

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE/FEDERAL RELATIONS

Call to Order: By **CHAIRMAN AUBYN CURTISS**, on March 23, 1995, at 8:05 a.m.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Matt Brainard (R)
Rep. Bill Carey (D)
Rep. Patrick G. Galvin (D)
Rep. Daniel W. McGee (R)
Rep. Ray Peck (D)
Rep. William R. Wiseman (R)

Members Excused:

Rep. Roger Somerville, Vice Chairman (Majority) (R)
Rep. George Heavy Runner, Vice Chairman (Minority) (D)
Rep. Judy Murdock (R)
Rep. Robert J. "Bob" Pavlovich (D)

Members Absent: None

Staff Present: Patti Borneman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SJR 6 TABLED

EXECUTIVE ACTION ON SJR 6

Discussion:

CHAIRMAN CURTISS announced to the committee that they received more information (listed below) which was distributed to the committee.

The Texas resolution, which resolves on the last page that the conference agenda extends also to common language to be used in state petitions to the U.S. Congress for a constitutional amendment convention under Article V. **EXHIBIT 1**

a Letter written to the Legislative Analyst in Florida by Florida State University in opposition to the Conference of the States.

EXHIBIT 2

A resolution introduced by the city of Philadelphia urging the Pennsylvania legislature to reject their Conference of the States resolution. **EXHIBIT 3**

A press release issued on March 8, 1995, by Senator John Cherry of Michigan, stating that the conference "opens up the danger that a group of extremist Western secessionists could eventually lead to a constitution convention to rewrite the United States Constitution. **EXHIBIT 4**

REP. MATT BRAINARD commented that these items were all faxes from Eagle Forum.

CHAIRMAN CURTISS pointed out that the battle against SJR 6 has primarily been led by Eagle Forum, but the University of Florida has nothing to do with Eagle Forum, nor has the city council of Philadelphia had anything to do with Eagle Forum. She didn't know about the Democratic floor leader, Senator John Cherry, of Michigan, whether or not he has connections with Eagle Forum. She commented that she didn't think that the involvement of a well-informed organization should be cause for disregard of their information.

Motion: **REP. DAN MCGEE** MOVED THAT SJR BE CONCURRED IN.

Motion: **REP. BRAINARD** MOVED HIS AMENDMENTS.

Discussion:

REP. BRAINARD described his amendment to the title. Following "states" he would add "providing exception to participation in a constitutional convention." On page 3, line 22, he would strike the words "without amendment." On page 4, line 3, following fundamental, he would strike "structural."

REP. PECK asked **REP. BRAINARD** if he checked with Legislative Council about these amendments to verify if they are appropriate. He responded that he had not, but since an amendment was added in the Senate, he believed that they would be appropriate based upon the committee's prior discussion.

REP. PECK said he didn't see anything wrong with the amendments.

REP. WISEMAN said if the amendment is passed, will they be able to support the resolution. **REP. BRAINARD** said he'd have a greater ability to do that, and would like to have a full discussion after the amendments are on it.

REP. MCGEE asked how striking the words "without amendment" would change the resolution. **REP. BRAINARD** said it seemed to him that

since it had already been amended, it would make the language more sound.

REP. PECK asked if they could divide the amendment and take them up one at a time. He didn't see anything wrong with amending the title, because the exception is already in there and makes sense. Striking "without amendment" is probably appropriate also, because that's their intent, otherwise it's a contradiction. The word "structural" on line 3, page 4, he wasn't sure about the intent for that, but didn't know if that was necessary. It could just be limited to "fundamental, long term reforms" and he didn't have a problem with any of it, but someone else might feel differently about the three different items.

CHAIRMAN CURTISS asked for a motion to segregate the proposed amendments.

Motion: REP. PECK MOVED TO SEGREGATE THE AMENDMENTS.

Discussion:

REP. PECK suggested starting with the amendment to the title.

REP. BRAINARD defended and described his amendment to the title.

Vote: The motion to adopt the first Brainard amendment carried unanimously.

Discussion:

REP. BRAINARD defended and described his second amendment removing "without amendment."

REP. BILL WISEMAN wondered what this would do to the overall acceptance of the resolution by the steering committee, since they requested that it not be amended.

CHAIRMAN CURTISS said this would provide that any amendments which have been amended would not be construed for a constitutional convention.

REP. MCGEE read the entire line in question, and said if it is amended as proposed, Montana would not be one of the 26 legislatures considered in establishing and calling for the COS.

REP. PECK said it would be a self-destructive mechanism.

REP. BRAINARD suggested that since the Senate had already amended the resolution, that to keep the language in would be prejudicial for them in attending the conference. In order for them to attend, if they include "without amendment" he said they're signing their own "death warrant" on attending it. He thought they would still be able to go to the conference with those words eliminated from the resolution.

REP. MCGEE said he didn't read it that way. The term "without amendment" doesn't apply to what they're doing, but applies to when a conference of states would be called. The COS would be called when 26 legislatures pass the resolution without amendment. Because Montana has amended it, they don't qualify as one of the 26 states. He didn't think it affected them in terms of being able to go to the conference. He said they wouldn't be in any case, because amendments have already been added.

Vote: The motion to adopt the second Brainard amendment carried with **REPS. MCGEE AND WISEMAN** voting no.

REP. BRAINARD defended and discussed the third amendment that would strike the word "structural" from the statement on page 4, and that "fundamental and long term reforms" is adequate. He thought the word "structural" indicated the possibility of changing the constitution, which is a basic structure for a form of government. He didn't think it was appropriate in the resolution.

REP. CAREY agreed with **REP. BRAINARD**, but said that "fundamental" is also a loaded word and suggested they may want to strike "fundamental" as well, but then what are they left with. He said it was a good amendment.

CHAIRMAN CURTISS asked **REP. BRAINARD** if he would consider that a friendly amendment to the one he proposed, and he said he would.

REP. CAREY said he didn't move that, but was meant as a hypothetical statement that they could strike it, because in striking "structural" they're still left with "fundamental" which basically leaves plenty of room to do whatever someone would want to do in terms of the constitution. He did not make a motion to amend.

REP. BRAINARD said he left in the word "fundamental" because he thought it could be applied to many things, in terms of logic or attitudes, but the word "structural" rang a bell because he sees structure in the text of the constitution. He didn't think "fundamental" was quite as threatening as "structural."

REP. WISEMAN stated that he was having a difficult time thinking how they could make fundamental, long term reforms without there being some affect on the structure. He noted in the newspaper an article about the President's signing of a GOP bill to rein in federal mandates. He said nothing structural was changed in the constitution, but some basic changes will take place. He could accept the amendment, but felt there was no desire to change the constitution, just a desire to take back the power given to the federal government.

REP. MCGEE wanted to make a suggestion and if the chairman agreed, would offer it as a substitute amendment. On line 3,

page 4, add "specify that the conference agenda is limited only to reform of state and federal relationships."

{Tape: 1; Side: A; Approx. Counter: 540; Comments: n/a.}

The committee discussed the meaning and the wording of **REP. MCGEE'S** amendment. He said he was trying to get away from any language that could remotely be construed to promote a change in the constitution. They decided to strike the word "only" from his amendment.

REP. BRAINARD didn't object to it, and after clarification, said he didn't have a problem with it.

REP. PECK said it would reduce any fear anyone might have about a constitutional convention, with the wording "reform of federal and state relationships."

REP. MCGEE asked if they should change the word relationship to something like interaction or dialogue.

CHAIRMAN CURTISS reminded him that the name of the committee is State/Federal Relations. She asked **REP. PECK** if he could clarify the grammatical aspects of that.

REP. PECK thought relations might be a better word.

They agreed to remove "ship" from the word.

REP. MCGEE looked up the word relation and read the definition to the committee.

Motion: **REP. MCGEE MOVED HIS SUBSTITUTE AMENDMENT.**

CHAIRMAN CURTISS said the amendment would read: "...to reform state and federal relations."

Vote: The motion carried unanimously.

CHAIRMAN CURTISS said they were now discussing the resolution as amended.

REP. BRAINARD said he was now more comfortable with what the state of Montana would be doing, despite what other states are doing. He referred to a letter from Senator Charles Duke, Colorado, in which he discusses the COS and its relation to the other states. **EXHIBIT 5** He asked the committee to discuss this.

{Tape: 1; Side: A; Approx. Counter: 770; Comments: n/a.}

REP. PECK asked **REP. BRAINARD** how this relates and said his concerns are unfounded because of the system that exists. He said they would not be able to get the approval of that proposal at this conference.

REP. WISEMAN said they are just going for a conference, there is no specific agenda that anyone has, they're just getting together as states. He said they could prevent governors from meeting as well, but when they do meet, they don't come up with agreements or terms plotting against the federal government.

{Tape: 1; Side: B; Approx. Counter: 70; Comments: n/a.}

REP. WISEMAN continued with discussion on the relevance of Senator Duke's correspondence to what they're trying to do.

REP. MCGEE said they needed to read the article in question (Article I, Section 10) in the context of the entire paragraph and he read it to the committee. **EXHIBIT 6** He couldn't see where this could impact the states relationship to each other. For instance, they passed a bill to allow for joint state usage of way stations at ports of entry. He said they make agreements with other states all the time.

They discussed the ability of states to keep troops despite this section in the constitution.

REP. PECK brought up a parliamentary question and said members anticipated voting on this resolution as it was and now they have some amendments that are fairly significant. He wondered if proxies can be appropriately applied to the amended resolution.

CHAIRMAN CURTISS said she didn't know.

REP. MCGEE thought the proxies were probably invalid.

CHAIRMAN CURTISS thought they could still vote them on the resolution.

REP. BRAINARD said every time he's left a proxy for the second readings on the floor after amendments have gone on, that proxies have been voted for the bill. He's seen this happen in committee as well.

REP. PECK said the usual thing is that they leave them with someone they trust, but in this case they have been left with the chair. He said he usually leaves his proxy with instructions. He said he's uncomfortable voting for **REP. PAVLOVICH** because they discussed it and his reservation dealt with the amendments that were added and might relieve his mind.

REP. WISEMAN said the amendments take out some of the doubt that was expressed, and he didn't think they have done that much to change it. He thought they could use the proxies.

REP. PECK said he wasn't objecting, if that was the will of the committee, but just wanted it to be considered before they vote.

{Tape: 1; Side: B; Approx. Counter: 200; Comments: n/a.}

CHAIRMAN CURTISS stated that she was going to vote against the resolution. She said it was the hardest call she's ever had to make, because with all her heart she believed they need to settle some things with the federal government and to establish which entity has supremacy. She said the 5th Amendment provides two methods for calling a constitutional convention. She reminded the committee what these two methods are. The resolution states that upon convening the conference, they will adopt the rules and regulations for the conduct of the conference. She pointed out that the words "conference" and "convention" are synonymous.

In other states, she noted that New Mexico voted it down. New Mexico is one state that has been beleaguered with federal regulations, and if any state should be motivated to straighten things out with Congress, it would be New Mexico, so they must have good reasons for rejecting it.

She said her name is on the resolution as a co-sponsor and it had her full support until she read all the materials that were presented to her. She now believes it leaves the door open for a constitutional convention.

She was also convinced that there are alternatives to SJR 6. Congress is currently dealing with federal mandates, and they passed SB 167 which will instruct various state agencies to evaluate what mandates are administered by their departments.

She referred to the many petitions she received, but said that she was most impressed by the many educated people who keep up with the issues, including former first lady, Betty Babcock, and emphasized that if she had received just one postcard in favor of the resolution, which she had not, she might have reconsidered.

She stated her adversity to people in Congress telling the states what's good for them, and although she'd like to vote for it, she can't arrogantly say she knows better for these people (who signed the petitions) than what they believe themselves.

REP. BRAINARD said he echoed her sentiments and said he would also be voting against it. He referred to the resolution from Texas and read language that was troublesome to him. (See Exhibit 1) He stated that he didn't want to lend the weight of Montana's legislature to the questionable motives of some movements. He said if they reject it, it would be a good sign to the rest of the country.

He added that should the conference take place, they may very well see 50 states all squabbling over their petty interests, and said there are deep divisions in the country between east and west. On the down side, this convention could result in nothing but a lot of "garbage."

REP. PECK said he would vote for the resolution and thought **REP. BRAINARD'S** amendments were meaningful and that he would be in a

more positive mode. He disagreed that conference and convention are the same thing. He said a convention has a more formal connotation than a conference. Drawing from his psychological training and experience, he said it seemed to him that the nation and Montana is in a hysterical or paranoid mode and is not unknown in the literature that exists. He said he doesn't have the kind of fear and mindset that they're going to be taken over or changed materially by a Conference of the States. He said he just couldn't believe it. He considers himself a moderate and likes to listen to arguments on both sides, but generally he stays in the middle.

He mentioned two books that he read recently and brought with him, the first: *America: Who Really Pays the Taxes*. It traces the development of the federal tax structure. He suggested that this book would make them very angry. It documents how riddled the tax system is that corporations would be encouraged with tax breaks to move out of the U.S. and "there doesn't seem to be a rational person in Congress" to change this. He said this issue alone justifies a meeting of the states. He described the second book [the title was inaudible on the tape] by a man named Kevin Phillips, a conservative writer, who documented the growth of the federal government. He asked what other avenues can they use to effectively implement a change if they don't do something else. He said millions of dollars are spent every year for politicians to fly around on private jets.

He responded to what **CHAIRMAN CURTISS** said about casting their votes based upon what the citizens have expressed, and he submitted to the committee that if they ever get to that point, they will never need to come to Helena, but just set up a computer and call in on these issues. He said they are there to make some rational judgments, not in response to the hysteria that is rampant, or to people who are so well organized that they can make a phone call and generate a lot of mail for them. He showed them his file on SJR 6 and said that fear is besetting the reactions that they have.

He didn't believe that the constitution could be rewritten at the Conference of the States, and reiterated the goals of the conference in terms of balancing the power between the state and federal governments.

{Tape: 1; Side: B; Approx. Counter: 595; Comments: n/a.}

REP. WISEMAN said that he is a native of Texas and can also relate to New Mexico. He studied the opponents and identified two groups which they came from. He reiterated his statement that the reason the federal government is out of control is because they've kept the states divided. He believed the COS would help the states to have a strong, powerful voice and he strongly supported SJR 6.

REP. BRAINARD said **REP. PECK** gave the best supportive speech for this conference that he has heard and said he valued his ideas and intentions, but commented that the forces described in the books he described might take over the conference and break it down and make it ineffective or counterproductive. He expected the resolution to pass and hoped the amendments would clean it up.

REP. MCGEE said he has learned to have respect for everyone in the legislature and respects the governor. He asked Governor Racicot about the call for a con-con for the purposes of balancing the budget and asked if he was concerned. He said he wasn't concerned, "because you can't get there from here."

REP. MCGEE described the steps that are necessary for a constitutional convention to occur: 1) 33 state legislatures have to vote for it, 2) the states would have to call a convention, 3) the purpose would have to be specified for amendments, and 4) the amendments proposed would have to be ratified by 38 state legislatures. He asked how long they waited for the Equal Rights Amendment, which finally died. It never made it because 36 states could not agree. **REP. GALVIN** said it lost by one state. **REP. MCGEE** said it went on for years. He emphasized that "we are the United States of America, not the divided states of America. We have the right to discuss anything with anybody at anytime we feel like and we've had it right here in this room." He described the issues they have discussed as a legislature.

Two reasons for going to the COS are: 1) perhaps there are issues they need to address between state and federal relations, 2) if they assume someone has an ulterior motive and wants to turn it into a con-con, "go and oppose it." He said he would vote for it. He absolutely agreed with **REP. PECK'S** statement that they are the elected representatives of their constituents and if it was a true, absolute democracy, every citizen would have a vote on every issue, but they are elected to bring their own sense of responsibility and ethics to the capitol, to weigh all the facts -- "we are, in fact, a jury" -- and then make a decision. He encouraged the committee to unite in this.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. GALVIN said he had a teacher, 50 years ago, who expressed some of the same ideas and concerns. He said he would be voting against the resolution.

REP. CAREY said he agreed with most of what everyone had to say, but thought they needed a cooling off period. There is a kind of paranoid attitude that is prevailing in some areas, so he wanted to see if the current Congress would be modifying relations, and if not, then perhaps they ought to have a conference of the states. He thought the timing was awful right now, so would oppose it.

REP. PECK stated that REP. BRAINARD anticipated that the minority leader asks the party to vote with him and he wanted it known that he doesn't do that. He said the Democrats in the House of Representatives are always free to vote their convictions and he doesn't exert influence over them. He was referring to his statement that he expected the resolution to pass and he must have been expecting Democrats to be for it.

REP. BRAINARD said his statement was not based on his possible influence, but was what he perceived was a common thread that seemed to run through many people who thought it was a good resolution.

Vote: A roll call vote was taken. The motion failed 6-5 with REPS. SOMERVILLE, MCGEE, MURDOCK, PECK and WISEMAN voting yes. REPS. MURDOCK, SOMERVILLE, PAVLOVICH and HEAVY RUNNER voted by proxy.

Motion/Vote: REP. BRAINARD MOVED TO TABLE SJR 6. The motion carried 6-1 with REP. WISEMAN voting no. REPS. SOMERVILLE, MURDOCK, PAVLOVICH AND HEAVY RUNNER were absent for the vote.

REP. CAREY asked if there would be any further business for this committee. He said he was concerned about congressional legislation that would impact food and nutrition programs in the state and wondered if the committee would be interested in learning more about what is happening in Congress as far as the potential ramifications.

CHAIRMAN CURTISS said that a request was made of the Legislative Finance Committee to track the action of federal mandates. She said she didn't believe that would completely address the concerns they have, but commented that Congress is moving in a direction, for the first time in 40 years, toward more accountability, for instance, as evidenced by the fact they are now producing fiscal notes.

REP. PECK asked REP. CAREY if he had something specific in mind for the committee to address. He responded that the committee may want to know more about the child nutrition cuts that he believed would take place in the block grant proposal and how that will impact Montana. He would bring in resource people to talk to the committee about this topic.

REP. PECK said he was interested, but noted the difficulty in getting this committee together, especially at this late stage in the session when activity picks up. He would have no objection.

CHAIRMAN CURTISS said, as a committee, they can do whatever they want to do. Even without funding, she considered having an interim committee, just to keep up-to-date with what is happening.

REP. PECK expected that the Legislative Finance Committee would track the issues and could lead to a special session.

CHAIRMAN CURTISS said she appreciated the opportunity to get better acquainted with members of the committee and appreciated their input.

{Tape: 2; Side: A; Approx. Counter: 239; Comments: Meeting adjourned.}

This meeting concluded business of the State/Federal Relations Committee for the 54th Legislative Session.

ADJOURNMENT

Adjournment: 9:15 a.m.


AUBYN CURTISS, Chairman


PATTI BORNEMAN, Secretary

AC/pb

HOUSE OF REPRESENTATIVES

State/Federal Relations

ROLL CALL

DATE 3/23/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Aubyn Curtiss, Chairman	✓		
Rep. Roger Somerville, Vice Chair, Majority			✓
Rep. George Heavy Runner, Vice Chair, Min.			✓
Rep. Matt Brainard	✓		
Rep. Bill Carey	✓		
Rep. Pat Galvin	✓		
Rep. Daniel McGee	✓		
Rep. Judy Rice Murdock			✓
Rep. Bob Pavlovich			✓
Rep. Ray Peck	✓		
Rep. Bill Wiseman	✓		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State/Federal Relations

DATE 3/23/95 BILL NO. SJR 6 NUMBER

MOTION: DO CONCUR AS AMENDED

FAILED

NAME	AYE	NO
Rep. Aubyn Curtiss, Chairman		✓
Rep. Roger Somerville, Vice Chairman, Majority	✓	
Rep. George Heavy Runner, Vice Chairman, Minority		✓
Rep. Matt Brainard	AYE	✓
Rep. Bill Carey		✓
Rep. Pat Galvin		✓
Rep. Daniel McGee	✓	
Rep. Judy Rice Murdock	✓	
Rep. Bob Pavlovich		✓
Rep. Ray Peck	✓	
Rep. Bill Wiseman	✓	

Proxy

Proxy

Proxy

Proxy

5

6

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State/Federal Relations

DATE 3/23 BILL NO. SJR 6 NUMBER

MOTION: Table - moved by Matt Brainard

NAME	AYE	NO
Rep. Aubyn Curtiss, Chairman	✓	
Rep. Roger Somerville, Vice Chairman, Majority		
Rep. George Heavy Runner, Vice Chairman, Minority		
Rep. Matt Brainard	✓	
Rep. Bill Carey	✓	
Rep. Pat Galvin	✓	
Rep. Daniel McGee	✓	
Rep. Judy Rice Murdock		
Rep. Bob Pavlovich		
Rep. Ray Peck	✓	
Rep. Bill Wiseman		✓

6 1

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

March 23-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

SJR Bill No. 6

Representative

Judy Mordock

voting

(yes)

aye
(aye or no)

HOUSE OF REPRESENTATIVES

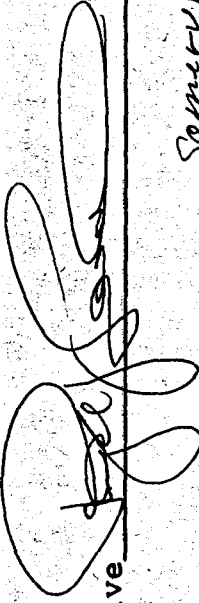
ABSENTEE VOTE

Date 22 March 1995

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

AYE Bill No. SJR 6



Representative

voting

AYE

(aye or no)

Somerville

REPRESENTATIVE ROBERT J. "BOB" PAVLOVICH HOUSE SEAT # 64

NOTICE OF COMMITTEE MEETING

The HOUSE STATE/FEDERAL RELATIONS COMMITTEE will meet on THURSDAY, March 23, 1995 at 8:00 A.M. in Room 312-1. We will take executive action on:

SJR 6

My Vote on SJR-6-15 No

March 22, 1995 -- 11:41am

Rep. Pavlovich
Patti Borneman, Secretary

Phone: 4838



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

3/23/95

I do hereby give my proxy
to vote at the House State-Federal
Relations Committee to
Representative PECK or Rep. Galvin
Rep. George Henry Rumm
Vote NO on SIR 6

February 20, 1995

DUKE

(303) 866-4866

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By Charles R. Duke
State Senator - District 9

An issue before many legislatures today is whether there shall be a Conference of States (COS), the bylaws of which would be confined to "fundamental, structural, long-term reforms" in government. Promoted by Utah Gov. Mike Leavitt and the Council of State Governments, which is a lobbying agency for state, local and county governments, the proposal requires any state which wishes to participate to adopt a joint resolution in that state to endorse participation and specify delegates.

In Colorado, we have Senate Joint Resolution 9 (SJR 9), sponsored by Senator Jeff Wells (R-Colorado Springs), Majority Leader in the Senate, and Representative Tim Foster (R-Grand Junction), Majority Leader in the House. The resolution passed 21-13 in the Senate despite spirited debate. It is currently stalled in the House Judiciary Committee, chaired by Rep. Jeanne Adkins (R-Parker). Very strong opposition from grass roots activist groups has essentially blocked the slam-dunk adoption a resolution carried by both majority leaders would normally receive.

* These groups believe the COS is just a thinly veiled stepping stone to a Constitutional Convention (Con-Con), and most are generally opposed to the adjustment of our Constitution in these uncertain times. The COS itself is believed to be unconstitutional, since Article 1, Section 10 of our Constitution states, "No State shall, without the consent of

Congress...enter into any agreement or compact with another

state, or with a foreign Power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." By endorsing the COS through adoption of a joint resolution, a state essentially is entering into an agreement or compact with other states, an action which is prohibited without the consent of Congress.

The sponsors of SJR 9 state they would resist any call for a Con-Con, but then qualify their resistance by asking, "But if a Con-Con should happen, shouldn't Colorado be represented in the proceedings?" This qualification is far too conciliatory for some of us. We should not only oppose the formation of the COS, but also actively encourage other states to oppose it.

Ideally, if at least 13 states refuse to participate, the requisite 38 would not be present to ratify the work of the conference. This would not be so unusual. Author Gary Benoit points out in an article in The New American that only five states attended the original Conference of States in Annapolis in September 1786, and the delegates "...decided not to proceed on what they called 'the business of their mission.'"

The number 38 is important because our Constitution requires that at least 3/4 of the states, or 38, are needed to ratify amendments to our Constitution. Although the sponsors of the COS insist the COS is not, in and of itself, a Con-Con, the COS does contain all the essential elements of a Con-Con. Our Constitution requires that only Congress may call a Con-Con upon receiving "...application of the legislatures of two-thirds of the several states..." SJR 9 states that the COS will not be

held unless 26 states request it, but the sponsors of the COS

have stated it will not be held unless 34 states request it.

Two-thirds of 50 is 34, when rounded to the next integer.

The goal of the COS is to develop a document called a States' Petition to Congress to address the concerns of the COS. This document, when coupled with the fact that the delegates are mostly members of state legislatures, is eerily close to the essential element of a call for a Con-Con. Clearly, one point of such a petition might be an application to call for a Con-Con. In any case, Congress, which seems to be under the control of those who would destroy our Constitution, might interpret the petition to be a call.

There are many warning flags about this COS. The sponsors embrace the Tenth Amendment Movement, but it is certain the Tenth Amendment would not survive a Con-Con. In point of fact, a rewrite of the Tenth Amendment is one of the stated goals of the COS. A conference of states could be held, as many often are, without the state endorsement of a joint resolution. The steering committee of the COS could adopt a posture that the conference is dissolved if the control of the conference is seized by those who want a Con-Con. All these safeguards and others have been vigorously opposed.

While legislatures may willingly deceive themselves into believing the COS is harmless, the people should not be so deceived. The late Everett Dirksen is said to have stated, "When I feel the heat, I see the light." The time for heat is now in every state in the Union.

End

Texas COS - Con/Con Resolution
see pages 3+4

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LEGISLATIVE INFORMATION SYSTEM 74(R)
BILL TEXT REPORT
HCR 18 INTRODUCED VERSION

DATE: 02/13/9
TIME: 12:00:1
PAGE:

By Chisum

H.C.R. No. 18

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intro + ref 11-5 Feb

CONCURRENT RESOLUTION

WHEREAS, The history of the adoption of the United States Constitution and Bill of Rights makes clear that the framers of those documents intended a system of federalism in which the national government and states were to be equal partners in achieving the goals of American self-governance; and

WHEREAS, In The Federalist Papers, James Madison and Alexander Hamilton clarified that the assumption of new powers by the national government would leave the states still sovereign in areas of authority outside those constitutionally enumerated as possessed by the national government; and

WHEREAS, The Tenth Amendment, the last item in a Bill of Rights promised to appease anti-federalist sentiment, reiterated the principle stated by Madison and Hamilton, providing that "(T)he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

WHEREAS, Over the last two centuries, the courts have provided little substantive interpretation of that amendment, while the government in Washington, D.C., has expanded its powers by proactive constitutional interpretation, leading to a situation in which issues tend toward a single national solution and the opportunity for experimental democracy by the 50 states is relentlessly eroded; and

03/08/95 10:48 FAX 7023580737
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EXHIBIT

DATE 3-21-95

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LEGISLATIVE INFORMATION SYSTEM 74(R)
BILL TEXT REPORT
HCR 18 INTRODUCED VERSION

DATE: 02/13/9
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WHEREAS, Increasingly, the states are saddled with unfunded federal mandates, the implementation of which robs them of revenue that might otherwise be applied to alternative, and more innovative, public investment as determined by the voters and leadership of each state; and

WHEREAS, In 1989, the Intergovernmental Partnership Task Force of the Council of State Governments issued a report containing proposals for restoring greater balance to America's system of federalism; and

WHEREAS, More recently, the National Governors' Association, the National Conference of State Legislatures, and the United States Advisory Commission on Intergovernmental Relations have called for summit meetings on the subject of federalism; and

WHEREAS, Recognizing that the collective voice of the 50 states is geographically dispersed, concerned state officials have proposed an informal and bipartisan Conference of the States for the summer of 1995, to be attended by delegations from the several states; and

WHEREAS, Delegates would focus narrowly on the subject of structural reform in the system of federalism, and the product of their deliberations would be submitted to the legislatures and governors of the 50 states for their formal consideration; and

WHEREAS, The Republican and Democratic governors of Utah and Nebraska, respectively, are working toward gathering support for the Conference of the States proposal, and the Council of State Governments has agreed to serve as coordinator and sponsor of the effort; now, therefore, be it

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RESOLVED, That the 74th Legislature of the State of Texas hereby authorize a delegation to represent Texas at a Conference of the States for the purpose of reexamining this nation's system of federalism and devising means to constitutionally reassert the principle of state sovereignty; and, be it further

RESOLVED, That the governor and presiding officers of the legislature have authority to determine the size, composition, membership, and chair of the Texas delegation to the conference; and, be it further

RESOLVED, That Texas agree to parliamentary rules adopted by the conference, provided that those rules entitle each state delegation, regardless of size, to one vote, and provided that each vote by the Texas delegation be in accordance with the majority of its members present and voting internally within the delegation; and, be it further

RESOLVED, That the conference agenda extend, if supported by participants, to the drafting of one or more potential amendments to the United States Constitution reaffirming and strengthening state sovereignty under the American system of federalism; and, be it further

RESOLVED, That the conference agenda extend also to common language to be used in state petitions to the United States Congress for a constitutional amendment convention under Article V of the United States Constitution, incorporating within that language the text of any amendments drafted by the Conference of the States for consideration by the constitutional amendment convention; and, be it further

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EXHIBIT 1

DATE 3-21-95

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RESOLVED, That the Texas delegation report fully on the proceedings of the conference to the Texas Legislature and the governor, including any action plan, constitutional amendment drafts, or constitutional amendment convention petitions receiving the support of conference participants; and, be it further

RESOLVED, That copies of this resolution be forwarded to the president of the United States, to the speaker of the house of representatives and the president of the senate of the United States Congress, to the members of the Texas delegation to the congress, and to the presiding officers of the legislatures of the other 49 states.

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P.02

The Florida State University
Tallahassee, Florida 32306-1043

College of Law

March 10, 1995

Mr. Eric J. Thorn
Legislative Analyst
House Republican Office
323 The Capitol
Tallahassee, FL 32399-1300

Dear Mr. Thorn:

This is in response to your inquiries regarding HCR 1401, which calls for the convening of a "Conference of the States" and would authorize Florida's participation in such a conference. As professors of constitutional law at the Florida State University College of Law, we are extremely troubled by the possibility that this proposed Conference could be construed as an application for a constitutional convention under Article V of the United States Constitution. Such a convention could evolve into a wholesale assault on our Constitution, and lead to proposals for destroying our present constitutional system. The history of the 1787 constitutional convention indicates that once a constitutional convention is convened, the delegates to that convention could expand the agenda of the convention beyond its original purposes, dictate their own rules for the ratification of the convention's proposals, and therefore circumvent the fairly strict requirements of Article V. Moreover, again using the 1787 experience as our model, no external authority--neither Congress, the courts, nor states that disagree with the convention's proposals--would have the legal authority to reject the convention's decisions if the convention itself deemed those decisions binding on the entire country.

Our conclusions about the dangers of the "Conference" proposed in HCR 1401 are not mitigated by the ambiguous phrasing of the proposal, nor by the final subsection stating that the Concurrent Resolution "does not constitute an application by the Legislature of the State of Florida for the calling of a federal Constitutional Convention within the meaning of Article V of the United States Constitution." It is essential to keep in mind that the "Conference of the States" could define its objectives for itself, and could reject preexisting limitations on its authority, just as the 1787 convention abandoned the limitations imposed on it by the Articles of Confederation. The broad language of the Concurrent Resolution authorizes the Conference to "reform the Federal Government" and authorizes Conference delegates to "propose, debate, and vote on elements of an action plan to restore checks and balances between the states and the national government." These broad mandates could easily be construed by the Conference as providing it the authority to fundamentally revise our existing constitutional structure.

It is the strange (and dangerous) nature of a constitutional convention that it defines its own objectives and sets the guidelines for its own success. Once a constitutional convention begins, the only limit on its power is political. The federal courts have consistently refused to entertain questions regarding the legitimacy of constitutional amendments (see *Coleman v. Miller*, 307 U.S. 433 (1939)). Therefore, a new constitutional convention presents the disturbing

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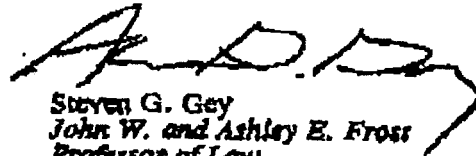
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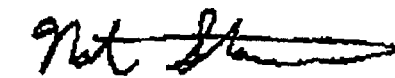
prospect of many different political bodies--the Conference, the existing federal government, dissenting states--all vying for preeminent political authority, without the possibility of judicial review to settle the dispute peacefully. This is truly a recipe for a constitutional crisis, and the destabilizing effects of such a crisis would reach into every aspect of our political, legal, and economic life.

We emphatically urge the Florida legislature to reject HCR 1401, or at the very least to postpone decision on the Concurrent Resolution until the legislature has given careful and detailed consideration to the many potentially disastrous implications that accompany even an ambiguous call for a constitutional convention. The United States Constitution is the greatest political document since the Magna Carta. Much of this country's strength and international moral authority are attributable to the Constitution's careful balancing of rights, responsibilities, and powers. Joining a "Conference of the States" as defined in HCR 1401 is the first, radical step down a very slippery slope toward upsetting that balance. We urge you to resist taking that step.

Sincerely,



Steven G. Gey
John W. and Ashley E. Frost
Professor of Law



Nat Stern
Professor of Law

03/21/95 11:28 FAX 7023560737

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RESOLUTION**URGING THE PENNSYLVANIA STATE LEGISLATURE TO REJECT
SENATE RESOLUTION NO. 12**

WHEREAS, there is currently pending before the Rules Committee of the State House of Representatives Senate Resolution No. 12 which authorizes the appointment of official State delegates to a Conference of the States to be held in Philadelphia October 22-25, 1995, and

WHEREAS, much concern has been expressed by organizations and groups as diverse as the Pennsylvania AFL-CIO, Pennsylvania Jewish Coalition, National Rifle Association, American Civil Liberties Union and members of the Legislative Black Caucus that the appointment of such delegates might be interpreted as an Application for the convening of a Federal Constitutional Convention, and

WHEREAS, Philadelphia would welcome the opportunity to serve as the host city for the Conference of the States; and

WHEREAS, legislative authorization and appointment of official State delegates is not required for successful conferences and meetings and only serves to cause serious questions and concerns as to possible motivation and ultimate purposes of such appointments, including concerns of converting the Conference of the States into a Constitutional Convention; therefore

BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF PHILADELPHIA hereby calls upon the Pennsylvania State Legislature to reject Senate Resolution No. 12; and

RESOLVED further that a copy of this resolution shall be forwarded to Governor Thomas Ridge.

COUNCILMAN DAVID COHEN
215-685-3446, 215-686-1927
March 16, 1995

03/21/95 11:28 FAX 7023560737

FROM: SENATOR JOHN CHERRY JR. TO:

EAGLE FORUM

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MAR 16, 1995 3:02PM #024 P.02

SENATE
STATE OF MICHIGANJOHN D. CHERRY, JR.
DEMOCRATIC FLOOR LEADERCAPITOL BUILDING
LANSING, MI 48913

PRESS RELEASE

FOR IMMEDIATE RELEASE
March 8, 1995CONTACT: Carol Lintean
517 373-1636**CHERRY SEES DANGER IN CALLING FOR CONFERENCE OF STATES**

(LANSING)—Senate Democratic Floor Leader John Cherry (D) said that today's approval of a resolution calling for a conference of the states opens up the danger that a group of extremist Western secessionists could eventually lead a constitutional convention to rewrite the United States Constitution.

"With the approval of Senate Concurrent Resolution (SCR) 32, the Republican majority have started us down a very dangerous road. This call for a conference of the states by the Council of State Governments comes to us under the guise of a discussion of the burden of unfunded federal mandates. But the organizers of this conference have spoken publicly about what they see is a need for 'a new federalism' and the possibility of this becoming a constitutional convention," said Cherry.

Cherry explained that during his legislative career, legislative groups—such as the National Council of State Legislatures, the National Governors Association, and even the Council of State Governments—have never called a meeting through a resolution adopted by the states. In the past, meetings have simply been called and legislators and elected officials invited to attend. SCR 32 is designed to call for a conference of the states with approval by 34

(More)

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FROM: SENATOR JOHN CHERRY JR. TO:

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legislatures. The resolution calls for a delegation of not more than seven including the governor, or a constitutional officer selected by the governor, and six legislators, three from each house, to attend the conference.

Cherry pointed out that James Madison, the father of the American Constitution, listed the steps by which a constitutional convention can be convened. The first step is the calling of a conference by the states and appointing delegates, which is precisely what Senate Concurrent Resolution 32 does.

"My Republican Senate colleagues argue that a constitutional convention is not the intent nor the agenda of this conference. That may be true, but once this conference is convened we here in Lansing and in other state legislatures across the country will not control the agenda. The delegates at the conference will control what goes on and what documents this conference produces. Our amendment to SCR 32 saying that this vote will not be a considered a vote calling for a constitutional convention is not binding on other states and will not control what might happen once the conference begins," said Cherry.

"I am afraid that my Republican colleagues have played into the hands of a group of extremist Western secessionists by supporting this resolution. If the organizers have their way, we may very well see this conference produce a document proposed as a new constitution to compete with the Constitution that we already have. I believe that the Constitution of the United States works and we should have voted down this resolution and put a stop to those who would dismantle our Constitution and replace it with an extremist document more to their liking," said Cherry.

SCR 32 now goes to the House of Representatives for approval.

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MAR-18-95 THU 18:41 COLORADO STATE SENATE

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P.04

On March 2, 1995, Senator Hank Brown introduced SR 82 in the U. S. Congress. This resolution laments Congress' inability to pass the Balanced Budget Amendment and, then, as the enacting clause of the Resolution, states, "Resolved, that Congress hereby petitions the several States of the United States of America to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution of the United States requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States, and that such States then consider whether it is necessary for the States to convene a Constitutional Convention pursuant to Article V of the Constitution of the United States in order to adopt such Amendment."

This resolution is believed to clearly represent the "consent of Congress" as required by Article 1, Section 10 of the Constitution. This consent document goes one step further, however, and lays the groundwork for a Con-Con.

The supporters of the COS can no longer say the intent of the COS is not to convene a Con-Con. We now have in plain language, for all to see, the preparatory steps to a Con-Con. Our worst fears for the dangers this COS represents to our Constitution are now real. The constitutional crisis represented by this COS must be opposed by all who revere the work of the Framers of our Constitution.

A Constitutional Convention at this point in our nation's history is not recommended because statesmen of the caliber of Thomas Jefferson, John Adams, and Benjamin Franklin are not presently in national political leadership. Our nation has such people; each of us must seek them out and then provide the support to encourage these people to show themselves.

THE TIME IS SHORT -- THE NEED IS GREAT!

Sincerely,

Charles R. Duke

Charles R. Duke

CD:hh

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or

with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

Section 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the whole may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate, shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and if equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. And if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

EXHIBIT

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