margeson
State Government Section
Office of Legislative Services
Statehouse Annex
Trenton, NJ 08625

Dear Assemblyman Martin:

SRS is a food, beverage and lodging trade organization in New Jersey. We are in support of Assemblyman Karmin's Concurrent Resolution No. 22 which urges Congress to pass an amendment to the U.S. Constitution to require a Balanced Federal Budget.

Congress must be made to realize we cannot spend more than we take in! Our federal government must be run just like a business. Other states have similar laws which require a balanced budget. Please give this Resolution your most serious attention.

Sincerely,

PAUL SAMPERI

PS:na

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