

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 30, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Tuesday, January 30. All members were present. Bills scheduled for hearing were House Bills 396, 413 and Senate Bill 88. House Joint Resolution 15 will be held in the Highway Auditorium because of the expected large number of witnesses, at 9:00 a.m.

HOUSE BILL NO. 413: Representative Fabrega. This bill was introduced at the request of the League of Cities and Towns. This bill would put compensation for loss of salary for injured officers under Workers compensation, and the city would be mandated to pay the difference between the officers full salary and the amount paid by workers compensation. This would be until his disability has ceased or for a period not to exceed 1 year, whichever comes first. I talked to the gentlemen who represent the police association. They are in favor of the bill.

JIM TURCOTTE, PERS: I support the bill but I would like to comment. By reducing the amount of salary the city is paying and that would reduce the amount the county will pay and that would reduce his retirement benefits. He discussed the average salary and the highest 36 month average. The only problem is the person disabled on the job and then becomes permanently disabled. The city would continue to make the 100% contribution and the policeman would have to make his full contribution.

There was some discussion and the hearing closed on House Bill No. 413.

HOUSE BILL NO. 396: Representative Keedy. This bill would eliminate the designation of nondangerous offender for the purposes of eligibility for parole. The board could release on parole by order any person confined to prison except persons under sentence of death and when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or the the community. He went on to explain the terms of the sentences and the parole procedure.

LARRY ZANTO: Department of Institutions. I have some hesitation about coming before the legislature on bills on sentencing. There should be a little bit of toughening up in the area. The sections that should be repealed were discussed.

REPRESENTATIVE KEEDY: It is not true that this bill will take out discretion from the judges. The fact of the matter is the judges have a wide range of discretion. So it is not at all true that HB 396 removes discretion from the judges. At the same time it is certainly a tougher sentencing bill. It is their responsibility. The offender can be back among us in a deceptively short time. I think the judge has the authority and responsibility to sentence these people. This was in answer to a comment that the bill did take authority away from the judge. Representative Keedy went on

to say, I am concerned especially about the prison conditions and the burdensome prison population. I don't think the answer is in loosening up our treatment of the offender.

Representative Daily asked about a non-dangerous offender if you look at 404.

Representative Lory said you must look at the two conditions, and Representative Keedy said they are not conjunctive.

Representative Keyser asked how many are recidivated from parole or are dangerous or would ordinarily be regarded as dangerous. This was discussed at some length.

Representative Holmes asked about a bad check offender. The Attorney General has stated that historically a prisoner is not designated now. There was general discussion about this.

Representative Keedy stated that he felt she had put her finger on the problem. Because 404 is mandatory in nature the Attorney General felt it was required in certain cases. I think there are all kinds of problems with it and I am trying to repeal it. The way I read the current law is that the judge has some discretion. Whereupon Representative Scully commented that 404 was not supposed to become law. One of those bills was so that a person could expect flat time. Discussion followed about this.

Mr. Zanto said that he meant to suggest that I agree with Mr. Keedy and I think there is a need for it.

Representative Holmes suggested that they put in a grandfather clause for the people who have already been convicted.

Representative Teague asked about dangerous and non-dangerous offenders and if it could be clarified what was meant by each.

Representative Scully stated that there is no designation for dangerous, only for non-dangerous and it applies to the person and not the crime.

After some general discussion the hearing closed on House Bill No. 396.

SENATE BILL NO. 88: Senator Turnage. This bill would provide for the creation and administration of trusts in favor of absent unlocatable owners of interests in minerals. It would require those holding funds for unlocatable owners to petition for creation of such trusts. It concerns severed mineral rights. The problem really got started with uniting severed miners rights with the owners rights. What do you really do when you have a fractured mineral right and there are other people that want to lease the mineral rights, so this bill is an attempt whereby a trust is created and a trustee would then have lawful authority. It was amended in the Senate. Section 4 is controversial with the oil people. They are opposed to that. It provides that in the event that there are monies held there are hold accounts. They have a period of 6 months to come forward with the money. The Attorney General has some question about the escheat portion.

SENATOR TOWE: This is a good bill and I would commend it to you. There are a number of oil companies that are not locating all of the heirs and are holding the money in the hope that the people don't show up. Our law definitely relates to what can be done with the money.

LES LOBEL: Montana, Dakota Utilities. I have a concern with this bill and the unclaimed property act. On page 4, line 10 that provision seems to cover the situation with a lease property. I would suggest an amendment, so that the company does not have the expense of setting up the trust. There was some discussion about this.

DENNIS DUNPHEY: Assistant Attorney General. I assist the Department of Revenue in the unclaimed property act. I am in favor of this bill. There is a 7 year presumption under the unclaimed property act. He explained the law.

Representative Scully asked if you would not set up a formed trust that you could snap together with very little effort. Some discussion followed about this.

SENATOR TOWE: We could amend the amendment so that the amount is less than \$200. Some discussion followed and the attorney generals office presented amendments for the committee to study.

There was no further discussion and no questions and the committee recessed for a short time to go to the Highway Auditorium to hear House Joint Resolution 15.

HOUSE JOINT RESOLUTION 15: Chairman Scully gave the ground rules under which this hearing would be held because of the controversial nature of the subject content. Each side will be allowed 45 minutes, with the proponents speaking first and the opponents speaking second.

REPRESENTATIVE O'CONNELL: As chief sponsor of the bill, I am overwhelmed to see this turnout. I belong to no group. My reason for suggesting this bill is because of my strong feelings about this. As a woman and as a mother I want to stop the killing of millions of unborn babies. I want to protect the lives of all human beings including unborn children at every stage of their biological development. The unborn baby is alive and human and I want to stop the slaughter. She went on at some length in much the same vein.

PROPOSERS:

MARTIN BURKE: Members of the committee. I am an attorney and assistant professor of law at the University of Montana School of Law. I am grateful to you for the opportunity to address this committee. He gave a copy of his prepared testimony to the committee. Exhibit #1.

ROBERT WHITESETT: I am a physician and surgeon. An abortion is any act or operation to intentionally terminate a pregnancy. The Supreme Court has made a determination. This was based on the 14th amendment that the fetus was involving the woman's right to privacy. For centuries clergymen have debated the issue about when life begins and the Supreme Court has decided that life begins at birth. He talked about Pennsylvania law at some length. Physicians are well aware of the Hippocratic oath which states that you will not help a woman have an abortion. He talked about the safety of abortion and gave statistics in Colorado. 30 times as many women died from abortion as from pregnancy. In our own state the family planning units have become abortion mills. He talked about how they operate.

LYLE PERSON: Pastor, Evangelical Lutheran Church. I only represent myself. First of all, biblically we say that life commences from the time of conception. Second, biologically the way God has created it is that all life has a built-in mechanism to preserve life. In the area of choice whose choice is it. Do we take into account the unborn child. I think the child would choose to live. I would urge your support of this bill.

PAUL FERGUSON: He gave a copy of his written testimony to the committee. Exhibit # 2. I am an obstetrician and gynecologist in Missoula. There is no doubt that life begins at the time of conception.

SUZANNE MORRIS: President of the Montana Right to Life Committee. I speak on behalf of thousands of the people of Montana and we take the matter of amending the constitution very seriously. She presented a copy of her written testimony to the committee. Exhibit #3.

MARGARET EAGLE: She talked about abortion and the effect of having one. We had an abortion. You suffer from all kinds of things beside the guilt.

GINNY DAVIS: President of Missoula Chapter of Right to Life. Representing the members, I petition this House Judiciary Committee to vote yes on HJR 15, the constitutional convention call on the abortion issue. It is the constitutional right of those in the Pro-Life movement, and all opposed to the current permissive abortion laws, to avail themselves, through this legislature, of this method of bringing a vital issue before the people. Fear of procedural impediments must not stop this valid democratic process. She presented a copy of a list of names in support of an advertisement in the Missoulian in January, 1979. Exhibit #4. Voting yes on this call is really pro-choice.

DR. JOHN DOUBECK: I would like to support this committee to pass a resolution to call for a constitutional convention for such an amendment. My reasons are one of violence and I think abortion is violence. Over 1 million every year since 1973. There is a mounting protest every year. The constitution guarantees pursuit of life, liberty and the pursuit of happiness. We do not have the full impact of its evil. I beg of you to support the pro-life resolution. He presented a copy of written testimony to the committee. Exhibit #5.

BETTY BABCOCK: I ask you to vote yes on this very important resolution. When it legalized abortion in 1973, the Supreme Court made it possible for women with unwanted pregnancies to obtain safe, sanitary and compassionate medical help. Nearly six years later, one out of every 11 women of reproductive age--5 million nationwide, 200,000 in Illinois--has had an abortion. In Illinois woefully little is being done to guarantee these women competent medical care during abortions. Dangerous and inept and illegal practices flourish inside four Chicago abortion clinics in flagrant defiance of state licensing and inspection laws, and accepted medical standards. We called the people who run these clinics the Abortion Profiteers. She presented a copy of the National Right to Life News to the committee. She went on to read other testimony which she did not leave with the committee. News copy is exhibit #6.

LARIES SULLIVAN: I support HJR 15. She talked about the Dred Scott Decision in the 1857 Supreme Court. This decision was overturned. The Supreme Court has ruled that the unborn child is not a person. This can also be overturned by a Constitutional amendment. I would like to suggest a do pass recommendation. She quoted Thomas Jefferson on the one legitimate option of good government.

TOM GLEESON: Lewis and Clark County. I want to talk to you as a father. Our son is one of the greatest blessing in our life. He has Down's Syndrome, which is a mongoloid child. I think there is a very religious aspect to this resolution. He read from Psalms 139, 13 to 16 which deals with birth. I urgently ask that you pass this resolution.

MRS. MARY DOUBECK: Please pass this resolution to give Montana the right to choose. There is no other reason.

PAULA LINDSAY: 1979 is the International Year of the Child. It will focus on such things as curbing child abuse and promoting better foster care. The focus is on strengthening the family.

MATT HEDMAN: In 1971 thirty legislatures in the United States were confronted with bill to liberalize abortion laws. He went on to mention the states that have abortion laws. I think it is time now that we can turn it back to the people. We can rely on the people.

MRS. JOHN SHEEHE: I agree with Mrs. Morris' testimony. This is the only option that we have left. I urge your support of this resolution.

OPPONENTS:

WM. BURKHARDT: Reverend, Helena. Every major national opinion survey in our country indicates that the majority of our people support the right of a woman to decide when or whether to have children. It is apparent that opposition to the right to determine this basic and profound matter is based on religious beliefs. Those who from their religious perspective are opposed to abortion on any grounds, are not being required to have abortions performed. I respect their right to believe and practice according to their conscience and faith. He named all the various mainline Protestant churches that have taken a stand in support of a woman's right to decide whether or not she will bear a child. He submitted written testimony. Exhibit #7.

SUSAN HILLEBOE: I am a teacher and in 1969 prior to the Supreme Court ruling on abortion in 1973, five angry women banded together to form the Pregnancy Referral Service. I was one of the original five and worked with P.R. for two years. We offered information on reliable contraception, adoption agencies, social services available, safe abortion, and pregnancy options. All volunteers in PRS had, in one form or another, been forced to recognize the reality of abortion. She told of cases she was familiar with and after reading her testimony she presented written copy to the committee. Exhibit #8.

CARL TOBIAS: University of Montana Law School. I ask you to think about the seriousness of a Constitutional Convention. We have never convened a convention in this way in over 200 years. You should ask yourself some very serious questions, how the convention will be called, how it will be dealt with, and consider the fact that there is no procedure established. Montana may be seriously disadvantaged against larger states. We shall address three topics, the broad policy questions of the advisability of amending the Constitution in this way, the general Constitutional Convention, and the specific question of the procedures to be followed in conducting a con-con. He presented the committee with a copy of written testimony. Exhibit #9.

VICTORIA BUTLER: I want to keep abortions safe and legal. I have had an abortion. I feel no shame, or guilt, or regret my decision. I am particularly grateful to the Blue Mountain Women's Clinic in Missoula, and it is my purpose to see it is always in operation. She presented written testimony to the committee after reading it. Exhibit #10.

VIRGINIA KNIGHT: As a practicing attorney, I am opposed to holding a Constitutional Convention for the sole and exclusive purpose of proposing a single amendment to the United States Constitution. The U.S Constitution has been an effective social framework for this country because it is adaptable. When changes in the Constitution have been necessary, the amendment process has served as an effective modification tool. A convention has potentially disastrous and uncharted consequences. It is like dismantling an engine to change the oil. You may never be able to put the engine back together again. She presented written testimony to the committee. Exhibit #11.

ELIZABETH MANLEY: Nurse. I feel that every woman should have the right to make her own choice about her body. She cited cases she was concerned with and compared appendectomy and child birth statistics to abortion statistics. I ask you to support this resolution and keep abortion safe and legal.

BERNEICE KINGSBURY: I am the 9th of 10 children, a mother, and a grandmother of two. I urge your support against the resolution. I am speaking on behalf of Helen Beresford Stratton. She is too ill to attend herself and asked me to read her testimony to you. Exhibit #12.

HELEN R. HERBERT: The first amendment to the Constitution states that "Congress shall make no law respecting the establishment of a religion or prohibiting the free exercise thereof." The American people would be making a great mistake to permit any one church to write its theological views about conception or sex into the constitution. She presented written testimony. Exhibit #13.

TRACY BIER: Field Representative, Montana Pro-Choice Coalition. What is the pro-choice coalition. We are not a bunch of screaming radicals located in Missoula. We don't like abortion anymore than you like abortion. We are interested in keeping a choice. If an abortion is made illegal there is no choice. Women with financial resources will still have a choice. She talked about abortions done at home, in the back alleys and the dangers involved. The other side graphically is dead women. The coalition represents lots of different kinds of people, all life styles and all ages. There are lots of pro-choice people and we intend to keep abortion legal. I urge your vote against this resolution. We need the right to make a choice.

MIKE DAHLEM: I would like to comment about some of the constitutional questions and the calling of a Constitutional Convention. HJR 15 introduced by Representative O'Connell poses several serious questions which this legislature should consider seriously in its deliberations. The resolution calls for a convention for the sole and exclusive purpose of proposing an amendment to the United States Constitution that would protect the lives of all human beings including unborn children at every stage of their biological development. Article V of the US Constitution allows for two methods of amending the Constitution. The procedure before employed requires a 2/3rds vote of both houses of Congress to propose amendments and 3/4ths of the states to ratify them. The second method which is proposed in this resolution, allows a mandate of 2/3rds of the state legislatures to convene a Constitutional Convention to propose amendments. All amendments would still require ratification by 3/4th of the states. He presented written testimony to the committee. Exhibit #14.

ALONA BROWN: Montana State University. In hearing the argument the one statement that I really need to make is the protest of civil liberties and I think its the hot bed of democracy. I am opposed to this resolution.

ANN LUITHLY: I am writing to ask you to please vote against HJR 15. I am against this resolution for a multitude of reasons, but shall only discuss briefly two of them now. She submitted written testimony. Exhibit #15.

JAMES JENSON: Most of my points have been made and I concur. I feel that it is incumbent upon the proponent to impose capital punishment. It is in direct opposition to the Constitution of the United State about religious tyranny.

LARRY CULP: Sociologist, University of Montana. The merits of public opinion polls are best demonstrated by their widespread use in political elections. The

validity and reliability have made them a useful tool for both the scientist and the layman. The reputable national surveys represent a cross section of the people with only about a one or two percent chance of error. For the most part the public opinion poll gives us immediate and accurate information concerning the relationship between facts. He submitted written testimony. Exhibit #16.

Several other opponents presented written testimony although they did not wish to speak before the committee. copies attached.

REPRESENTATIVE O'CONNELL: I have had so much happen this week, the support has been tremendous. Without the right of life we will need no other right. 64-103 in the code protects the life of the unborn child from conception on through. The Supreme Court decision was an example of raw judicial power and it violates the rights of the individual. I would be willing to lose the decision if it were to go to the right process. I have, in my opinion, the greatest title in the world and that is the title of wife, mother and grandmother and I am proud of it, so that we can preserve the greatest thing on earth, life.

REPRESENTATIVE KEYSER: What was your intent on page 2.

REPRESENTATIVE O'CONNELL: Most states are considering this. She asked Mr. Burke and he talked about how long the convention would last. The Supreme Court has the right to limit the length of them.

REPRESENTATIVE DAILY: If we did have the convention could the committee write an amendment that would be pro-abortion right then. Mr. Burke explained how it would work. A Constitutional Convention can make no change in the Constitution. Anything that a Constitutional Convention proposes for ratification by the states must be ratified thereafter by 76 legislative bodies in 38 states or 3/4 of the states. He elaborated upon this a little further.

REPRESENTATIVE KEMMIS: The Constitution does say how Congress can call a convention. Article XIX of the Committee draft presented to the Convention on August 6 and adopted without amendment on August 30 provided, on application of the Legislatures of two-thirds of the states in the Union, for an amendment of this Constitution, the Legislature of the United states shall call a convention for that purpose.

Mr. Burke commented that there are certain details that should not muddy up a convention. It would be left up to the convention itself.

Mr. Kemmis commented that we would have no guarantee that we would have fair representation. The question was asked if this had ever been done before and Mr. Kemmis said that the framers of the Constitution left it up to the various states.

REPRESENTATIVE HOLMES:

Why isn't the usual method being used. Mr. Burke stated that the Constitutional amendments are log-jammed and here the states have the right to take action themselves. Mrs. Holmes then asked how will it be paid for, and Mr. Burke said by Congressional legislation. Then Mrs. Holmes asked how you would manage the enforcement of the law. Mr. Burke said it would be the same way you would handle homicide.

REPRESENTATIVE ROSENTHAL:

What are the best answers to problem pregnancies? Discussion followed about this and the number of teen-agers involved. Then Mr. Rosenthal asked the Right-to-Life members if they would support adequate funding for child abuse, day care and such things as that. The Right-to-Life spokesman said, "yes, they would".

There were no further questions and the hearing closed on House Joint

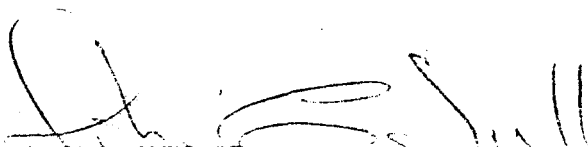
Resolution Number 15.

Listed below are the names of persons presenting testimony which was not read but will be included in the minutes.

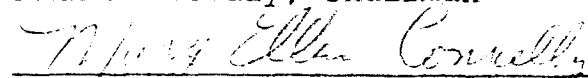
Christine Torginson
Robert Oret
Alice Howe Austin
Priscilla Phillips, Director
Blue MT Womens Clinic
Mary Lou Armitage
Colleen Mack Canty
Marylou Lahey
Rebecca Kohl
Helena Women's Political Caucus
Judy Smith, PH.D. Health Educator
Cathy Anderson
Susan Gunn, Anne Gun, Liz Gunn
Sue Bennett
Pat Boedecker
Bev Fox
Kelly Deveau

Terry Hoskins
Margaret Miller
Nancy Ritz
Lois LaCroix
Chris Raver
Claudia Kurie
Stan and Glenda Bradshaw
Douglas Webber, MD

The meeting adjourned at 11:35 a.m.



John P. Scully, Chairman



Mary Ellen Connelly, Secretary