

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Jan Brown, on February 15, 1989, at
8:02 a.m.

ROLL CALL

Members Present: All Except:

Members Excused: Rep. Gervais

Members Absent: None

Staff Present: Judy Burggraff, Secretary; Lois Menzies, Staff
Researcher

DISPOSITION OF HB 234

Hearing Date: January 25, 1989

Motion: Rep. Cocchiarella moved HB 234 DO PASS.

Discussion: Rep. Cocchiarella requested Tom Schneider to explain the fiscal notes comparison (Exhibit 1). He said the disagreements on the fiscal note concern whether there are savings derived by people retiring and jobs being left open for people to be hired at a lower salary. Mr. Schneider said the comparisons of the Budget Office and sponsor fiscal notes are fairly confusing, but it doesn't really matter what happens to salaries. Whether we would save any money through retirement or not is something you have to decide in your own minds. This bill changes the formula for retirement from 1/60 to 1/56. The bill will be paid for by assessing the employee and the employer.

REP. PHILLIPS said that the sponsor's fiscal note states that 177 people will retire and 10 percent of those jobs will be left unfilled. He asked Mr. Schneider to explain this statement. Mr. Schneider said that is an assumption of 10 percent of the people who would not be replaced. That is based solely on the fact that the governor has committed to not filling jobs. That would be 10 percent the first year.

Amendments, Discussion, and Votes: None

Recommendation and Vote: A roll call vote was taken. The motion
CARRIED 16 - 2 (see roll call vote)

DISPOSITION OF HB 317

Hearing Date: February 3, 1989

Motion: Rep. Cocchiarella moved HB 317 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: The Subcommittee's amendments were distributed (Exhibit 2). Rep. Cocchiarella moved the amendments and explained them. She said that there were objections to the bill as drafted from the university system. The bill basically penalized everyone to take care of a few problems of people who would retire with more than they should have based on the amount they had contributed to the Teachers' Retirement System (TRS). With the amendments, we have created a statement of intent. The amendments represent a compromise between the faculties of the universities and the TRS Board.

REP. ROTH asked how Rep. Eudaily feels about the amendments. REP. COCCHIARELLA said that he was in agreement with the amendments and recognized the problem.

The motion CARRIED unanimously

Recommendation and Vote: HB 317 DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF HB 357

Hearing Date: February 7, 1989

Motion: Rep. Phillips moved TO TABLE HB 357.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED 16 - 2, with Reps. Cocchiarella and Whalen voting no.

DISPOSITION OF HB 502

Hearing Date: February 9, 1989

Motion: Rep. Davis moved TO TABLE HB 502.

Discussion: Chairman Brown said that Rep. Wyatt had told her that she had brought the bill before the Committee as a

constituent request. She felt that she had carried out her responsibility. It was up to the Committee as to what we wanted to do with the bill.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED 16 - 2, with Reps. Whalen and Campbell voting no.

DISPOSITION OF HB 543

Hearing Date: February 14, 1989

Motion: Rep. Davis moved HB 543 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. SQUIRES moved the sponsor's amendments. The sponsor's amendments increase the fee on motor vehicles by only fifty cents rather than \$1. The motion CARRIED unanimously. REP. DAVIS moved HB 543 AS AMENDED DO PASS.

REP. PHILLIPS asked what the average premium for a state employee is. Dave Ashley, Department of Administration, said that for the average employee it is about \$101 per month cost. REP. PHILLIPS said he is in total sympathy with the highway patrolmen. "But when you give one system a benefit, you set a precedent. How will we afford it? I agree that the cost of two postage stamps is not much, but I think we will be setting a precedence that will be hard to live with."

REP. COCCHIARELLA said that the highway patrol retirement system is not the same as other systems because officers receive no social security. She said that this is the least we can do, especially when you look at how little they receive each month.

Recommendation and Vote: The motion CARRIED unanimously.

DISPOSITION OF HB 605

Hearing Date: February 14, 1989

Motion: Rep. Whalen moved HB 605 DO NOT PASS.

Discussion: REP. WHALEN said the basis for his motion is that the offset is now in the Department of Revenue. He said he was surprised at the testimony which said in effect that one department can do it better than another.

REP. CAMPBELL said he disagreed with Rep. Whalen because most of the checks are paid out by the State Auditor's Office, not the Department of Revenue. They pay out to a lot of people besides state employees. It will give the State Auditor's Office a much better handle on who they are sending the checks to. REP. CAMPBELL offered a substitute motion that HB 605 DO PASS.

REP. ROTH said that one of the things we should watch and pay attention to is the fact that the job apparently is not getting done over at the Department of Revenue by their own admission. REP. ROTH thinks that the indication that a \$40,000 investment may end up returning an additional \$500,000 should be considered. He said that not all that money would go to the state but some will go to single mothers trying to collect their child support. REP. ROTH said, "If we can make that more efficient and more effective it is certainly worth the effort to do so. I will support the substitute motion."

REP. SPRING said he is in support of the substitute motion, mainly on the testimony of the people from the department that admitted that there is a problem.

REP. WHALEN said he would like to make a simple observation on the substitute motion that Department of Revenue is doing the job now. He said he thinks that if this bill were to pass it would take away from the focus of the office. REP. WHALEN said, "I think we should kill this bill and tell them to do their job."

Amendments, Discussion, and Votes: REP. WHALEN moved the sponsor's technical amendment. The motion CARRIED unanimously.

Recommendation and Vote: REP CAMPBELL moved HB 605 DO PASS AS AMENDED. A roll call vote was taken. The motion CARRIED 11 - 7 (see roll call vote).

DISPOSITION OF HB 632

Hearing Date: February 14, 1989

Motion: Rep. Campbell moved HB 632 DO NOT PASS.

Discussion: CHAIRMAN BROWN noted that the Committee has not yet received a fiscal note on the bill. REP. PHILLIPS said this is the same as SB 149 which was introduced last session, but there is more money in this one. Also there is an unfair situation here where people just coming into the system are going to pay for those just retiring.

REP. WHALEN moved to defer action on HB 632 so the Committee could see a fiscal note and to talk to the teachers to see what they think. The motion CARRIED.

HEARING ON HB 580

Presentation and Opening Statement by Sponsor: Rep. Mike Kadas, House District 55, introduced the bill. Under current law, if a member of the Public Employees' Retirement System (PERS) receives a lump-sum payment for unused vacation or sick leave upon terminating his or her employment, the member and the employer must make contributions to the retirement system on the lump-sum payment. This amount is considered part of the member's compensation; if the member is ready to retire, the lump-sum payment is considered in calculating his or her retirement allowance. This bill provides that a lump-sum payment is not considered compensation, and no member or employer contributions may be made on the payment unless the member elects to contribute. If the member elects to contribute, the employer must also contribute. If contributions are made, the lump-sum payment may be used to calculate the member's final compensation for purposes of determining his or her retirement allowance.

Rep. Kadas said that a constituent brought the bill to him. He had worked for the city of Billings for several years and had accrued a great deal of sick and vacation leave. He quit working for the city of Billings and immediately went to work for the city of Missoula. In Billings he accrued six weeks of vacation and sick leave. He paid PERS on that vacation and sick leave, but it did not get added to his benefit. He did not get an extra six weeks' worth of service credits for that even though he still paid the benefits. This bill would say that he wouldn't have to pay on that additional accrued sick leave and vacation unless he wants to. Rep. Kadas said that if this problem exists for this individual, it probably exists for others.

Testifying Proponents and Who They Represent: None

Testifying Opponents and Who They Represent:

Larry Nachtsheim, Administrator, Public Employees' Retirement Division

Opponent Testimony:

LARRY NACHTSHEIM presented written testimony (Exhibit 3).

Questions From Committee Members:

REP. ROTH asked if the six additional weeks of payment would be used to calculate the man's retirement benefits. Mr.

Nachtsheim said only if he retired within a three-year period from when it was paid.

REP. SPRING asked if this is strictly an isolated case. Mr. Nachtsheim said he was not aware of this particular case until the bill was entered. The Board has some latitude to deal with these type of cases. Had the board been petitioned, Mr. Nachtsheim said he didn't know how they would have acted.

Closing by Sponsor: Rep. Kadas said he does not think it is fair to this one individual that he ends up paying into PERS and gets no benefit. If the PERS Board can deal with that through its own rulemaking, that would be great. Rep. Kadas said that he hasn't seen that happen as the individual tried to get some satisfaction and nothing has happened.

HEARING ON HB 636

Presentation and Opening Statement by Sponsor: Rep. Bob Pavlovich, House District 70, Butte, introduced the bill. This is an agency bill requested by the Department of Institutions. It revises the provisions concerning the per diem and ancillary charges for care of residents at Montana State Hospital, Montana Development Center, Montana Veterans' Home, Montana Center for the Aged and Eastmont Human Services Center.

Testifying Proponents and Who They Represent:

Nick Rotering, Legal Counsel, Department of Institutions

Janie Wunderwald, Reimbursement Chief, Department of Institutions

Proponent Testimony:

NICK ROTERING said that the measure is a housekeeping one to clarify the reimbursement statutes for the Department of Institutions. By law the Department assesses reimbursement charges at specific institutions. They are primarily the mental health institutions, those for the mentally retarded and the Montana Veterans' Home. The correctional facilities are not included.

JANIE WUNDERWALD presented written testimony (Exhibit 4).

Testifying Opponents and Who They Represent: None

Questions From Committee Members:

REP. ROTH said that on page 1, line 24, the Department of Institutions is adding to the list of services, which

previously included physical therapy, now occupational therapy. Doesn't Worker's Compensation handle occupational therapy in this situation and why would it have to be included? Mr. Rotering said we are providing occupational therapy at Boulder River School to the residents now. We want to be able to bill for that. These people have never been employed so they would not be covered under Workers' Compensation. REP. ROTH asked who is being assessed. Mr. Rotering said the state is assessing a responsible person for the patient. Most of our revenue comes from third-party payments such as insurance carriers.

Closing by Sponsor: None

DISPOSITION OF HB 636

Motion: Rep. O'Connell moved DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously. REP. ROTH moved to place HB 636 on the CONSENT CALENDAR. The motion CARRIED unanimously.

HEARING ON HB 599

Presentation and Opening Statement by Sponsor: Rep. Vivian Brooke, House District 56, Missoula, introduced the bill. This bill expands the provisions concerning false publications (letters, circulars, bills, placards, posters, etc.) relating to a candidate, political committee or ballot issue. A person who knowingly and with reckless disregard violates these provisions may be prosecuted by the Commissioner of Political Practices or a county attorney. The bill also applies the Voluntary Code of Fair Campaign Practices to officers of political committees. If a candidate or officer of a political committee who subscribes to the code violates the code, the violation is grounds for filing an action under the false publications law.

Rep. Brooke said that she was unopposed this fall so she brings the bill before the Committee with no axe to grind or complaints against the office or her opponent. She said that this bill would bring no new sections into the law, but it strengthens the Political Practices Office. In section 2, we want to include the officer of a political committee to make the decision on whether to sign or not sign the code.

Rep. Brooke said that when they were working on this bill that they looked at some statutes in other states. She passed out (Exhibit 5) an example from various states.

Testifying Proponents and Who They Represent:

C. B. Pearson, Executive Director, Common Cause in Montana

Margaret Davis, League of Women Voters

Don Judge, Montana State AFL-CIO

Charles Walk, Executive Director, Montana Newspaper Association

Todd Eastin, self

Proponent Testimony:

C. B. PEARSON presented written testimony (Exhibit 6) and an information sheet on polling (Exhibit 7).

MARGARET DAVIS said that the League of Women Voters of Montana rise in favor of HB 599 and urged a do pass recommendation.

DON JUDGE said that he represents Montana State AFL-CIO and said we support HB 599. He said that they have been before the Legislature before asking for stronger enforcement of our campaign and political practices laws. For greater disclosure of those laws, we think this bill takes a gigantic step in that direction. We want to point out to the Committee that this in no way infringes upon any communication which we have directly to our memberships regarding campaigns. It affects political committees. Mr. Judge said he has two questions about the bill that he thinks the Committee should look at. First, the Code of Fair Campaign Practices was written for candidates and not for officers of political committees. Second, Mr. Judge said the code should be clarified with respects to officers of political committees. Mr. Judge was concerned about editors of newspapers being given immunity from false advertising that they publish but which they are not responsible for putting together. The bill should continue to cover the editorials made in newspapers regarding candidates. He said they supported the legislation with those two caveats.

CHARLES WALK said he represents the Montana Newspaper Association and that they had some serious reservations about this bill. He said that there is an amendment to come, which will resolve some of their problems. We see the bill as a vehicle to strengthen the campaign practices law. In researching the bill, we contacted the newspapers and media in Oregon, which have been operating under a similar law.

There is a media protection clause in the Oregon law that covers liability for dissemination of false advertising. We feel that is very important for this piece of legislation. The Oregon people said that they had very little problem with the bill; in fact, they like working with the law because it gives them the ability to take an advertisement they have some question about and go back to the advertiser and say it is not our responsibility, but we think it would be in your best interest to take another look at it and make some changes before it is run.

TODD EASTIN said that this bill is an excellent effort to reduce the aspects of negative campaigning that went on in the last election. Mr. Eastin said that he understands that you can't reduce all of the mud that goes out but this makes a good step toward it. The fact that participation with this bill is voluntary doesn't weaken it. Those that do participate will be noticeable and perhaps those who don't can be called by the voters. It is often said that Montana is behind the times in the way they approach doing things. This is an excellent chance for us to step forward and take the lead and be a good example of what an election is all about.

Testifying Opponents and Who They Represent:

Roger Tippy, self

Opponent Testimony:

ROGER TIPPY said that his opposition of the bill goes only to the coverage of ballot issues and political committees working on ballot issues. Mr. Tippy said there are three good reasons this bill should not be reported out if it has anything to do with initiatives or ballot issues. First, this bill would regulate speech about ideas in violation of the first amendment to the Bill of Rights. Secondly, ballot issues are like bills. Debate over ballots is like debate in the Legislature on second reading. However, Legislators have immunity from libel. Third, every time you place a subjective term into the campaign laws, you make the job of the Commissioner of Political Practices much more difficult. You are asking the Commissioner to make an interpretation about whether a statement about a ballot issue is true or not. Mr. Tippy presented a copy of a California court decision (Exhibit 8).

Questions From Committee Members:

REP. GERVAIS said that a lot of the negative campaigning has been coming nationally over the television. Do we have any control over that? Rep. Brooke said no, other than turning the TVs off. REP. GERVAIS asked if we did have some literature or negative campaign material from nonresidents,

could we do anything. Rep. Brooke replied that she hadn't thought about that.

REP. PHILLIPS said that he has always signed fair practices codes. He asked why a candidate would want to sign the code if he or she would be subjected to prosecution. Rep. Brooke said that would be a decision the candidate would have to make. She said that she would sign so she could make it known that it would be something she would try to follow.

REP. ROTH said he noticed in the language on page 1 that the bill takes out the language that says, "knowingly misrepresents the voting record or position." He said he has a problem with information that may be taken out of context. While not false, without showing the whole picture or without representing the entire issue, under this bill, that would not be considered wrong. He said he has a real problem with that language being taken out. REP. ROTH asked Rep. Brooke if she would have a problem with putting that language back in. Rep. Brooke said she didn't think she would have. She said, "When the bill was drafted, we stuck fairly close to the Oregon law, and I share your concern about that total picture with respect to voting record."

Closing by Sponsor: Rep. Brooke said that, as Charles Walk from the Montana Newspaper Association mentioned, we do have an amendment (Exhibit 9).

She said she would like to reemphasize that this is an issue that the public is very concerned about. Truth is an illusive thing, but it shows that the public would like us to state the truth as openly and as honestly as we can. The idea in this bill is to prevent the kind of advertising statements that we see that are false. She said that the freedom of speech we have in this country does not protect us from false speech. With regards to the objection about the ballot issue, she said that the Committee should just think that over. The ballot issues and political committees have become a reality that we all live with during campaigning. The voting public may or may not be privileged to have all of the information that those working on the campaigns do. The public wants to know if those groups are telling the truth. This type of legislation has been in operation in four states with no problems.

HEARING ON HJR 19

Presentation and Opening Statement by Sponsor: Rep. Fred Thomas, House District 62, introduced the resolution. This resolution is a continuing application to Congress to call a constitutional convention for the purpose of proposing an amendment to the United States Constitution. The proposed

amendment would limit to two the number of terms a United States representative or senator could serve in each house and increase the term for representatives from two to four years. If Congress proposes a similar amendment and submits it to the states for ratification, this application terminates.

Rep. Thomas said we have a pressing problem with our Congress and something must be done. The problem with the federal election system is that it is nothing but a re-election system. People who go to Congress get addicted to it and do not care about representing people at home; they just want to stay. This would put Montana on record as saying "you can only serve two terms in each house." He said that 99 percent of every congressman that runs for re-election is re-elected. He said that if the Committee cannot pass this resolution the way it is, he encouraged it to at least amend it to encourage Congress to do this.

Testifying Proponents and Who They Represent: None

Testifying Opponents and Who They Represent:

Betty Babcock, Eagle Forum

Mary Doubek, Helena Eagle Forum, Pioneer's Chapter

Jim Murray, Executive Secretary, Montana AFL-CIO

Terry Murphy, President, Montana Farmers Unions, Montana Grange, Montana Cattlemen's Association, Montana Grain Growers' Association, Montana Cattle Feeders' Association, Montana Stockgrowers' Association and Women Involved in Farm Economics (WIFE)

Phil Campbell, Montana Education Association

Opponent Testimony:

BETTY BABCOCK said she was a former legislator and a delegate to Montana's Constitutional Convention (MCC). She requested the Committee to protect the U.S. Constitution. There are those that would like to destroy this document. One way is to change the number of terms that a Congressman can serve, limiting the number of terms a President can serve, or by offering an amendment to balance the budget. At MCC a precedent was established for choosing delegates and establishing procedures at the state level. No such precedent exists on the national level. Ms. Babcock said there would be cutthroat competition between special interest groups when delegates would be chosen. There is no way to be assured that a convention could be called for the sole purpose of changing the number and the length of terms a member of Congress could serve. This body would have

nothing to say about why it was called or what the rules would be. After the delegates were chosen, they would have sovereign power and they would decide what issues they could present.

MARY DOUBEK distributed a photocopy of the CALIFORNIA REPORTER (Exhibit 10). She read to the Committee the areas that were marked with highlighting marker.

JIM MURRAY presented written testimony (Exhibit 11).

TERRY MURPHY presented written testimony (Exhibit 12).

PHIL CAMPBELL expressed opposition to the resolution.

Questions From Committee Members:

REP. ROTH said that currently there are a number amendments to our Constitution called the Bill of Rights. He asked Mr. Murray if we did not have the Bill of Rights, and there was a call for a Constitutional Convention to put the Bill of Rights in our Constitution, would he still oppose a Constitutional Convention. Mr. Murray said that issue isn't before us today, and it would be something that they would have to give a lot of thought and consideration to.

Closing by Sponsor: Rep. Thomas said he thinks he can sum up the opposition to this bill with a famous quote from, he thinks, President Kennedy, "All we have to fear is fear itself." That is what every one of these proponents talked about. He emphasized that this resolution requests a constitutional convention for the sole purpose of limiting congressional terms. If other issues are considered, this request is void.

DISPOSITION OF HJR 19

Motion: Rep. Phillips moved TO TABLE HJR 19.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED 16 - 2, with Reps. Roth and Campbell voting no.

DISPOSITION OF HB 620

Hearing Date: February 14, 1989

Motion: Rep. Whalen moved HB 620 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: Rep. Whalen presented amendments (Exhibit 13) and explained them. The amendments replace all of the language in subsection (1). Rep. Whalen moved the amendment.

REP. ROTH offered a substitute motion that the same amendment be adopted except that the last four words ("or other public officials") be stricken. It would read, "A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information is an official dissemination by election administrators."

The motion CARRIED unanimously.

Recommendation and Vote: Rep. Whalen moved HB 620 AS AMENDED DO PASS. The motion CARRIED 16 - 2, with Reps. Hayne and Roth voting no.

DISPOSITION OF HB 78

Motion: Rep. Phillips moved TO TAKE HB 78 FROM THE TABLE.

Discussion: REP. PHILLIPS said that Ray Harbin, a county commissioner, came to him and talked about the bill. Mr. Harbin said that the reason that the Committee didn't want to do anything with this bill primarily was because it needed money. They have come up with a proposal that would not require adding a person but would combine the duties of the Coordinator of Reservation Counties with the duties of the Indian Affairs Coordinator.

REP. RUSSELL said she is concerned about changing the basic intent of the office that has been in existence for some years dealing with Indian affairs. This is the office that deals with the state and with Indian tribes within our state. She said when we start changing that and adding other entities, that really could muddy the water and make things less clear. We can potentially have some problems here. There is access to the Indian Coordinator's Office by the counties, especially those reservation counties, that is readily available.

REP. GERVAIS said he had a chance to look at some of the proposed amendments. He said that if we are going to take a vote to change that position that we should consult with the new coordinator and also with the tribes and the counties concerned.

REP. DAVIS said he was at a funeral the day executive action was taken on the bill. Ray Harbin is his county commissioner. When we met he asked me if I would support this bill, which I did prior to that time but did not have a chance to vote. If you bring it off the table, I am a "yes" vote.

Amendments, Discussion, and Votes: None

Recommendation and Vote: A roll call vote was taken. The motion FAILED on a tie vote, 9 - 9 (see roll call vote).

ADJOURNMENT

Adjournment At: 11:06 a.m.



REP. JAN BROWN, Chairman

JB/jb

3914.min

DAILY ROLL CALL

STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date February 15, 1989

NAME	PRESENT	ABSENT	EXCUSED
Rep. Jan Brown, Chairman	✓		
Rep. Helen O'Connell, Vice Ch.	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Ervin Davis	✓		
Rep. Floyd "Bob" Gervais	✓		
Rep. Janet Moore			✓
Rep. Angela Russell	✓		
Rep. Carolyn Squires	✓		
Rep. Vernon Westlake	✓		
Rep. Timothy Whalen	✓		
Rep. Bud Campbell	✓		
Rep. Duane Compton	✓		
Rep. Roger DeBruycker	✓		
Rep. Harriet Hayne	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Rande Roth	✓		
Rep. Wilbur Spring, Jr.	✓		

STANDING COMMITTEE REPORT

2-15-89
1:05pm
J.O.

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that House Bill 234 (first reading copy -- white) do pass.

Signed: _____

Jan Brown
Jan Brown, Chairman

2-15-89
1:05 pm
J. Q.

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 2

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 317 (first reading copy -- white), with statement of intent attached, do pass as amended.

Signed: Jan Brown
Jan Brown, Chairman

And, that such amendments read:

1. Title, line 10.

Following: "COMPENSATION"

Insert: ", SUBJECT TO RULES ADOPTED BY THE TEACHERS' RETIREMENT BOARD"

2. Page 1.

Following: line 12

Insert: "STATEMENT OF INTENT

It is the intent of the legislature to provide equitable retirement benefits to all members of the teachers' retirement system based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their last years of employment.

The bill provides that the amount of each year's earned compensation that may be used in calculating a member's average final compensation may not exceed the member's

2-15-87
11:05pm
[Signature]

earned compensation for the preceding year by more than 10%, except as provided by rule by the board. The legislature intends that the board's rules exempt from the 10% statutory cap increases that:

- (1) result from collective bargaining agreements;
- (2) have been granted by the employer to all other similarly situated employees; or
- (3) have been received as compensation for summer employment.

In addition, the legislature intends that the board's rules require a member to provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% statutory cap."

3. Page 2, line 16.

Strike: "The"

Insert: "In determining a member's retirement allowance under 19-4-802 or 19-4-804, the"

4. Page 2, lines 18 and 19.

Strike: "the" on line 18 through "of" on line 19

5. Page 2, line 19.

Following: "of the"

Insert: "member's"

6. Page 2, lines 20 through 23.

Strike: "," on line 20 through "system" on line 23

Insert: "by more than 10%, except as provided by rule by the retirement board"

7. Page 2, line 25.

Strike: "shall be"

Insert: "is"

2-15-89
1:05pm
J.B.

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 543 (first reading copy -- white) do pass as amended.

Signed:

Jan Brown
Jan Brown, Chairman

And, that such amendments read:

1. Page 6, line 5.

Strike: "\$4"

Insert: "\$3.50"

2. Page 6, line 11.

Strike: "25%" through "revenue"

Insert: "50 cents"

Strike: "this"

Insert: "each"

Following: "fee"

Insert: "collected"

2-15-89
1:05pm
J.C.

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 605 (first reading copy -- white), with statement of intent attached, do pass as amended.

Signed: Jan Brown
Jan Brown, Chairman

And, that such amendments read:

1. Title, line 6.
Following: ";"

Insert: "CLARIFYING THE DEPARTMENT OF REVENUE'S PROCEDURES REGARDING TAX OFFSETS;"

2-15-89
1:05pm
70

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 636 (first reading copy -- white) do pass and BE PLACED ON CONSENT CALENDAR.

Signed: Jan Brown
Jan Brown, Chairman

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 620 (first reading copy -- white) do pass as amended.

Signed: _____

Jan Brown, Chairman

And, that such amendments read:

1. Page 1, line 10.

Strike: "provide"

Insert: "knowingly or purposely disseminate"

2. Page 1, lines 12 through 15.

Strike: "." on line 12 through "official" on line 15

Insert: "or gives the impression that the"

3. Page 1, line 15.

Strike: "or" through "sanctioned"

Insert: "has been officially disseminated"

Following: "by"

Insert: "an"

4. Page 1, line 16.

Strike: "officials"

Insert: "administrator"

February 10, 1989

EXHIBIT 1DATE 2-15-89HB 234

PUBLIC

EMPLOYEES

ASSOCIATION

TO: House State Administration

FROM: Thomas E. Schneider
Executive Director

SUBJECT: House Bill 234

You have now received two fiscal notes and a comparison. To put them in perspective the interest rate assumption really doesn't count and whether there will be savings or not is anyone's guess.

There are some important facts that are just that FACT, and I would like you to decide the bill on that basis.

1. There are two reasons for the bill. First, the employees over the past two years have received little or no salary increases so anyone choosing to retire will be penalized in the calculation of benefits because of salary. Second, the new administration expressed a desire to reduce government by retirement incentive. This bill coupled with HB 235 gives the incentive to 2112 members of PERD to retire now.
2. The bill changes the current formula of years over 60 to years over 56. For the average PERD retiree that means the following:

CURRENT

18/60 = 30% x \$ 21,882 = \$ 6564.60 Annually or \$ 547.05 Monthly

18/56 = 32.413% x \$ 21,882 = \$ 7092.61 Annually or \$ 586.13 Monthly

House Bill 234 will increase retirement for everyone who retires from the system by about 7%.

3. In 1994, when the contribution increase is totally in effect for each \$ 100,000 or payroll the employees will pay \$ 700.00 more than under the current law and the employers will pay \$ 283.00 more.

The assumption of salary or savings do not change these figures. The one question you have to answer for yourself is whether state or local governments will fill all of the positions of those that retire. If you feel that they will not then savings will occur. That's House Bill 234 in its simplest form.

Payouts of vacation and sick leave don't count because the bill doesn't create the payouts and they will occur whether this bill passes or not..



Amendments to House Bill No. 317
First Reading Copy

Requested by the Subcommittee on Hb 317
For the House Committee on State Administration

Prepared by Lois Menzies
February 10, 1989

1. Title, line 10.
Following: "COMPENSATION"
Insert: ", SUBJECT TO RULES ADOPTED BY THE TEACHERS' RETIREMENT BOARD"

2. Page 1.
Following: line 12
Insert: "STATEMENT OF INTENT"

It is the intent of the legislature to provide equitable retirement benefits to all members of the teachers' retirement system based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their last years of employment.

The bill provides that the amount of each year's earned compensation that may be used in calculating a member's average final compensation may not exceed the member's earned compensation for the preceding year by more than 10%, except as provided by rule by the board. The legislature intends that the board's rules exempt from the 10% statutory cap increases that:

- (1) result from collective bargaining agreements;
- (2) have been granted by the employer to all other similarly situated employees; or
- (3) have been received as compensation for summer employment.

In addition, the legislature intends that the board's rules require a member to provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% statutory cap."

3. Page 2, line 16.
Strike: "The"
Insert: "In determining a member's retirement allowance under 19-4-802 or 19-4-804, the"

4. Page 2, lines 18 and 19.
Strike: "the" on line 18 through "of" on line 19

5. Page 2, line 19.

Following: "of the"
Insert: "member's"

6. Page 2, lines 20 through 23.

Strike: ";" on line 20 through "system" on line 23

Insert: "by more than 10%, except as provided by rule by the
retirement board"

7. Page 2, line 25.

Strike: "shall be"

Insert: "is"

TESTIMONY ON

EXHIBIT 3

HOUSE BILL 580

DATE 2-15-89

HB. 580

Larry Nachtsheim, Administrator
Public Employees' Retirement Div.

The Public Employees' Retirement Board is opposed to this bill, first, because it would serve to reduce revenues to the retirement system by over \$100,000 each year. Over a period of time, this could require an increase in employer contributions to maintain the fiscal integrity of the system.

It is our understanding the bill is introduced on behalf of one employee. There may be a few others. This bill would resolve their problem.

On the other hand, every PERS member would lose the right to make their contributions on lump sum termination payouts with pre-tax dollars. The IRS will not allow employees to defer taxes under Section 414(h) on an elective basis. Members of the TRS no longer enjoy deferred taxes on their lump sum contributions because they have elective rights in this area.

Terminating employees, particularly young employees, who do not elect to pay PERS contributions on their lump sum payouts who later return to public employment may wish to purchase the service credits represented by their lump sum payout. The cost of paying the employer and employee contributions, plus interest, on these lump sums may make the purchase cost prohibitive.

From the perspective of the retirement board, this bill does not serve the best interests of the vast majority of the members of the retirement system, and could serve to increase employer costs in future years. Therefore, we respectfully request a do not pass on this bill.

The following is the legal impact regarding HB636 by Representative Pavlovich at request of Department of Institutions.

The legal impact of this bill is to generally revise for clarity and intent, the provisions for defining per diem and ancillary and to clearly address the department's authority regarding assessing and collecting charges for patient care.

Section 1:
53-1-401(1) This section more clearly states the primary group of services defined as medical "ancillary", and removes those services from the definition which are no longer provided. The remaining language would allow for additional medical services, to also be covered by the "ancillary" definition. This section directly relates to the lawful ancillary fee for service authority in assessing billed charges. The section defines the ancillary expenses which must be identified when calculating per diem rates.

53-1-401(7) This section also provides added clarity pertaining to how per diem rates are to be calculated. The statute, as it currently reads, does not provide sufficient enabling language to clearly address how the per diem rates are arrived. Nothing in this section, however, will change or alter the actual method used in per diem calculation. The amendments will simply use language consistent with generally accepted accounting principles, as to what expenses can and cannot be incorporated within the agencies base rates. This section also provides that an institution can have more than one per diem rate depending on the number of treatment units or programs that are provided.

Section 2:
53-1-402 This section relates to those facilities which are subject to the department's reimbursement laws. It amends the authority by clearly addressing the three component processes leading to the collection of revenues for patient care. As the statute currently reads, authority is given for collecting and "processing per diem and ancillary payments," with no mention of the preliminary assessment, or billing function.

Section 3:
53-1-407 This section relates to the department's administrative appeal process. The statute is intended to provide an ultimate avenue of legal adjudication if an assessment is still believed to be excessive, even after a department ruling has been rendered which upholds the validity of the assessment. The department's internal appeal processes, leading up to a possible district court involvement, are specifically covered by 20.22.115, ARM. By adding the word "final" to this section, it brings clarity to the intent. Appeals are still allowable under the administrative procedures act. The term "final" determination is inserted to indicate that the enactment of the appellate review under the administrative procedures act would only be used after the Department makes a "final" determination. This would allow the Department and the responsible person to have an informal opportunity to resolve any conflicts before an actual contested case is filed.

Section 4: This section extends rule making authority to the provisions of this bill.

Section 4: This section extends rule making authority to the provisions of this bill.

Section 5: This section provides the effective date of July 1, 1989.

Essentially this is a simple bill that is a housekeeping matter to clarify existing problems that have been raised in the past with insurance carriers relative to the procedures that the Department uses to assess costs and bill private parties. These statutes were substantially revised in the 1977 session of the legislature. While relatively free of conflict, certain issues have arisen that need to be addressed and clarified in this bill.

EXHIBIT 5

DATE 2-15-89

HB 599

242

NORTH DAKOTA

CORRUPT PRACTICES 16.1-10-06.1

16.1-10-04. Publication of false information in political advertisements - Penalty. No person shall knowingly sponsor any political advertisement or news release containing deliberately calculated falsehoods, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, or constitutional amendment, and whether such publication shall be by radio, television, newspaper, pamphlet, folder, display cards, signs, posters or billboard advertisements, or by any other public means. Any person who shall violate the provisions of this section shall be guilty of a class A misdemeanor.

UTAH

CORRUPT PRACTICES IN ELECTIONS 20-14-28.

20-14-28. False statements in relation to candidates forbidden. No person shall knowingly make or publish, or cause to be made or published, any false statement in relation to any candidate, proposed constitutional amendment or other measure, which is intended or tends to affect any voting at any primary, convention or election.

MASSACHUSETTS

VIOLATIONS OF ELECTION LAWS 56 \43 A

\42 A. False statements relating to candidates or questions submitted to voters.

No person shall make or publish, or cause to be made or published, any false statement in relation to any candidate for nomination or election to public office, which is designed or tends to aid or injure or defeat such candidate.

No person shall publish or cause to be published in any letter, circular, advertisement, poster or in any other writing any false statement in relation to any question submitted to the voters, which statement is designed to affect the vote on said question.

Whoever knowingly violates any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months.

OREGON

260.532 False publication relating to candidate or measure. (1) No person shall cause to be written, printed, published, posted, communicated or circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any advertisement to be placed in a publication, or singly or with others pay for any advertisement, with knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph, publication or advertisement contains a false statement of material fact relating to any candidate, political committee or measure.

(2) A candidate who knows of and consents to a publication or advertisement prohibited by this section with knowledge or with reckless disregard that it contains a false statement of material fact, violates this section regardless of whether the candidate has participated directly in the publication or advertisement.

(3) There is a rebuttable presumption that a candidate knows of and consents to any publication or advertisement prohibited by this section caused by a political committee over which the candidate exercises any direction or control.

(4) Any candidate or political committee aggrieved by a violation of this section shall have a right of action against the person alleged to have committed the violation. The aggrieved party may file the action in the circuit court for any county in this state in which a defendant resides or can be found or, if the defendant is a nonresident of this state, in the circuit court for any county in which the publication occurred. To prevail in such an action, the plaintiff must show by clear and convincing evidence that the defendant violated subsection (1) of this section.

(5) A plaintiff who prevails in an action provided by subsection (4) of this section may recover compensatory damages for all injury suffered by the plaintiff by reason of the false statement of material fact. Proof of entitlement to compensatory damages must be by a preponderance of evidence. Any prevailing party is entitled to recover reasonable attorney fees at trial and on appeal.

(6) A political committee has standing to bring an action provided by subsection (4) of this section as plaintiff in its own name, if its purpose as evidenced by its preelection activities, solicitations and publications has been injured by the violation and if it has fully complied with the provisions of this chapter. In an action brought by a political committee as provided by subsection (4) of this section, the plaintiff may recover compensatory damages for all injury to the purpose of the committee by reason of the false statement of material fact. A political committee may not be sued as defendant in such an action. A recovery made by a political committee which prevails in an action under this section shall be distributed pro rata among the persons making contributions to the committee.

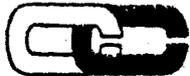
(7) If a judgement is rendered in an action under this section against a defendant who has been nominated to a public office or elected to a public office other than state Senator or State Representative, and it is established by clear and convincing evidence that the false statement was deliberately made by the defendant, the finder of fact shall determine whether the false statement reversed the outcome of the election. If the finder of fact finds by clear and convincing evidence that the false statement reversed the outcome of the election, the defendant shall be deprived of the nomination, or election and the nomination or office shall be declared vacant.

(8) An action under this section must be filed not later than the 30th day after the election relating to which a publication or advertisement was made. Proceedings on a complaint filed under this section shall have precedence over all other business on the docket. The courts will proceed in a manner which will insure that:

(a) Final judgement on a complaint which relates to a primary or nominating election is rendered before the 30th day before the general election; and

(b) Final judgement on a complaint which relates to an election to an office is rendered before the term of that office begins.

(c) The remedy provided by this section is the exclusive remedy for a violation of this section.



COMMON CAUSE/MONTANA

P.O. Box 623
Helena, Montana 59624

(406) 442-9251

EXHIBIT 6
DATE 2-15-89
HE 599

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TESTIMONY OF COMMON CAUSE

IN SUPPORT OF

HOUSE BILL 599

Madame Chairwoman and members of the House State Administration Committee, for the record my name is C.B. Pearson, Executive Director of Montana Common Cause. I am here on behalf of the members of Common Cause.

Common Cause would like to go on record in support of House Bill 599.

It is probably news to most Montanans that this past campaign season was one of the worst in the history of state for negative campaigning. There was also a sharp increase in the number of formal complaints filed with the Commissioner of Political Practices.

Negative campaigning alone isn't necessarily bad. In some instances negative campaigning, based on truthful assertions of differences between candidates or campaigns, can help sharpen the debate or clearly distinguish the candidates or issue at question. However, the use of false or inaccurate advertising in a negative campaign distorts the political process.

In modern campaigns the use of polling has increased the temptation to use false or misleading advertising. Polls can tell a candidate or a ballot issue campaign the means why a voter may vote against a candidate or a ballot issue. Once these reasons are in hand the candidate or political committee is tempted to advertise these points regardless of the truthfulness of the advertisement.

The reason for concern with false and misleading campaigning is the long term harm it causes to the political process. False and misleading

campaigning has as its fundamental purpose to direct a vote against something or someone rather than a vote for something or someone. Therefore, false and misleading campaigning can and often does reduce voter participation and increase voter apathy as voters become aware of the lack of truth in some campaigns.

False and misleading campaigns can unfairly damage the reputations of many candidates, elected officials and ballot ideas. Such campaigns can provide an unfair advantage to unscrupulous candidates or unscrupulous campaign managers and can serve to further erode public confidence in elected officials and direct democracy. False and misleading campaigns discourage people from running for public office, thus weakening our republic. Further, voters, confused by misleading information, are distracted from the more substantive political issues and vote not for their choice of candidates or issues but for the lesser of a set of perceived evils. As a consequence, some political scientists suggest, election results may be skewed and less qualified and deserving candidates may be propelled into office and ballot questions may be unfairly decided.

What do the people of Montana think about political advertising? In a poll commissioned by Common Cause/Montana to follow-up the 1988 election only 51% of those polled found advertising on the ballot issues helpful. On the other hand, 83% of those polled found the voter information pamphlet which presents both sides of the issue was helpful. Clearly, the people of Montana want to have some degree of confidence in the political advertisements presented via the media and other publications.

When polled about a "truth in political advertising" law, 90% said they would favor such legislation. Montanan's are clearly stating they want legislation that will implement a "truth in political advertising" law. The

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HB 599

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time is right to improve our laws covering false publications in political campaigns.

Currently, our campaign laws are inadequate in enforcing laws regarding false and misleading campaigns. Seventeen states have laws that work to curb false information in candidate campaigns, but only four states have such laws that cover ballot issues. Montana's laws covering false information concerning candidates are inadequate to cover the range of publications that occur during campaigns. Further, Montana's campaign laws do not cover false advertising for ballot questions.

With this legislation we can make candidates, campaign managers and ballot committees pause and rethink their campaign as they consider the fact that Montana would have in place a law prohibiting false publication in political campaigns. With this legislation we can change the emerging trend toward the use of false or misleading advertisements in negative campaigns.

We urge you to vote "do pass" on House Bill 599.

Public Opinion Poll of Montana Voters Concerning Political Advertising and Sources of Information

Summary of Findings
by
Dr. E.B. Eiselein

Soon after the general election in November 1988, A & A Research (a professional public opinion polling firm) conducted a poll of 403 Montana residents who voted in the November election. Respondents were picked at random (see "Fact Sheet") and were asked a series of questions about political issues advertising and sources of political information. The sample was proportional to the number of households in each county throughout the state of Montana.

An important point to keep in mind with a public opinion poll is that it is necessary to look beyond the "numbers" and see the "people patterns" there.

One point of interest: for a survey with this sample size, a difference in response of 5% or more is considered statistically significant.

Montana voters tend to be divided on whether advertising on ballot issues is helpful or not. However, most feel that the voter information pamphlet sent to them by the State of Montana is helpful and most favor a "truth in political advertising" law which would require political advertising to be truthful.

In general do you feel that the advertising you saw or heard about the various ballot issues was helpful to you in deciding how to vote? Montana voters are divided about the helpfulness of the advertising on the various ballot issues: 51 percent feel that it was helpful while 45% feel that it was not. The following patterns are found:

- Women tend to find the advertising helpful (54% helpful and 43% not helpful), while men tend to evenly divided (50% not helpful and 46% helpful).
- Republicans tend to find the advertising helpful (58% helpful and 38% not helpful), while Democrats tend to be evenly divided (51% not helpful and 47% helpful).
- As education increases there is a tendency for the percentage of voters who find the advertising not helpful to

also increase.

--Younger voters (age group 18-34) tend to feel that the advertising is helpful (57% helpful and 43% not helpful).

Did you find the voter information pamphlet sent to you by the state of Montana to be helpful? Most voters--83 percent--feel that the voter information pamphlet was helpful.

In general, would you favor a "truth in political advertising" law which would require political advertising to be truthful? Nine out of ten voters (90%) would favor such a law. Among younger voters (age group 18-34), 96% would favor such a law.

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Fact Sheet

Scope of Survey: Random telephone survey of 403 Montana adults who voted in the November 1988 general election.

Survey Method:

1. The sample of phone numbers to be called was based on a computer generated random digit system which includes unlisted and new telephone households.
2. All calls were placed between 5:00 PM and 9:30 PM local time.
3. The survey was conducted during November 20-22, 1988.
4. All calls were made from the research offices of A & A Research, 690 Sunset Blvd., Kalispell, Montana. All interviewers were directly supervised and randomly monitored.
5. All questionnaire items involving lists were rotated to eliminate list order bias.

Survey Accuracy: This opinion poll has an overall allowed statistical variation of 5 percent.

Questions Asked: The actual wording of the questions is shown in the summary of findings.

A & A Research: This public opinion survey is a service of A & A Research, a professional marketing, advertising, and media research firm. A & A Research conducts marketing surveys and public opinions polls in markets throughout the United States and Canada. A & A Research is a member of the American Association for Public Opinion Research and uses current scientific standards in conducting surveys.

Limitations: All scientific surveys, such as this public opinion poll, are subject to certain limitations which should be taken into account when interpreting their findings:

1. The survey was limited to households with telephones (including those with unlisted numbers). It is assumed that there is no significant difference in the patterns of telephone households and non-telephone households.

2. It is assumed that there is no significant difference in the patterns of people who participated in the survey and those who refused to participate. 406

3. It is assumed that there is no significant difference in patterns between those people who were available to be interviewed and those who were not.

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Reading the Tables

The data in this report are shown in two basic types of tables:

1. **Demographic Table:** Simply speaking, this table breaks out responses by a particular group of people (age group, gender, community of residence, etc., known as demographic groups) shown at the top of the table. The bar graphs below the heading show the percentage of that demographic group giving a particular answer to each of the questions. So, for example, if you want to see at a glance how just the men responded to the questions, you would turn to the demographic table headed "All Men". Or you could check at a glance the responses of age group 35-54 by turning to the demographic table with that heading.

Percentages in the demographic tables may total less than or more than 100% for the following reasons: multiple responses are allowed on some questions; response categories of less than 1% are not statistically significant and are not listed on the tables; some respondents refuse to or are unable to answer particular questions; percentages are sometimes rounded to the nearest whole number.

2. **Profile Table:** This table breaks down respondents' answers question by question allowing you to quickly compare responses among demographic groups. On this type of table the question response is shown at the top of the page. The bar graphs show the percentage of the demographic group listed to the left of the bar giving that response. Using a hypothetical example, if you wanted to see at a glance whether there was a significant difference in the percentage of women who think location is more important than convenient hours and the percentage of men who feel that way, you would turn to the heading "Location most important". The table below will show you the percentage of men responding that way, the percentage of women, the percentage of certain age groups, etc.

The tables in the report are arranged as follows:

1. **Demographic Tables for All Adults**--these will give you an overview.

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HB 509

2. Profile Tables--these will show you the patterns of response.

3. Demographic Tables for all other groups--these will allow you to aim your advertising ("target") for specific groups.

6 of 6

Montana Bottle Bill OPINION POLL
A & A Research

70612

SAMPLE

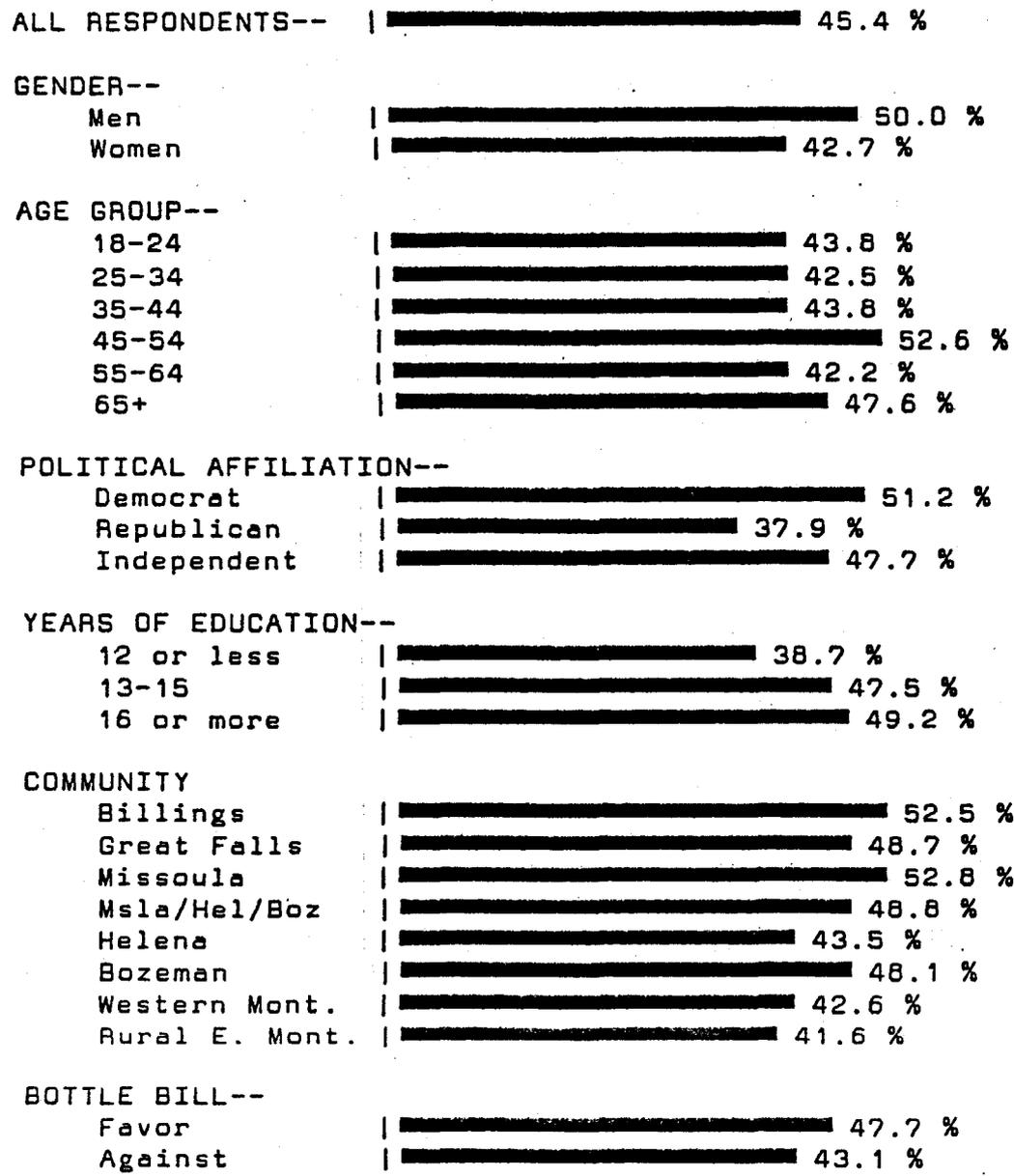
DEMOGRAPHIC:	NUMBER	PERCENT
ALL RESPONDENTS--	403	%100.0
GENDER--		
Men	156	38.7
Women	246	61.0
AGE GROUP--		
18-24	32	7.9
25-34	106	26.3
35-44	80	19.9
45-54	57	14.1
55-64	45	11.2
65+	82	20.3
POLITICAL AFFILIATION--		
Democrat	129	32.0
Republican	145	36.0
Independent	107	26.6
Refused	15	3.7
YEARS OF EDUCATION--		
12 or less	150	37.2
13-15	122	30.3
16 or more	122	30.3
COMMUNITY		
Billings	59	14.6
Great Falls	39	9.7
Missoula	36	8.9
Msl/Hel/Boz	86	21.3
Helena	23	5.7
Bozeman	27	6.7
Western Mont.	94	23.3
Rural E. Mont.	219	54.3
BOTTLE BILL--		
Favor	86	21.3
Against	295	73.2

* Montana Opinion Poll conducted during November 1988
* Copyright 1988 by A & A Research, 690 Sunset Blvd.,
Kalispell, MT 59901. Phone: (406) 752-7857.

Montana Bottle Bill OPINION POLL HB 599
A & A Research

100/12

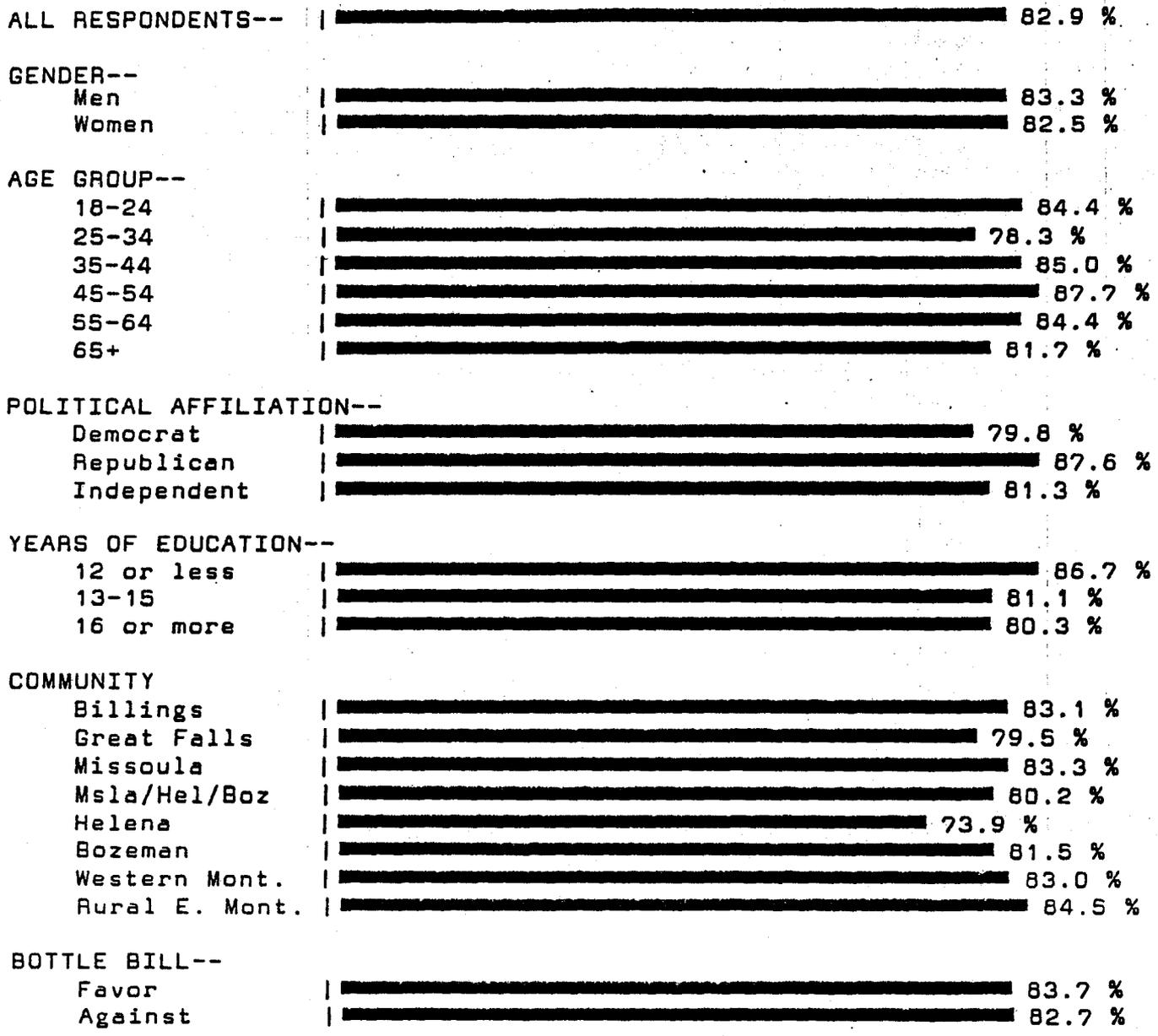
PROFILE OF ADS NOT HELPFUL



* B M S - below minimum statistical standards for reporting.
* Bar graphs are percentage of the demographic group listed to the left of the bar.
* Montana Opinion Poll conducted during November 1988
* Copyright 1988 by A & A Research, 690 Sunset Blvd., Kalispell, MT 59901. Phone: (406) 752-7857.

Montana Bottle Bill OPINION POLL
A & A Research

PROFILE OF VOTER INFO. PAM. HELPFUL 11/12



* B M S - below minimum statistical standards for reporting.

* Bar graphs are percentage of the demographic group listed to the left of the bar.

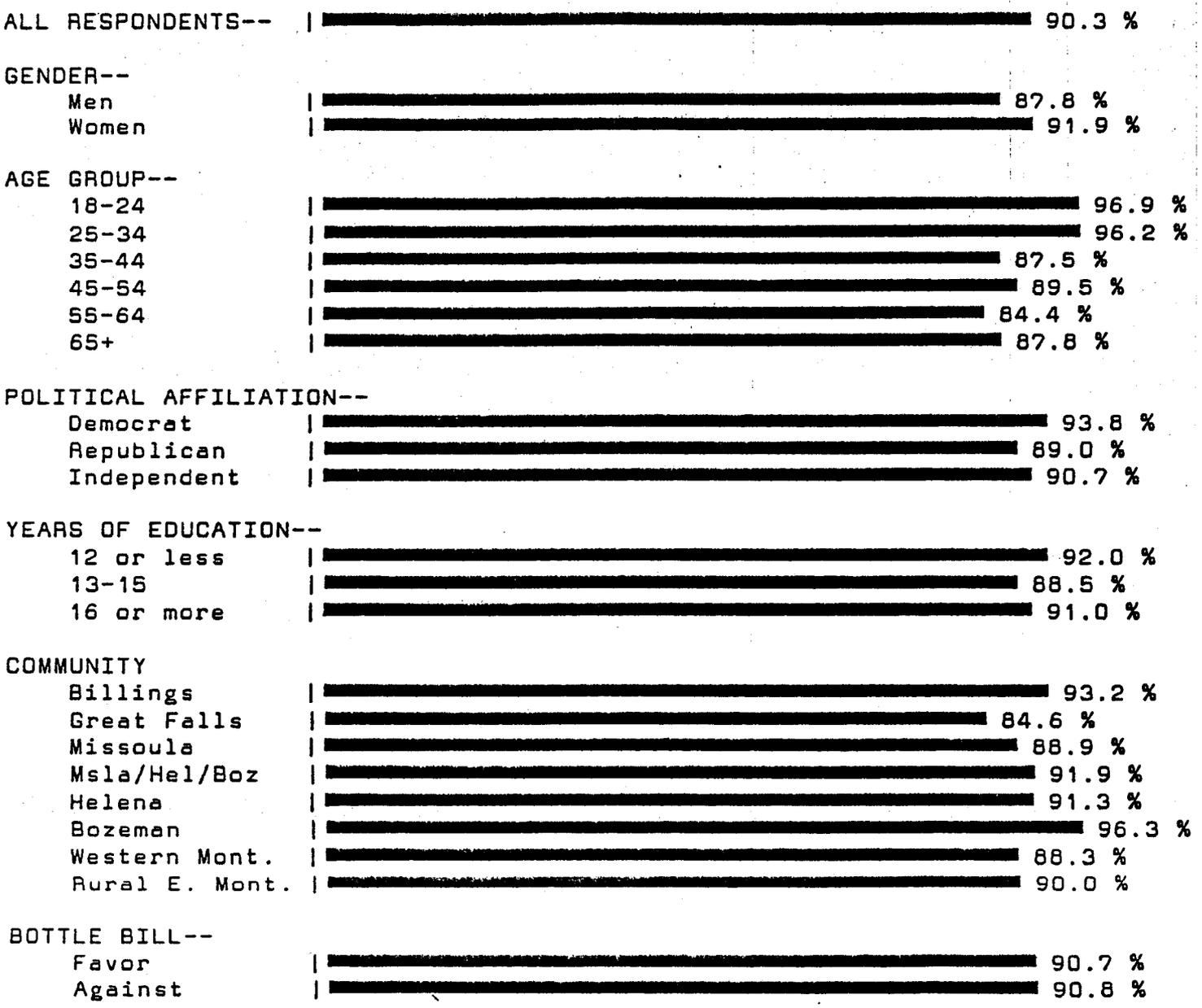
* Montana Opinion Poll conducted during November 1988

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Montana Bottle Bill OPINION POLL HB 599
A & A Research

120612

PROFILE OF FAVOR TRUTH IN POL. AD. LAW



* B M S = below minimum statistical standards for reporting.

* Bar graphs are percentage of the demographic group listed to the left of the bar.

* Montana Opinion Poll conducted during November 1988

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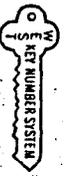
EXHIBIT 84-115-99-10599

six batteries. After being discharged from the facility he was sentenced on probation. The appellant was sentenced on the petty theft violation, the juvenile judge revived these battery violations and used them to extend the commitment to CYA. This augmented commitment cannot be characterized as "collateral" in the same sense as in *Seape and Martinez*; it was directly imposed by the same judge at the same proceeding as the underlying charge. It was an integral part of the petty theft commitment. *DWE* hold, therefore, that the revocation of probation at a dispositional hearing is a direct consequence of an admission, and a juvenile must be apprised of the possibility of such revocation before entering his admission.

Appellant also argues that the court abused its discretion in committing him for 36 months for the six prior batteries. The batteries involved lewd but nonviolent touchings of six students at his high school during one morning. While we would agree with appellant that the imposition of six consecutive periods of confinement for these incidents was excessive, we need not reach this issue since we are reversing the underlying commitment. By the same token we need not reach appellant's argument that the commitment constituted cruel and unusual punishment.

The judgment is reversed. The matter is remanded with directions to permit appellant to withdraw his admission of the petty theft charge.

GEO. A. BROWN, P. J., and GINSBURG (Assigned by the Chairperson of the Judicial Council), J., concur.



84 Cal.App.3d 77
Cesar E. CHAVEZ et al., Plaintiffs
and Appellants,
v.
CITIZENS FOR A FAIR FARM LABOR LAW, a California nonprofit corporation, et al., Defendants and Respondents.

Civ. 52081.
Court of Appeal, Second District,
Division 5.
Aug. 21, 1978.
As Modified Aug. 31, 1978.

Action was brought to obtain actual and punitive damages for alleged fraudulent misrepresentation in the course of an election campaign. The Superior Court, Los Angeles County, Alfred L. Margolis, J., sustained all demurrers without leave to amend, and plaintiffs appealed. The Court of Appeal, Hastings, J., held that: (1) inasmuch as plaintiffs, by their own pleading, admitted that they knew at all times that the statements of their opponents were false, the reliance requirement for a fraud action was missing, and (2) the representations to the electorate that gave rise to the action were statements of opinion which were not subject to legal challenge as false and misleading statements of fact.

Affirmed.

1. Elections \approx 309
The Civil Code section which provides that any person performing or proposing to perform an act of unfair competition within the state may be enjoined applies to unlawful business practices and not to public election campaigning. West's Ann. Civ. Code, \S 3369.

2. Fraud \approx 41
In order to state a cause of action for fraud, a plaintiff must allege a false representation of a material fact made recklessly or without reasonable ground for believing its truth and with the intent to induce

84 Cal.App.3d 79
reliance thereon and on which plaintiff justifiably relied to his injury.

3. Fraud \approx 21

Where parties who campaigned in favor of proposed initiative statute admitted, by their own pleading, that they knew at all times that statements made by their opponents were false, proponents of the statute could not justifiably have relied on the alleged misrepresentations of their opponents and, therefore, the proponents had no cause of action for fraudulent misrepresentation.

4. Fraud \approx 11(1)

Held that there must be a false statement of fact, not merely of opinion, before the test of reckless or knowing falsity can be met in constitutionally based.

5. Fraud \approx 11(1)

The Constitution and public policy require open public debate on initiative issues without the chilling effect of legal reprisals; therefore, statements made in the context of such public debate should be treated as "opinions."

6. Fraud \approx 11(1)

Partisan representations to electorate, made in connection with proposed initiative statute intended to amend and reenact legislation regarding organization and collective bargaining rights and procedures of farm workers, to the effect that the proposed statute would entail the deprivation of property rights and personal property rights of agricultural employers were statements of "opinion" which were not subject

to legal challenge as false and fraudulent misrepresentations of fact.
See publication Words and Phrases for other judicial constructions and definitions.

Jerome Cohen, Sanford N. Nathan, Sallmas and George C. Lazar, San Diego, for plaintiffs and appellants.

Gibson, Dunn & Crutcher, Theodore B. Olson, and H. Frederick Tepker, Jr., Los Angeles, for defendants and respondent Citizens for a Fair Farm Labor Law, Dolphin Investment, Inc., Bill Roberts, and Pan-American Underwriters, Inc.

Hanna & Morton, James Paul Lower James S. Bright, and Dean W. Drulias, Los Angeles, for defendants and respondent Superior Farming Co. and The Superior Oil Co.

HASTINGS, Associate Justice.

[1] Plaintiffs filed an action seeking actual and punitive damages for fraudulent misrepresentation in the course of the campaign election concerning Proposition 13, the Agricultural Labor Relations Initiative statute. Defendants demurred and the court sustained all demurrers without leave to amend. On this appeal, plaintiffs contend that their complaint states a cause of action, either on intentional misrepresentation, or pursuant to Civil Code section 3369.

In the 1976 general election, plaintiffs campaigned in favor of Proposition 13 while defendants were against it. Both leading advertising and any act denounced by Business and Professions Code Sections 1750 to 17535, inclusive."

Plaintiffs claim this section was violated by defendants' intentional false statements of fact. This is answered by our opinion. Furthermore this section applies to unlawful business practices and not public election campaigning.

3. Proposition 13 was a proposed initiative statute intended to amend and reenact certain legislation regarding the organization and collective bargaining rights and procedures of farm workers. One of its provisions created a statutory right of access to farms for union organizers.

1. Elections \approx 309
The demurring defendants were Citizens for a Fair Farm Labor Law, a California non-profit corporation erroneously sued as No. on 14 Committee; Dolphin Investment, Inc., a California corporation erroneously sued as Dolphin Public Relations—a division of Dolphin Investment, Inc.; Superior Farming Company; The Superior Oil Co.; Pan-American Underwriters, Inc.; and Bill Roberts.
2. Civil Code, \S 3369 reads in pertinent part as follows: "2. Any person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction. [3] 3. As used in this section, unfair competition shall mean and include unlawful, unfair, or fraudulent business practice and unfair deceptive, untrue, or mis-

EXHIBIT 9
DATE 2-15-89
HB 599

Amendments to HB 599

Page 2 Line 6 add after 13-37-124 or any violation of this section may be treated as a civil violation under 13-37-128.

Page 5 Line 6 add section 4 to read: Liability for dissemination of false advertisement. No publisher, radio broadcast licensee or agency or medium for dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, is liable under this section by reason of the dissemination by the publisher, licensee or agency or medium of such false advertisement, unless the publisher, licensee or agency or medium has refused, on the request of the commissioner to furnish the Office of Political Practices the name and post office address of the manufacturer, packer, distributor, sell or advertising agency who caused to be publisher, licensee or agency or medium to disseminate the advertisement.

At the request of Montana Newspaper Association - Charles Walk.

EXHIBIT 10
DATE 2-15-89
HB HJR 19
1 of 2

Dear Legislators,

This is an Alert for future legislation in Montana.

We are opposed to a ConCon (Constitutional Convention) for all reasons, as a ConCon opens itself to many dangers to our Federal Constitution despite what proponents may promise.

Please read our enclosed newsheet which is well documented. Thanks for "listening".

Helena Eagle Forum Pioneers' Chapter
P.O. Box 4344
Helena, Montana 59601
Feb, 1989

Respectfully,
Mrs. Mary E. Doubek
Mrs. Mary E. Doubek
Chairman - Eagle Forum Pioneers' Chapter

INDEPENDENT PRESS RECORD

FROM MONTANA'S CAPITAL

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FRIDAY
AFTERNOON
March 20, 1987
Helena, Montana
Vol. 43 No. 119

Budget convention rejected

By LEN IWANSKI
Associated Press Writers

The Montana Senate on Thursday overwhelmingly rejected a call for a constitutional convention to draft an amendment for a balanced federal budget.

The state Senate on a 46-4 vote accepted a committee recommendation to kill House Joint Resolution 10, which called for a constitutional convention.

The Senate's State Administration Committee earlier in the week had voted 9-1 to reject the resolution. The full Senate accepted the committee report Thursday without debate.

Last month the Montana House approved the resolution 51-49. Had Montana joined states calling for a constitutional convention it would have been the 33rd state to do so, just one short

(More on BUDGET, back page)

Budget

Continued from Page 1A

of the 34 required.

"I know many of you received tens of letters. We on the committee received hundreds of letters from Montana and hundreds and hundreds of letters from around the U.S. and 99 percent were opposed to the constitutional convention," State Administration Chairman Jack Hafley, D-Anacosta, told the Senate in presenting the committee report Thursday.

Opponents of the resolution, including some nationally prominent political figures who traveled to Montana to testify at a hearing Monday, argued that a balanced-budget amendment was not necessary because Congress and the president have other tools to accomplish that goal.

"They also said calling a constitutional convention is a dangerous thing to do" because it could open the Constitution to other, not necessarily desirable changes, Hafley told the Senate Thursday.

The State Administration Committee concluded there is no compelling reason for us to concur in House Joint Resolution 10," Hafley said.

Florida Just Says "NO"

And the constitutional convention pushers suffer another setback

EXHIBIT 10
DATE 2-15-89
HB HJR 19

3 of 2

It could be called the "Southeastern one-two punch." First Alabama repealed its 1976 petition to Congress calling for a constitutional convention. Less than a month later, on May 25th, Florida followed suit when its House of Representatives voted to rescind the Sunshine State's 12-year-old convention call.

This latest action in Florida confirms that the tide that swept in 32 state calls for a constitutional convention (supposedly limited to a "Balanced Budget Amendment") between 1975 and 1983 has not only peaked, but ebbed.

The change in sentiment on this issue is the result of increasing information on the subject, rather than a change of heart on the merits of a balanced budget. What sounded like a good idea originally ("Let's force Congress to balance the budget!") lost much of its appeal when people realized we were on the brink of a Constitutional experiment with no precedent, with no guaranteed outcome.

Truth in Packaging

According to many state legislators, the way the convention idea was presented in the late 1970s and early 1980s generated little opposition. Everyone (or almost everyone) wants to balance the budget; it was a regular "motherhood-and-apple-pie bill." When serious discussion began, however, support eroded. Few legislators wanted to carry the stigma of voting to open a Pandora's box of constitutional woes. Since 1984, state legislatures have refused to pass convention calls at least 37 times, and now Alabama and Florida have reversed previous decisions.

Florida State Senator Marlene Woodson (R-Bradenton) was the sponsor of SM 302, the withdrawal measure in the Senate. "I'm a novice to the political scene," Senator Woodson told THE NEW AMERICAN. "This was a brand new issue I had never heard anything about; no one seemed to know much about it. I went to Washington in November and met members of Eagle Forum. After learning about the dangers of calling for a consti-

tutional convention, I decided to sponsor legislation withdrawing Florida's call."

With 21 of 40 state senators co-sponsoring SM 302, passage seemed certain, but the measure was not without oppo-



NTU's Davidson pushes convention
(See page 17 for related article.)

sition. "Members of the NTU [National Taxpayers Union] came into town a few days before the vote and they did manage to delay things through lobbying tactics," explained Senator Woodson.

Deputy House Majority Leader Elaine Bloom (D-Miami Beach) probably worked longer than any other member of the Florida Legislature to achieve the withdrawal of the 1976 call. Ironically, Representative Bloom was listed as a supporter of the original 1976 measure. She thought little more of the resolution until four years ago when, while working as a lobbyist for the Florida Association of Jewish Federations and the United Protestant Appeal, Bloom received a call from Linda Rogers-Kingsbury of Citizens to Protect the Constitution, a Washington-based group working to alert Americans to the dangers of holding a convention. Upon her return to the House in 1986, Representative Bloom worked every year to bring the withdrawal mea-

sure to a vote. One hurdle to overcome was initial opposition from Senator Dempsey Barron (D-Panama City), the Rules Committee Chairman. However, Senator Marlene Woodson helped convince Senator Barron to change his mind.

Representative Bloom believes the alternate convention method of amending the Constitution was placed there by the Founding Fathers as a refuge of last resort, just one step short of another revolution, and that the traditional methods should be used so long as there is a choice.

"I consider myself a moderate," Representative Bloom told THE NEW AMERICAN, "and I thought that the people from the Committee on the Constitutional System like Lloyd Cutler were supposedly moderates, until I saw their plans to use a convention to propose a package of amendments — and I don't like their package." The fight has been a rewarding experience for this courageous Miami Beach legislator. "I feel this was my major contribution to the United States. I care very much about the constitutional traditions that guarantee my rights."

Representative Bloom gave her thanks to those who supported her in this effort: "I really have to give credit to the members of The John Birch Society, who created the Save the Constitution Committee; Rita and Gene Krehl did a great job."

The Save The Constitution Committee, a state-wide organization formed in Pensacola in 1986, has spent nearly two years working with Florida state legislators on the convention issue. "We laid such a solid groundwork of education with the legislators that they largely ignored the last-ditch efforts by the NTU," said Rita Krehl, the Committee's Chairman and spokeswoman. Mrs. Krehl isolated two key elements of the Committee's strategy: (1) generating plenty of input from the local constituency of each legislator, and (2) having a "core group" maintain a physical presence in the state capital to keep abreast of developments and to call on legislators personally. ■

— WARREN P. MASS

Steer clear of constitutional convention

By ARTHUR J. GOLDBERG

As we look forward to celebrating the bicentennial of the Constitution, a few people have asked, "Why not another constitutional convention?"

I would respond by saying that one of the most serious problems Article V poses is a runaway convention. There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights. Moreover, the absence of any mechanism to ensure representative selection of delegates could put a runaway convention in the hands of single-issue groups whose self-interest may be contrary to our national well-being.

A constitutional convention could lead to sharp confrontations between Congress and the states. For example, Congress may frustrate the states by treating some state convention applications as invalid, or by insisting on particular parliamentary rules for a convention, or by mandating a restricted convention agenda. If a convention did run away, Congress might decline to forward to the states for ratification

Former U.S. Supreme Court Justice Arthur J. Goldberg, a member of the advisory board of Citizens to Protect the Constitution, wrote this article for *The Herald* in response to an article by Arthur S. Miller, "Why not another constitutional convention?" (Viewpoint, July 6).

In Response

those proposed amendments not within the convention's original mandate.

Ultimately, the courts would be called upon to decide these matters. This raises unprecedented problems. If every disgruntled convention delegate, member of Congress, state legislator or concerned citizen could sue at any time, a convention could mire the federal and state governments in a debilitating web of lawsuits. Could government thus preoccupied with a convention meet the needs of their citizens and the country as a whole?

If the issues are not reviewable by the courts, then the convention would take place outside our system of checks and balances and the dangers of a runaway convention increase. If the convention issues are reviewable, then serious enforcement problems arise.

Proponents for a convention offer assurances that it can be limited to a single issue by saying the state legislatures have called for a convention for the "sole and express purpose" of drafting a specific amendment, particularly the balanced budget amendment.

In response, they should be reminded that the convention of 1787 was called "for the sole and express purpose of revising the Articles of Confederation." As we know, that convention, in these special and unique circumstances, discarded the Articles and drafted the U.S. Constitution,

despite its limited mandate.

History has established that the Philadelphia Convention was a success, but it cannot be denied that it broke every restraint intended to limit its power and agenda. Logic therefore compels one conclusion: Any claim that the Congress could, by statute, limit a convention's agenda is pure speculation, and any attempt at limiting the agenda would almost certainly be unenforceable. It would create a sense of security where none exists, and it would project a false image of unity.

Opposition to a constitutional convention at this point in our history does not indicate a distrust of the American public, but in fact recognizes the potential for mischief. We have all read about the various plans being considered for constitutional change. Could this nation tolerate the simultaneous consideration of a parliamentary system, returning to the gold standard, gun control, ERA, school prayer, abortion vs. right to life and anti-public interest laws?

As individuals, we may well disagree on the merits of particular issues that would likely be proposed as amendments to the Constitution; however, it is my firm belief that no single issue or combination of issues is so important as to warrant jeopardizing our entire constitutional system of governance at this point of our history, particularly since Congress and the Supreme Court are empowered to deal with these matters.

James Madison, the father of our Constitution, recognized the perils inherent in a second constitutional

convention when he said an Article V

national convention would "give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already heated too much men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first convention which assembled under every propitious circumstance, I would tremble for the result of the second."

Let's turn away from this risky business of a convention, and focus on the enduring inspiration of our Constitution.

The bicentennial should be an occasion of celebrating that magnificent document. It is our basic law; our inspiration and hope, the opinion of our minds and spirit; it is our defense and protection, our teacher and our continuous example in the quest for equality, dignity and opportunity for all people in this nation. It is an instrument of practical and viable government and a declaration of faith — faith in the spirit of liberty and freedom.



A Constitutional Coup?

EXHIBIT 10
DATE 2-15-89
HB HR 19

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Recently, I had a lengthy conversation with journalist Jeffrey St. John concerning the 200th anniversary of the Constitution of the United States and the manner in which it is to be officially commemorated.

Conservatives had been heartened by the announcement, following his 1984 reelection defeat in Iowa, that former Republican Senator Roger Jepsen was to be designated by President Reagan as the full-time director of the Bicentennial Commission.

I was therefore shocked and disappointed to learn during April that Senator Jepsen had been ousted from the position (to which he had never been formally appointed) and, as a consolation prize, named administrator of the National Credit Union Administration.

What had happened? Here is what Jeffrey St. John told the Philadelphia Society, a conservative "ideas" group, meeting in Chicago on April 13:

Hijacking the Constitution?

"While the conservatives have been preoccupied with more mechanical and mundane political problems, the Democrats, liberals, and leftists have already been busy plotting ways to hijack the bicentennial.

"Two organizations are already in place. . . The Committee on the Constitutional System is headed by Lloyd Cutler, Jimmy Carter's White House legal counsel. What they advocate is the transformation of the current system along European Parliamentary lines. The second organization is known as Project 87, headed by liberal. . . historian James McGregor Burns:

Howard Phillips is chairman of The Conservative Caucus.

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" . . . If the conservative drive to hold a Constitutional Convention for a balanced budget is successful, ironically the Cutler and Burns groups will then be in a position to push for their ideas. . .

"Does anyone seriously believe that if a Constitutional Convention is called in the 1980's that it will be confined strictly to a balanced budget amendment?"

" . . . While acting as Honorary Chairman of Project 87, the Chief Justice has successfully lobbied Mr. Reagan to appoint him Chairman of the Presidential Bicentennial Commission, which will be composed of 23 Commissioners. It is my surmise that Burger cut a deal with the President whereby he would help the President pack the high court with appointees in exchange for the Chairmanship of the Bicentennial Commission. Chief Justice Burger apparently feels that the bicentennial of the U.S. Constitution can be the crowning achievement of his public career. A less charitable interpretation is that Burger feels no little guilt for some of his decisions on the high court and hopes to insure his place in history by being remembered as the Chief Justice who also was the Constitutional statesman who gave the country an 'updated,' more socially relevant document."

At one time, I agreed with those of my fellow conservatives who dismissed any likelihood that the Constitution could be fundamentally altered, even if a Constitutional Convention were called to consider a "Balanced Budget Amendment".

First of all, I pointed out that three-fourths the states were unlikely to go along with radical changes. After all, they had rejected ERA, and the proposed amendment to give D.C. voting representation in the House and Senate has fallen far short of ratification.

Furthermore, I reasoned, conservatives would have as much pros-

pect as liberals of holding sway at a Constitutional Convention—even one which sought to exceed its mandate.

Once a Constitutional Convention has met, its work can be ratified by either three-fourths of the state legislatures or by three-fourths of the special Conventions called, at the state level, to consider proposed changes. It is this latter procedure which concerns me profoundly.

Liberal Objectives

The liberals already have federally-funded structures in place which could provide the ad hoc means for convening such ratifying sessions, and there is no guarantee that such meetings would be at all representative of the general populations.

Some of the liberals' objectives are already clear: (a) a weakened, ceremonial President, with a six-year term, functioning more like the Queen of England than the tribune of the people, and (b) a "Westminster-style" parliamentary system with no fixed terms of office, and greater party discipline, to replace our bicameral Congress. This latter "reform" would vastly increase the power of Big Media, able as it is to create political "firestorms" which could undermine confidence in a government and require calling new elections.

Moreover, if you believe, as I do, that the Great Society liberalism of the Democrats prevents that party from ever again achieving the presidential "majority party" status which it lost in 1968, and that, by reason of economic problems arising from a potential three trillion dollar deficit in 1988, the GOP may also lose public confidence (as it did during the "Hoover Depression"), what better way to prevent a victory by conservative independents than to lock the present Establishment-controlled two-party system into a new Constitution? □

VETERANS OF FOREIGN WARS OF THE UNITED STATES



EXHIBIT 10
DATE 2-15-89
HB HJR 19

6068

Resolution No. 449

CHANGING THE CONSTITUTION

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

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

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

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

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

... Resolution No. 449

What have conservatives written in this column?

What the opponents seldom say, however, is that most impartial experts see nothing to fear from a convention. A two-year term of the American Bar Association, which included the Dean of the Harvard Law School and other leading experts, unanimously concluded that a convention could be limited.

There Are Eight Checks on a Constitutional Convention.

- 1. Congress could avoid the convention by acting itself.
- 2. Congress establishes the convention procedures.
- 3. The delegates would have both a moral and legal obligation to stay on the topic.
- 4. Voters themselves would demand that a convention be limited.
- 5. Even if delegates did favor opening the convention to another issue, it is unlikely that they would all favor opening to the same issue.
- 6. Congress would have the power to refuse to send a nonconforming amendment to ratification.
- 7. Proposals which stray beyond the convention call would be subject to court challenge.
- 8. Thirty-eight states must ratify.

The eight checks on a limited constitutional convention would ensure that it stays on the balanced budget amendment topic.

If 34 states called for a constitutional convention on the balanced budget amendment, the Congress would have the option of proposing such an amendment itself. The odds are overwhelming that the Congress would prefer to do so. Why? Because the Congress would rather live with an amendment which its members drew up themselves than one which was drafted by others. Furthermore, if a convention were successfully held, it would weaken the powers of the Congress. This is something which few of the members of Congress want. They also do not want to see convention delegates elected from their home districts—delegates who might later decide to challenge the congressmen for reelection.

2. Congress establishes the convention procedures. Any confusion about how a convention would operate would be the fault of Congress. Congress has the power to determine exactly under what conditions the delegates would be chosen. when the election of delegates would be held, where they would meet, and how they would be paid. Congress can and will limit the agenda of the convention. All 32 state convention calls on the balanced budget issue are limited to that topic and no other.

who was not a candidate and had received no popular votes. Yet this has never happened. There have been 19,180 elections since 1798 and only seven have voted for a candidate other than the one for whom they were elected. The odds against delegates to a convention behaving differently would be astronomical.

Also, legislation unanimously approved by the Senate Judiciary Committee in 1984 would enforce this limit by requiring that each delegate swear to an oath to limit the convention to the topic for which it was called. Similar legislation has been passed by the Senate twice on unanimous votes.

Many groups say they oppose an unlimited constitutional convention. So do advocates of the balanced budget amendment. If this is the majority opinion, as it seems to be, it is reasonable to expect that delegates elected to a convention would reflect that view. Certainly if a convention were to be held, every candidate would be asked whether he favored limiting the convention to the subject of the call. Even if the voters in some areas did favor an open convention, or some candidates lied and were elected, it is still improbable that a majority of delegates would be elected who favored opening the convention to another issue when the majority of voters do not.

5. Even if delegates did favor opening the convention to another issue, it is unlikely that they would all favor opening to the same issue.

they allege might be brought up at a constitutional convention. There have been allegations that the Bill of Rights would be tampered with, that amendments would be inserted banning abortion, or doing other things which polls show a majority of citizens oppose. Yet those who raise these fears have never offered any analysis of from where support for such propositions would come. Consequently, even if it were true that some delegates to a convention would favor reviving the ERA, and others might favor banning abortion, that does not mean that either group would be likely to control a convention. The odds are against it.

6. Congress would have the power to refuse to send a nonconforming amendment to ratification. As the American Bar Association indicated in its study of the amendment by the convention mode, the Congress has yet another way of preventing a runaway amendment. It could

simply refuse to send such an amendment to the states for ratification.

7. Proposals which stray beyond the convention call would be subject to court challenge. Leaders in legislatures which have petitioned for a constitutional convention on the balanced budget issue have indicated that they would institute court challenges to any proposal which went beyond their original call. According to the American Bar Association, such challenges are possible to convention-proposed amendments, but not to those which originate in the Congress. There is an excellent chance that the Supreme Court would prohibit a stray amendment from being sent to the states for ratification.

The final and greatest check against a "runaway" convention is the fact that nothing a convention would propose could become part of the Constitution until it was ratified by 38 states. It is by no means easy to obtain 38 states to ratify any controversial proposition. The fate of the ERA and the proposed amendment granting voting representation in Congress for the District of Columbia proves this point. If there are even 13 state legislatures in the country that are not convinced that any amendment proposed by a convention represents an improvement in our Constitution, that amendment would not be ratified.

One Hundred Million To One. The odds against many of these events are remote. Even if you assume the odds of all eight of these possibilities are 50-50, the chance that all eight could happen and produce a runaway convention are only four in a thousand. But the odds against many of these events are remote. Even if you assume average odds of just 10-1, the chance of a runaway convention would fall to one in one hundred million.

However you calculate the odds, the danger of a convention "running away" is slight. Much less remote is the danger to our country of continued, runaway deficit spending. Stagging deficits stretch out on the horizon as far as the eye can see. Deficits which mean high interest rates. More high inflation. Or both. We would be fools if we attempted to prove that America would be the exception to the rule that protracted financial turmoil weakens and eventually destroys free institutions. The best way to preserve our constitutional order which we all cherish is a constitutional amendment to bring runaway federal deficits under control.

Oppose Federal Constitutional Convention

PUBLISHED BY HELENA EAGLE FORUM—PIONEERS' CHAPTER BOX 4944, HELENA, MONTANA 59604

Balanced Budget? YES!

Con Con? NO!

The fact that we've never used the convention route doesn't make it illegitimate. But it is an uncertain route because it hasn't been tried, because it raises a lot of questions, and because those questions haven't begun to be resolved. If 34 state legislators deliberately and thoughtfully want to take this uncertain course, with adequate awareness of the risks ahead, so be it. But the ongoing campaign has largely been an exercise in constitutional irresponsibility—constitutional roulette, or brinkmanship if you will, a stumbling toward a constitutional convention that more resembles blindman's bluff than serious attention to deliberate revision of our basic law.

There is a precedence for that happening! True? There is only one precedent for a Federal Con Con, and that is the Constitutional Convention of 1787 and it was indeed a runaway convention. It violated its orders to merely amend the old Articles of Confederation, and then wrote the U.S. Constitution.

The Framers of the Constitution Constitutional Convention

Called for May 14, 1787 found that not a quorum of delegates representing seven states had arrived, and it was not until the 25th that the Convention got underway. George Washington, a delegate from Virginia, was chosen as President of the Convention. On May 29th, Edward

The founding fathers established the Separation of Powers as the fundamental basis of our structure of government. Our Constitution separated the powers of government so that each branch can serve as a check on the other two; and so that no one branch can become powerful enough to gobble up the others. This principle is what preserved our freedom.

People usually pay little attention to the things which serve them best. Almost every American born takes the Constitution as a matter of course. What the absence of Constitutional guarantee means, most Americans may not know, but their European ancestors did.

Key to the Constitution
by Francis Harley

Our American Separation of Powers differs from Parliamentary Systems, such as the British where the executive and legislative branches are combined. James Madison argued that the accumulation of legislative, executive, and judicial powers in the same hands is "the very definition of tyranny."

All the power granted to the Federal Government by the Constitution was divided into three branches: The Legislative, Executive, and Judicial.

The British Parliament

The British Prime Minister can dissolve Parliament and call a new election. The British Parliament can fire the Prime Minister.

What Con Con Supporters Say

In talking with people who support Con Con as a device to get a Balanced Budget Amendment, several curious factors emerge.

(1) They argue single-mindedly for a Balanced Budget Amendment and seldom address the Con Con issue at all. They seem to think that when 34 states pass a Con Con resolution, that will ipso facto give us a Balanced Budget Amendment. The truth is that even if Congress calls a Con Con, there is no assurance that Con Con would pass the Balanced Budget Amendment.

(2) They are usually uninformed about what Con Con is, how it would function, and what Article V of the U.S. Constitution requires. They do not present any Con Con argument which makes sense—constitutionally, legislatively or politically. They have not evaluated the pros and cons, the risks and the expectations.

(3) They usually phrase their arguments in terms of "anti-balanced budget Amendment."

They do not want the balanced budget Amendment, they want the Con Con. They are afraid of the word "balanced budget Amendment" and they are afraid of the word "Constitutional Convention."



EXHIBIT 11

DATE 2-15-89

HSR 19

1063

JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1178
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF JIM MURRY ON HJR 19 BEFORE THE HOUSE STATE ADMINISTRATION
COMMITTEE, FEBRUARY 15, 1989.

Madam Chairman, for the record, my name is Jim Murry and I am executive secretary of the Montana State AFL-CIO.

I'm here today to oppose House Joint Resolution 19, calling for a constitutional convention to consider an amendment to limit the term of members of the United States Congress.

The Montana State AFL-CIO opposes HJR 19 on several grounds:

- A convention could not be limited to any one topic.
- The existing non-convention method of constitutional amendment is adequate and available to would-be reformers.
- The proposed amendment is not in Montana's best interest.

Please let me elaborate on those three points.

HJR 19 seeks to convene a constitutional convention "for the sole purpose" of the amendment to limit congressional terms. Despite the language that would appear to limit the scope, there is great disagreement among constitutional scholars as to whether a call for a constitutional convention could be limited by Congress to any one subject.

The language in the U.S. Constitution seems very clear: it simply requires Congress to call the convention -- period. Allow me to quote Article V:

"The Congress, ... on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, ..."

As you can see, it refers specifically to proposing amendments. It is highly unlikely that a convention could be limited to any one subject, regardless of its merit. Many people have tried to pay only that portion of their federal taxes that goes to programs they support, but those attempts at qualification and limitation have failed, just as this one would fail.

The present U.S. Constitution was a product of what was then a runaway convention. The Articles of Confederation were considered weak in some respects, so a convention was called in 1787 to consider revising some of its specific federal powers. What happened then was the complete disposal

TESTIMONY OF JIM MURRY
HJR 19
PAGE TWO, FEBRUARY 15, 1989

of the Articles of Confederation and the adoption of the present Constitution. And opponents of the new document were powerless to stop the by-product of that runaway convention.

A wide-open convention today could be a dangerous event that could threaten the basic liberties on which our entire system of government is founded. Such polarizing issues as gun control; water rights; the right to set our own taxes, such as the coal severance tax; the separation of church and state and so forth could easily make their way onto the convention floor.

Even supporters of a constitutional convention acknowledge its dangers. Cleon Skousen, head of the National Center for Constitutional Studies, said in a December 1987 newsletter:

"A constitutional convention is fraught with dangers, and we share with many the concerns of having a convention with the authority to draft an amendment to the Constitution."

I point out Skousen's comments in particular because he is among the right-wing supporters of a convention. His organization, with financial support from the Rev. Moon of the Unification Church, supports changing our Constitution to create a new "Biblically based" document.

A convention today would offer such extremists at both ends of the spectrum an unprecedented chance to force their radical views onto the public.

Since the Constitution was first adopted, many amendments have been proposed, and many have been ratified. It's important to note that ALL of the successful amendments were proposed by Congress and then ratified by the states. None have been handled via a convention. I submit that if we could abolish slavery via an amendment proposed by Congress, the same method is good enough for any other subject that might come up.

A final argument that I want to make very strongly against HJR 19 is essentially a political argument. Not Democratic or Republican politics, but Montana politics. This proposed amendment would reduce Montana's already small voice in our nation's capital.

Montanans have a history of magnifying their voice in Congress by allowing their representatives and senators to build up seniority. That seniority gives them political clout that makes up somewhat for our small number. Senator Mike Mansfield's tenure is an obvious case in point. Had this amendment been in effect at the time, Senator Mansfield likely would not have been able to build up the seniority, experience and respect that enabled him to work so well for all Montanans. If we limit the number of terms we Montanans could serve in Congress, our four voices would have little chance of being heard above the din of 531 others of equal seniority.

EXHIBIT 11
DATE 2-15-89
HJR 19

303

TESTIMONY OF JIM MURRY
HJR 19
PAGE THREE, FEBRUARY 15, 1989

With so many issues vital to Montana being decided at the federal level, it's crucial that we don't dilute the effectiveness of our representatives. Consider the possibility, for example, if a city-dominated Congress were to take up the issue of water rights. Or what about when the rights and wishes of Montanans butt up against those of California's 47 congressmen, or the 36 from New York?

Remember, too, that proportional representation at a constitutional convention would leave Montana again with a very small voice.

The impact of a constitutional convention could be devastating for us as a nation, and the impact of this specific amendment could be devastating for us as Montanans.

I urge you to give House Joint Resolution 19 a "do not pass" recommendation.

Thank you.

HJR 19

EXHIBIT 12

DATE 2-15-89

HB HJR 19

WITNESS STATEMENT

NAME Terry Murphy

BUDGET _____

ADDRESS P.O. Box 2447 Great Falls, MT. 59403

WHOM DO YOU REPRESENT? _____

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: _____

Montana Farmers Union, Montana Grange, Montana Cattleman's Ass'n., Montana Draingrowers Ass'n., Montana Cattlefeeders Ass'n., Montana Stockgrowers Ass'n., and Women Involved in Farm Economics (W.I.F.E.) all oppose HJR 19.

We are absolutely opposed to the convening of a National Constitutional Convention for the purpose stated in HJR 19, or for any other purpose.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT 13
DATE 2-15-89
~~HB 620~~ HB 620

AMENDMENTS TO HOUSE BILL NO. 620
(Submitted by Rep. Whalin)

STRIKE: (1) in its entirety

INSERT: "(1) A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information is an official dissemination by election administrators or other public officials."

VISITORS' REGISTER
STATE ADMINISTRATION COMMITTEE

BILL NO. HJR 19

DATE February 15, 1989

SPONSOR REP. THOMAS

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Mrs Mary Douber	Helena Eagle Forum - Pioneer Sch.		✓
BETTY L. BABCOCK	EAGLE Forum		✓
Nadlean Jensen	AFSCME		✓
Terri Mungby	MT. Farmers Union etc.		✓
Jim Murray	Mont. AFL-CIO		✓
Phil Campbell	MEA		✓
Kay Nounber	Wife		✓
John Asay	MEFA		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

STATE ADMINISTRATION

COMMITTEE

DATE 2-15-89

BILL NO. HB 605

NUMBER 1

NAME	AYE	NAY
Jan Brown	✓	
Bud Campbell	✓	
Vicki Cocchiarella	✓	
Duane Compton	✓	
Ervin Davis	✓	
Roger DeBruycker		✓
Floyd "Bob" Gervais		✓
Harriet Hayne	✓	
Janet Moore		✓
Richard Nelson	✓	
Helen O'Connell	✓	
John Phillips		✓
Rande Roth	✓	
Angela Russell		✓
Wilbur Spring, Jr.	✓	
Carolyn Squires		✓
Vernon Westlake	✓	
Timothy Whalen		✓

TALLY

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Judy Burgzoff
Secretary

Chairman

MOTION: As Passed As Amended.

