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**PUBLIC HEARING**

before

**ASSEMBLY STATE GOVERNMENT COMMITTEE**

**Assembly Concurrent Resolution 54**

(The State of New Jersey applies to the Congress of the United States for the calling of a Convention for the purpose of proposing an amendment to the Constitution of the United States)

**Assembly Concurrent Resolution 102**

(Proposes an amendment to the State Constitution which would require the Legislature to enact a statute limiting the increases in appropriations in any fiscal year.)

October 21, 1986  
Room 418  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman Richard A. Zimmer

**ALSO PRESENT:**

Assemblyman Rodney P. Frelinghuysen  
District 25

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

**New Jersey State Library**

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



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**New Jersey State Legislature**  
**ASSEMBLY STATE GOVERNMENT COMMITTEE**  
STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
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October 1, 1986

NOTICE OF PUBLIC HEARING

The Assembly State Government Committee will hold a public hearing on Tuesday, October 21, 1986 at 2:00 P.M. in Room 418 of the State House Annex in Trenton, concerning the following legislation:

ACR-54  
Zimmer

Calls for a convention to propose an amendment to the U.S. Constitution requiring a balanced federal budget and a limit on federal spending increase.

ACR-102  
Zimmer,  
Frelinghuysen

Proposes a constitutional amendment capping State expenditures based on a three-year moving average of per-capita income growth.

Anyone wishing to testify at the hearing should contact Donald Margeson, Aide to the Committee, at (609) 292-9106.



# ASSEMBLY CONCURRENT RESOLUTION No. 54

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman ZIMMER

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

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

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

1 2. This application by the Legislature of the State of New Jersey  
2 constitutes a continuing application in accordance with Article V  
3 of the Constitution of the United States until at least two-thirds  
4 of the legislatures of the several states have made similar applica-  
5 tions pursuant to Article V, but if Congress proposes an amend-  
6 ment to the Constitution to achieve substantially the same purpose  
7 with that described in section 1 of this concurrent resolution before  
8 January 1, 1989, this application for a state application shall no  
9 longer be of any force or effect.

1 3. Copies of this concurrent resolution shall be sent to the legis-  
2 latures of all the states, to the Clerk of the United States House  
3 of Representatives and to the Secretary of the Senate in Washing-  
4 ton, D. C., requesting each of the several states to pass a substan-  
5 tially identical application to the United States Congress so as  
6 to meet the constitutional requirements for application for such a  
7 convention by two-thirds of the states.

## STATEMENT

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

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# ASSEMBLY CONCURRENT RESOLUTION No. 102

## STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

By Assemblymen ZIMMER, FRELINGHUYSEN, Weidel and Rafferty

A CONCURRENT RESOLUTION proposing to amend Article VIII, Section II of the Constitution of the State of New Jersey by adding a new paragraph thereto.

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

1 1. The following proposed amendment to the Constitution of the  
2 State of New Jersey is agreed to:

### PROPOSED AMENDMENT

3 Amend Article VIII, Section II by adding the following para-  
4 graph:

5 5. No general appropriation law or other law appropriating  
6 money for any State purpose shall be enacted if the appropriation  
7 contained therein, together with all prior appropriations made for  
8 the same fiscal period, shall exceed the maximum appropriations  
9 permitted pursuant to law enacted as prescribed in this section.  
10 The Legislature shall enact a statute prescribing the maximum  
11 appropriations which may be made for State purposes in one fiscal  
12 period. Any such statute shall base the maximum appropriations  
13 on the total appropriations made for the immediately preceding  
14 fiscal period, after adjustments for appropriations for purposes  
15 not subject to limitations, and shall provide a formula for calcu-  
16 lating the maximum appropriations allowed that reflects the change  
17 in personal income of residents of this State, over such period as  
18 may be determined by the Legislature, expressed as a percentage.  
19 Any such statute shall not limit the appropriations to be made  
20 from the proceeds of any tax or other revenue the expenditure of

21 which is provided for otherwise in this Constitution, nor appro-  
22 priations required for the payment of interest or principal on any  
23 general obligation bond issue approved heretofore or hereafter by  
24 the legally qualified voters of this State at a general election, nor  
25 appropriations made for payments as State aid to, or on behalf of,  
26 any county, municipality, school district, or other political sub-  
27 division or instrumentality of the State. Any such statute may  
28 provide for an exclusion from the limit on appropriations for funds  
29 received or reasonably anticipated to be received by the State  
30 from the federal government, or for any program costs imposed  
31 on the State by the federal government, or for capital construction  
32 projects, or for lease or lease purchase agreements, or for the  
33 payments in support of any retirement plan or medical benefits  
34 for State employees, all as may be found necessary or appropriate  
35 by the Legislature.

36 The limit on appropriations provided for hereinabove may be  
37 exceeded only if such increase is submitted to the people of this  
38 State in the form of a referendum at a general election held  
39 immediately prior to or during any fiscal period for which such  
40 increase is proposed and approved by a majority of the legally  
41 qualified voters of the State voting thereon.

42 The provisions of this paragraph shall apply to appropriations  
43 made in the fiscal period next following its approval by the people  
44 pursuant to Article IX, paragraph 1 of this Constitution and to  
45 each fiscal period thereafter, except that the Legislature shall  
46 enact the statute required hereinabove so to apply to appropria-  
47 tions made for the fiscal period next following the approval of this  
48 paragraph by the people pursuant to Article IX, paragraph 1 of  
49 this Constitution.

1 2. When this proposed amendment to the Constitution is finally  
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,  
3 it shall be submitted to the people at the next general election  
4 occurring more than three months after such final agreement and  
5 shall be published at least once in at least one newspaper of each  
6 county designated by the President of the Senate and the Speaker  
7 of the General Assembly and the Secretary of State, not less than  
8 three months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-  
2 mitted to the people at said election in the following manner and  
3 form:

4 There shall be printed on each official ballot to be used at such  
5 general election, the following:

- 6 a. In every municipality in which voting machines are not used,  
 7 a legend which shall immediately precede the question, as follows:  
 8 If you favor the proposition printed below make a cross (X),  
 9 plus (+) or check (✓) in the square opposite the word "Yes."  
 10 If you are opposed thereto make a cross (X), plus (+) or check  
 11 (✓) in the square opposite the word "No."  
 12 b. In every municipality the following question:

|  |             |   |
|--|-------------|---|
|  | <b>Yes.</b> | <p style="text-align: center;">LIMITATIONS ON STATE APPROPRIATIONS</p> <p>Do you approve the amendment to Article VIII, Section II of the Constitution of the State of New Jersey, requiring the Legislature to enact a law limiting the percentage increase in State spending for any fiscal year to a percentage equal to the percentage change in personal income of the residents of this State, with certain exclusions, which limit could be exceeded only by referendum approved by a majority of the voters of this State voting thereon?</p>   |
|  | <b>No.</b>  | <p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>This amendment to the Constitution of the State of New Jersey would require the enactment of a law which would limit, or "cap," the amount of increases in appropriations made by the State Legislature to a percentage which reflects the increase in the personal income of the residents of this State. The limit would not apply to State aid appropriations, the Property Tax Relief Fund or the Casino Revenue Fund, nor to payments due on State debt. The Legislature would be permitted to exclude from the limit the use of federal funds or costs imposed on the State by the federal government, capital expenditures including leases, or for costs associated with State employee pensions or medical benefits.</p> <p>The limit may be exceeded only if approved by the voters on referendum.</p> |

STATEMENT

This concurrent resolution proposes an amendment to the Constitution of the State of New Jersey which would require the Legislature to enact a statute limiting the increases in total appropriations made by the Legislature in any fiscal year to an amount based on the appropriation for the immediately preceding year and

increased by a percentage that reflects the percentage change in personal income of the residents of this State.

Specific exemptions from this limit are provided for all State aid appropriations, Property Tax Relief Fund and Casino Revenue Fund appropriations and for appropriations required to pay principal and interest on State general obligation bonds. The Legislature is permitted, not required, to provide for exclusions from the limit for federal funds, costs imposed on this State by the federal government, appropriations for capital construction projects or lease and lease purchase agreements, or for costs associated with retirement plans or medical benefits for State employees.

The limit on increased appropriations can be exceeded only if approved by referendum submitted to and approved by the voters of this State.

The enactment of a law imposing the limits on increases in appropriations is mandatory under this proposal, and would be applicable to the first fiscal year and each fiscal year thereafter following the adoption of this amendment to the Constitution.

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#### STATE BUDGET AND FINANCE

Amends the Constitution to limit State spending.

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**ASSEMBLYMAN RICHARD A. ZIMMER (Chairman):** Good afternoon. My name is Richard Zimmer, and I'm Chairman of the Assembly State Government Committee. To my right is Don Margeson, who is our staff aide from the Office of Legislative Services. And to my left is Greg Edwards, of the Assembly Majority Staff. I want to welcome you to the public hearing on ACR-54, which is a resolution to petition Congress for a Constitutional convention to recommend a balanced budget amendment to the United States Constitution. We have a very long witness list this afternoon. I do not believe we're going to be able to hear everybody who signed up. In all events, I've been planning a second hearing, probably for next month, definitely outside of Trenton, to continue the consideration of this very important and far-reaching measure.

I should mention that this is a dual hearing. We're also considering ACR-102, sponsored by myself and Assemblyman Frelinghuysen. Rod, if you would like to join us at the committee table, we'd be honored to have you. That is a proposed State constitutional amendment, which would institute a State spending cap. If any of you are here from out-of-State, or have serious time constraints, please communicate that with Don Margeson, so that we don't miss your testimony. Otherwise, I'll try to get through the witness list as best I can.

The first witness before us today is a gentleman I'm really proud to have start off the hearing -- the Congressman from the 12th Congressional district of New Jersey, Jim Courter. **C O N G R E S S M A N J A M E S A. C O U R T E R:** Thank you very much Assemblyman Zimmer. Thank you for having me here. I appreciate the opportunity to say a few words on behalf of the proposed legislation. It's certainly a pleasure for me, a distinct honor to be testifying before my friend Rod Frelinghuysen, from my area, as well--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Excuse me, the microphone isn't working, for some strange reason. We can't hear a work you said.

ASSEMBLYMAN ZIMMER: These microphones are attached to the tape for the transcription. It's not a public address system.

CONGRESSMAN COURTER: All right, I'll speak up as best I can, so you can hear all these words of wisdom. Maybe I'll turn this way. I was just thanking Assemblyman Zimmer and Assemblyman Frelinghuysen, for allowing me to testify today. I know, from having spoken to Assemblyman Zimmer about this issue a number of times -- as a matter of fact, having a couple press conferences together over the years -- that he knows this issue a lot better than I do. So I'm not here to explain to him why I think it's necessary.

I'm here to explain, really, why I believe, after my personal experiences in Washington D.C., that we have a tremendous problem. I believe that in Washington-- In fact, I was telling a gentleman before we started that when I first was elected to the U.S. House of Representatives, in 1978 -- sworn in, 1979 -- I, like a lot of members during that period of time felt that with a little bit of luck, and with the right individuals -- both men and women elected to the Congress of the United States -- fiscal responsibility would reign. We could elect people who were doing the job that they were elected to do. That is, make sure that time after time outlays did not exceed revenues.

But I have reluctantly concluded, after having spent eight years in Washington D.C., that although individual members are proven responsible, something happens when they act in concert. When they sit as a Congress their individual ideas of what is responsible and what is prudent with regard to deficit spending, somehow goes out the window. They don't behave individually the same way-- They don't behave as a

corporate body, the same way they behave as individuals. So therefore, I have been favor of giving some aid and assistance, some crutch, some help to the institutions so we could act fiscally responsibly, as we clearly have not done during the last number of years.

One of these things that was attempted was legislation called Gramm-Rudman, and everybody has heard about that. It's something that some people are in favor of, and other people are against. I voted in favor of it. Once again, I voted in favor of it not because it was the perfect piece of legislation, but it was a procedural change that would make it more difficult to deficit-spend. It is important to distinguish between simply spending, and government deficit spending. We're talking about deficit spending; we're not talking about government performing those necessary and vital functions with regard to social policy, and national security policy that our Federal government is designed to fulfill.

Gramm-Rudman has that flexibility because it said that we should achieve a reduction by \$36 billion in our deficit five years in a row. The goal for the next fiscal year was \$144 billion, which we voted on. Hopefully, we'll achieve it -- \$108 billion in the next fiscal year. It's flexible, because Gramm-Rudman was silent as to how we're supposed to achieve it. Should it be done by tax increases? Clearly, the deficit reduction targets could be all achieved by increasing taxes. They could be all achieved by reductions in defense spending. They could be all achieved by freezing taxes, by no increases in defense spending, and deductions in other types of spending.

So Congress did have flexibility. The problem is that this is something that may not work. When Congress gets together and finds it very, very difficult to achieve these deficit reductions, particularly next year, I would suggest we're going to amend Gramm-Rudman, number one; and number two,

of course, the trigger on Gramm-Rudman, was declared unconstitutional.

What Congress can create, Congress can destroy. Therefore, Gramm-Rudman is something that if we find difficulty in following it, we will certainly amend it so that we will have an easier job living with ourselves.

Also, there are the suggestions with regard to a line item veto. I'm in favor of that as well. I think very clearly -- not clearly, but perhaps if the President of the United States had a line item veto 10 years ago, we wouldn't be here in this hearing today. A fiscal sanity would be reigning in Washington D.C, but it is not.

Then comes along another proposal -- the Constitutional amendment, which would require a balanced budget over a period of time. I voted for that one. So, what you see here basically is a frustrated member of Congress, who was pledged and charged with the responsibility of voting in a responsible way. As an individual, I do that. But as an institution, what comes out is something other than something very, very responsible.

So I have concluded -- and Assemblyman Zimmer knows all the intricacies of his legislation, there's nothing I could tell him about it that he doesn't already know -- but I want him to know that I, and many members of Congress have frankly given up, because we, as an institution, don't respond in a fiscally prudent and sensible way.

This legislation that Mr. Zimmer and Mr. Frelinghuysen have introduced obviously calls for a Constitutional convention -- something that we in Congress would call. I know that the concern of a number of people here is that there would be a runaway convention. They would be originally charged with the responsibility of drafting carefully designed legislation which would require a balanced budget, but they would start meddling in the First Amendment. They'd start tampering with the due

process clause. They'd tamper with Federalism itself. I've spoken very frankly to lots of legal scholars, and they have indicated to me that we do not have to face that.

I have examined the Constitution, and the Constitution clearly says that there are two levels of government, the national level of government, and the state government. They have, very frankly, equal power to propose amendments to the Constitution. All 26 amendments to the Constitution that have been enacted so far have been passed by the Congress by a two-thirds vote of the House, and a two-thirds vote of the Senate.

You will then ask, "Well, why don't you do that with this piece of legislation?" The answer is I've tried. We tried in the House of Representative for about four years. Unfortunately, the Chairman of the Judiciary Committee, which has jurisdiction over this matter -- a gentleman, a fine friend, a wonderful patriot, a great American, a great defender of the Constitution -- didn't hold hearings on it. Year, after year, after year, not one hearing on even the issue to be treated substantively -- I think that was a mistake.

Finally, the Congress, through stealth of night, got the majority of members to sign a discharge petition, which is something -- a piece of paper that is signed by 51% of the members of the House of Representatives. If you get 51% of the members signing a petition demanding that something be voted on and heard on the merits, it is within 48 hours. You have one hour of debate, no amendments, one vote up or down. It took us a long period of time, we got the requisite 51% to sign the discharge petition, even though there was a number of them that were quite concerned about what their leadership would say. After we debated it for just one hour, without the right to amend it, it failed at getting the two-thirds necessary. It was brought up in the Senate, and it failed to get two-thirds there by one vote.

So I've been frustrated about it, and I've seen as well a growing number of States -- now, all except two that are needed -- that are calling for a Constitutional convention. I think very frankly that people are saying something to us. I think what they're saying is, "You haven't gotten the job done. You're performing vital functions with regard to services, but you're not acting responsibly and prudently when it comes to deficit financing."

I think there will be a day when we rue the aggregate deficits that appear year, after year, after year. There are going to have an impact, and I would imagine that they're having an impact today. So, out of sheer frustration, out of concern and love of the Constitution frankly, and out of love of this country, I've arrived at the conclusion that we as an institution -- Congress -- needs more states to vote yes on this type of a petition, so we would eliminate even the possibility of having a Constitutional convention.

I believe it happened one other time in the history of the United States, during the Seventeenth Amendment. Once again, Assemblyman Zimmer, correct me if I'm wrong. I didn't know this years and years ago when I was a child. I always assumed that Senators were popularly elected. Nay, they weren't. There was a time when they were appointed. I don't know whether they were appointed by governors, or the Assembly. I'm not sure. I know that the Legislature-- Maybe you don't like the Seventeenth Amendment. I don't know about that.

But anyway, there was a time when the people started petitioning their government, and demanding a Constitutional convention for the purpose of popularly electing United States Senators. When it became perilously clear to the Congress that the people were going to have a Constitutional convention, they passed -- by the needed two-thirds -- the amendment, and that was ratified by two-thirds of the states.

I think the same thing would occur here. If two additional states petition the Congress for a Constitutional convention, I think that would get the leadership's attention, and that would get the attention of members of Congress, and will proceed through the normal course of amending the Constitution, so we could have a sound, fiscal, prudent responsible activity on the Federal level, and amend the Constitution in the normal way.

That is the summary of my testimony. I would like to ask you now, if you consent, that what I have written here somehow get in the record, because it's a lot more articulate than I. I want to thank the Chairman, and also Assemblyman Frelinghuysen for permitting me the opportunity to testify today. If there are any questions, I'd be very happy to try to answer them.

ASSEMBLYMAN ZIMMER: Thank you very much, Congressman. I have no questions. I just want to commend you for sticking with this issue through thick and thin. We'll find out later whether this is thick or thin. Rod, do you have any questions? (negative response)

CONGRESSMAN COURTER: Thank you very much. I appreciate it.

ASSEMBLYMAN ZIMMER: Next, I'd like to call James Davidson, from the National Taxpayers Union.

J A M E S D A L E D A V I D S O N: Thank you very much, Representative Zimmer. I appreciate your leadership in putting this hearing together. I been thinking about this issue for a long time, because the National Taxpayers Union, since 1976, has been urging states to call a Constitutional convention to balance the budget.

Many people during these years have said, "Don't do this. Stop. We don't need it. It's not necessary." I point out that if we had achieved a balanced budget amendment in 1976, when we first started working for it, there would be, in

the United States Treasury today, hundreds of billions of dollars that could be spent for programs to benefit people to do the purposes of government, which are today lost in interest payments.

Next year we're going to spend about \$200 billion to pay interest on the national debt. That's money that goes not to defend the country, it doesn't educate a person, it doesn't do anything that people think of as government's main purpose. We're going to be spending two-fifths to a half of our total income tax receipts just paying interest on the national debt.

People say, "Well, look. What are you complaining about? This sound like accountants talking." The United States today is the richest country in the world, but we're not the first country that's been the richest country in the world. There have been lots of other countries that have been rich before us.

One example that I think -- really -- we ought to take the hardest look at is what happened to Spain back -- a long time ago -- in the 16th century. They were the richest country in the world. They were the first country to try to stay rich by deficit spending. They raised taxes several times. By the end of the 17th century -- the beginning of the 17th century -- they were spending 40% of their national income on interest on the national debt. That country went down in a swoon, and it has not been heard of since. It has never achieved, or regained the manufacturing prominence, the economic power that it had before it went on this binge of deficit spending.

The Founding Fathers of the United States knew about this example. They knew of other examples of countries that had spent themselves into oblivion, and they put in our Constitution what they thought were checks and balances, that would prevent the Congress from doing just what it is now doing. Thomas Jefferson, who was a great leader -- the founder of the Democratic Party -- a man who understood a tremendous

amount about the way the country works, said: "Wait a second. This is not going to work. We need a Constitutional Amendment to prohibit the Congress from running up deficits." Because if we don't -- not now, not immediately, not in the next six week, but someday, we're going to spend ourselves into bankruptcy, and the American people will wish that they had put this limit.

Because he was ambassador to France at the time of the Constitutional Convention, he saw what happened in France with the French Revolution -- the Reign of Terror and the other things that he attributed to the great debts that the French kings had run up in the years prior to the Revolution. Because this idea that we need to put restraints on government's ability to create deficit spending is not a new idea. But only last week, an economist won the Nobel Prize for Economics by pointing out why Congress continues to run these deficits. Maybe if there had been a Nobel Prize in the 18th century, Jefferson should have gotten it. Perhaps any of you members on the Committee should have it.

But the point is that he -- Professor Buchanan -- pointed out in very clear logic why the Congress does not balance the budget, and why they'll never balance the budget. In fact, many states have the same problem. That's why if you look at what happened in the United States in the 19th century -- seven states in the United States went bankrupt. There is still a committee of bondholders in London, trying to get Mississippi to pay its debt. Because Mississippi-- When they put their constitution back together again, they put in a balanced budget requirement-- They haven't been broke since.

The point is that there are reasons why we have these deficits. This is not a random event. It is something that you could understand would be just like if we came out here in the streets of Trenton, we gave everybody an American Express Gold Card, we said, "Okay folks, this is your bill, this is your Gold Card. We'll tell you what. At the end of each

month, you're going to get a bill. But the only difference is you're going to get a bill that's going to include all the debts that were racked up by everybody else we've given this card to." We're going to give it to about 535 people." And you see what happens.

You'll get the same results that you'll get from Washington, because all those people would spend like Congressmen. They'd realize that if they didn't spend, they'd be bankrupt -- just as broke as the others. But if they did spend, they'd get more benefits along the way. That is why the Congress is never going to stop deficit spending, until we bring a Constitutional limit into place.

Now people might say, "Well, why did we not have runaway deficits in the years before the early seventies, if this is the case?" And the answer, I think, lies in the mysteries of monetary policy as it goes around the world. Because prior to 1971, which is about the time these big deficits started to come upon us, we had a gold reserve standard, which enabled foreign central banks to reduce our money supply if we ran big debts. And that kept the Congress in check.

Today, we don't have that restriction. We have pure floating exchange rates. We've got a gigantic budget deficit that is tied in, in many ways, to a gigantic trade deficit because the Congress of the United States has been borrowing money that should have been invested in this country to keep the United States workers competitive with people around the world.

There are a lot of other people who are going to testify. There are a lot of good reasons. I wish you could get Jim Buchanan here, and hear the arguments that won the Nobel Prize for saying we've got to balance the Federal budget. I don't think you need to be a Nobel prize winning economist to understand that. I think there's probably not a

household or a business that's run in the State of New Jersey, that doesn't have somebody in it who knows in his heart that you cannot spend money that you do not have over a long period of time, without getting into big trouble. This argument is very obvious, it's very clear. Yet in economics and in politics, there have always been people who've been intent on denying that the obvious is true, and telling you that the inevitable will never happen.

Inevitably, if we continue on this path of deficit spending, we're going to reach the road of ruin, and we're going to come to a point where there will be no turning back, where this country will sink down into the same kind of footnote of history that Spain sank into, and other countries before us have done when they spent money that they did not have. I put it to you that we have in our Constitution a great document that was left to us by our Founding Fathers for the very reason that we approach this Committee today, which is to give voice to a public concern that the Congress will not answer.

There are a lot of people -- well-meaning people, I'm sure -- who are going to tell you, "Oh, you can't have a Constitutional convention. You're going to do all sorts of things." People are not thinking clearly, who are afraid of a Constitutional convention. Because that is just a way of saying, "We don't trust the American people." It's the same argument that George III used against the colonists a long time ago, when the people not far from here, in Philadelphia, signed a Declaration of Independence, and indicated that they thought the people should rule the government, and not that the government should rule the people. George III and all of his advisors said: "But this is daffy. You don't know what they're going to do. They're going to go crazy. They're going to pretend that they know something that they don't. They're going to make a mess of everything."

The point is that the Congress of the United States, right now, today, every day, is an unlimited Constitutional convention. It has unlimited power to propose any amendments, on any subject, at any time, and this doesn't bother anybody. Not one of these people who are in the back of the room advertising Campbell Soup has lost a minute's sleep over the fact that the Congress is an unlimited Constitutional convention.

If that Congress can propose any amendment-- There are 100 amendments in fact, right now, today, that have been proposed to the 99th Congress, that are sitting on the table, and nobody hears about it. Because they know, and we know, that there is no reason to fear the power of a convention, or a Congress to propose an amendment, because for it to mean anything, it's got to be ratified by 38 states. The same would be true for an amendment proposed by a Constitutional convention.

So, the people who tell you that you cannot trust a convention to deliberate on a question of great national importance, are people who are telling you that they don't believe in the Constitution that we now have. Because the Constitutional convention provision does not-- It's not something that I made up; it's something that the Founding Fathers made up; they put it in the Constitution for a good reason; and that reason is evident in the Congress today, when we see people who will not do their job responsibly.

And if this country is to avoid what I think would be the same fate that we've seen with so many other countries -- and we need only look-- You don't have to look back hundreds of years, you only have to look to the countries to the south of us, many of whom have great natural resource, and all sorts of potential. Look at Argentina. It was one of the richest countries of the world at the turn of the century. It had tremendous natural resources per capita. And they're stuck in

the mire, and nobody can figure out how they're going to get out of it. The reason is that they went on a binge of deficit spending that lasted for 40 years. Their country is so screwed up that nobody can figure out how to undo the omelet.

We have a chance still, today, to keep this country from going down that same path, but we have to use the method that the Founders left to us. That's why I urge you to institute a balanced budget amendment call, and join with the other 32 states that are trying to make this country work. Thank you.

ASSEMBLYMAN ZIMMER: Thank you very much. I've heard little that I would quibble with in your speech. One comment I'd like to make is that there are those who feel that Thomas Jefferson was the spiritual father of the Republican party, and we're hoping to reinstall Jeffersonian traditions through that vehicle. I'd be very happy to have Professor Buchanan come and be the star witness at our next hearing. If you know the professor, I hope you'll intercede with him to join us at that time. Rod, do you have anything to say? (negative response) Thank you very much.

We have just been joined by Governor Richard Thornburgh, who I'd like to invite to testify next. Thank you very much for crossing the Delaware to come with us. I know how busy you are, and I'm honored that you would add your weight to this effort.

GOVERNOR R I C H A R D L. T H O R N B U R G H: It's a great pleasure to be here, Mr. Chairman. I have a deep and abiding respect for our sister state, for your Governor, and for your legislative process, and I hope to be able to add something to the discussion going forward with regard to Assembly Concurrent Resolution 54, and your quest for effective fiscal discipline in Washington D.C. Would you like me to proceed?

ASSEMBLYMAN ZIMMER: Please do.

GOVERNOR THORNBURGH: Thank you. I'm pleased to appear before you today to discuss what I believe is the nation's most pressing problem. I speak of the burgeoning Federal deficit, and the failure of Congress to adequately deal with the need to restrain a spending spree, which has saddled future generations with a national debt of over \$2 trillion. Ignoring a self-imposed deadline for across-the-board cuts, enacting 20 days after required by law, Congress finally enacted a budget reconciliation bill, reducing the deficit by a mere \$11.5 billion. The bill provides that the deficit for the current fiscal year will be \$154 billion. The New York Times said that figure -- and I'm using The Times' word -- is "fabricated" through inflated revenue estimates, and unrealistic spending predictions. Mickey D. Levy, chief economist at Philadelphia's Fidelity Bank, estimated over the weekend that the deficit actually will be closer to \$180 billion to \$200 billion. I must note that being a state governor, my statement improperly refers to \$180 million to \$200 million, which is big money at the state level, but a mere pittance at the Federal level. Those should be "billions," in that third paragraph.

Congressional action came only after the House refused to go along with a plan of the Republican-controlled Senate, which provided an alternative automatic budget cutting plan to replace the budget balancing law declared unconstitutional by the Supreme Court last summer. The failure, once again, of a legislative effort to restrain the Federal deficit and balance the budget, reemphasizes the need for a Constitutional amendment to impose long-overdue fiscal discipline on Washington's credit card budget process.

It is constitutional, not legislative change that is needed. You can no more expect Congress to balance the budget without a Constitutional mandate, than you would expect a chocoholic to ignore one of Pennsylvania's Hershey Bars, 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.

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 budgets. During the 1982-1983 recession, for example, painful as it was, 43 states cut costs, and 44 states raised taxes to keep budgets in balance. I personally doubt these actions would have occurred without Constitutional requirements mandating balanced budgets, and without the executive and legislative discipline these provisions imposed.

At the same time, the Federal budget process, as you know, lacking any such discipline, has been out of balance in 25 of the last 26 years, and the total national debt has more than doubled during 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's not without significance that the nation's governors are on record in favor of a balanced budget Constitutional amendment. The National Governors Association on a bipartisan basis, expressed its support for a balanced budget amendment, a line item veto, and a separate capital budget -- all tools available to the state governors and legislators throughout the nation. In this resolve, the governors joined with 71% of the American public, according to a recent nationwide poll, and with the legislatures of 32 states -- including my own State of Pennsylvania -- which have called for a Constitutional convention to adopt a balanced budget amendment -- the subject of today's hearings. All of these supporters recognized the wisdom in Thomas Jefferson's observations: "To preserve our independence, we must not let our rulers load us with perpetual debt."

While the balanced budget amendment is gaining support, doubters remain. To their most frequently voiced objections, by your leave, I would like to offer these responses: First, it is argued that the amendment would clutter up our basic document, in a way contrary to the intentions of the Founding Fathers. This is clearly wrong, I would submit. The Founding Fathers contemplated that amendments would be necessary to keep the Constitution abreast of the times. This process already had been used 26 times.

Moreover, one certainly can speculate that the notion of a Federal government consistently spending more than it took in was so alien to the thinking of 1787 that a balanced budget might well have been deemed redundant or superfluous. Indeed, one of the major preoccupations of the Constitutional convention itself was dealing with the problem of how to liquidate the post-Revolutionary war debts of the states in an expeditious manner. It's worth noting that the Treasury did not begin to systematically incur annual deficits until the mid-1930s, nearly a century and a half after the adoption of the Constitution.

Second, while criticism is often offered that the adoption of the amendment will not solve the deficit overnight, it's important to note that no such claim has ever been made by serious proponents of the amendment. Obviously, a period of time, perhaps the five years suggested by the nation's governors and embodied by the Gramm-Rudman-Hollings Act, or even longer would be required for the full phase-in of a reduction to zero deficit. During this interim period, however, budget makers would be disciplined to meet declining deficit targets, in order to reach a final balanced budget by the established date.

Third, it is argued that such an amendment would necessitate vast cuts in social services, or military, or other categories of expenditures. Not necessarily. It would require

that these programs be paid for on a current basis. Certainly, difficult choices would have to be made about priorities and the levels of program funding in all areas. But the amendment's purpose is to discipline the executive and legislative branches actually to make these choices, and not propose or perpetuate vast spending programs without providing revenues to fund them, as has been the practice of late. It would, in effect, make Congress and the President more accountable for the spending decisions they make while in office, which would have a very healthy impact on the decision making process itself.

Fourth, critics say that a balanced-budget requirement would prevent or hinder our capacity to respond to national defense, or economic emergencies. This is an easy one to counter, because any sensible requirement would feature a safety valve to exempt the incurring of deficits to respond to national defense and economic emergencies -- perhaps a requirement of a two-thirds vote, or a three-fifths of the members of both Houses of the Congress. There also, incidentally, would be nothing to prevent Congress from instituting rainy day funds, that would set aside current revenues during good times to be used for counter-cyclical purposes during economic retrenchment, as is done currently in 29 states.

Finally, it's said that the balanced budget amendment would be more loophole than law, and easily could be circumvented. If the experience of the nation-states is any guide, this too is wrong. Such requirements are now in effect, in all but one of the 50 states -- Vermont being the exception, and I think, a fiscally conservative state where in fact, it might well be redundant. These requirements have served the states well. The inclusion of a Presidential line item veto, which is available to most governors, and which I, along with your respected Governor, Tom Kean, strongly support, would

assure that any Congressional overruns could be dealt with by the President; and public clamor, the elective process and the courts would provide back-up restraint on any tendency to simply ignore a Constitutional directive.

In the final analysis, most of the excuses raised for not enacting an Constitutional mandate to balance the budget seem to rest on a stated or implied preference for solving our deficit dilemma through the political process. That is, responsible action by the President and the Congress. This has, as noted above, been tried and found wanting again and again. Mounting deficits, higher interest rates, a huge negative trade balance, and further discredit to the governmental process itself have resulted.

I believe this country is ready for a simple, clear and supreme directive that its elected officials fulfill their fiscal responsibilities. I believe that a Constitutional amendment is the only instrument that will meet this need effectively. Years of experience at the State level argue persuasively in favor of such a step, and years of debate have produced no persuasive arguments against it.

A distinguished American, and advisor to eight Presidents, Dr. Milton S. Eisenhower, in one of his last observations prior to his death last year said -- and I quote: "Without an amendment requiring the President and Congress to maintain a balanced budget, with exceptions to meet certain emergencies, our nation faces disaster." More recently, this year's Nobel prize winner in economics, James Buchanan, stated -- and again I quote: "There is a natural propensity to create deficits unless Congressmen are bound by some Constitutional restraint."

We could yet avoid such a disaster, as Dr. Eisenhower foresees, and impose the restraints, which Mr. Buchanan styles as necessary, if all interested parties move quickly to do so. To incorporate such an amendment into our Constitution, as we

observe its 200th anniversary, would, it seems to me, be doubly appropriate. I urge the New Jersey Legislature take all appropriate steps to participate in this process. I thank you once again for the opportunity to be here today.

ASSEMBLYMAN ZIMMER: Thank you for your compelling presentation. I have no questions. Rod?

ASSEMBLYMAN FRELINGHUYSEN: Governor, I'd like to join with my colleague in thanking you for your testimony. It's eloquent, and that of a statesman. I think it gives credence to our push here in New Jersey to have those remarks from a governor whose term draws to a close. It adds, I think, real significance to our effort, and to what is a national effort. I thank you very much

ASSEMBLYMAN ZIMMER: Marilyn Rosenbaum?

M A R I L Y N R O S E N B A U M: I want to begin by thanking Assemblyman Zimmer for the opportunity to speak before this Committee today. My name is Marilyn Rosenbaum. I am a resident of West Orange. I recently completed two terms as president of the New Jersey region of the American Jewish Congress. I have been involved in encouraging a broad-based, statewide coalition of groups which has actively opposed the call for a Federal Constitutional convention.

I speak here today on behalf of our 27 groups -- civic, educational, labor, religious -- a truly varied, 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 -- who nonetheless, concur on the vital matter before this Committee. The organizations are listed on the last page of my testimony, which I will give you when I'm through.

All of us agree that ACR-54 should not be enacted, because we don't believe it's in America's best interest, for the nation to be confronted with a second Constitutional convention. We would hold to that position whatever the

purpose of that convention might be.

Some of our coalition members are testifying independently, so they may provide you with their own organizational or institutional insights. I am testifying specifically on behalf of those organizations which have chosen to deliver separate independent testimony, and have authorized me to speak for them. These groups are the American Federation of State, County and Municipal Employees, the American Jewish Committee, the American Jewish Congress, the Association of Jewish Federations of New Jersey, Na'Amat USA, the New Jersey AFL-CIO, People for the American Way, and the United Auto Workers. The AFL-CIO expects, nonetheless, to be submitting a statement of its own in writing.

I trust that the members of this 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. For if New Jersey decides to reject ACR-54, it may well doom the issue. But if it should happen to approve it, we would move to within one state of facing our first Constitutional convention in nearly 200 years.

The Constitutional convention effort has clearly run out of steam, and it's almost running out of states. And as more and more legislatures study the issue closely, hold their public hearings, and calmly lay the seriousness of this issue, they continue to reject the calls for a Constitutional convention.

Now, when North Dakota issued a Constitutional or a convention call, early in 1975, it triggered a flurry of action in some state legislatures, but by 1979, the pace had slowed considerably. In fact, only two states have passed resolutions in this decade. The last was Missouri, which did so in 1983. In 1985, lawmakers in 16 states either rejected or defeated legislation calling for a Constitutional convention.

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 throughout the nation, getting together to draft a Constitutional amendment -- essentially one, which would bring the budget into balance?

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

The issue before the State's Assembly Committee on Government is not the Federal budget or spending. The issue is the Constitutional convention. Now the members of our coalition are moved primarily by a sense of admiration for the vitality, the majesty, and the stability of the United States Constitution. 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 rule, and minority rights. And 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 preeminent.

We are hesitant to put minority and/or individual rights up to a vote, either by the public at large, or by a Constitutional convention. That is what could happen with a runaway convention. Where are the Jeffersons and the Madisons among us, whom we could entrust with this business of rewriting our Constitution? Moreover, even if people of comparable brilliance and wisdom were to attend a Constitutional convention, I doubt that we could take a chance of redrafting the Bill of Rights.

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Of course, ACR-54 supporters assure us that they are not really interested in a convention. They only wish to cajole the United States Congress into passing the 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. The argument is both dangerous and fallacious. It is, first of all, predicted on the theory that a bludgeon can work. History has shown us that it really doesn't.

In 1911, there were 30 applications that were received from the states over the issue of the direct election of the United States Senators, while the Senate, after years of opposition, was considering a Congress-initiated amendment -- the Seventeenth, as was mentioned here already. At that time, only 31 state conventions were required before a convention could be called. Thirty applications had already been received. A study of the Senate debate, and the background at the time, revealed 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 1870s. 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 a fear of a convention, as it reflected the Senate's acceptance of what was already occurring.

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 in the 1960s. In 1964, the Supreme Court ruled that both houses of the state legislatures had to be apportioned according to population.

Senator Everett Dirksen, the Republican from Illinois, failing in an effort of have Congress propose an amendment, launched a campaign to convene a convention to propose an amendment allowing apportionment of one house of the state legislature on a basis other than population.

During this campaign, 33 states one short of the necessary two-thirds, made application for a convention. If one subscribes to the bludgeon theory, that this number should have been enough to stimulate Congress into submitting an amendment. In this instance, Congress took no action. In a short time, 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 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 indicates that this is not so. Congress' willingness to tackle the most difficult fiscal issues imaginable was best illustrated most recently when both political parties joined forces to enact a historic tax reform bill.

Still, it is argued that we need an amendment in order to lock in any budget balancing fix that may be passed. But the Congress has dealt with the subject, in 1982, in 1984, and in 1986. In 1982, following extensive hearings and public debate, press editorials and op-ed pieces, the House voted an amendment down after the Senate 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 votes short on a discharge petition. And then this year, the Senate, which had approved a balanced budget amendment in 1982, failed

passage by exactly one vote, and the amendment has 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 has decided. If we don't like the decision, then let's vote our elected representatives out of office. But let's 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 -- the fear of a runaway convention -- which we must face if this Constitutional convention effort succeeds. Can Congress overrule a convention after the convention meets on a procedural matter? Should elected state legislators, or members of Congress be precluded as convention delegates? And, if so, will this mean that only representatives of the special interest groups, unattached to the organized parties and political process, run as delegates?

Well, the answers to such questions are elusive, and are widely disputed among Constitutional experts. Convention proponents reassure us that no matter what craziness occurs at a convention, we are protected from a runaway because three-quarters of the states' legislatures must ratify amendments before they become law. Well, this safe harbor argument provides small comfort. Presumably, almost half of the needed 38 would include those same legislatures which passed constitutional convention resolutions without benefit of hearings, discussions, debates, or recorded votes. Let us also not forget that three-quarters of the states does not necessarily mean 38 legislatures -- it can mean 38 state-ratifying conventions.

In 1787, the Constitutional convention avoided state legislatures by sending the 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 if the state legislature ratification process is used, a Federal convention is likely to have a large body of state legislators in attendance. These delegates would presumably have a vested interest in seeing to it that the newly proposed Constitutional changes would, in turn, be ratified by their own legislatures.

We thus conclude that the only certainty we face should the magic number of 34 ever be attained is the cold, dark, and uncharted waters of Constitutional crisis. As one United States Senator has observed, "If we are foolish enough to spend our children's monetary inheritance, that's too not gutsy, because the kids can probably survive it. But we can't afford to squander their inheritance of Constitutional ideals. Such currency can never be replaced." Please vote against this resolution. Thank you.

ASSEMBLYMAN ZIMMER: Thank you. You raised a number of important issues. I think you put the question in focus with your final statement. Those of us who support the move towards a Constitutional convention feel that our very system of government, with all its liberties, is at risk as a result of our Congress' inability to put its fiscal house in order.

I do have some specific questions about some of specific points that you've raised. You mentioned that the movement for a convention is losing steam. Of the 32 states that have called for the convention, has any state rescinded that call?

MS. ROSENBAUM: I don't know. I don't think so.

ASSEMBLYMAN ZIMMER: You said in 1985, that 15 states rejected or defeated the call for a constitutional convention.

What was the form of that rejection or defeat? Was it actual votes in committee, or the floor of the legislature?

MS. ROSENBAUM: I don't know state-by-state.

ASSEMBLYMAN ZIMMER: I just wonder whether New Jersey might be one of the states. I had this resolution in last year, and it wasn't acted on. I wondered whether you were counting that sort of thing.

MS. ROSENBAUM: I don't have state-by-state as to where it was rejected, either in committee or in the legislature.

ASSEMBLYMAN ZIMMER: You mentioned that some of the members of your coalition have no position on the Constitutional amendment to balance the budget. Some of them are opposed to the amendment. Which of the coalition are on record opposed to the balanced budget amendment?

MS. ROSENBAUM: You would have to get that from each of them, because that was not the basis of our coalition. It was not formed on the basis of whether we were for against the balanced budget. It was based on the call for a convention -- solely on that, not on the balanced budget. Because, as I said to you, many of the organizations have a position for, some against, and some have no position at all.

ASSEMBLYMAN ZIMMER: You say some of the members of the coalition are in favor of the balanced budget amendment?

MS. ROSENBAUM: Yes.

ASSEMBLYMAN ZIMMER: You don't know which they are either?

MS. ROSENBAUM: No, but some of them are going to testify.

ASSEMBLYMAN ZIMMER: I would ask those--

MS. ROSENBAUM: Only because that was not the reason for our coalition. It was not based on that.

ASSEMBLYMAN ZIMMER: You can understand why I'm asking this question. Those of us who believe the amendment is

essential, and that the convention route is the only way to get the amendment see the issues as inextricably intertwined.

MS. ROSENBAUM: Yes, but as you and I have discussed before, you know the terrible fear that we have, and particularly all the members of the coalition is that we cannot envision -- we cannot see it as coming out as a single issue convention. That is really our number one fear, the runaway and not single-issue convention.

ASSEMBLYMAN ZIMMER: Let's talk about your statement that the bludgeon won't work. You believe it was merely coincidence that the United States Senate finally relented in 1911, and endorsed the direct election of United States Senators. It's only coincidence that it happened after 30 or 31 states called for a Constitutional convention?

MS. ROSENBAUM: Historically, I believe that there has always been the fear of another call. I mean, if you really go back, we have only had one Constitutional convention.

ASSEMBLYMAN ZIMMER: The question I'm asking is whether the proposed-- As I understand your statement, you said there was no connection between the fact that nearly all the necessary states called for a Constitutional convention in 1911 for the direct election of United States Senators, and the fact that Congress actually recommended to the states that year, a Constitutional amendment to that effect. You're relying on the debates, or the absence of a reference to this in the debates. So, the only explanation would be it was mere coincidence that this movement occurred immediately proceeding the action of Congress.

MS. ROSENBAUM: I don't really know. I just know that it happened historically.

ASSEMBLYMAN ZIMMER: Speaking for myself, I could tell you if I were being thrown out of a bar by the bouncer, I'd probably say, "Well, I was intending to go anyway." I don't think you can count on the admissions or discussions of those

who were being coerced as to what was the motivating factor on it.

MS. ROSENBAUM: Well, I guess the best part was that it didn't occur.

ASSEMBLYMAN ZIMMER: Well, the best part was that we have direct election of United States Senators.

MS. ROSENBAUM: Okay, I'll take the second best part is that we didn't have a Constitutional convention called.

ASSEMBLYMAN ZIMMER: You said the system is working. You implied that you were satisfied with the Gramm-Rudman process. Was that my misstating that? You are?

MS. ROSENBAUM: Yes.

ASSEMBLYMAN ZIMMER: Gramm-Rudman said for-- I believe the deficit for the most recent fiscal year was supposed to be \$170 billion. That was missed by \$50 billion, I believe, and so it was a \$220 billion deficit -- another record. Does that trouble you at all?

MS. ROSENBAUM: Sure it troubles me. It troubles me personally. It troubles me, and I can speak for my own particular organization that I represent as a member of the Coalition. But, you know, that really is not involved in the reasons for the Coalition, in terms of the call for the Constitutional convention. Sure it troubles me. It troubles me when I can't balance my own checkbook.

ASSEMBLYMAN ZIMMER: It was part of your testimony, which is why I'm questioning you about it. Did you follow the proceedings that led to the adoption of the most recent budget legislation for the fiscal year which began October 1st?

MS. ROSENBAUM: Somewhat, probably not as carefully as many of you.

ASSEMBLYMAN ZIMMER: Are you familiar with the comments that were made, some of which were referred to earlier, that the budget -- the targets, the Gramm-Rudman targets -- were met only with smoke and mirrors, with

accounting gimmicks, and that we would probably miss this year's target, the way we missed last year's target? Do you have any judgment as to whether that's accurate?

MS. ROSENBAUM: I don't know that it's accurate, but I don't think the Constitutional convention is the place to do it. Personally, I really think that it doesn't really belong in a Constitutional convention.

ASSEMBLYMAN ZIMMER: Well, I'm just trying to direct my questions to your statement that Gramm-Rudman is working. The point I brought up seems to indicate that Gramm-Rudman has been, at best, a mixed success. It looks like it's going to be jettisoned next year because of the hole that was dug by previous Congresses.

MS. ROSENBAUM: Well, hopefully the bill will come up with something else other than the convention to settle the problem.

ASSEMBLYMAN ZIMMER: Do you have any suggestion? Frankly, if there was any other way to get a balanced budget, I would embrace it. Can you suggest one?

MS. ROSENBAUM: No, I don't. I only know that-- You know, I don't think that the call for the convention is the way to go.

ASSEMBLYMAN ZIMMER: One final question. You said that the 38 states that would have to ratify the proposed amendment could do it by state conventions. Whose choice is that? I think you had indicated that it was the choice of the national convention itself. Are you sure about that, because I believe that the Constitution gives that choice to Congress?

MS. ROSENBAUM: Right, but I think then when it comes to the states, there are no guidelines in the states for a Constitutional convention. Who would attend? I think that was the point I was making.

ASSEMBLYMAN ZIMMER: Who would attend what?

MS. ROSENBAUM: Who would attend from each state?

ASSEMBLYMAN ZIMMER: The national convention?

MS. ROSENBAUM: Yes.

ASSEMBLYMAN ZIMMER: The national convention?

MS. ROSENBAUM: I don't think there are-- I don't think there are any--

ASSEMBLYMAN ZIMMER: Well, are you familiar with the legislation that was approved unanimously by the Senate Judiciary Committee a few years ago, that would have answered these procedural questions?

MS. ROSENBAUM: No I'm not familiar with it completely.

ASSEMBLYMAN ZIMMER: Do you think the Congress should address those procedural questions, in view of the fact that we are close to the 34 states?

MS. ROSENBAUM: Well, I would hope they would-- Sure, but I hope they wouldn't have to come to that point -- that they wouldn't get the call from the 34 states for the convention.

ASSEMBLYMAN ZIMMER: So speaking for your group, you'd endorse, at least, the procedural legislation to eliminate these questions in the event that what you do not want to happen -- would mind happening -- occurs?

MS. ROSENBAUM: No, I couldn't speak for my group on that because I am charged to speak here today on -- really -- the main issue on trying to get this Committee not to support the call for a Constitutional convention. And of course, should a call come, should that happen, then we'd probably would regroup, and come back and ask for other things as part of the Coalition.

ASSEMBLYMAN ZIMMER: Thank you very much. Rod, do you have any questions? (negative response) Thank you. At this point I'd like to invite Adrian Foley to testify.

A D R I A N F O L E Y: Thank you Mr. Chairman.

ASSEMBLYMAN ZIMMER: Thank you. Mr. Foley, thank you so much for coming at such short notice. I've heard of you,

but I had not remembered that you are a member of the American Bar Association committee that had addressed the issue of Constitutional convention some years ago. I'm delighted that on short notice, you were able to join us to discuss with us the issue of the powers of a Constitutional convention, and the power of Congress to limit the scope of a Constitutional convention. For those of you who do not know Mr. Foley's credentials, he's a former President of the New Jersey State Bar Association, and he has some experience of conventions himself, having chaired New Jersey's most recent Constitutional convention -- a limited Constitutional convention. Mr. Foley?

MR. FOLEY: Thank you Mr. Chairman. I think the record should reflect that I do appear at your invitation. Since I was just asked to appear, I have nothing prepared.

Your other comments require me, I think, to enter a disclaimer -- at least a partial disclaimer. While I was a member of the American Bar Association Committee to Study the Constitutional amendment, the implementation of Article V, in my remarks today, unless I quote from the American Bar Association's stand, my remarks will be personal.

I might also state for the record that the American Bar Association, through the section of litigation -- a 45,000-member section -- has constituted another committee to study the same questions, to look at our 1973 report and to reexamine it. I have the privilege of serving as Chairman of this new commission.

I should state that I also will not necessarily limit my remarks, but at least commence my remarks by addressing the question which was put to me, and that is whether a convention called at the call of two-thirds of the states can -- though it's national in character -- be limited to a specific purpose. The American Bar Association which -- another disclaimer, I'm sorry -- which does not take a position either advocating the call of the convention, or against the call of a

convention-- That is not the position of the American Bar Association. But in the event that an Article V national constitution is called at the behest of two-thirds of the states, we do take the position clearly that the convention can be for a limited purpose, so that the record is clear that this is not a conviction arrived at lightly.

In our report, which was adopted by the entire house of delegates, we named that issue as central to any consideration of the implementation of a Constitutional convention, so that it was indeed the first question we addressed. We were also mindful then, as I am now, that some scholars are in disagreement with our position -- that is, that a convention, once called, becomes a sovereign body and therefore has the power to determine issues beyond those delegated to it. We disagree with that, and our study disagreed with it. We think that both the language of the Article itself, the history of the Article, and in particular, the history of the debates at the first Constitutional convention, as well as the debates that ensued thereafter -- that is, the debates which accompanied the ratification procedure -- all support our conclusion that a convention can be for a limited purpose.

Not to belabor the point, but to revert briefly to the history-- As you know, Article V provides two methods of amending the Constitution. One, of course, is the method that has been utilized by the Congress in each instance, as we know, setting forth a specific amendment for the consideration of the people. Nowhere in the language of Article V, which established the alternate method -- that is, the call by the states -- is there any indication in its verbiage or in its language content, to indicate that the second method is in any way inferior to, or unequal to the first method.

So, it became quite apparent to us that the Founding Fathers clearly envisioned the opportunity to call a convention

upon equal terms as the ability of Congress to call for an amendment. The history, of course, bears this out. Hamilton and Madison, in one of the times that they agree completely, felt that the Constitution must be a malleable instrument, subject to meeting the changing times.

There was a fear at that time, that the national body -- which in the Constitution wasn't even called the Constitution -- the national body might at some time not become responsive to the will of the people. So the second part of Article V, calling for a national convention, was always considered as, more or less, the states' -- the individual citizens' -- right to respond should the national body become oppressive. That it was available for a single amendment became evident in the very first committee which had to codify the agreement reached in the Constitutional convention. This was the Committee on Style. And in the Committee on Style's first report to the convention, in 1787, it clearly spoke in terms of a convention called for the purpose of making an amendment. Throughout the debates that followed thereafter, it was clear again that those people who championed the second version, the second part of Article V were very, very attentive to the fact that the states -- the individual citizens -- should have this right unfettered, and unnecessary to involve the Congress in the first instance.

I don't think it probably serves your purpose for me to go into a long soliloquy about some of the other rationales, that were advanced -- the pros and cons. But I will say that Governor Morris, New Jersey's own representative to the convention, was the person most responsible for -- in the last instance -- the adoption of the language which we now find.

I should probably address the argument that's made contra to the American Bar's position. And that is that the only precedent we have is the precedent which was the occasion of the first national convention, if indeed there were summoned

together with limited delegated authority, and they thereafter -- convened as a committee of the whole -- deemed themselves a sovereign body. Is it not, therefore, a precedent for the future? I think there are two answers to that, because we find otherwise. In the first place, the occasion for the first national convention was a far cry, and far different from what we have today, and ever will have again. You had a convention of individual states. There was no national body. We were, as one historian, James Cooley, puts it, "on the brink of dissolution."

So not only does that, I think, set that particular character of that convention apart, but also we must remember the safeguards. The result of that convention went back to the Congress. After that, it was ratified individually by the states. So that, I think, that fear is not a realistic one, and the precedent is not a valid one.

Added to that, I think we have a history of the hundreds of state constitutions which were adopted after the national. The first four state constitutions to be adopted after 1789, after ratification, all incorporated this specific provision, and carefully delineated the fact that a state constitution could be for a specific purpose. We have some states such as New Hampshire, which calls for a constitutional convention as often as every five or six years. We've had the history of our own state. The remarkable Constitutional Convention of 1947 was addressed to one specific area, the unified court system which became the pride of not only our state, but the whole court system of the country.

Mr. Chairman, you alluded to the 1966 Convention. The 1966 Convention was called for the purpose of addressing one issue -- that is, one man, one vote -- and the apportionment problems that attended it. With the history of limited delegation of authority that has been unanimously, universally, and without exception recognized in all of the state

constitutions, I think that we're on solid ground when we follow those as precedents, rather than what I think is chimerical thought that this national constitution would exceed the delegated authority.

I'd be happy to answer any questions. I apologize for no written statement.

ASSEMBLYMAN ZIMMER: I'm astounded by your eloquence in the absence of a written statement. I have a couple of specific questions responding to some of the arguments that I've seen interpreting Article V. You mentioned the initial drafts of the amendment provision had referred to amendment in the singular. However, Article V of the Constitution as currently drafted used the term "amendment." It says, "On application of the legislatures of two-thirds of the several states shall call a convention for proposing amendments" -- in the plural. I believe that the fact that it's the plural has given rise to a lot of concern on the part of observers.

MR. FOLEY: Yes, and of course that particular provision refers both to the method adopted by the Congress, and the method with which we're all familiar -- with all the various amendments -- and to the convention. It would seem to me irrational to consider that it applied only to the second and not to the first.

ASSEMBLYMAN ZIMMER: There was another argument that was made construing the conclusion of your own committee. You said that Congress has the power to establish procedures governing the calling of a national Constitutional convention, limited to subject matter. It's been stated by Phyllis Schafly that there's a big difference between saying that, and saying Congress has the power to limit the subject matter of a convention. Do you see that as an important distinction?

MR. FOLEY: I don't see the distinction. It was our view that Congress has no option, that the call, when made by the states, imposes a mandatory duty upon the Congress to call

a convention, if that duty called upon the states, calls for action upon one amendment. We think Congress' ability to expand that doesn't exist. It acts merely-- It's a mandate given to it, and it must respond. When we talk about -- in our report -- about how Congress' powers to form regulations and conduct the convention, we think that's the natural body for that action. Indeed, that's why we urge and we support the present bill before the Congress, to adopt standards, a program, and a procedure, so that when a convention -- if called -- arrives to meet, they won't be in chaos but they will have a procedure. We think that it's within Congress' power to pass an act which would guide a convention. I see nothing in that which supports the contention that Congress can expand, or do anything other than that which is dictated by the state's actions.

ASSEMBLYMAN ZIMMER: If the convention disregarded the call of Congress, and the specific limitations imposed by Congress, would the courts be able to reinforce that limit. Would Congress be able to disregard the ultra virious amendments?

MR. FOLEY: We suggest, in our report, that a limited judicial review is inherent in the entire process. Were Congress to avoid, or attempt to avoid its responsibility by failing to call a convention, the limited review that we foresee, and have not articulated very clearly in our report, we think is clearly available. It would be in derogation of the Constitution. It would be in derogation of what we consider to be their simple, mandatory duty to call it. An appeal could be had, to the United States Supreme Court.

ASSEMBLYMAN ZIMMER: If Congress didn't make the call--

MR. FOLEY: Right.

ASSEMBLYMAN ZIMMER: What I was concerned about is if the convention itself disregarded the call, and adopted proposals that were outside of the scope set forth by the Congress, would the courts have a role in that?

MR. FOLEY: Yes, we feel that they would have a role, but we never have decided whether their role -- that is, judicial review -- would come into play immediately, or whether -- indeed, I think, more likely -- the Supreme Court would say, "Well, you have another step to take." Each of the states have to ratify, and in each state you would have a convention called to ratify this consideration that you brought up, namely, something beyond their delegated power. So, even before judicial review, you'd have the power of the citizens to say, "No, we didn't determine that. We gave you the delegated authority for one purpose, or two purposes, or, as they also have the power, for a general convention not presently before you."

ASSEMBLYMAN ZIMMER: Do you feel the Congress would be within its rights to disregard proposals adopted by a runaway convention that exceeded its scope, as laid out by Congress?

MR. FOLEY: Yes. We feel that it would have the duty to disregard them. It has, again, a very limited function. It should take the result of the convention, mold it in the form compatible with the call -- limited purpose -- send it back to the states for ratification. And Congress, in the first instance, could strip it of the excess, or ultra virious -- as you properly called -- actions of a convention.

ASSEMBLYMAN ZIMMER: So it seems to me that there are several layers of protection between what might be a runaway convention, which is only a hypothetical in any event, and the adoption of a valid Constitutional amendment recommended by that convention.

MR. FOLEY: Yes, I feel that.

ASSEMBLYMAN ZIMMER: Well, thank you very much. Rod, do you have any questions?

ASSEMBLYMAN FRELINGHUYSEN: No comments, Mr. Chairman.

ASSEMBLYMAN ZIMMER: I very much appreciate your testimony. I'd like to call Ed Martone and Eric Neisser of the ACLU.

E R I C N E I S S E R: Thank you, Chairman Zimmer. I'm Eric Neisser. I'm the legal director of the ACLU. We'll spare you a duplicate. Mr. Martone couldn't make it today. I appreciate the opportunity to be here. I should say in addition to my position at the ACLU, I also happen to be on leave from the Rutgers Law School, where I'm a Professor of Constitutional Law. So I have some background on the subject, apart from my present work. I should say you will be getting separate testimony -- written testimony -- from a good number of my colleagues in the constitutional law and law teaching area separately later on.

I want to first congratulate and praise the Committee for holding hearings. Sixteen other states which have called for a Constitutional convention of this nature didn't even take the time to deliberate on this subject by having hearings. I hope after you've deliberated and heard all the different testimony, you will ultimately oppose ACR-54, which we believe both unnecessary and dangerous.

I should say, and this is a partial answer to Chairman Zimmer's question to an earlier witness, the American Civil Liberties Union of New Jersey does not take any position on the balanced budget amendment itself. Our opposition is to the calling of a Constitutional convention for the purpose of that amendment. We are a member of that Coalition that was referred to several times earlier. I would like, not to repeat matters that have been spoken to already, but to highlight a few, and particularly, to respond to some questions that have been posed.

I think we need to address the question posed by Mr. Foley a few moments ago, "Can the states call for a limited Constitutional convention?" Mr. Zimmer has already pointed out that the language of the Article V is in the plural for the purposes of proposing amendments. It is, at best ambiguous. At worst, it suggests that in fact, the convention cannot be limited.

We ought to look to the purposes of the two different clauses in Article V. Why do we have two different ways of amending the Constitution? We have it, I think because the people who proposed our Constitution were embarking on an experiment, and they did not know exactly how well it would work. They had just come out of an unsuccessful experiment, known as the Articles of Confederation. They developed a brand new system, completely different from both the charter that they had and the call that they were brought together for, namely, to amend that set of articles. Therefore, they wanted to see whether the new body -- in this case, Congress -- would in fact work both the amendment process and of course, in the basic legislative function.

The fact that they kept this safety valve open, in case the system overall didn't work, and the people were totally dissatisfied with the new structure, does not suggest that we should use this convention approach for a specific amendment, but rather, for a more radical or total restructuring. I know Mr. Zimmer doesn't, and I know most people who support a balanced budget amendment are not calling for a restructuring of our government. I think most of us are fairly satisfied with the general constitutional framework.

I should note that to the degree we've had an overall restructuring, it happened once. That was the first Congress, and that was when they proposed what are known as the first 10 amendments to the Bill of Rights, although there were, as you may know, 12 amendments. That was the largest package of amendments we've had, the largest restructuring, at one time, of our Constitution. That was done by Congress, the new Congress, by the way that we passed all of our amendments -- all 26 I think that I'll address in a minute the problems of a limited convention, if one can be called. Second question -- can you call for -- if it's possible to call for -- a limited

Constitutional convention? Can you do it without having your petition to Congress include the specific language of the amendment you want? ACR-54, like most of the others, has a general statement of an amendment to require a balanced Federal budget, and a limitation on the rate of increase of Federal spending. If it is possible to call a convention for a specific amendment, why shouldn't it be done in the same way that Congress proposed amendments, namely, put the text out, so that the legislatures who are voting and the people who are responding to it know what it is?

It is at least questionable for us. We don't know the answer. Thus, it is not clear how Congress could or should respond to a call, even if there were 34 identical petitions such as this one. Note that-- I'm sure you're aware they are not all identical, and that itself is a separate problem.

The question -- the so-called bludgeon question -- if I may put it that way, since it's been referred to. Can Congress pass an amendment once a call from 34 states has been received? I think the language is clear. I think Mr. Foley addressed it. The answer is no. The language of the Constitution is "shall." It's a mandate -- as Mr. Foley put it -- that Congress, excuse me, must call for this convention.

Now let me touch on what I think is a key point, that has been missed today. If you can call a limited convention without having specific language -- let's assume it -- as limited to what you have proposed, "To require a balanced federal budget and a limitation on the rate of increase of Federal spending." Does that prevent -- as part of the amendment that this convention proposes, or as a part of a package of amendments -- when it says that our Federal budget shall always be balanced and in addition, no Federal funds shall be spent for supportive health facilities that offer abortion or Planned Parenthood services; no funds shall be spent for school districts that teach Darwin's theories, or

schools that don't have prayer, or schools that bus, or don't bus, or whatever your view is? What about an amendment that says no Federal funds shall be spent for any new weapons system -- Strategic Defense Initiative or otherwise?

I'm not taking a position on any of those. I'm suggesting to you that the concept of a limited convention, by using the word "balanced budget," is not quite so comforting. It is limited by a general purpose. As we all know, Congress has, and this legislation has -- within its jurisdiction has -- often affected social policies through budgetary limits. That's not improper, and I'm not suggesting it's improper. I'm suggesting that when we have a call for a Constitutional convention on balanced budgets, that a budget can be balanced in many ways, not just a bland general statement that the books always have to come out even at the end of each fiscal year, which I take it to be the general intent of most people who support it. We could have, in other words, many, many of the problems that some of us are concerned with, even if it was not a runaway convention in the sense that most people think -- a runaway convention being one to amend the First Amendment to take away the protection of religion, or free speech, or whatever.

I think one small point on the selection of delegates, as pointed out from Chairman Zimmer's question to a prior witness-- Obviously, the Constitution says nothing about how to select. The Constitution doesn't even tell us if there would be an equal number of delegates from each state, so that Montana and New Jersey would have the same number of delegates, -- which would be odd, indeed -- or whether it was proportionate to population. Would it be composed of Congressional members or state legislatures, or would state legislators, such as yourself, or would such persons be barred because of their official position? Would they be elected delegates, or would they be appointed? There's a whole variety of questions. I don't need to probe any further, I think.

Sixth -- there's a problem again addressed earlier. If we can have a call for a limited convention, how does one enforce that limit, if it is exceeded by either Congress -- or more likely -- the convention, and if -- as I pointed out -- the limit means anything. You'd have enormous problems with judicial review. It is far from clear that the Supreme Court would undertake to hear a debate, or -- excuse me -- a dispute between the Congress on the one hand, and the national constitutional convention on the other. They are considered far less serious. I know one position is to have so-called political questions outside the scope of legal, or judicial review.

What happens if you have a court ruling, and the body that was found on the losing side ignored it, and went into contempt of court? How does one enforce that? I think you can just imagine the ongoing problems that would develop, and I think it would be mild to call it a Constitutional crisis. People used to call the Watergate incident a Constitutional crisis, but everything that was done there was entirely consistent with the established and clear provisions of the Constitution, including impeachment provisions. This would dwarf that in complexity and in concern.

There are many other issues that I could touch on. I want to answer your questions. So I will stop, just saying that I think whether or not one is in favor of a balanced budget or a balanced budget amendment, upon which my organization takes no position either way, we strongly feel, and urge you to accept the proposition that this is the wrong, wrong way to go about it.

There is one question for Mr. Zimmer that I think is most important to answer. That is, how can we go about getting this if we can't do it this way? We all elected -- you and I and the rest of us -- the people who are now in Congress who either are doing or not doing a good job with Gramm-Rudman and

the recent budget. I forget the title of the bill that just passed with \$572 billion. Whether you think it's good or not, you have an opportunity, on November 4th, to elect different people if your representative wasn't satisfactory.

ASSEMBLYMAN ZIMMER: My representative was the first person to testify.

MR. NEISSER: Obviously, I didn't mean to get into the personalities of it. The point is, we have a perfectly legitimate process, the same way that we have dealt with our elected officials who passed budgets, or other measures than budgets, that we don't find acceptable, including the members of this State Legislature. We vote either in favor or against them -- the next time we have an opportunity -- so that the next budget will look different, if that's what we want. I submit we have plenty of Constitutional processes that have been proven to work. Let's stick with them, whatever your view on the amendment. Thank you for the opportunity to speak.

ASSEMBLYMAN ZIMMER: I just have one specific question I'd like to ask you. Are you saying that in your professional opinion, in order to be effective a call for a limited constitutional would have to-- All 34 calls would have to include the text of the proposed amendment?

MR. NEISSER: I'm not sure. I think it's a serious question. I certainly would think that 34 applications would have to be identical. I'm not talking about missing commas, but I mean, identical in text, which is a problem right here.

ASSEMBLYMAN ZIMMER: So then do you believe that our action, by adopting ACR-54 would be invalid, or would it be a call for an unlimited Constitutional convention, which it specifically says it is not looking for?

MR. NEISSER: No, you're clearly not intending an unlimited one. That's obvious. What I raise as a question is that I don't think-- I cannot give you either historical text or example to prove it, but I can give you only the analogies

we have. I think it is questionable whether if we can have a limited convention. That's not at all clear to me in the first place. But if it is, then that can be other than by narrowing down two specific texts of a proposed amendment. So, I guess I would say your -- I don't want to use the word invalid. I would say it might prove ineffective in accomplishing your purpose -- as I understand your purpose -- which is to have a call for a convention for one, and only one purpose.

I think that issue would have to be decided -- as I read Article V, and the history -- by the Congress when it receives -- if it receives -- 34 applications. First thing they would obviously have to do is check if they are asking for the same thing. Then it would have to ask itself-- If, let's say they are all along this line, and I might say they're not all exactly the same-- But if they were all exactly, word for word, yours, then Congress would have to decide whether -- the question, I guess, that Mr. Foley and I addressed -- we could have a limited Constitutional convention at all, and therefore, whether this concept of limitation is permissible. And secondly, whether you've gone far enough in your proposed limitations, i.e., whether you have failed because you did not provide text.

ASSEMBLYMAN ZIMMER: Has the ACLU been a participant in the discussion of the procedural legislation that is pending in Congress?

MR. NEISSER: No, we have not yet addressed that. The ACLU has been a participant in many other states where these kinds of applications, such as the ACR-54, have been considered.

ASSEMBLYMAN ZIMMER: It would seem to me that you could resolve a lot of the questions that you've raised in your testimony by taking an active part in that effort, and trying to see that this legislation gets enacted, regardless of your views on the Constitutional convention, for whatever reason.

MR. NEISSER: I think having in place some legislation would certainly be beneficial to all, especially to those, like yourself, who want to have a limited convention, and those of us who are concerned that it wouldn't be truly limited. As you know, if this were to be passed in the next period of time -- this and one other state would have passed it -- we would be in the unfortunate situation where we would have 34 applications but no existing legislation. So that is a problem in itself. I'm not at all sure, given that Congress has just adjourned -- as I understand it, last weekend -- when such a bill would realistically move forward.

ASSEMBLYMAN ZIMMER: I would urge you to contact your national lobbying affiliate, and try to get active in that. It seems to me that a lot of talk about risks and gambles in this discussion. It's a big risk to confront the prospect of a Constitutional convention, without having the ground rules laid out by Congress. I think if they were laid out, they might obviate a lot of your concerns.

MR. NEISSER: I think that's absolutely true. I'm not sure that the national organization hasn't considered it. I know we haven't taken any active role yet in the legislative matter in Congress.

ASSEMBLYMAN ZIMMER: Thank you. Rod? (Negative response) Thank you very much.

MR. NEISSER: Thank you very much.

ASSEMBLYMAN ZIMMER: I'd now like to call Professor John Armor.

J O H N A R M O R: Mr. Chairman, there were two descriptions of me on one of the early lists, so let me state the correct one. I am an adjunct professor of political science at the University of Baltimore. I'm an attorney. I've had 12 cases in the Supreme Court. I've published some 75 articles and have a couple of books coming up in the next six months. A particular interest of mine is the history of Article V of the

Constitution. I've testified in seven other states on this particular subject, and before two committees of the Senate of the United States. Over the years I've seen the testimony get more accurate, but still not correct, on the history of why we have Article V, and especially on the history of how it was used in 1911.

First of all, why we have it: One of the books I have coming out is on the anti-Federalists, the people who sought to defeat the Constitution. One of the leaders of that group is George Mason. It was he who asked that Article V be amended late in the convention, in August, because prior to that it simply said that if there are going to be amendments to the Constitution, they will come from Congress. He raised on the floor of the convention, and others agreed with him, that there was a problem -- a possibility that the Congress of the United States might not obey the will of the people. If that were ever to occur, there had to be a safety valve. And therefore, they put in the second part of Article V, which have the people acting through their state legislatures, an alternative method of obtaining amendments to the Constitution.

The way that James Madison, who is referred to -- correctly -- as the Father of the Constitution described, the reason for Article V was to say that it allowed for the, "correction of errors as they were perceived on one side or the other." By that he meant that normally the people in Congress would make whatever corrections were necessary. But in the event that they did not, then it would be up to the states to force the issue.

Now, anyone who goes into the history of Article V and reads what they said, and why they did it will know that they were intended to be parallel remedies. In fact, at the time they assumed that amendments to the Constitution would come about equally through the two processes. Now, not all of their assumptions were correct, and that one certainly was not.

I have noticed just in the last year, that the testimony has changed. It used to be that people would say we never used the second half of Article V. Today, several witnesses have said, "Well, in a way we used it, but we didn't really use it."

Well, let's get into the facts of the adoption of the Seventeenth Amendment to the Constitution. Starting in 1893, the House of Representatives five times passed a proposal to make the Senate of the United States elective rather than appointed by the state legislatures, which was the original pattern. That continued through 1910. Five times, when that was passed in the House, it died in committee in the Senate. It was never voted on, and never got to the floor.

Well, I'm a firm believer that one should not stray off into pure theory, that one should pay attention to political reality. And that is a demonstration of it. The Senators were very comfortable with the arrangement, that they would lobby for and seek the support of a limited number of people in the Legislature of New Jersey, Delaware, or whatever. Having gotten that, they would become United States Senators. And if they had looked forward to see the travail and the expensive money that is spent to elect Senators today, they might have been even stauncher in their opposition. But nonetheless, every time the proposal got to the Senate, the Senate killed it deader than a doornail.

Now, in the meantime, what happened? Contrary to something said earlier today, the target of two-thirds of the states was 32 then, not 31. When the number of states that had acted reached 31, finally -- and I suggest to you ladies and gentlemen, not magically -- the Senate relented and passed the 17th amendment. Now, I refer to this as proof of what I call the swap order theory, which is that Congress will swallow anything if you give it two choices, and the other one is worse.

What happened in the Senate is demonstrated by the language of the Constitution itself. The third clause of the Seventeenth Amendment says, -- and I quote: "Nothing in this amendment shall affect the appointment or terms of the Senators serving at the time it is ratified." Now that's a classic grandfather clause. What it says is, "We got in through the old method, and we're going to stay there. If this amendment is adopted -- no matter. I get to serve out the rest of my term." Now the grandfathers who wrote that grandfather clause are long dead. But, the use of grandfather clause type arrangements is far older than the United States.

And what does it demonstrate? It demonstrates that the Senate of the United States was pushed to the wall. It recognized that one of two things was going to occur. Either there was going to be a convention which was going to write the Seventeenth Amendment, or the Senate itself was going to take a hand in the writing of that amendment. They concluded, and I suggest very correctly, that they would be kinder to themselves than a convention might be to them.

For instance, in the base Constitution, the Senate was set up with staggered terms -- two years, four years, six years -- in order to get onto the cycle which we now know. There would have been nothing to prevent a convention that wrote the Seventeenth Amendment from saying, "All unelected Senators can pack your bags and go home; you're out into the street," and setting up a brand new Senate with staggered terms. It was done once, it could have been done again. But there was never any question that the Senate would allow anything that radical to be done to itself.

Let us supply the same political logic, which is based on history -- nothing more, nothing less -- to the subject at hand today. A convention could put in enforcement mechanisms such as, "The pay for all members of Congress and the pay for the staff of all members of Congress shall be cut off, never to

be restored, unless a balanced budget is passed by such-and-such a date." Now obviously, Congress would not be so unkind to itself. That's exactly the parallel to what happened in 1911, when the Senate of the United States relented, put in its grandfather clause, and passed the Seventeenth Amendment.

So the historical fact is that the bludgeon theory works. And why should that be any surprise? The bludgeon theory has been working since the Magna Carta was signed by King John in 1215. It's a simple political truth that when power is expressed in any system -- and in our system, one of the ways it is intended to be expressed is through the states -- once it has reached a sufficient point, it will, in fact, have an effect. That's what happened in 1911, and that's exactly what the subject is here today.

Now, there are a number of smaller questions that had been raised by several of the witnesses, concerning how delegates would be selected, etc. All of these detailed questions are addressed in the American Bar Association report of 1973, which you heard referred to earlier.

Secondly, every single state has a mechanism for conducting constitutional conventions within its own borders for its own purposes. There's absolutely no reason to believe that the procedures which New Jersey is satisfied with for its own Constitution, will not serve for the election of delegates to a national convention. The question was raised if New Jersey would have the same representation as Montana. The answer to that is clearly no, because we have an outstanding Supreme Court decision which says one man, one vote. The only exception to that is the Senate of the United States, and that is because the Senate is so described in the base document in the Constitution. Every other election in the United States, under long-standing Supreme Court rules, is one man, one vote. Therefore, there is no reason to believe that any attempt to conduct an election today for any purpose that violates one man one vote would be successful.

Another thing that concerns me especially is the suggestion in some of the testimony that somehow, the American people are less able to control their own destiny today than 200 years ago. I've spent a good part of the past five years -- as much as one can through paper and ink -- living with the people who both wrote the Constitution, and also fought to have it defeated. None of them came down from heaven on shafts of lightning. They were all ordinary human beings. Not entirely ordinary -- they were all able to read and write, and that put them ahead of the majority of Americans. Most of them have the equivalent of what we would today call a college education. That too, was unusual. But in terms of the fact that they had certain groups, certain interests, certain concerns which were not at all dissimilar from representatives in Congress today, or representatives in New Jersey today, or anywhere else, it all shows. They voted and reacted on the basis of these. We do have Madisons and Hamiltons today. They might not be easy to find, and you won't find them on the cover of "People Magazine," but I certainly have faith in the American people that we still possess such powers. Because, they were not anything other than human beings -- well-read, well-educated by terms of the day, especially well-educated in the history of the failure of prior governments.

Let us keep in mind why we lost our first government under the Articles. It required unanimous consent of the states to make any amendment. Therefore, because the best proposals to correct its problems were defeated by one state, the national government went bankrupt. Our ambassadors had to pay their own ways overseas. They served as little better than sophisticated beggars, seeking loans from those people who were willing to accept the possibility of not being paid, and wanted to curry favor, or whatever it might be, with the government of the United States. Our nation was pathetic internationally, and pathetic within its own borders. That view was shared by

everybody from Hamilton to Jefferson, largely because it did not have an effective amendment clause. That is exactly why the creation of a correct amendment clause, one that was possible but not easy, was one of the first concerns of the people who wrote our Constitution.

One other suggestion that we should think about, Mr. Chairman: When you look at the daily newspapers, and the slaughters of people going on in nations around the world, what is the one subject that most of those wars concern themselves with. It is the amendment of government by weapons, by killing. Because historically, across the pattern of nations on this planet, that has been the normal way that governments have been amended.

What the framers gave us in Article V was a peaceable means of amending our own government, and deliberately, two methods of using it. If the time has come, and that judgment is a political one beyond what I'm saying-- But if the time has come that the national government needs to be instructed that there is an amendment necessary that it will not agree to, that's precisely why George Mason, James Madison, and the others gave us this 200 years ago.

Furthermore, it is precisely the way it was used the one time the same problem arose before, between 1910 and 1912. I'd welcome any questions you have, Mr. Chairman.

ASSEMBLYMAN ZIMMER: I have no questions. I think that in view of the fact that Frelinghuysens were elected both under the old system and the new system to the U.S. Senate, Rod might have a couple of questions.

ASSEMBLYMAN FRELINGHUYSEN: Three were elected under the old system, and one was elected under the new system with the Seventeenth Amendment. I have no questions, but I certainly value your testimony, and I'm glad that it will be a part of the public record. It'll make interesting reading, and I think will help Assemblyman Zimmer and those of us interested in this pursue it more vigorously.

MR. ARMOR: I meant in no way to denigrate the Frelinghuysens who were elected before the Seventeenth Amendment was adopted. Thank you.

ASSEMBLYMAN ZIMMER: Thank you very much. Ed McCool, from New Jersey Common Cause.

E D Mc C O O L: I have a question clarification. Does Professor Armor endorse this bill before us today?

ASSEMBLYMAN ZIMMER: Professor? Professor did you take a position on ACR-54?

MR. ARMOR: No, nor have I ever taken a position on any of these in any state. I've discussed solely the Constitutional structure in this.

ASSEMBLYMAN ZIMMER: Thank you very much.

MR. McCOOL: Thank you. First let me begin in reference to earlier observation. Our organization, New Jersey Common Cause, has no formal position on the merits or demerits of a balanced budget per se. Our concern, as part of the coalition opposed to a call to convention for a balanced budget is directed principally at the whole concept of calling a Constitutional convention for that purpose.

Again, I would like to thank the Chairman for the opportunity to represent our concerns, and I'd like to open my remarks with the words of James Madison: "Having witnessed the difficulties and dangers experienced by the first convention, which assembled under every propitious circumstances, I would tremble for the result of the second." We feel this call to convention represents several difficulties.

Procedurally, it is subject to serious question. At least 16 states, as was pointed out, passed convention petitions without so much as a public hearing or recorded vote. In fact, research conducted by Common Cause in 1978, showed that on the first 21 petitions passed by the States, only six of them issued committee reports explaining the proposed action. Hearings where the public was allowed to

testify were held in only six legislatures. In two states, no committees considered the petitions before they were passed by the two bodies of the legislature.

Again, we wish to thank the Chairman and this Committee for affording the citizens of New Jersey an opportunity that clearly wasn't afforded to many of the other citizens and states which have endorsed this proposal. Substantively, I'd like to raise several concerns: The first has to do with the reported urgency of the Federal deficit. An amendment process is too slow to be used to meet this reported crisis. Once the amendment is passed, either by Congress or a Constitutional convention, approval by the states will take from two to seven years, and implementation would be years off. Many economists do not believe we can wait four to nine years for a solution to solve an over \$2 billion a year deficit problem. The only thing that prevents Congress from lowering the deficit is political will. Even President Reagan, a staunch supporter of such an amendment, has proposed deficits in excess of \$150 billion to Congress.

The next two points I wish to make are best expressed by Archibald Cox, our National Chairman and Professor of Constitutional Law at Harvard University. Professor Cox states, -- and I quote: "Characterized by supporters as a sign of fiscal responsibility, the proposal is in truth an act of grave Constitutional irresponsibility. Designed for election-year politics, the amendment trivializes the Constitution by introducing language foreign to the Constitution's fundamental and traditional purposes. The amendment not only puts at risk the honor and respect that the American people give the Constitution -- upon which its vitality depends -- but the amendments would also do injury to the prestige and authority of the courts by requiring judges, and ultimately the Supreme Court of the United States, to work out the specifics necessary to impose an ill-stated fiscal policy upon the Congress and the President, without the guidance from any existing body of law."

The balanced budget amendment is essentially an economic theory, and as such, is inappropriate for inclusion in the Constitution. The Constitution traditionally has been reserved for guaranteeing our basic rights and outlining our institutions of government.

ASSEMBLYMAN ZIMMER: Excuse me, are you continuing the quote?

MR. McCOOL: No. I'm sorry, I ended the quote. I thought I indicated that. My statement begins with, "The balanced budget amendment is essentially an economic theory, and as such is inappropriate for inclusion in the Constitution. The Constitution has been reserved for guaranteeing our basic rights, and outlining our institutions of government." It has not been used for economic theories. On the subject of economic theories, it was noted that a recent Nobel laureate has endorsed the balanced budget amendment. I think the Committee needs to know that only two Nobel laureates favor the balanced budget -- Buchanan and Milton Friedman -- while seven Nobel laureates in economics oppose the concept of a balanced budget amendment: Kenneth Arrow, Lawrence Kline, Vassily Leontiev, Franco Modigliani, Paul Samuelson, Herbert Simon, and James Tobin all oppose the balanced budget amendment.

The amendment would threaten damage to the judiciary by requiring them to determine whether in fact the budget was truly balanced. Such inevitable judicial intervention would be resented by Congress and the President, those currently entrusted with such decisions by the Constitution. As has been pointed out -- and I will not go into it any further -- Article V has some questions -- at least in the minds of those of us opposed to it -- as to the procedures to be followed in selecting convention delegates, and the rules of the convention itself. Again, the disagreement as to whether the convention can be limited to a single subject.

The closest that we believe as precedent is the 1787 convention. It was mandated to revise the Articles of

Confederation, exceeded that mandate and wrote an entirely new document and form of government. Fears of a runaway convention are unjustified, we're told, because the states will have to ratify the product of a Constitutional convention, and they would not approve amendments on issues of which their calls did not approve. Facts are, the convention of 1787 not only exceeded the mandate, but once having done so, it revised the ratification procedure, requiring the approval of only three-fourths, instead of all of the states. Should the convention stray from its mandate-- Indeed, several of its supporters today throughout the nation have said they intend to have the convention stray from its mandate--

ASSEMBLYMAN ZIMMER: Excuse me. Who said that?

MR. McCOOL: Some of the current supporters-- Orrin Hatch has already indicated his desire to see a prayer in schools amendment considered by such a convention. Given that supporters are not disabused from wishing to introduce other issues, it's unclear what redress, if any, would be available to the citizens.

If the Federal deficit is the main concern, then let that be addressed in the most direct way. Let Congress begin to make the difficult decisions about whose program is to end, whose special interest subsidy is to run out, and whose pet project will be no more. In short, let there be the political will to do something about it.

If the Federal deficit is the main concern, we are dangerously close to having something that currently no one wants to have happen, occur. We're about to call into convention something which we say -- or at least some proponents say -- is not the main purpose, but rather Congressional action is. Let us not subject the finest working Constitution in the world to what we believe are very serious and very real risks. We urge this Committee to vote no on this amendment.

ASSEMBLYMAN ZIMMER: Thank you. You started off your testimony by saying Common Cause had no position on the balanced budget amendment?

MR. McCOOL: That's right -- on the concept of balanced budget--

ASSEMBLYMAN ZIMMER: Oh, you do have a position on the balanced budget amendment.

MR. McCOOL: We are opposed to the calling of a Constitutional convention for the purposes of passing a balanced budget. We do not have a position on the balanced budget amendment.

ASSEMBLYMAN ZIMMER: Well, most of your testimony seems to be devoted to an attack on the balanced budget amendment -- both quoting Archibald Cox, and your own testimony.

MR. McCOOL: That's true. I mean, there's no question there are some serious problems using a Constitutional amendment to rectify a fiscal problem. That, generically, is at the root of the difficulty in calling a convention. To put into the Constitution of the United States what is economic theory is a very serious matter. Particularly, when that theory is not universally agreed upon, even by experts in the United States.

ASSEMBLYMAN ZIMMER: And you believe that having a balanced budget provision is contrary to the notion of an acceptable Constitution.

MR. McCOOL: I pointed out that it seems to go beyond what the original use of the Constitution has been.

ASSEMBLYMAN ZIMMER: Then do you object to the balanced budget provision of the New Jersey Constitution, and most of the other constitutions of the states in the United States?

MR. McCOOL: The economic impact and the economic policy-- I'm not here as an economist to represent Common Cause's economic policy. On the other hand, I don't think it's

fair to compare the balanced budget requirements in the state constitutions with Federal economics.

ASSEMBLYMAN ZIMMER: Well, you were speaking-- We're not talking about scale, we're talking about theory. You said it was inappropriate for inclusion in the Constitution.

MR. McCOOL: Speaking directly to the issue at hand, which is the Federal Constitution. We're not here to discuss whether it should be in state constitutions or not.

ASSEMBLYMAN ZIMMER: You said that the only-- All we need to balance the budget is political will. Would you--

MR. McCOOL: The only reason it hasn't been balanced is there is the lack of political will.

ASSEMBLYMAN ZIMMER: Okay, how would you propose generating that political will?

MR. McCOOL: Well, if I had "the answer," I wouldn't be sitting here. I'd go out and--

ASSEMBLYMAN ZIMMER: Do you have a better answer than my answer.

MR. McCOOL: Yes, it is to make it-- Right now, we're in the midst of a national Congressional campaign. It's interesting that of 14 Congressional candidates, only one chose to show up to testify on behalf of this. That tells me that in 13 Congressional districts, this is an issue that politically is not viable. It's too dangerous to get into, or other candidates wish not to have their position known on it. And here we are in the midst of a Congressional campaign.

ASSEMBLYMAN ZIMMER: That's an indication to you that there's not a political will to balance the budget? I mean, we're talking about the political will.

MR. McCOOL: No, what-- That's right. There's an indication that there's a lot more work to be done in creating that political will. I don't think we go about it simply by taking "the easy route," which is to call a Constitutional convention.

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ASSEMBLYMAN ZIMMER: But tell me how the difficult route works. I believe Common Cause is opposed to Gramm-Rudman. Let the record show he nodded his head. (referring to the witness' indication of agreement)

MR. McCOOL: The difficult route is to explain the complexities. First of all, I'm not here as a person who personally believes that the Federal deficit is of such a magnitude as to warrant this type of drastic action. But if I had to plan the issue out, the object is there's a lot more public education that has to be done on it to translate into political will. I mean, it's that simple.

ASSEMBLYMAN ZIMMER: Well, 71% of the public in the last poll I've seen has stated that it wants to have a balanced budget amendment. Isn't that--

MR. McCOOL: Ask the other 13 or 26 Congressional candidates who chose not to be here today whether that 71% is a meaningful figure or not. Because clearly, they must not be hearing it. Or if they're hearing it, they're hearing conflicting messages.

ASSEMBLYMAN ZIMMER: Here we go, which is the reason why I would think that maybe Common Cause would have another perspective on the balanced budget amendment. As you know, I was Chairman of the New Jersey Common Cause, and a member of the National Board of Common Cause. I believe it was the perspective I gained from that experience that leads me to believe so strongly that we need a Constitutional amendment on this issue. Because, the recurring theme of Common Cause has been that in case after case, special economic interests overwhelm the general public interest. Congress is more responsive to the individual special interest constituencies that are looking for their own appropriations and their own tax breaks, rather than the general constituency. Because, as John Gardner said in the first advertisement for Common Cause, "Everybody is organized except the people."

It is with that in mind that I, after a great deal of consideration, proposed ACR-54 in 1982, feeling that we do have

an organic problem with Congress, as relates to the budget. The deficits threaten the very democratic system. The only way we can deal with it is with a response embodied in our organic document, the Constitution.

MR. McCOOL: If I can, I will disagree with you that the only way we can deal with it-- I think you know we agree totally with your description of the system, and the fact that it's increasingly becoming a prisoner of special interest considerations. That's primarily due to the way we finance our campaigns. We are very busy, and have been for several years directing our efforts at changing the way this nation finances its national elections?

I would say that's the direction to go -- not calling a convention with so many unanswered questions at this stage of the game. If in fact, there is a process problem, if in fact the institution has changed from possibly what it was originally intended to be in terms of who it responds to, then let's address the real reason for that, and that is, where do campaign moneys come from, and how much does it cost to run for elected office?

ASSEMBLYMAN ZIMMER: Thank you. Rod, do you have any questions?

ASSEMBLYMAN FRELINGHUYSEN: I'll resist, Mr. Chairman.

ASSEMBLYMAN ZIMMER: Let yourself go. (Laughter)

ASSEMBLYMAN FRELINGHUYSEN: I'd like to, but I'll resist in the interest of all the good people who have taken the time out here to testify. Thank you.

ASSEMBLYMAN ZIMMER: Thank you. We would like to call Trisha Katson, from the Liberty Lobby.

T R I S H A K A T S O N: Thank you very much for the opportunity to testify. I apologize-- I arrived late, so I missed the introduction of the people in the panel. I know Mr. Margeson. I was wondering if you could be kind enough to tell me who the other three gentlemen are.

ASSEMBLYMAN ZIMMER: This is Rod Frelinghuysen, who is an Assemblyman and the Chairman of a subcommittee -- the Appropriations Committee -- and the cosponsor of ACR-102, which I hope somebody will address before we're done. It is a State spending cap -- proposed constitutional amendment. This is Greg Edwards, staff for the Majority of the Assembly -- you met Don Margeson -- and Al Harris, who is the staff of the Assembly Minority.

MS. KATSON: Thank you very much. I appreciate that. I'd like to first of all I'm the legislative director for Liberty Lobby. I represent about 25,000 board or policy members across the United States, including some in New Jersey. I've been working on this particular issue for about three years now. The political point of view of our group is very nationalistic, pro-Constitutional, populist, and America first. I'm glad I came here yesterday, since there's only one-- Although I'm very happy to talk to you of course, Mr. Chairman, four of the other Committee members are missing. I'm glad I came here yesterday to have a chance to talk with them at that time. I hope that all of you will have a chance to read the supplemental material I gave you.

What I'm going to do is I'm going to really scrap what I was going to say originally, and look at this issue from a different perspective. We support a balanced budget amendment-- Excuse me, we support a balanced budget. We oppose the Constitutional convention to do so. What I'd like to do is look at some of the economic and financial implications of what might happen if a Constitutional convention were held.

I think in my mind, the two most important questions in politics -- certainly, two of the most important -- is who funds certain activities, or certain people, or certain things, and who profits from certain political activities. I think these are two questions that we need to ask on the issue of who

would profit from a Constitutional convention. We hear many good conservatives telling us-- Because generally, this movement has been pursued by -- generally speaking -- conservatives or Republicans.

We are a nonpartisan organization. We hear many of the conservatives telling us we need a Constitutional convention to balance the budget. We even hear conservatives like President Reagan telling us several weeks ago before the World Bank in the International Monetary Fund meeting, that he supports a new global monetary system, a new global economic system. We hear good conservatives like Congressman Jack Kemp promoting-- He's part of a group called the Global Monetary Project.

I would like to bring up the fact that even if a convention is limited to balancing the budget, what tremendous consequences this could have, because a number of things could enter into the picture of balancing the budget. We could possibly have some kind of a new monetary system proposed. You could have some kind of new taxing system proposed, particularly when you have conservatives -- two of whom I mentioned -- promoting global monetary ideas.

So, we're told that we need to get our economic house in order, we need to balance the budget -- all of which, of course, I agree with -- to end the spiraling national debt. But I'm concerned that possibly a convention might be used to promote some of these other things I just mentioned. A Constitutional convention may even be the cause of an economic collapse in this country. I say this because right now, there is a current climate or feeling of economic well-being in this country, but it is largely an illusion. Because the reality is that the United States is being kept afloat and prosperous largely because of foreign investments in this country, and other holdings in this country.

Now, this was brought up a year or two ago by former

Treasury Secretary Michael Blumenthal, when he was asked if the United States had a Constitutional convention, what could be the possible feeling as far as countries around the world, who have their financial holdings and assets in the United States? The reason why they have investments and holdings in the United States is because they view the United States now as a stable place to invest their money.

Now, if we had a Constitutional convention, it is very possible that these foreign countries could regard where you have a situation where even if the entire Constitution isn't being reviewed, or looked at, or studied, certainly it could be a vehicle for doing that. And, as former Treasury Secretary Blumenthal pointed out, other countries could then withdraw some of their holdings and assets in this country. We could have a collapse of the banking system, and who knows what other financial calamities. I think that's something that we need to be aware of as possibly happening. Because, other nations could be viewing the law of the land, the structure of our government, as being shaky or questionable.

I'd also like to point out that right now, the deficit is making money for some very powerful financial interests. The reason why we have a deficit is because the Congress, in what I would regard as criminal borrowing activity, borrows money. There are certain financial interests that purchase these U.S. government securities, bonds, and notes. Many Americans have the impression that the average American buys these government notes and securities. But in fact, The Washington Post reported that the largest purchaser of these government bonds is the World Bank.

Now, the World Bank makes interest on these government securities that they purchase when Congress borrows. They take that money, and they go to different foreign countries and lend it out -- like developing nations, Third World Countries,

wherever. They use this money that the World Bank has again made from purchasing U.S. government securities. These countries build up their industries. They make certain products and dump them into the United States, which puts Americans out of work.

Now, the World Bank is a very powerful institution. I wonder if they are going to sit idly by and watch their profits go down the drain at such a Constitutional convention, if the budget is balanced. The United States became the number one debtor nation last year -- or this year -- while the World Bank was making \$1.2 billion.

Another thing I was reading in The Wall Street Journal is Japan has-- We have \$160 billion trade deficit in this country now. Japan has such a trade surplus that last year, they spent about \$19 billion buying up U.S. government securities. They take the assets, and then some of this money is used to open auto plants in Detroit and other places in the United States. The American people are told this is a great idea, but in reality, it saves the Japanese from paying the shipping costs of shipping cars over here. So, it's to the Japanese benefit.

I wonder if the Japanese and other powerful financial securities right now, because Congress is borrowing-- Will it be the people who have the voice at a Constitution convention, or will these powerful special interest groups have a hand, as they currently have tremendous influence over Congress? I think that's a question that your constituents would be very interested in knowing.

Another point is that other purchasers of these government securities and bonds include powerful brokerage houses like Goldman, Sachs & Co., Lazar Brothers, and many others. These are the same people who testify on Capitol Hill on the question of the deficit. They're making money off the deficit by selling these U.S. government securities. If

there's no deficit they are going to be out of business, or at least their profits are going to go way down. Are these powerful financial interests are going to sit down and just let their profits go down the drain at a Constitutional convention, if a balanced budget is proposed?

I'd also like to point out that the Gramm-Rudman amendment -- the Gramm-Rudman bill, rather -- which was partially declared unconstitutional by the Supreme Court for the wrong reasons, but nonetheless, was declared unconstitutional-- Congress has missed virtually all the deadlines on that. It's really a worthless bill. It's wasting a lot of people a lot of time, and the balanced budget amendment itself, which I've researched and studied, is also a fraud. It's our view that the balanced budget amendment in Congress and the Gramm-Rudman bill have been used to set up a phony debate to contrive a situation whereby the American people will become convinced that the structure of our government does not work, and that a Constitutional convention is needed to remedy the situation. Well, I reject that. I think the problem is that our Constitution need to be obeyed. While I think that I'd like to address the point made by John Armor. He pointed out that Congress would pass an amendment if the 33rd state came through, i.e., New Jersey in this case. Connecticut has already said that it really wants to be the historic 34th state to make a convention happen. So if New Jersey becomes the 33rd state, Connecticut, at this point, appears likely to be the 34th state.

Another witness -- I think it was the Governor of Pennsylvania -- and others have brought up all these balanced budget amendments that exist in state constitutions in claiming that now the budgets are balanced, and isn't it wonderful, and now we could do the same thing at a Federal level-- What they don't tell you is that many states are deeply in debt. Many states -- and this is also true at the Federal level -- have

pension funds in which money is taken from workers' paychecks. The government is supposed to match this money, but really they're often bookkeeping entries, and often the money is spent to buy government bonds, as I was discussing before. And whether it's at the State level, or the government level, it's the same thing. The producers of this country are paying the interest or assets on investments that people who can afford it are making. The Washington Post recently said that Federal pension retirement funds are losing millions of dollars because the government is at-- This is previous to Congress passing the debt limit recently last week. In other words, there's a lot of hocus-pocus going on with pension funds at the State level, and also the Federal level, even though their budgets are supposed to be balanced.

Now, the solution-- I've spent a lot of time on this, and also I've been working with some individuals who have studied the legislative history of the Constitution, including the debates of the only other convention we've had, "the Federalists Papers, the state ratifications of the Constitution, Madison's notes. What they did is discover that our Founding Fathers had a method to balance the budget, but its being ignored. In fact, it was practiced in our nation's history very successfully, and it's being ignored.

Now, this information has been provided to every member of Congress, but because of the political realities, as we hear so much about, they're unwilling to talk about what would be our Founding Father's method to balance the budget. The states clearly understood what this method was to be. That was when the Federal government had not collected enough revenues through imposts, excises and duties -- and imposts are tariffs, taxes on imported goods -- then they were supposed to go to the states, and present a bill to each of the states for a certain amount of money. That money was apportioned according to that state's representation in Congress. So, if

you had that occurring today, as was done a number of years ago, then this would make Congress fiscally accountable.

Now first of all, of course you have to take into account the fact that you would have to be turning the clock back quite a few years, and there wouldn't even be any direct taxes laid by the Federal government, which really only began in the 1940s. But the idea that our Founding Fathers had was that-- Say, if you took New Jersey, the Congress or the legislators from New Jersey -- Senators and Representatives -- would come to all of you -- the Governor of New Jersey and the legislators here -- and say, "We want \$1 million or \$1 billion, or whatever the sum is," and you're going to have to come up with it. You're going to have to tax directly your constituents. Probably, the people aren't going to like that. But the idea is then the Governor and the State legislators could say, "Well, you want \$1 billion. What do you want to spend it on?" Right now, Congress is so out of control, whether you're talking domestic spending, military spending, or interest on the national debt, which is the biggest atrocity.

Then the governors and the legislators would have a chance to say, "Wait a minute. Look at all these defense contract abuses. Look at all this waste in welfare," and whatever it is the governors and the state legislators want to bring up. We don't want to collect this money from our constituents, so you can't spend that money. That would force Congress to put reins to them. They wouldn't be able to spend. They would have to be accountable to the states, which was the original idea of our Founding Fathers, which is being ignored.

Now that's my proposal. I'm just reiterating what our Founding Fathers had said, which is being ignored. If you don't want to turn the clock back, then at the very minimum the Congress should cut spending. So, in conclusion, I would just

say that I'm very concerned that this Constitutional convention is a guise to implement some kind of globalist, international policy, or whatever. There are just too many unanswered questions. We don't need a convention. We need to simply obey our own Constitution. Thank you.

ASSEMBLYMAN ZIMMER: Thank you. I read the material you gave me yesterday. I tried to find the provision in the Constitution that you said already requires a balanced budget, and I can't.

MS. KATSON: Well, there's a book that's been published that explains it in detail. First, they have about 40 or 50 pages explaining what this method is, because it doesn't say "balanced budget" -- "there must be a balanced budget." There are no such words. But you have to take the Constitution, the debates, if you studied the debates when they were talking about the two taxing provisions--

There are two taxing provisions in the Constitution. According to the Constitution-- In other words, one is imposts, excises and duties that are intended to be indirect taxes. The other section deals with direct taxes, which must be apportioned among the states. Now, the people I've been working with have read every Supreme Court case, because people usually bring up the Sixteenth Amendment. The Sixteenth Amendment did nothing to change the requirement that direct taxes must always be apportioned among the states. Now, if you look in the state ratifications of the Constitution, you could also find it there. I don't have this with me, but I'd be happy to provide it for you.

ASSEMBLYMAN ZIMMER: If you could, I'd appreciate it. Thank you very much.

MS. KATSON: Thank you.

ASSEMBLYMAN ZIMMER: Rod Frelinghuysen has to leave soon, so out of courtesy to him I'd like to ask whether there's anybody here who has come to speak on ACR-102. Mr. Haines, you

haven't signed up but you're always welcome to testify.

F R A N K H A I N E S: No, I did not sign up. I wasn't sure if you were going to get to it this afternoon. I have no prepared statement, but I do have some comments that I would like to make in respect to the proposal. My name is Frank Haines. I'm a private citizen. After having served 34 years in the governmental research profession here in New Jersey, during which time I spent a great deal of time in fiscal policy analysis, and in many other areas of State and local government -- administration and finance.

I won't go through the history of State caps, which might be of some benefit for the record, but I don't think it's worth the time at this point, with other people waiting to testify on the other proposal. Needless to say, possibly there has been, since the expiration of the State cap -- which was in effect for about six years -- a difference of opinion as to what the formula should be for measuring the cap. I think it's important to note that the earlier State cap was a statutory cap. That meant that the Legislature could make changes relatively easily in the event that some sort of a situation which it felt needed change came up. That's one of the reasons that basically I oppose this amendment in its present form.

Constitutional amendments are difficult to change, even if they are sound when initially drafted. Particularly this amendment has no provision other than a referendum, and only at a general election, providing for any emergency situation in the event that there should be one. If this were going to be done through Constitutional amendment, I note that in looking at summaries of similar limitations in other states, that many of them have provided for some sort of exception in the event of emergencies -- exceptions either such as you proposed in your I & R legislation, where a specific vote of the Legislature -- a rather high vote, such as a Constitutional amendment itself -- would be the basis for relief of the limitation.

Another reason I suggest that there is no great urgency for this limitation at this time is that this is one of the subjects that's under review by the State and local expenditure and tax reform group. I am not aware that the Legislature has had an extensive review of the impact and effect as it previously existed. I had occasion to sponsor a graduate paper by a student several years ago in looking at the cap. I think the general conclusion two years ago, not only in New Jersey but in other states was that there had not been sufficient experience in those other states on the effect of a cap. In New Jersey, our general conclusion was -- and this goes back three years -- that the cap had not been effective since the formula had not even had an opportunity to go into effect, since revenue growth was not sufficient to foster expenditure growth to the cap limit.

The other thing is a need to review the philosophy for a cap. What is the real purpose? At one point, we evaluated the cap in New Jersey, and it only turned out to be on about 40% of the bottom line. Why? Because debt service and all of the State aid programs and the special funds were excluded, maybe reasonably so.

But I think it's important for the public to understand that you are not planning to limit gross State spending. It's only a proportion. If, in effect -- and I recall your proposal does or would provide for certain exclusions-- This is a new approach, as I recall in looking at some of the cap bills over the past years. It's a Constitutional amendment which improperly so -- in I think, in Constitutional language -- delegates to the Legislature the power to enact caps within broad limits, and leaves a significant area of discretion toward excluding certain things. However, I would--

My personal feeling is even though the description -- as I recall -- says three year moving average of per capita, I

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don't find that language in that amendment. Either that, or I read it wrong, although the implementing legislation, which I think Assemblyman Frelinghuysen has -- assuming that would implement it -- does have that three-year moving average. Now, in the history of the cap-- The reason we don't have a cap today, as I interpret it, is that the original cap law was a straight cap percentage based on one year's personal income growth -- per capita personal income growth. The Governor, on at least three occasions -- I think it's three, maybe it's four, but at least three occasions -- conditionally vetoed bills sponsored by Democrats, but passed with Republican votes. The Governor wanted a different formula. He said he preferred a formula with a three-year moving average on per capita income growth. He also wanted a number of new exclusions -- capital outlay, leases, adjustment for leases -- which in effect were sort of a debt type commitment -- mandated cost of pensions, as I recall, and the capital outlay. These would reduce further the amount of the budget that would be capped.

This, as I say-- With all these in mind, and with the situation that I would like to see someone in the Legislature -- through the Committee leaving it to slip -- take an evaluation of the significance and the philosophy of limitations. That's a reason that I suggest today that without a significant hue and cry for this subject, that it might be better delayed for a couple of years until somebody has had a chance to evaluate whether it is really necessary, and how can it be most effective. Thank you, sir, for the opportunity. I apologize again for not having something in writing on it.

ASSEMBLYMAN ZIMMER: Thank you, Mr. Haines. You were very lucid, speaking off the cuff. Just so it's clear to you and for the record, this was introduced as a companion bill to Assemblyman Frelinghuysen's legislation, because, as you know, statutory caps can be repealed when the going gets tough. It

seemed to me that this was needed as an extra fortification to the structure that we were building. It was deliberately made general, and it does not include the terms of the moving average.

MR. HAINES: I did not see any relationship in the statement. That's why I pointed that out. I realize that bill has come out of committee.

ASSEMBLYMAN ZIMMER: So I will yield now to Assemblyman Frelinghuysen, who is really responsible for this, indirectly, by introducing his bill.

ASSEMBLYMAN FRELINGHUYSEN: You made some good distinctions, as has the Chairman.

MR. HAINES: I was unable to appear before your Committee when it considered the bill itself. One of the reasons -- potentially -- why the cap never came into significant effect is that the Joint Appropriations Committee, during the time that the cap was in effect did include exceptions in the Appropriations Act to make sure that there would not have to be limitations. And as I say, without any provisions for emergency type situations, then I think I would prefer the statutory route. Because in the event that it is necessary -- and the Legislature assumes that it is necessary in its wisdom -- to exceed whatever limits, or make exclusions, then I much prefer to see that happen.

The timetable on a referendum on a cap, to exceed a cap at a general election, I think also has to be considered in relation to your balanced budget requirement. The fact that probably, if you are going to exceed, you would be breaking out certain new programs, or major program increases, or something like that for public referendum. I see an extremely difficult situation rising if you're trying to refer to the public as has happened in the case of some local camp exclusion referendum with which I'm quite familiar, to try to break out a whole series of appropriations -- let's say as many as 10, 15, or 20

-- to put on the ballot in order for a cap increase. And so, as I say, some of these things, in terms of a Constitutional amendment, ought to be very carefully weighed. Thank you, gentlemen.

ASSEMBLYMAN ZIMMER: Thank you very much. Okay, do we have Linda Bowker here? (negative response) Rick Engler? (negative response) Ray Peterson? (affirmative response)

R A Y P E T E R S O N: Good afternoon, Mr. Chairman. I'm Ray Peterson, from the American Federation of Teachers. Just a few minutes ago I was authorized by Rick Engler to speak for the New Jersey Industrial Union Council, which, as you may know, includes the CWA and the IUC, and the United Auto Workers, and so forth. I'll be brief, because I think much has been said. You've learned a lot today; I've learned a lot today. I can agree with much that's been said. So I'll just get into my very brief prepared testimony.

We disagree with the notion that a Constitutional convention needs to be called for the ostensible purpose of controlling Federal spending. Federal spending and the entire budget process are among the responsibilities of the Congress, and there is a mechanism to replace Congress if they don't do their jobs properly. The President and the Executive Branch also play major roles in the budget making, and there is a mechanism to replace them also. But there's a larger issue here than budget making. We agree with those who say that a convention that's called for one purpose could easily go on to other issues, just as the original convention did when it convened to amend the Articles of Confederation.

Last summer, millions of Americans celebrated the hundredth birthday of the Statue of Liberty. We're proud of that statue and all that it stands for. But after all, it's just a symbol for what this country is all about. The real treasure of this nation is its Constitution, which has withstood the test of time and has provided a standard of

stable government and personal liberty that is unmatched on this planet. We ought not to gamble with it. We ought not to expose it to the intended overhaul that could undue 200 years of progress for human rights and civil liberties. We ought not to create a situation that could tempt extremists of various persuasions to seize the opportunity to make the supreme law of the land to suit their own particular goals.

It's not clear to me how delegates to such a convention would be selected, nor is it clear how they could be limited to dealing with one issue. The convening of such a convention could create endless procedural problems, and open up a Pandora's box of litigation which could drag on for years and cloud legal issues and precedents that were well settled in the present Constitution.

It is a popular aphorism that reminds us, "If it ain't broke, don't fix it." Those of us who believe that the Constitution of the United States is our greatest treasure agree with that advice. The Constitution has worked well for nearly 200 years. We ought not to gamble with its future, nor with the futures of our children and our grandchildren. That's about all I have to say. So much has been said earlier that I agree with, and this tends to reinforce my position.

ASSEMBLYMAN ZIMMER: Thank you very much. Does your organization, or the Industrial Union Council have a position on the desirability of the balanced budget amendment?

MR. PETERSON: Yes, we oppose the balanced budget amendment, but we more vigorously oppose this Constitutional proposal.

ASSEMBLYMAN ZIMMER: Could you briefly explain why you're opposed to the balanced budget amendment?

MR. PETERSON: Because no one can foresee what may happen. If you tie yourself to a 60% -- as someone suggested earlier -- as it were a 67% percent vote, suppose you only get 59%. Then the issue may not be addressed. Now, those that say

political will is important in this are making a lot of sense. If the President of the United States had taken a different position on the current situation, the bill that was just enacted would not be revenue neutral. People in an influential position -- Senator Bradley and others -- can build and develop public opinion to address this problem. And they probably will after the election. It's a long process. I was impressed by the people who said that this would take 7 to 9 years to take its effect. This needs to be addressed immediately.

ASSEMBLYMAN ZIMMER: The direction we're going in is with larger and larger deficits.

MR. PETERSON: Yes, and I agree that's a mistake.

ASSEMBLYMAN ZIMMER: Do you believe after the election things are going to get better?

MR. PETERSON: I believe that heading for larger deficits is a mistake. I think it needs to be addressed, and I believe it will be addressed.

ASSEMBLYMAN ZIMMER: Thank you very much. Ellen Goldstein, League of Women Voters.

E L L E N G O L D S T E I N: Good afternoon. My name is Ellen Goldstein, fiscal policy director of the League of Women Voters of New Jersey. I thank you for your time, and for the opportunity to speak to you today on ACR-54. The League of Women Voters of New Jersey opposes ACR-54. We oppose this measure for both fiscal and governmental reasons. I think that we are probably the only group that has a position against a Federally mandated balanced budget.

All of us here today are concerned that the Federal deficit has grown out of all proportions. In order to halt this growth, a Constitutional amendment mandating a Federal balanced budget has been proposed. The League of Women Voters believes that the current Federal deficit, as projected to 1990 should be reduced. To accomplish this, the government should rely primarily on reductions on defense spending through

selective cuts, and the elimination of waste and duplication. The League opposes across-the-board Federal spending cuts. The League recognizes that sometimes deficit spending is sometimes economically appropriate and necessary. We therefore oppose a Constitutionally mandated balanced budget for the Federal government.

The League 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 from meeting defense needs in times of national security crises. ACR-54 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 power set up by the Constitution.

We believe that the system for amending our Constitution, as set up by our forefathers, has functioned well for over two centuries. If a Constitutional convention were to be called, our governmental system would be in jeopardy. Although this resolution refers only to a balanced budget amendment, once the convention is called anything could happen. Well-meaning legislators or delegates to a Constitutional convention could jeopardize our individual liberties. In this 200th year of our Constitution, let it remain intact. Let us vote against this resolution.

ASSEMBLYMAN ZIMMER: Thank you. You note in your testimony that there are times when a deficit is appropriate. Are you familiar with the House and Senate joint resolutions that refer to ACR-54? The reason I ask that is because they allow for a deficit with a 60% vote of each House in exceptional circumstances such as these. Is it the position of the League that we should have these?

MS. GOLDSTEIN: That would not change our position, however. That would still not change our position.

ASSEMBLYMAN ZIMMER: It's the position of the League that even circumstances are not so exceptional as to generate a 60% majority, this Congress should be absolutely free to run a deficit up if it chooses?

MS. GOLDSTEIN: No, the League definitely feels the deficit should be reduced, and that it is much, much too large at this point. But I think that the general consensus of League members throughout the country was that defense spending should be cut, and in addition, that maybe taxes should be raised. Now, the League was in favor of the new tax system that has been passed, but in order to reduce the deficit, I think that the income tax, as it has not been enacted, would have to be a little bit more graduated.

ASSEMBLYMAN ZIMMER: Is the League against Gramm-Rudman?

MS. GOLDSTEIN: Yes.

ASSEMBLYMAN ZIMMER: Is it not true that the only time the defense budget has really been substantially reduced was under the pressure of Gramm-Rudman and what you would say were across-the-board Federal spending cuts?

MS. GOLDSTEIN: That is true, but that's-- I guess the League likes to be a little bit more idealistic, I guess. We really don't feel that a mandated Federally balanced budget should be.

ASSEMBLYMAN ZIMMER: Thank you very much. I don't see Harris Gilbert here, so there's nobody from People for the American Way? (affirmative response) Esther Abrahams, AARP? (negative response) Dudley Sarfaty, Council of Churches? (affirmative response)

REVEREND DUDLEY SARFATY: Thank you Mr. Chairman. I'm glad to see you and your staff. I feel a little bit like a New York Met going out on a cold ball field up in Boston. I'd like to make two points, and try to document them briefly. I'm appalled-- This is not my first point. Forget

my parenthesis. I'm a victim of parenthitis (sic). I think the present Gramm-Rudman compromise, trying to sell off the unpaid student debts, and trying to sell off the railroad is not even funny. It's not a bad joke. Close parenthesis. But we can talk about how to cut the Federal deficit.

The New Jersey Council of Churches' primary concern, as you wouldn't be surprised to learn, is our concern with the Bill of Rights, and secondarily with the ambiguity of the ground rules. I'm personally a Presbyterian minister, and Presbyterians are famous for being more picky about due process, and having more faith in due process than perhaps they have in God himself. So, there's been a lot said about the ground rules and ambiguities. I won't say anything more about that.

On the Bill of Rights though-- While you're all tired, and there are other people still to speak, let me be brief and dramatic without seeming unfriendly. To dramatize how much we care about religious liberty, even when there is an indirect possibility of it being threatened, the American Council of Churches, and the American Baptist denomination just finished filing amicus petitions in the Federal Supreme Court to defend the right of the United States Conference of Catholic Bishops -- the United States Catholic Conference -- to do whatever it felt was its religious obligation in terms of political lobbying for their view of abortion for the sake of religious liberty, and not necessarily because the American Baptist denomination or the National Council of Churches shared that. And it occurs to me that might indicate the depth of our commitment, if not our fanaticism.

Just, then, another word on the ground rules. The reason you were able to persuade our policy committee on your Assembly version of the I & R was because it was written out in great detail. I had not heard that question suggested today, so I am thinking off the cuff. Although there is companion

legislation, if there is any ambiguity -- and I'm totally unfamiliar with the seven to nine year argument that Ed McCool made-- But if there is any ambiguity about what is going to happen, it seems to be that maybe New Jersey needs to lead the way and spell it out beyond any ambiguity.

I personally -- and the Council hasn't this position -- but I'm sure a lot of its officers do think the original business tax cut given early in the Reagan administration was a mistake. Right now with Mr. Gorbachev going bankrupt and in all sorts of trouble in the Kremlin with a 14% GNP defense budget, it seems to me we're having a parallel pain in our stomach with our 8% budget. Maybe that's one way the budget could be cut. But simply put, our position is a radical view of civil liberties and any endangerment of them, and a deep concern for due process.

ASSEMBLYMAN ZIMMER: Thank you.

REV. SARFATY: Thank you for the opportunity.

ASSEMBLYMAN ZIMMER: Are Martin Spritzer and Larry Grossman here from the Jewish Federation of Greater Middlesex?

LAWRENCE GROSSMAN: One of us. Good afternoon, Mr. Chairman. Thank you for inviting us. Mr. Spritzer could not stay until the end of the day, so I'll be presenting on behalf of both of us. We represent the Jewish Federation of Greater Middlesex County. I'm on the board of directors, and Mr. Spritzer is the chairman of the local and national subcommittee. The Jewish Federation of Greater Middlesex body is the central administrative body for the organized Jewish community in our region. We represent approximately 50,000 individuals and 16,000 households in the 13th, 14th, 17th, 18th 19th and 20th legislative districts.

Our community is very concerned about ACR-54. Our focus is not the issue of the balanced budget. Like others before us, we don't have a position on that. We do not have a position on whether or not an amendment for a balanced budget

would be appropriate. We do have a position on the question of holding a Constitutional convention. On this we are unequivocally opposed. You have before you a resolution that was passed last night at the board of directors meeting of our Federation. I presented that resolution to our 60 participating directors last night. We had a discussion of the issue. There was not -- I wish to emphasize -- one voice in dissent when we passed this resolution. There was one question about the issue. But on balance, the view of our community is that when one, on one hand, raises the question of the Constitution and its sanctity, if you will, and on the other hand raises the issue of the balanced budget, the Constitution and any risk to it unequivocally comes out on top. I think this point has been made by people who spoke prior to me. If there is any question with respect to a Constitutional convention somehow endangering the Constitution as we currently have it, then we would be opposed to it. And we are.

I could elaborate that I don't really think-- Oh, there's one other point I should make. And that is about is there a question-- And we've been debating this. I think there have been witnesses here today who have said there is no question. You can have a Constitutional convention and you can limit it. On the other hand, if you look at the ABA report of 1974 -- and I, in all honesty, have not seen the original. I have seen the New York ABA report of 1985 -- December 1985 -- which referred to it in detail. If you look at least the documents I've looked at, there appears to be substantive dissenting views. There are others who question the majority opinion of the ABA. So, in the minds of our community, and in the minds of a number of individuals -- among those who spoke here today -- there is a risk. And if there is a risk, in our view, the risk should not be taken and some other way should be found.

ASSEMBLYMAN ZIMMER: Could you clarify your reference to the New York report of 1985? There is a report that I've

seen of the Association of the Bar in the City of the New York, dealing with the legal sufficiency of the calls for the Constitutional convention. Is that what--

MR. GROSSMAN: That's correct, and in that -- as I read it -- there are a number of references to indicate that there were significant dissenting opinions. They are referenced here, and I assume that they were extant there. That is besides-- The point of this article was that there were many other complexities. I think on another level those were of concern, but not formally of concern to our community.

ASSEMBLYMAN ZIMMER: I wanted to make sure that I was aware of the document you were referring to. It is a very scholarly document. It raises a lot of questions, but not directly the question of the runaway convention. It concludes that there is a lot of doubt as to the legal sufficiency of the resolutions that have already been adopted.

MR. GROSSMAN: It does tend to reinforce the view that if there would be a 34th call, that the process that would ensue subsequent to that would be very chaotic, not only on these procedural grounds but on the grounds of all the other questions that have been raised with respect to the Constitution. I think it's that kind of unravelling that is of concern to our community.

ASSEMBLYMAN ZIMMER: Thank you very much.

MR. GROSSMAN: Thank you.

ASSEMBLYMAN ZIMMER: John Tomicki? (negative response) Vera Roche? (negative response) David Coggins? (negative response) I've run out of names. Is there anybody else here who would like to testify? Yes?

**S H E R R Y Z O W A D E R:** Sherry Zowader.

ASSEMBLYMAN ZIMMER: Oh, I'm sorry. The name was crossed out because you replaced somebody else. I'm sorry. Sherry Zowader, National Council of Jewish women.

MS. ZOWADER: Thank you. I am Sherry Zowader, New Jersey State Public Affairs Vice Chairwoman of the National

Council of Jewish Women, a nonprofit, volunteer organization dedicated to advancing human welfare through a multifaceted program -- 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 54, 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 States Constitution.

In our history there has been one Constitutional convention called for the expressed purpose of revising the Articles of Confederation. It is important to note that 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 the 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. Holding a Constitutional convention at this point in our history would set a dangerous precedent. The 10,000 member families of the NCJW in the State of New Jersey vigorously oppose ACR-54, and urge you to do the same. Thank you.

ASSEMBLYMAN ZIMMER: Thank you. Has your organization been involved at all in the proposed legislation to answer some of these questions that you raised -- the procedural questions involving the Constitutional conventions?

MS. ZOWADER: No, basically because we don't want to see a Constitutional convention called.

ASSEMBLYMAN ZIMMER: So you feel that past enacting of procedural legislation might enhance the prospects for a Constitutional convention?

MS. ZOWADER: No.

ASSEMBLYMAN ZIMMER: Don't you think you ought to get involved in it? If you're so concerned about the consequences--

MS. ZOWADER: Absolutely.

ASSEMBLYMAN ZIMMER: --I would urge you to get involved in the legislation.

MS. ZOWADER: But my feeling is to go back to the fact that we as citizens of this country have the right to select the people that -- number one -- are better educated. Not necessarily all on their own, but due to the fact that they have staff and have availability to materials. So they then can become -- not really instant -- superstars on an issue, but so they know better than we do. I unfortunately feel that when I vote for someone, I am voting for someone who is going to look after the best interests not only of myself, but in fact, of the issues that I believe in. And if, as unfortunately Mr. Courter doesn't think that the Congress is doing its job, well I tend to disagree with him. I feel that there must be

something awry if they don't want it. I don't-- I mean I just--

ASSEMBLYMAN ZIMMER: So you think if Congress doesn't want it, then you feel that Congress might have--

MS. ZOWADER: Who else do I trust? Who else do you put your faith into governing the country?

ASSEMBLYMAN ZIMMER: I'm touched by your trust in us elected officials. It's a very rare occurrence.

MS. ZOWADER: Well, it's probably very naive.

ASSEMBLYMAN ZIMMER: I think you're right.

MS. ZOWADER: But I believe in the system. Then are you saying, in fact, that the fact that we have elected officials that we are being washed out and put over all the time?

ASSEMBLYMAN ZIMMER: No, I'm saying that we work for you. I'm saying that the job of the citizen is the most important job. I believe that even now that I'm in office. I still have a button at home that says "Question Authority." I don't wear it much anymore, but I think it's healthy for a democracy.

MS. ZOWADER: I definitely will question. Obviously I'm here. I have a question. But my point is I am not the most knowledgeable person on this. I don't have-- I have a staff to draw from, and can get whatever I need to, I think.

ASSEMBLYMAN ZIMMER: The specific point I was making was that if you have such a concern about the unanswered questions involved in the Constitutional convention, even if New Jersey doesn't pass this resolution but two other states do and we're put into a Constitutional convention, I would suggest that many of those questions can be answered by legislation which has been proposed and has been under consideration for several years. I would suggest that those groups that have sincere concerns about the unanswered questions involved in a Constitutional convention set to work to try to answer some of them and try to clarify some of the issues. Thank you very much for your testimony.

MS. ZOWADER: Thank you.

ASSEMBLYMAN ZIMMER: Is there anyone else who would like to testify? (negative response) Thank you all for your patience, all those of you who are left. We shall continue this hearing I hope in November, the date and place to be announced.

**(HEARING CONCLUDED)**

**APPENDIX**



# LIBERTY LOBBY

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## Testimony of

Trisha Katson, legislative director,  
Liberty Lobby

Before the New Jersey Assembly  
State Government Committee  
Testimony on ACR ~~53~~ 54

October 20, 1986

We oppose A.C.R. ~~53~~ because:  
The idea of a Constitutional Convention at this time, with so many groups and individuals in great positions of power advocating changes in our Constitution, is a dangerous one; and the balanced budget amendment itself now moving through Congress is not only unnecessary but is fraudulent and in its wording would actually legalize practices now engaged in by Congress that are in no way in the interests of American citizens.

The entire debate on this issue makes it seem on the surface that if you oppose the petition for a Constitutional Convention to balance the budget then you must be against balancing the budget and, in the traditional liberal-conservative thinking, therefore must favor increasing taxes and spending. But I have spent a lot of time researching this issue this year and have discovered that this whole drive for a Constitutional Convention involves far more than simply balancing the budget.

The Balanced Budget Amendment now before Congress, S.J.R. 5, introduced by Sen. Strom Thurmond (R-S.C.), has a section that says: "Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principals."

What this section will do is legalize the current practice of borrowing to finance the deficit. It continues to allow the government to borrow and places outside of the budgetary process the current practice of our government borrowing from banks and issuing government securities and bonds, mostly to banks and wealthy individuals, who are then guaranteed dividends on their investments by the U.S. taxpayer.

The so-called "Tax Limitation/Balanced Budget Amendment" also neither mandates a balanced budget nor does it limit taxes. Taxes could be hiked beyond the rate of increase in "national income" by a simple majority of Congress.

And just what is the national income? According to the Senate Judiciary Committee report (Report No. 97-151), this

could mean the gross national product, personal income, disposable personal income, or the gross domestic product. And the definition could change from year to year.

The amendment would not preclude Congress from authorizing agreements that guarantee loans. It is such loan guarantees and monetizing of foreign debt, made possible through passage of the Monetary Control Act of 1980, that have made our national debt \$12 trillion, rather than the \$1.4-trillion figure commonly known.

The amendment would also allow Congress to continue its practice of imposing increased costs upon the private sector through rules and regulations.

Certain words used in the amendment—"receipts, borrowing, outlays, repayment of debt principal" etc—would not be defined in strict terms even though they would be in our Constitution. Their meaning would be defined and redefined by statute or court definitions.

If Congress didn't abide by this balanced budget amendment—and there's no reason to think it would in light of its history of flagrantly violating the Constitution—could an angry individual or group take his senators or representative to court?

Currently there are 44 states that have balanced budget amendments in their constitutions. Yet all 50 states have unfunded liability and many are deeply in debt. Maryland, for instance, balances her budget each year but is reportedly about \$250 billion in debt.

### NO CON CON

We also strongly oppose a Constitutional Convention. It is not necessary to have one to balance the budget.

As for the so-called "protective" device that convention advocates refer to—that whatever comes out of a convention must be ratified by three-fourths of the states—Article V of the Constitution says that the state legislatures do not have to be involved in the ratification process if Congress so chooses. Ratification can be done by state conventions and it is unknown at this time who the delegates to such conventions might be. And Article V does not give Congress any right to itself study anything coming out of a Constitutional Convention.

### FIRST CON CON

The only precedent we have for what might happen at a Constitutional Convention is the 1787 convention. The delegates were instructed to amend the Articles of Confederation in specific ways, but once behind closed doors, they illegally exceeded the authority granted to them and ended up throwing

away the Articles and writing our U.S. Constitution.

Fortunately, the end result was a brilliant document, the first of its kind in the world where the people and not the government were sovereign. We will not be as fortunate next time.

The convention proceedings were held in secret and Madison's notes, the most accurate record of the convention, were not released until 30 years later. It is interesting to note that Sen. Orrin Hatch's (R-Utah) bill setting procedures for a convention, which is moving through the Senate, stipulates that outsiders will not be allowed to question delegates on any speech or debate they give in the convention.

As to the argument that a Constitutional Convention is the opportunity for "the people" to take part, I recently visited and watched the state constitutional convention in New Hampshire. Many extremely knowledgeable citizens of that state thought the proceedings were a farce and a violation of the separation of powers and deprivation of the people's rights. The convention was controlled by a delegation dominated by lawyers, state representatives and senators and judges. All of the major committees were controlled in numbers by the judiciary.

These citizens believe that what happened at their recent state constitutional convention will be a model for what will happen nationally at a convention to amend the U.S. Constitution.

Speaking on behalf of the 26,000 Board of Policy members of Liberty Lobby, let me conclude that a Constitutional Convention at this point in history would be a dangerous occurrence that would not improve our own Constitution. With the control of both major political parties by internationalist interests—that's why the Populist Party, which espouses "America-first," populist and nationalist principles, was born this year and why I work for it as a public relations director—a convention is certain to be controlled by internationalist interests.

We do not need an amendment to our Constitution to balance the budget and we certainly do not need and firmly oppose the fraudulent one moving through Congress that will legalize its criminal borrowing practices. The problem of balancing the budget will be solved by forcing Congress to obey the Constitution as written. It is Congress's disobedience to our Constitution, which its members are sworn to uphold, that is causing an unbalanced budget and many other ills our nation faces today. ●

# THE JEWISH FEDERATION OF GREATER MIDDLESEX COUNTY

SUITE 101

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October 21, 1986

Mr. Chairman, Members of the Committee:

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*Executive Director*  
Michael Shapiro

*Associate Exec. Dir.*  
Joan Kemeny Paru

My name is Lawrence Grossman. My colleague, Martin Spritzer, and I are here today representing the Jewish Federation of Greater Middlesex County. I am a member of the Federation's Board of Directors and its Government Liaison for community relations work. Mr. Spritzer is the Federation's chairman of the Local and National Affairs Committee. We are both lay participants with the Federation and are here, rather than at our businesses, because of our community's strong feelings about ACR-54.

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-54. We also publish a biweekly newspaper, The Jewish Journal, which goes into almost every Jewish home in our region.

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,

## SERVING THE JEWISH COMMUNITIES OF:

Avenel, Carteret, Colonia, Cranbury, East Brunswick, Edison, Fords, Highland Park, Iselin, Jamesburg, Metuchen, Milltown, Monmouth Junction, New Brunswick, North Brunswick, Old Bridge, Parlin, Perth Amboy, Piscataway, Plainsboro, Sayerville, Somerset, South Brunswick/Dayton, South Brunswick/Kendall Park, South River, Spotswood, Woodbridge

-2x-

such as the Jewish War Veterans, Jewish Family services, Hadassah, B'nai B'rith, the "Y"s, and the day schools.

Our community is very concerned about ACR-54. 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 recently 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 to our Federation's position on ACR-54, which Mr. Spritzer will presently express. I say all this by way of preamble to Mr. Spritzer's substantive discussion of ACR-54 to emphasize that in our community, where this issue has already been tested at the grass roots, there is a strong and overwhelming unanimity of views.

# THE JEWISH FEDERATION OF GREATER MIDDLESEX COUNTY

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October 21, 1986

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In 1987 the United States will celebrate 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

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*SERVING THE JEWISH COMMUNITIES OF:*

Avenel, Carteret, Colonia, Cranbury, East Brunswick, Edison, Fords, Highland Park, Iselin, Jamesburg, Metuchen, Milltown, Monmouth Junction, New Brunswick, North Brunswick, Old Bridge, Parlin, Perth Amboy, Piscataway, Plainsboro, Sayerville, Somerset, South Brunswick/Dayton, South Brunswick/Kendall Park, South River, Spotswood, Woodbridge

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 magnificent document known as the Constitution by approving the call for a Constitutional Convention as set forth in Assembly Concurrent Resolution No. 54 of 1986? 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?--Legal opinion is divided, and no one really knows. 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 text, 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 54 should be defeated.

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## RESOLUTION ON CONSTITUTIONAL CONVENTION

WHEREAS, As we approach the Bicentennial Anniversary of our Constitution, it is appropriate to reaffirm our commitment to the ideals which are enshrined in that document and renew our appreciation for the wisdom of its framers;

WHEREAS, For our Jewish community the constitution is particularly cherished for the individual and religious rights which it embodies and upon which we place inestimable value;

WHEREAS, The New Jersey Legislature has before it Assembly Concurrent Resolution No. 54 of 1986 which would petition the Federal Government to convene a Constitutional Convention to consider a balanced budget amendment;

WHEREAS, Were a Constitutional Convention to be held, the subject of the convention could not with certainty be limited to the balanced budget issue, and therefore, those individual and religious freedoms which we so strongly cherish could be fundamentally altered; and

WHEREAS, There exist alternative means of addressing the budgetary imbalance which do not jeopardize the integrity of our current constitution;

Be It Resolved That the Jewish Federation of Greater Middlesex County hereby expresses its unequivocal opposition to Assembly Concurrent Resolution No. 54 which calls for the convening of a constitutional convention.

Adopted by The Board of Directors  
Jewish Federation of Greater Middlesex County  
October 20, 1986

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SERVING THE JEWISH COMMUNITIES OF:

Avenel, Carteret, Colonia, Cranbury, East Brunswick, Edison, Fords, Highland Park, Iselin, Jamesburg, Metuchen, Milltown, Monmouth Junction, New Brunswick, North Brunswick, Old Bridge, Parlin, Perth Amboy, Piscataway, Plainsboro, Sayerville, Somerset, South Brunswick/Dayton, South Brunswick/Kendall Park, South River, Spotswood, Woodbridge



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Mr. Chairman, members of the State Government Committee, my name is Esther Abrams, I live in Princeton, N.J. and I am Chairman of the New Jersey State Legislative Committee of the American Association of Retired Persons, or AARP. I am here representing the over 860,000 AARP members in New Jersey and the 100 plus chapters in our state.

The AARP nationally, as well as on the state level, is opposed to calling for a constitutional convention for the purpose of writing a balanced budget constitutional ammendment. The United States Constitution in Article V provides two methods of ammending the Constitution---the traditional Congressional method by which all 26 ammendments have been adopted up to this time, and the convention method which has never been used!

Proponents of attempting this convention method for the first time in our history claim that it can be limited to one issue, a balanced budget. With this statement they prove that they are clearly indulging in wishful thinking! Representatives of groups with many different political viewpoints, as well as legal scholars, have shown that in Article V there is no enforceable mechanism to prevent a convention from reporting out wholesale changes in our Constitution and Bill of Rights.

The AARP has over 23 million members nationwide, and these members have many diverse viewpoints. Since Article V does not include any guidelines or procedure for the convening and functioning of a convention, and since there is no enforceable mechanism to ensure representative selection of delegates, there is also a clear danger that a runaway convention in the hands of single-issue groups would take away our most precious freedom, the right to have and express these diverse viewpoint

We know that New Jersey is a critical state in this effort, because 32 states have already petitioned Congress to call a constitutional convention on a balanced budget ammendment. Only 34 states are needed! But the irresponsible way that several of these states reached such a critical decision compounds the responsibility of New Jersey, our legislators and our citizens. I would like to quote Melvin Laird, the Secretary of Defense in the Nixon administration and also a Representative in the U.S. Congress for 17 years, he said, "Over one/half of the states calling for a convention have done so without the benefit of public hearings, debate or recorded vote. This momentous decision in other words, is being made surreptitiously, as if it cannot withstand the scrutiny and discussion of a concerned and intelligent citizenry." End of quote. Of course I am here today because this is not the way our legislators operate in New Jersey; and I would like to express my appreciation of this fact.

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700 (over )

Vita R. Ostrander *President* Cyril E. Bruckfield *Executive Director*

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