

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

February 20, 1985

The meeting of the State Administration Committee was called to order by Chairman Sales at 8:00 a.m. in Room 317 of the State Capitol on the above date.

ROLL CALL: Seventeen members present with Rep. Smith excused to attend another hearing.

CONSIDERATION OF HOUSE BILL NO. 814: Rep. Jack Moore, District #37, said that four years ago he had done away with the State Women's Bureau and after consulting with many people he had decided to try to recreate that board in the department of commerce rather than the department of labor. He explained to the Committee what the bill is attempting to do and said that the main portion of the bill is page 2, (6). The department of commerce does have people on board who could be designated to work in this bureau.

PROPOSERS: Mary Lou Garrett, representing the Inter-departmental Coordinating Committee for Women of the department of commerce, provided written testimony which is attached to the minutes as Exhibit #1.

There were no further proposers.

OPPOSERS: There were no opposers.

DISCUSSION OF HOUSE BILL NO. 814: Rep. Moore told Rep. Cody that there would be no additional funding as it is already planned for in the budget of the department of commerce. She then asked if it is planned for and asked for why does it have to be named Women's Bureau. Rep. Moore stated that it has to be designated as such.

Rep. Garcia asked Rep. Moore if he thought \$108,043 for two years would be sufficient to fund this program. Rep. Moore replied it would be.

Without further comment, Rep. Moore closed.

CONSIDERATION OF HOUSE BILL NO. 780: Rep. Bob Pavlovich, District #70, read the bill and explained the purpose of it. He then introduced Ron Tenneson of Butte to explain it further.

PROPOSERS: Ron Tenneson, Butte, said he had been in the teachers' retirement system for 8 years. He taught in Dillon, went to Butte Central and then to Montana Tech for 3 1/2 years. Butte Central is not covered by the Teachers' Retirement System and he was told he would have

to teach another 1 1/2 years before he could buy back the time he was at Butte Central. He asked why it is 1 1/2 years and not five years. He wanted to buy back that time. He wanted to know why he was denied this as long as he was willing to pay the employer's contribution.

OPPONENTS: Bob Johnson, Teachers' Retirement System, said they are opposed to the bill because they feel it would have severe cost implications to the System and there is no funding provided. He submitted prepared testimony which is attached as Exhibit #2.

Phil Campbell, Montana Education Association, said they were opposed to this bill. He said the five year limitation does provide a function and is security for the entire system.

There being no further opponents, the hearing was open to questions from the Committee.

DISCUSSION OF HOUSE BILL NO. 780: There were no questions from the Committee.

In closing, Rep. Pavlovich said there are people out there in Montana that deserve this and he would like to help them by passing this legislation.

The hearing was closed on HB 780.

CONSIDERATION OF HOUSE BILL NO. 796: Rep. Joe Quilici, District #71, said that this bill would levy an increase for certain members of the Sheriff's Retirement System. Those who retired before July 1, 1985 would be entitled to receive a 5% increase in his service or disability or survivor allowance. This is simply asking for a cost of living adjustment for these people.

PROPONENTS: Nadiean Jensen, Executive Director of Council #9, Montana AFL-CIO, who represents the Sheriff's deputies, supported the bill saying it was a cost of living adjustment for those on fixed incomes as some of them do not belong to the social security system.

OPPONENTS: There were no opponents appearing to the bill.

Larry Natschein, Administrator of the Public Employees' Retirement System, simply appeared before the committee to say that they had been involved in the bill and the fiscal note and that they had no problem with it.

DISCUSSION OF HOUSE BILL NO. 780: Mr. Natschein said this would be a one time increase for those who retire on or before July 1, 1985. The benefits would be funded over a period of 40 years. He said that the sheriff's system is the best funded system because it is the youngest system, being established in 1974, and they also have relatively young people.

Chairman Sales asked if this would change the unfunded liability of the system. Mr. Natschein said it would increase the amount of unfunded liability but would not substantially change the period that it covers.

There were no further questions from the Committee.

In closing, Rep. Quilici said it doesn't really affect a lot of people but those that it does affect would really benefit from this and there is no real fiscal impact.

The hearing was closed on HB 780.

CONSIDERATION OF HOUSE BILL NO. 785: Rep. Kelly Addy, District #94, sponsor, said that this bill was introduced in the hopes that the language could be amended to read closer to what the parties intended in the first place. When this was amended the people affected thought that it meant the first day of the month following the last day of covered employment. If a person retires on May 15, the allowance doesn't begin until June 1.

PROPOSERS: Ray Blehm, Montana State Firemen's Association, spoke in favor of the bill and submitted written testimony attached to the minutes as Exhibit #3. He proposed an amendment to read "The retirement date is the first day following his last day of membership service."

Nadian Jensen, AFL-CIO, Council #9, spoke in support of HB 785.

Tom Schneider, representing the Montana Public Employees' Association spoke neither as a proponent or opponent but wanted the Committee to amend the bill to cover only the firefighters as there is a problem with including the PERS system. In the 1970's they used to pay as of the day they retired and this could take up to 90 days to get the first check. All they have to do is retire on the last day of the month rather than mid-month. They still get a full month of benefits. He said they have had no problem and would like to be amended out of the bill.

OPPOSERS: Larry Natschein, Administrator of PERS, said they retire some 700 people per year, approximately 14 of these are firefighters. There are some 26,000 employees and of these 399 are firefighters.

DISCUSSION OF HOUSE BILL NO. 785: Rep. Cody asked Rep. Addy why this is so difficult if it is working for everyone else and asked if they can't retire the last day of the month. Rep. Addy replied that some people like it fine. However, some people had a different understanding of what the law was going to be.

Chairman Sales asked if they cleaned up the language in the bill, how about the people who retired and lost a few days - would this be creating a liability there? Mr. Natschein said that for the majority of the people they don't seem to have a problem.

Rep. Harbin asked Mr. Natschein if they are required to figure prorata calculations for sick leave, annual leave, etc. for those that retire at some period during the month. Mr. Natschein said they want to avoid having to make the prorata calculations. Mr. Blehm explained his situation to the Committee stating that he will be eligible to retire October 17, 1985 but didn't plan to retire until the day following New Year's Day and this would increase the time he would have to serve for retirement. Under this bill he would lose one month.

Mr. Schneider said they would support the bill if everyone was amended out but the firefighters. Rep. Addy said they are the ones with the problem and with the misunderstanding.

Rep. Addy closed with no further comment.

The hearing was closed on HB 785.

CONSIDERATION OF HOUSE BILL NO. 806: Rep. Helen O'Connell, District #40, sponsor, said this bill would allow appeals rights to public employees by modifying the classification act by restoring those rights which have been eliminated. She submitted written testimony which is attached as Exhibit #4. She said this bill would prevent the employees from using both the appeal and the negotiation process.

PROponents: Tom Schneider, Montana Public Employees Association, was a supporter of HB 806 and submitted his prepared testimony, Exhibit #5 which states that in 1979 it was deleted that classification was a mandatory subject for bargaining. A person can appeal their classification but they cannot appeal their grade level. Without this bill these employees have no right to appeal and no right to negotiation, therefore, he said it was a good bill.

There were no further proponents.

OPponents: John McHugh, State Personnel Division, Department of Administration, read the attached testimony of Dennis Taylor, Administrator of that Division who could

not attend the hearing. This testimony is attached as Exhibit #6. They were opposed to the bill because it would impact three areas. It would require the bargaining of classification, would expand the appeals process and would conflict with management rights to assign work and to manage the use of positions. He spoke to all three areas in his testimony.

Sue Romney, Montana University System, said they were very concerned about maintaining the integrity of the system and there is a good reason to have a classification system. The bottom line is that it provides for equity of employment. She said it was important that classification remain centralized and that the department of administration should oversee this. The only strike in the University system has been on a classification matter which is a difficult issue to deal with and is very emotional. She said that HB 806 would detract from the viability of the classification system.

DISCUSSION OF HOUSE BILL NO. 806: Rep. Pistoria asked Mr. McHugh if these people don't have the right to appeal. He replied that they do have the right to appeal. This bill expands the appeals rights to group or grade appeals and he didn't feel that they should be appealable issues. Rep. Harbin asked if this bill would duplicate the appeals process. Mr. Schneider said there is not an adequate appeal right and asked if the system is so good why are the appeals being upheld by a neutral party.

In closing, Rep. O'Connell said her first priority is to represent the people she represents and wants more equal opportunity and equal rights for them. The employees have nothing they can say and she said it was discrimination that our public employees don't have the same rights as other employees. They should have the right to appeal and the right to be heard.

The hearing was closed on HB 806.

CONSIDERATION OF HOUSE BILL NO. 788: Rep. Bruce Simon, District #91, said this was brought to his attention by a letter from an individual living in Billings. In Billings there are a number of State offices scattered throughout the city making a hardship on the people of that area. It also creates a problem for the State to lease all these different spaces. The department of administration doesn't have the authority to consolidate and put them under one lease. This would provide a more efficient operation as phone systems and other types of systems could be shared by several agencies.

PROPOSERS: Ellen Feaver, Director of the Department of Administration, thought this was a good government bill and handed out a spread sheet showing the office space that is

leased throughout the state. She said there are about 200 State leases and it is difficult to get agencies to agree on one location. She told the committee that her department would be willing to do their best and would be interested to try this consolidation, however, there are some agencies that cannot be consolidated such as liquor stores.

DISCUSSION OF HOUSE BILL NO. 788: Rep. Phillips asked Ms. Feaver if she wanted to start building construction outside of Helena. Ms. Feaver said it is conceivable to go into a community and have the potential for putting all State agencies in a small building. Perhaps they would have to acquire a building and have it become a State building.

Ms. Feaver said at the present time they have the authority to review all leases within Helena. This would make it more consistent with the new section (3).

Rep. Peterson said that at the present time each agency must have their own lease - they are not combining leases. Ms. Feaver said that 55 could be subtracted from the 74 leases on the Exhibit as liquor stores for the department of revenue.

Without further comment, Rep. Simon closed.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 29: Rep. Jack Sands, District #90, said that this is more than the usual resolution - it is sending a message to Congress. It asks for a Constitutional Convention for calling for a balanced budget amendment to the Constitution. He said the federal deficit is the biggest political-economic issue since FDR's New Deal and that there is broad support for a balanced federal budget in Montana. Congress must have a resolution passed by 2/3 of the states of which 34 states have done so. Only two more states are needed and said that Montana could have an important contribution as to whether we have a federal balanced budget. He said that Congress will not act until pressure builds from the states.

PROPOSERS: Rep. Tom Hannah was in support of the Resolution and said that 56,000 Montanans signed petitions to get this on the ballot last fall.

Rep. Bob Marks said that the federal government should have to balance the budget just as the states do.

J. Riley Johnson, representing the National Federation of Independent Business read a letter to Chairman Sales supporting HJR 29. This letter is attached as Exhibit #8. He also submitted a letter from former Senator Sam J. Ervin to Chairman Sales and the committee supporting a balanced budget. This letter is attached as Exhibit #9. Exhibit #10, a pamphlet "The Hoax of a 'Runaway' Constitutional Convention" was also submitted for the record.

Marilyn Foss, Montana Association of Realtors, was very much in support of the Resolution.

Bill Thurm of the National Association of Realtors, Washington D.C. said that the deficit is projected to be over \$200 billion over the next two years. The federal government must learn to live within its income.

Others supporting the measure were the Montana Farm Bureau, Stockgrowers, Wool Growers, Cowbells, Chamber of Commerce, Snowmobile Association, Home Builders, National Taxpayers Union.

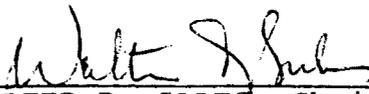
OPPONENTS: Betty Babcock, representing herself and the Eagle Forum read her prepared testimony, attached as Exhibit #11 in opposition to the Resolution. She said we must consider what it would cost to call such a Convention. She also had several other handouts for the Committee, i.e. "The Case Against the Constitutional Convention", an article from the Chicago Tribune of May 2, 1984, the Phyllis Schlafly Report, "Constitutional Brinkmanship" by Gerald Gunther.

Jim Murry, Executive Director of the Montana State AFL-CIO asked the Committee for a Do Not Pass on the Resolution as they were against the calling of a Constitutional Convention, not against the balanced budget. Mr. Murry said he rarely agrees with Ms. Schlafly but he did quote from her newsletter stating that no constitutional authority claims a constitutional convention could be limited to an up-or-down vote on a particular balanced budget amendment.

Other opponents were the American Civil Liberties Union, American Federation of State County and Municipal Employees Operating Engineers Union, United Methodist Church, the Montana Democratic Party, Common Cause and Montana Education Association.

FURTHER TESTIMONY FOR HOUSE BILL NO. 814: Anne Brodsky of the Women's Lobbyist Fund, who reached the hearing as testimony was being completed on HB 814 asked that her testimony be included with the minutes for HB 814. This testimony is attached as Exhibit #12.

There being no further business the Committee adjourned at 10:00 a.m.

  
WALTER R. SALES, Chairman

(Type in committee members' names and have 50 printed to start).

DAILY ROLL CALL

State Administration COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/20/85

NAME	PRESENT	ABSENT	EXCUSED
Chairman Walter Sales	/		
V-Chairman Helen O'Connell	/		
Campbell, Bud	/		
Compton, Duane	/		
Cody, Dorothy	/		
Fritz, Harry	/		
Garcia, Rodney	/		
Hayne, Harriet	/		
Harbin, Raymond	✓		
Holliday, Gay	/		
Jenkins, Loren	/		
Kennerly, Roland	/		
Moore, Janet	/		
Nelson, Richard	/		
Peterson, Mary Lou	✓		
Phillips, John	✓		
Pistoria, Paul	✓		
Smith, Clyde			✓

Ex. # 2  
HB 780  
2/20/85

TESTIMONY - HOUSE BILL #780

BOB JOHNSON, ADMINISTRATOR

TEACHERS' RETIREMENT SYSTEM

The proposed bill is one we think will have severe cost implications to the System and because there is no funding provided, the Teachers' Retirement Board is opposed to the measure.

House Bill 780 would remove the provision that a member's last five years of creditable service must be in the Montana Teachers' Retirement System for the member to be eligible to receive a retirement allowance.

What this law means is that any creditable service used in the calculation of benefits, the last 5 must have been as a contributing member of the Montana Teachers' Retirement System. It doesn't say the years must be consecutive.

In accordance with an Attorney General's Opinion, this law has also been used as a governing provision to determine when a member becomes eligible to purchase service such as out-of-state, military service and private school employment. The opinion simply stated in terms of today's law states that a member must complete 5 years of membership service following the type of service they wish to purchase, regardless of how many years of membership service they had prior to the out-of-state, military or private school employment.

The law serves 2 primary purposes. It requires an individual to come back into membership service before the former member is eligible to purchase any additional service and it also tends to restrict the number of members who eventually become eligible to purchase additional service in order to enhance their retirement benefit.

Even though the member must purchase the service, there is still a liability to the System for the benefit that will result when the member actually retires. The law states the cost is to be based on the first full year's teaching salary in the Teachers' Retirement System following the type of service being purchased multiplied by the employee-employer contribution rate in effect when the member becomes eligible. For members who joined the System prior to July 1, 1979, they can purchase out-of-state service at only the employee contribution rate. Our actuary has calculated, that for every 3 years of service an average member is allowed to purchase, there is a cost to the system of approximately \$12,000.00. This is over and above what the member had to pay for the service. For a member prior to July 1, 1979, the cost to the System for out-of-state service of 3 years would be about \$24,000.

There is also a technical defect in the proposed bill. By eliminating the requirement to come back into the System, there would be no basis to price the service and those particular sections of the law governing out-of-state service, military and private school employment would have to be amended.

It would also mean a member with 5 or more years of service could leave the system and go out-of-state or to a private school and then buy the service with the Montana System in order to increase the benefit. Similarly, a member who retired and receiving a benefit and is currently teaching in a private school or an out-of-state public school could buy that service without ever having to rejoin the Montana Teachers' Retirement System.

The real danger of the bill is the potential number of members who would now be eligible to purchase this service which would result in a liability to the System, that it did not have before the proposed legislation.

We have estimated that approximately 1,000 members or less than 5% of our membership would become eligible and in order to fund these 1,000 members, an additional .15% in contributions would be required. For every additional 100 that would become eligible, there would be an additional .022% required.

This is exactly the kind of bill that increases the 40 year funding to 42 or 43 years and it is the Board's policy to oppose any measure which would increase the amortization period of the unfunded liability.

With a 25 year retirement program, the System can ill afford to relax any of the current buy-in service provisions and this bill is designed to do just that.

A retirement system should be one that attracts and retains members, not one that would encourage them to leave, knowing that they can improve their benefit by leaving.

We would appreciate your giving consideration to oppose this measure.

Ex #1  
NB 814  
2/20/85

## TESTIMONY

H.B. 814

*mlg*

My name is Mary Lou Garrett. I represent the Interdepartmental Coordinating Committee for Women, known as the ICCW.

The creation of a Women's Bureau in the Department of Commerce providing a business woman's advocate is exciting and a major step for the business industry as women also helped "Build Montana" from the days of the pioneer to the present days of advanced technology.

This bureau would provide the necessary technical assistance to women regarding all facets of the business industry.

ICCW urges your support of H.B. 814.

Thank you.

WITNESS STATEMENT

Name Mary Lou Burnett Committee On St. Admin.  
Address Helena Date 2-20-84  
Representing ICCW Support X  
Bill No. ND 814 v ND 806 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- 1.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

EX. #3  
HB-785  
2/20/85

HB.785

THIS BILL CORRECTS A PROBLEM CAUSED BY SB. 216: STIMATZ, WHICH PROVIDED WHAT MAY BE A REAL CLASSIC OF STATUTORY LOOPHOLE LANGUAGE.

ALTHOUGH THIS 1983 LAW PROVIDED ADENTICAL LANGUAGE TO OUR CURRENT ACT THE ATTORNEY GENERAL HAS RULLED THAT THIS LANGUAGE CHANGED THE MEANING OF THE FIRE FIGHTERS ACT. THE OPERATIVE LANGUAGE OVER WHICH THIS ISSUE ARROSE SAYS:

"THE RETIREMENT DATE FOR A FIRE FIGHTER RETIRING FROM ACTIVE SERVICE IS THE FIRST DAY [OF THE MONTH] FOLLOWING HIS LAST DAY OF MEMBERSHIP SERVICE."

THIS LANGUAGE WAS NTERPRETED TO MEAN THE RETIREMENT DATE...IS THE FIRST DAY OF THE [NEXT] MONTH FOLLOWING HIS LAST DAY OF...

THE ATTORNEY GENERAL RELYED ON WRITTEN TESTIMONY SUBMITTED BY MR. NACHTSHEIM AT COMMITTEE HEARINGS TO RULE THIS WAY.

FIRE FIGHTERS RELYED ON THE FACT THAT THIS LANGAGE WAS ADDED FOR CLARITY AND SINCE IT REPEATED ALREADY STATED AND PREVIOUSLY INTERPRETED LANGUAGE THAT THERE WOULD BE NO CHANGE EXCEPT THAT ALL SYSTYEMS WOULD HAVE THE FEATURE THAT OUR OLD SYSTEM HAD AND THAT WAS THAT AN EMPLOYEE RECIEVED A PRO RATA SHARE OF THE MONTHS BENEFIT IF HE/SHE RETIRED AT SOME TIME DURING THE MONTH.

BECAUSE A PORTION OF OUR MEMBERS HAVE A GRAND FATHERED RIGHT IN THIS ISSUE WE FELT THAT A COURT CASE WOULD BE JUSTIFIED BUT BECAUSE OF THE UNNEEDED EXPENSE OF WE COULD GET THE ORIGINAL ACT TO SAY WHAT WE THOUGHT HAD BEEN ORIGINALLY INTENDED OUR MEMBERS

DECIDED TO ATTEMPT TO CHANGE THIS PROVISION FOR THE BETTERMENT OF ALL EMPLOYEES.

THEREFOR WDE ASK YOU TO ADOPT THIS CHANGE TO CLEARLY STATE:  
"THE RETIREMENT DATE...IS THE FIRST DAY FOLLOWING HIS LAST  
DAY OF MEMBERSHIP SERVICE."

Ex. #4  
HB-806  
2/20/85

In 1975, the state employee classification act allowed full appeal rights and allowed negotiation of classification.

HB 806 will modify the classification act in two ways by restoring those rights which have been eliminated.

- 1) It would again allow employees complete rights to appeal their classification.
- 2) It would again allow labor organizations the right to negotiate over classification matters.

These rights are necessary and important for the following reasons:

- 1) Employees must have complete appeal rights to insure that classification actions which adversely affect them can be reviewed. They currently don't have this right.
- 2) Employees must have appeal rights to guarantee their classification actions meet the statutorily-mandated comparable worth standard. They currently don't have this right.
- 3) Employees need the safeguard of the appeal process as a protection against the upheaval which will accompany the classification enhancement project. This safeguard currently doesn't exist.
- 4) Labor organizations need the right to negotiate classification to better represent members in occupational groups where negotiation is the only effective way to address classification problems. A limited number of labor organizations currently have this right and there is no good reason not to extend it to the rest.
- 5) This bill would prevent employees from using both the appeal and the negotiation process.

A more detailed description of the purpose and effect of HB 806 has been handed out. I would appreciate your review of this material and your support for HB 806.

## PUBLIC

## EMPLOYEES

## ASSOCIATION

*Ex. #5  
HB-806  
2/20/85*

Presented By: Thomas E. Schneider, Executive Director

House Bill 806 is written to restore some balance to the state classification system. In 1973, the 43rd Legislature adopted the state employee classification act. It was designed to correct inequitable treatment of employees between various departments of the Executive Branch and create a uniform system of position classification. To insure that employees would have some protection under this new act, Section 2-18-203, as originally written, extended to employees and employee organizations the right to appeal any changes in classifications or positions.

In 1975, the 44th Legislature recognized that, since bargaining rights had been extended to state employees, and since position classification is an important part of a state employee's conditions of employment, it made sense and was consistent to make anything relevant to the determination of classification a negotiable item. Section 2-18-203 (then Sec. 59-907) was amended to accomplish this.

However, in 1979, under pressure from the Department of Administration, the 46th Legislature began eroding these significant employee rights and protections. In that session, Section 2-18-203 was modified to delete the requirement that classification was a mandatory subject for bargaining. At that time, employees and employee organizations still had the right to appeal changes in classifications.



This erosion of protection continued in 1981 when the 47th Legislature took away the right to appeal changes in classification and specifically prohibited the right to appeal grade levels. This action put Section 2-18-203 in the state in which it currently exists and has led to a severe imbalance in the system to the detriment of state employees.

The restriction on being able to appeal grade level is particularly significant. Currently, employees may only appeal their allocation to a class, i.e. a Secretary I who can show that he/she is performing at the same level as a Secretary II can appeal. But there are large numbers of employees in unique or specialized classes who are precluded from appealing, no matter how obvious it is that they are not properly classified. Examples would include groups such as Cottage Life Attendants, Eligibility Technicians, Parole and Probation Officers, Employment Specialists, Engineering Tech III's, Correction Officers and Fish and Wildlife Biologists. In Addition, there are 600 - 800 single or very limited size classes which have no appeal rights. Examples would include such positions as Supervisor, Special Permits Section and Supervisor, Change Order and Utility Section. Because it is nearly impossible for such employees to argue that they have been allocated to the wrong class, they have no way to appeal, even if comparable positions with similar duties and responsibilities are at a higher grade. One such employee who did try to appeal (Contract Plan Supervisor, Bud Williams) was told by the Hearing Examiner that he agreed that he was not correctly classified or graded but he was powerless under the law to remedy this inequity.

Another concern in the last 4 years has been the inability of classes of positions which have been adversely affected by the Department action to get any review of the Department decision. Currently, if the Department elects to downgrade a class or reorganize it significantly, even though the employee's duties and responsibilities have not been changed, the employees is powerless to appeal that Department action.

The lack of right to bargain over classification has led to different problems. Due to wide-spread mis-classification in a given agency, for example, negotiations over proper levels of classification may be the only effective method of addressing the problem. The Prison is a good example of this. There are serious classification problems among the correctional staff and there is currently no adequate way to address those problems, since there is no authority to negotiate and since the employees can't appeal in an effective manner. This is especially the case in the creation of career ladders in certain occupations in an effort to give valuable state employees some type of long range career plans, or in the case of the creation of a new method of classification for a given occupational group, as has been done before.

An anticipated problem with the lack of negotiability or appealability is with the comparable worth issue. Prior to the law being changed to limit appeals, the Eligibility Technicians (a predominantly female class) filed an appeal basically alleging a comparable worth issue, that their positions were comparable to the Employment Interviewers (predominantly male). This appeal was partially successful. But under the law as written today, it could not have been filed. Since the Legislature has endorsed the concept of comparable worth in classification and since the Department is currently involved in an enhancement project designed, among other things, to insure a comparable worth standard, it seems especially important that employees be restored a true and meaningful right of appeal so that the Department's actions do not go unreviewed.

The purpose of HB 806 is balance. It would restore balance to the classification system by once again allowing employees an honest right of appeal. It would allow employee organizations the right to negotiate to address special problems of classification which can't be dealt with effectively any other way. It would prohibit the possibility of two bites at the apple by limiting employees to appeal or negotiations, thereby adding stability. It would return a protective oversight mechanism which will be necessary to insure success of the comparable worth program. In sum, it would place the employees once again in a position

Ex. # 6  
2/19/85  
HB-806

DEPARTMENT OF ADMINISTRATION  
STATE PERSONNEL DIVISION



TED SCHWINDEN, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 444-3871

HELENA, MONTANA 59620

February 20, 1985

TESTIMONY OF DENNIS M. TAYLOR, ADMINISTRATOR,  
STATE PERSONNEL DIVISION, DEPARTMENT OF ADMINISTRATION,  
PRESENTED TO THE HOUSE COMMITTEE ON STATE  
ADMINISTRATION IN OPPOSITION TO HB 806

Mr. Chairman, Committee members, my name is Dennis Taylor. I am the Administrator of the State Personnel Division in the Department of Administration. I appear before you today in opposition to HB 806.

As proposed, this bill would have an impact in three major areas. First, it would require the bargaining of classification; second, it would expand the classification appeals process; and finally, it would conflict with managements right to assign work and to manage the use of positions. I will direct my testimony to each of these three areas.

Classification, based on systematic job evaluation, is a managerial and administrative tool used by Montana state government to facilitate and ensure a fair and equitable pay schedules based on the concept of equal pay for equal work. The equal pay concept, and position classification in general, was first systematically introduced into state government personnel management practices. The compensation system in Montana state government prior to 1973 was a fragmented non-system of unequal pay for similar work that was neither equitable nor fair.

From the outset of the statewide classification system, union involvement in the state classification process has been permitted and encouraged. At the time the statewide classification system was implemented in 1975, the legislature included a provision that required that anything relevant to the determination of classification was a mandatory subject of negotiations. For four years the State Personnel Division negotiated classification with the various unions representing state employees. These negotiations resulted in some fragmentation of the statewide classification plan and the establishment of the blue collar plan, the liquor store clerk plan and the teachers plan and the resulting pay schedules for each of these negotiated classification schemes. In addition, during the same time frame (1975-1979), the grade levels of various classes in the statewide schedule were negotiated upward, examples include Highway Patrol Officer, Fish and Game Wardens, and Gross Vehicle Weight Officers. This experience with mandatory bargaining of classifications created major conflicts in the Department of Administration's ability to operate and maintain the classification system consistently and fairly among bargaining units, among unionized and non-unionized employees and among agencies. Please keep in mind that currently there are over 13,000 positions grouped into 1,400

classes, that is 1,400 separate and unique job titles, in the state's classified system. Approximately 50% of the state executive branch work force is organized into 72 separate bargaining units represented by 20 different unions. There are an additional 17 bargaining units in the university system. Title 2, Chapter 18, Parts 1 and 2 outline the technical and legal requirements for an equitable classification system based upon consistency, fairness, efficient management, equal pay for equal work, and equal pay for work of comparable value. These technical and legal requirements affect all state employees whether they are organized and represented by a labor union or not and transcend bargaining unit boundaries and union lines.

It became increasingly clear to the legislature that all these competing goals for a statewide classification system could not be achieved with a collectively bargaining classification system, so in 1979, the Legislature changed the law to eliminate the state's obligation to collectively bargain all things relevant to the determination of classification. In its place, the 1979 Legislature put in the current language that requires the department to consult with bargaining units prior to implementing adjustments in class specifications and in classification criteria. This existing consultation process works. When unions make comments about class specifications their comments have often been incorporated into the specifications. In some cases the classification staff has worked closely with bargaining unit employees when reviewing and changing the specifications. Currently the State Personnel Division is working on a major change to the classification system. This effort, which we call the classification enhancement project, is being conducted with the assistance of an advisory council that includes member from the two major unions that represent state employees.

House Bill 806 would be a reversal of the change made by the Legislature in 1979. If adopted as proposed HB 806 would return the state's classification system to the situation where the Department of Administration's ability to maintain a fair and uniform system would be severely hampered.

The second area of concern is the change that HB 806 would make in the classification appeals process. The appeals process has had a controversial history and has had a significant impact on the state's classification system. From the beginning of the state classification system, employees have had the right of appeal. The original appeal language in the statutes allowed employees "to appeal any changes in classifications or positions." The kind of appeals that the State Personnel Division dealt with under the original language included appeals from individuals who believed they were in the wrong class (example: a Secretary I, grade 7 appealing to be a Secretary II, grade 8) and appeals from a whole class of employees who believed the grade assigned to their class was incorrect (example: all Highway Patrol Officers, grade 13, appealing to be grade 14). In 1981, the legislature wisely inserted the current language to disallow an appeal of the grade assigned to a class.

Why did the legislature make the 1981 change? The change was made because successful grade appeals had significant direct costs attached to them and had impact on the relationships among the many classes in the system. To illustrate, the Board of Personnel Appeals in the Department

of Labor and Industry ruled against the State Personnel Division in eleven grade appeals that resulted in a one grade increase for 650 positions. The dollar impact was over \$1,000 per position per year. These grade changes also had ripple effects on hundreds of other positions - that is, the State Personnel Division was forced to upgrade other classes to maintain relationships among similar classes. You may recall, the last of these grade appeals to be resolved was the Highway Patrol Officers. The 1983 legislature had to appropriate over \$1 million for backpay for 160 officers upgraded as the result of appeals to the Board of Personnel Appeals.

The last area of concern is the impact that HB 806 would have on agency managements right to assign work and manage positions. A close reading of the language in the bill indicates that the state would have to negotiate over the changing of the duties and responsibilities of a position. Management must be free to change duties and responsibilities to meet changes in funding and priorities, to deal with emergencies, and to implement reorganization. Giving bargaining units the opportunity to negotiate changes in positions conflicts with the management rights clause of the Public Employees Collective Bargaining Act (39-31-303, M.C.A.) which states:

"Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

- (1) direct employees;
- (2) hire, promote, transfer, assign, and retain employees;
- (3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and non productive;
- (4) maintain the efficiency of government operations;
- (5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (7) establish the methods and processes by which work is performed."

In summary, the existing statute that governs the classification system works well. In order for the state's classification system to be operated on a consistent and fair basis, there must be a single administrative agency (presently the Department of Administration) responsible for maintaining the integrity of a uniform classification system, together with a timely classification appeals process such as the one permitted under current law to the Board of Personnel Appeals in the Department of Labor and Industry.

HB 806 would create further fragmentation of the state's classification and pay environment in state government at a time when we are attempting to insure greater equity and more consistent and uniform practices.

Thank you for the opportunity to present my views on HB 806. I urge you to give this measure a "DO NOT PASS" recommendation.

Ek # 7  
HB 788  
2/20/85

STATEWIDE LEASE INFORMATION  
OUTSIDE THE HELENA AREA  
\* FEBRUARY 1985

<u>A G E N C Y</u>	<u>No. of Leases</u>	<u>Square Footage</u>
Department of Agriculture	9	3,099
Department of Commerce	2	700
Board of Education	none	none
Department of Fish, Wildlife and Parks	8	16,606
Department of Health	1	1,710
Deaprtment of Highways	6	3,995
Department of Institutions	16	14,914
Department of Justice	19	34,626
Department of Labor and Industry	17	35,218
Department of State Lands	6	5,869
Department of Livestock	4	2,500
Department of Military Affairs	4	11,500
Department of Natural Resources	10	12,373
Office of Public Instruction	none	none
Department of Revenue	74	210,667
Department of S.R.S.	22	135,649
Supreme Court	<u>1</u>	<u>2,900</u>
TOTALS	199	492,326

\*Based on a telephone survey.

sc/02/05/85

Ex. #8  
#18  
HJR-29  
2/20/85



**NFIB** National Federation  
of Independent Business

The Guardian of Small Business.

February 19, 1985

Walter Sales  
Chairman, State Administration Committee  
House of Representatives  
Capitol Station  
Helena, Montana 59620

Mr. Sales:

The National Federation of Independent business, representing 5,500 small and independent businesses in Montana, request that your committee look favorably on HJR 29.

We have surveyed our membership this January with the specific question on balancing the federal budget, even if it means calling for a Constitutional Convention, and over 75% voted in favor of such action. We feel this is a mandate.

Montana has the opportunity to be the 34th state, and final state necessary, to mandate the United States Congress to action on this issue. We urge your recognition of our membership vote and give a "Do Pass" recommendation to this legislation.

Thank you for your consideration.

Regards,

J. Hiley Johnson  
Director/State Government Relations

En. # 9  
HJR-29  
2/20/85

SAM J. ERVIN, JR.

P. O. BOX 69

MORGANTON, NORTH CAROLINA 28655

AREA CODE 704

437-5532

January 23, 1985

Walter Sales  
Chairman, State Administration Committee  
House of Representatives  
Montana State Capitol  
Helena, Montana 59620

Dear Mr. Sales:

I trust you will pardon me for writing this letter. I understand that there is great interest in the Montana Legislature in a resolution calling for a balanced budget amendment, or in the alternative, a limited constitutional convention on that sole issue.

I write this letter simply because I love my country and believe that its day as a viable economic entity is doomed unless the Constitution is amended to require Congress to balance the Federal budget. I love my country so much I cannot keep silent while opponents of a balanced budget conjure up a non-existent constitutional ghost to defeat the efforts of those who believe in fiscal sanity.

In writing this letter, I will ignore Mark Twain's advice: "The truth is precious; use it sparingly." In telling the truth about Congress, I omit from my criticism the many wise congressmen who have been advocating the adoption by Congress of a balanced budget. I will number the specific points I wish to make in the paragraphs set forth below.

1. The fiscal folly of Congress itself is responsible for the demand of many people throughout the nation for the utilization of the alternative method of amending the Constitution -- that is, the calling of a constitutional convention to submit an amendment. This provision was inserted in the Constitution to enable the states and their people to make amendments they desired when Congress failed to perform its constitutional duty, and in addition failed to submit to them for ratification or rejection a constitutional amendment they deemed essential. During 43 of the last 50 years, Congress has refused to balance the budget. I think the reason for this is simple. Members of Congress have found that it is possible for them to use the taxpayers' taxes and the taxpayers' credit to buy the votes of all the groups of people who want to get funds out of the federal treasury for themselves and the causes they support, regardless of the effect of such action on the financial stability of the county. As a consequence, our national debt has increased to over

one trillion, six hundred billion dollars, the annual interest charge on the national debt has risen to approximately 150 billion dollars, and interest rates have ascended toward the skies. These things would never have happened if Congress had exercised its power to balance the budget. It could have done this in either one of two ways. First, it could have increased taxes sufficient to pay the appropriations it was making, or second, it could have reduced its appropriations to the amount of revenues available to it under the existing tax system. It didn't dare to do the first of these things because it feared there might be a taxpayers' revolt and some members of Congress who favor reckless spending might be thrown out of office. It didn't dare to do the second of these things because some of its members would have lost the votes of those groups who wanted access to the empty treasury for some programs which are good and some which are bad, and which are for non-governmental purposes. Instead of acting with courage and intelligence, Congress has been scattering the patrimony of the American people at home and abroad like a drunken sailor for approximately half a century.

2. Congress could avoid the necessity of calling a convention at the instance of two-thirds of the states if it would manifest either the intelligence and the courage to balance its budget itself, or to submit to the states for ratification or rejection an amendment requiring a balanced budget. Congress is apparently unwilling to do either of these things. It is rapidly destroying the United States as a viable economic entity and thereby depriving us of the financial ability to even fight a necessary war for survival. It is ruining our industries because it is taking the confiscating taxes and robbing the future by deficit financing of the funds necessary to modernize the machinery in our industrial plants, and make them once again the production marvels of the world.

3. It is futile to expect Congress to act with courage and intelligence in fiscal matters unless it is compelled to do so by the people of the United States. For many years members of the Senate like Senator Harry F. Byrd of Virginia, Senator Styles Bridges of New Hampshire, and myself tried to persuade Congress to submit to the states an amendment requiring a balanced budget. My amendment provided, in substance, that Congress would have to balance the budget each year except in times of war declared by Congress or in times of great depressions like that of the early 1930's. My amendment took care of the second of these propositions by providing that Congress, by a record two-thirds vote of both Houses of Congress, could suspend the requirement for a balanced budget in times of great economic necessity. Congress ignored our attempts to persuade it to submit a balanced budget and continued on its reckless course. Personally I believe Congress will submit a balanced budget if -- and only if -- enough of the states call for a convention to submit one.

4. The claim of some opponents of the demand for the calling of a constitutional convention at the instances of the states that the country would be endangered by a run-away convention is totally without foundation. Congress could avoid any danger of such event by submitting a proposed amendment for a balanced

budget itself. It could also do so by passing a bill regulating such a convention which I introduced and persuaded the Senate to pass twice virtually without opposition. My bill provided complete machinery for the operation of a convention called at the instance of two-thirds of the states. It provided that each state would have the number of delegates equal to its Senators and Congressmen, and that the two delegates allotted to each state because of its two Senators would be elected by the state at large, and the delegate from each district would be elected by the district. It provided expressly that no convention could call for an amendment not sought in the resolutions of two-thirds of the states asking for the convention, and thus made it impossible to have what is called a run-away convention. In the opinion of two great constitutional scholars who cooperated with me in drafting the bill, Phillip B. Kurland of the University of Chicago Law School, and the late Alexander Bickel of the Yale Law School, my bill was clearly constitutional under the provisions of section 8 of Article I of the Constitution which expressly empowers Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." The House simply would not take the bill because it did not want its members handicapped by requiring them to be fiscally responsible.

In my judgment, there is no danger of a run-away convention. It requires a tremendous effort on the part of the states to call for a convention. This effort can only be generated when at least two-thirds of the states feel the necessity of making a specific amendment to the Constitution. No effort on the part of two-thirds of the states to call for a convention for the submission of a multitude of amendments could possibly have the momentum necessary to generate the calling of a convention. Furthermore, it is inconceivable that members of the convention called at the instance of the states would ever attempt to rewrite the Constitution. If they were to do so, I believe the federal courts would hold that it is implied in the Constitution that at least two-thirds of the states must ask for any amendment which is submitted. This, of course, is merely a surmise. Nevertheless, it is plain that there is no danger of a run-away convention trying to rewrite the entire Constitution. This is true simply because nothing the convention does can ever have any effect unless the amendments it submits are ratified by three-fourths of the states. Any proposal which is not ratified by three-fourths of the states after being submitted by the convention will never have any force or effect. Surely, there is no basis for anyone to object to three-fourths of the states and their people amending the Constitution. After all, the Constitution is the property of the people and not the toy of the members of Congress. Those who use the argument of a run-away convention to persuade state legislators not to call for a constitutional convention to submit a balanced budget amendment are simply conjuring up a non-existent ghost. After all, those who want to use the taxpayers' resources to buy the votes of those who want to rob the federal treasury are like all other tyrants. They never surrender their power to practice tyranny fiscally or otherwise voluntarily. It has to be taken away from them by the people.

It is time for Congress to put an end to deficit financing which robs the past of its savings, the present of its financial power, and the future of its hopes as well as of its unearned income. As I have indicated, the reckless fiscal conduct of Congress for many, many years has actually imperiled the capacity of our country to finance a defensive war if such a war should come.

Just before the French Revolution, the French Court recognized that France was sitting on a volcano which was in danger of erupting at any moment and destroying the old France. It is said that at formal banquets the nobility of France used to drink to this toast: "After me, the deluge", indicating that they didn't care what happened after their day was over.

Those who oppose a balanced budget and the dangers which imperil the future of our nation may not be drinking exactly the same toast. But their conduct indicates that as long as the causes they like can get access to an empty treasury, they don't care what happens to the future of our nation or its posterity.

With all good wishes, I am

Sincerely yours,



Sam J. Ervin, Jr.  
Former United States Senator

SJE:mmm

JANUARY 17, 1985

## Balancing the Budget in a Conventional Way

By MILTON S. EISENHOWER

Potentially critical shifts in the makeup of legislatures in Connecticut and Michigan could provide the 33rd and 34th states necessary to force a constitutional convention to consider a balanced-budget amendment. Republicans gained control of both houses in Hartford and made important marginal advances in Lansing. In 32 other states, two short of the required number, legislators—often of both major parties—have already called for such a convention.

The rhetoric opposing such a salutary move is predictable. The argument is made that a constitutional convention, if called for any reason, would automatically pose a threat to our future. Stephen H. Sachs, the attorney general of Maryland, has written that a convention would place "America on the threshold of a reckless experiment that could endanger our constitutional liberties and even alter our form of government."

This extreme nonsense is not upheld by a special committee of the American Bar Association, by numerous other legal authorities and by any common-sense study of the origin and reason for Article V of the Constitution.

Convention calls are a necessary and fundamental part of our system of checks and balances. No thinking citizen should wish to see them become a dead letter. Those who have stirred fears of a convention, playing on emotion rather than logic, are not only attacking the legitimacy of a part of our Constitution, they are also taking direct aim at its basic premise: that ours is a government for and by the people.

There is no reason to believe that delegates to a constitutional assembly would be any less committed to upholding our basic liberties and form of government than our members of Congress. Congressmen have unlimited power to propose a constitutional amendment on any subject at any time. In this sense, the Congress is an unlimited constitutional convention. Yet this has never disturbed anyone. Nothing proposed by the Congress can become part

of the Constitution until it is ratified by three-fourths or 38 of the states. The same would be true of anything proposed by a convention called under Article V.

Without an amendment requiring the president and Congress to maintain a balanced budget, with exceptions to meet certain emergencies, our nation faces disaster. In only four years—1980 to 1984—we have added almost 50% to the total debt accumulated from the founding of the U.S. The total is now approaching \$2 trillion. Under current policies of both major political parties one can see an acceleration of the deficits. In time, the interest alone on the debt will consume a huge share of revenues from all forms of taxes. That could lead to a repudiation of federal debt. In my view, this is a far greater and more realistic danger than anything that could happen at a constitutional convention called by the states to try to bring about fiscal sanity.

Those who object in general to a state-called convention do not believe in the Constitution as it is now written. If they believe it is wrong and dangerous to permit the states this power, they should say so and propose it be deleted by an amendment proposed by Congress.

The framers of the Constitution recognized that those in power in the federal government might be disinclined to give up unforeseen prerogatives. Today, most congressmen do not want a convention called by the states, for they foresee a threat to their undisciplined spending.

Congress has the power to establish procedures limiting a convention to the single subject matter stated in the applications from the state legislatures. In fact, legislation to do just that passed the Senate Judiciary Committee without dissent in the last session of Congress.

Congress may determine exactly under what condition the delegates to a convention would be chosen, when the election of delegates would be held, where they would meet, how the delegates would be paid and precisely how the convention would be limited to a single topic.

Both opponents and proponents of bal-

ancing the budget say that they would wish a convention to be limited to a single subject. Who, then, favors opening a convention to many subjects? And where is their base of popular support? Does anyone seriously believe that delegates chosen for a limited purpose, namely to approve a single constitutional amendment that would be strictly at harmony with the call of their states, would now turn around and propose amendments that went beyond the legal call? Or that 38 states would ratify them?

In addition, Congress today, tomorrow or any time before the 34th state acts could write its own balanced-budget amendment and offer it to the states using the same amendment process we have always used. Just such a precedent exists. For over 20 years, the U.S. Senate resisted popular calls for direct election of senators. As state convention calls neared the required two-thirds, the Senate gave in and an amendment was submitted by Congress to the states.

The "runaway convention" argument is raised by those who do not wish to force an irresponsible Congress (which now threatens our representative form of government) to be restricted, even for the good of the country, even to overcome the peril we now face. Irresponsibility fits the needs of thousands of pressure groups and disregards the vital needs of all the people—the nation itself.

The people should act, have the right to act, and act at once. Past Congresses, the present Congress and several presidents have recklessly handled the federal budget. They will continue in that mood, for they prefer to vote for what will reelect, rather than to vote for what is right. This is precisely the type of self-serving attitude the framers of the Constitution foresaw. Perhaps it is what de Tocqueville meant 150 years ago when he said, "Democracy contains the seeds of its own destruction."

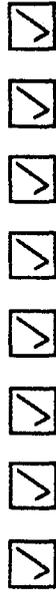
*Mr. Eisenhower is president emeritus of Johns Hopkins University.*

Many who oppose a constitutional amendment for a balanced federal budget fear a "runaway" constitutional convention.

What the opponents seldom say, however, is that most impartial experts see nothing to fear from a convention. A two-year commission 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.

Before a limited constitutional convention could succeed in adding any amendment to the Constitution, eight things have to happen.



### 1. Congress could avoid the convention by acting itself.

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.

### 3. The delegates would have both a moral and legal obligation to stay on the topic.

There is a long history in the United States of individuals limiting their actions to the job for which they were chosen. Members of the Electoral College could, if they wished, elect anyone to be the President of the United States, even someone

who was not a candidate and had received no popular votes. Yet this has never happened. There have been 18,642 electors 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 introduced by Senator Orrin Hatch, Chairman of the Constitution Subcommittee, 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.

### 4. Voters themselves would demand that a convention be limited.

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 it to the same issue.

Opponents of the constitutional convention call on the balanced budget amendment have listed dozens of issues which 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.

### 8. Thirty-eight states must ratify.

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. It would mean nothing.



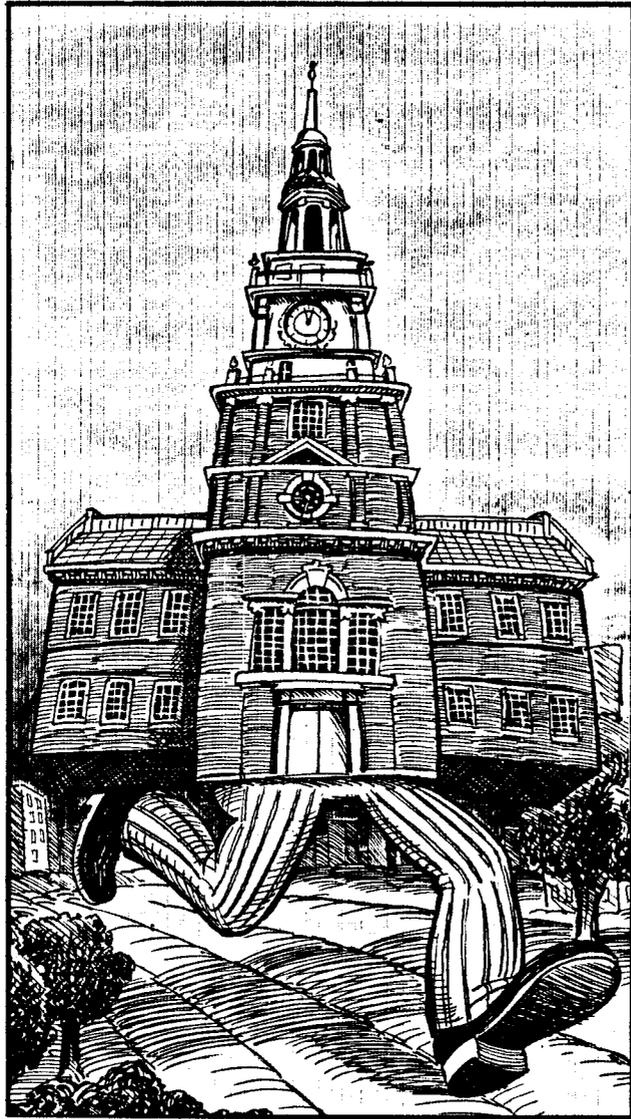
## One Hundred Million To One

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. Staggering 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.

2/20/85 Ex. #10  
HJR 29

# The Hoax of a "Runaway" Constitutional Convention



TESTIMONY AGAINST CALLING A CONSTITUTIONAL CONVENTION

BETTY BABCOCK  
Eagle Forum Legislative Chairman  
Wednesday, February 20, 1985  
Montana House Hearings

There are TWO distinctly different issues involved when we talk about H.R. 29.

- 1) The question of a Balanced Budget Amendment.
- 2) The calling of a Constitutional Convention under Article V in the hope of accomplishing that Balanced Budget Amendment.

Ladies and Gentlemen let us not go blindly into a vehicle or means that can ignite and blow apart the magnificent U.S. Constitution that has served for 200 years as a guide to developing the greatest form of human civilization the world has ever known.

The calling of a Con-Con, as it is commonly referred to, may seem simple and maybe considered "just a pressure tactic"; HOWEVER the reality of having a Convention is a very serious matter and could be right around the corner IF Montana were to go along at this point and become the 33rd state to call for such a Constitutional Convention. (I understand by the way there are several states who are thinking of recinding their calls which were made 6 or 7 years ago by different legislatures.)

The practical considerations are: FIVE steps...each having numerous problems.

1. Obtaining convention calls from the legislatures of two thirds of the states. *ARE THESE "CALLS" UNIFORM?*
2. Debate in Congress over procedures and rules to govern a convention, (which could last for years).
3. Election or selection of delegates to the constitutional convention.
4. Proposal by the convention.
5. Ratification by three fourths of the states, OR will they change ratification requirements!

The Constitutional problems are monumental, e.g.:

Who has judicial power over the setting of the rules and procedures?

1. The United States Congress?
2. The Convention body?
3. Or the courts?

In fact, WHO will make the decision as to which body has that judicial power?

Are these justifiable issues to be decided by the courts?...or political questions to be decided by Congress?

Just mentioning these few points should make one stop and ask "is this the most practical approach to attaining a Balanced Budget Amendment?" I am convinced it is not. The enclosed article by Gerald Gunther in the American Bar Association Journal examines the terrific problems involved to secure an Amendment.

For the proponents to say this is a faster route to secure an Amendment I feel is probably because they are not aware of all the many details. I believe it is politically naive to assume that the delegates selected for a Constitutional Convention would be any more pro-Balanced Budget than our National Congress. I believe you, ladies and gentlemen can understand how unlikely it is that the political structure would ever relinquish control to individual issue groups. To consider that the first National Convention since the original one of 1787 could be controlled by any other than the established political structure is showing a lack of knowledge of practical politics. If control of selection, or election, of pro-Balanced Budget delegates on such a broad national scale were possible, we should be able to harness that power to replace the few who are blocking this legislation in the current Congress.

In this time of extraordinary budgetary problems, we should be very concerned with the cost of calling such a convention. We must stop and consider what it will cost to hold elections for delegates in 50 states. What will it cost to operate the Convention itself? Not only will it be an astounding dollar cost but a cost in TIME! Do you really think it reasonable and practical to pursue such an obvious costly route?

The considerable problems of enabling legislation for a Constitutional Convention which could be debated in Congress

for years is spelled out in the attached documentation. We plead with you not to rush into this very serious decision. Carefully weigh the research we are only beginning to assemble, do not burden our State and our Nation with a procedure that will cause havoc, devisèvness and could lead to the complete revision of our U.S. Constitution.

The enclosed material shows how there are groups already discussing and producing reports on how the Constitution could, and should be changed. e.g. Committee for Constitutional Systems. There is even a group I understand who have written a "Constitution for the Newstates of America." We should study this VERY carefully. They are moving along as though the "Con-Con" were a reality. So the argument of it being "only a threat" is not practical.

Don't let Congress shift the burden of their responsibility on to you the State Legislatures and us the citizenry by putting us in this chaotic situation. Congress must learn to live within its means, Balance its Budget and/or pass the Amendment for it, and it must be done soon, NOT put us through years of termoil.

Ex. 12  
HB-814  
2/20/85

TESTIMONY BY ANNE BRODSKY OF THE WOMEN'S LOBBYIST FUND BEFORE  
THE HOUSE STATE ADMINISTRATION COMMITTEE ON HB 814, FEBRUARY  
20, 1985

The Women's Lobbyist Fund stands today in support of the establishment of a Women's Bureau in Montana state government. We are pleased Representative Moore has recognized the importance of support for women evidenced in creation of a women's bureau.

Newspapers have recently been reporting a new phenomenon in America -- the feminization of poverty. Employed women earn on an average only 59% of men's wages. The number of unemployed women has been growing dramatically, due to economic factors and lack of job training. Divorce rates are climbing---there were about 4,700 divorces in Montana last year alone. Newly divorced or widowed women find they are the sole support of themselves and their children. Child support laws leave gaps in enforcement that are being brought to the attention of the legislature. Yet a recent bill in this legislature seeks to remove able-bodied adults from eligibility for general assistance.

Montana has several effective programs that provide job training and support to women -- most notably the displaced homemaker program that provides counseling and job training for newly divorced or widowed women. And the Executive Budget includes funding as recommended by several Montana women's groups for a position in the Department of Commerce to provide technical assistance in business skills for Montana women.

But these programs are being implemented in a piece-meal fashion from one department to another. HB 814 could provide a base for coordination of programs across state agency lines to benefit Montana women. HB 814 provides specific responsibilities for the position budgeted in the Department of Commerce at the recommendation of women's groups attending the recent Women and Economic Development seminar in Missoula. However additional responsibilities exist in other state agencies --particularly the Departments of Labor and Industry and Social and Rehabilitation Services -- to provide services to Montana women. These services could and should be coordinated through a Women's Bureau to ensure the best use of scarce resources.

The Women's Lobbyist Fund recommends the Women's Bureau be located in the Governor's office to provide an inter-departmental spirit of cooperation. The Women's Bureau could assist communication and coordination of services among state agencies. The Bureau should also act as an advocate for Montana women, ensuring they are informed of their job rights, rights concerning availability of credit and

insurance, information about business opportunities, and a myriad of other facts that will assist them in becoming self-sufficient, productive and capable individuals.

The Women's Lobbyist Fund urges adoption of amendments to HB 814 as follows:

1) scope of responsibilities broadened to include duties of the Department of Labor and Industry located at 2-15-1701 MCA and the Department of Commerce located at 2-15-1801 MCA.

2) coordinate activities of the Departments of Commerce and Labor and Industry with duties of the Department of Social and Rehabilitation Services (2-15-2201 MCA) and Office of Public Instruction in providing services and information to women.

3) locate the Women's Bureau in the Office of the Governor as an inter-departmental coordinating agency.

4) include an adequate budget appropriation for staff for the women's bureau.

With inclusion of these amendments to strengthen the bill, the Women's Lobbyist Fund urges a "do pass" recommendation to HB 814.

## THE CASE AGAINST THE CONSTITUTIONAL CONVENTION

### 1. A Con Con as the Only Hope for a Balanced Budget

Public Law PL95-435 section 7 (see bracket C on last page) already calls for a balanced budget. It has been weakened by amendment and is simply ignored as many provisions of the Constitution are and as the proposed amendment would be. Legal penalties are required to make it stick and could be added to PL95-435 as amendments without risk to the Constitution. The Amendments S.J.Res.5 and H.J.Res. 243 that the National Taxpayers Union is backing do not require a balanced budget because a deficit could be voted by a three-fifths majority.

### 2. Limitation of the Con Con to Consideration of a Balanced Budget Amendment

Idaho Congressman Larry Craig's CLUBB (Congressional Leaders United for a Balanced Budget), Louis Uhler's National Tax Limitation Committee, and Jim Davidson's National Taxpayers Union all refer to Article 2 (see A) in the resolution from page VII of Amendment of the Constitution by the Convention Method Under Article V by the American Bar Association, which states that Congress has the power to establish procedures to limit Con Con, but systematically fail to refer to the first paragraph of page 18 (see B) of the same ABA report where the ABA committee weakens that assertion to a belief and then contradicts it completely by saying, "we consider it essential that implementing legislation not preclude the states from applying for a general convention" and that any such legislation would be of "questionable validity" since in their view Article V does not prohibit a general convention. This leaves the door open for all the special interest groups pushing for amendments to discover page 18 and destroy any limitation.

### 3. The Ratification Process as a Guard Against a Runaway Con Con

Again proponents of this arguments fail to note that Article V provides for two modes of ratification: by state legislature and special state convention. Article V says nothing about how the special convention is to be chosen.

### 4. The Need for a Whole New Constitution

The Committee on the Constitutional System headed by Lloyd Cuttler and C. Douglas Dillon held a press conference in Washington DC on Wednesday, May 30, 1984 to promote their new constitutional proposals being drafted by a Robert McNamara task force designed to weaken separation of powers and introduce parliamentary government in the U.S. Their backers include David Rockefeller and would be instrumental in selecting the state ratification committees as they were in the failed 1976 attempt to get a Con Con to implement Tugwell's marxist New States Constitution which eliminates the Bill of Rights.

### 5. Many Conservative Congressmen are in Pro Con Con Organizations

Calls to these Congressmen and their aides reveal that many have accepted the balanced budget argument at face value and have not done their homework. None have defended their position by successfully refuting the factual accuracy of the above statements.

The following resolutions were approved by the American Bar Association House of Delegates in August, 1973, upon the recommendation of the ABA Constitutional Convention Study Committee.

WHEREAS, the House of Delegates, at its July 1971 meeting, created the Constitutional Convention Study Committee "to analyze and study all questions of law concerned with the calling of a national Constitutional Convention, including, but not limited to, the question of whether such a Convention's jurisdiction can be limited to the subject matter giving rise to its call, or whether the convening of such a Convention, as a matter of constitutional law, opens such a Convention to multiple amendments and the consideration of a new Constitution"; and

WHEREAS, the Constitutional Convention Study Committee so created has intensively and exhaustively analyzed and studied the principal questions of law concerned with the calling of a national constitutional convention and has delineated its conclusions with respect to these questions of law in its Report attached hereto,

NOW, THEREFORE, BE IT RESOLVED, THAT, with respect to the provision of Article V of the United States Constitution providing that "Congress . . . on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments" to the Constitution,

1. It is desirable for Congress to establish procedures for amending the Constitution by means of a national constitutional convention.
2. Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislatures.
3. Any Congressional legislation dealing with

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While we believe that Congress has the power to establish standards for making available to the states a limited convention when they petition for that type of convention, we consider it essential that implementing legislation not preclude the states from applying for a general convention. Legislation which did so would be of questionable validity since neither the language nor history of Article V reveals an intention to prohibit another general convention.

In formulating standards for determining whether a convention call should issue, there is a need for great delicacy. The standards not only will determine the call but they also will have the effect of defining the convention's authority and determining whether Congress must submit a proposed amendment to the states for ratification. The standards chosen should be precise enough to permit a judgment that two-thirds of the state legislatures seek a convention on an agreed-upon matter. Our research of possible standards has not produced any alternatives which we feel are preferable to the "same subject" test embodied in S.1272. We do feel, however, that the language of Sections 4, 5, 6, 10 and 11 of S.1272 is in need of improvement and harmonization so as to avoid the use of different expressions and concepts.

We believe that standards which in effect required applications to be identical in wording would be improper since they would tend to make resort to the convention process exceedingly difficult in view of the problems that would be encountered in obtaining identically worded applications from thirty-four states. Equally improper, we believe, would be standards which permitted Congress to

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applications of this nature." The House thus decided not to refer the application to committee but rather to enter it upon the Journals of Congress and place the original in its files. 1 Annals of Congress, cols. 248-51 (1789). Further support for the proposition that Congress has no discretion on whether or not to call a constitutional convention, once two-thirds of the states have applied for one, may be found in IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 178 (2d ed 1836) (remarks of delegate James Iredell of North Carolina); 1 Annals of Congress, col. 498 (1796) (remarks of Rep. William Smith of South Carolina during debate on a proposed treaty with Great Britain); Cong. Globe, 38th Cong., 2d Sess. 630-31 (1865) (remarks of Senator Johnson).

“(m) No article, material, or supply, including technical data or other information, other than cereal grains and additional food products, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, may be exported to Uganda until the President determines and certifies to the Congress that the Government of Uganda is no longer committing a consistent pattern of gross violations of human rights.”

Presidential  
certification to  
Congress.

(e) The Congress directs the President to encourage and support international actions, including economic restrictions, to respond to conditions in the Republic of Uganda.

22 USC 2151  
note.

SEC. 6. The Secretary of the Treasury shall instruct the Executive Director of the United States to the International Monetary Fund to work in opposition to any extension of financial or technical assistance by the Supplemental Financing Facility or by any other agency or facility of such Fund to any country the government of which—

22 USC  
286e-11.

(1) permits entry into the territory of such country to any person who has committed an act of international terrorism, including any act of aircraft hijacking, or otherwise supports, encourages, or harbors such person; or

(2) fails to take appropriate measures to prevent any such person from committing any such act outside the territory of such country.

SEC. 7. Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

31 USC 27.

Approved October 10, 1978.

C [

# Perspective

A forum—ideas, analysis, opinion

Chicago Tribune, Wednesday, May 2, 1984

Section 1 13

## Risking a constitutional crisis

By Samuel W. Witwer

No citizen can be complacent about huge federal budget deficits, now estimated in the range of \$200 billion, and reasonable steps certainly are in order to work toward balanced budgets. However, the method chosen by advocates of reform—the call for a federal constitutional convention—is dangerous to an extreme. It could be even more damaging to our national interests than budgetary imbalances.

America faces the possibility of holding a constitutional convention for the first time since 1787, when the U.S. Constitution was adopted. Such a startling development could result from the balanced-budget proponents' quiet, persistent campaign to obtain state petitions calling on Congress to "call" such a convention.

The proponents of reform, reacting to Congress' failure to submit to the states for ratification an amendment mandating a balanced budget, have chosen a "shotgun" approach instead of seeking to elect a Congress that would pass such an amendment. They are demanding a constitutional convention to achieve their budgetary objective, and therein lies the potential for a grave constitutional crisis of unprecedented dimensions.

Their legislative campaign has netted 32 state petitions of one sort or another, just two short of the magic number of 34 states required by the Constitution [Article V] to force Congress to call the proposed convention.

The degree of care given by many of the states in passing their critical convention-call resolutions may well be questioned. But aside from that factor, there are many additional reasons why a constitutional convention calling for a balanced budget amendment or, for that matter, any other "single issue," would be a grave error.

For one thing, there is general satisfaction with the existing Constitution as a document that has served our nation well. It is a document of principle, inspiration, equity and opportunity for all people. As needs for change became manifest, one of the two amendment methods provided in Article V—changes initiated by Congress—has proven responsive and effective on 26 occasions. So it is understandable that many citizens and legal scholars who hold the Constitution in high regard are becoming worried about the dangers of a second constitutional convention and the uncharted course upon which this nation would embark if such a convention were called for the ostensible purpose of mandating a balanced budget.

Moreover, leading proponents of the convention call have announced that such a convention, once assembled, would consider a variety of related issues such as a provision for vetoes of parts of bills [the so-

called "line-item" veto], for national referenda on budgetary questions, for return to the gold standard and presumably matters that would affect "fiscal aspects" of our domestic and foreign policy concerns.

Though the history of the 1787 convention and the wording of Article V suggest that a convention could either be limited or general in scope, legal scholars agree there can be no positive assurance that a convention could be limited to a particular amendment once the convention had convened. Thus, there is no assurance that all facets of American law, government and the civil rights of U.S. citizens could not be opened to debate and possible revision by a runaway convention.

The situation is unlike state constitutional conventions, more than 200 of which have been held. In the states, there is a literature of constitutional reform, numerous precedents, enabling acts and other traditions that throw a cloak of procedural certainty and order around the call of state constitutional conventions, most of which have been general and unlimited.

Although the question of whether a federal constitutional convention may be confined to a single subject is the major concern, other questions of great constitutional importance remain unanswered as well:

What constitutes a valid application which Congress must count? Who is to judge its validity? What is the length of time applications will be counted to determine if 34 are filed? What will be the procedures for selection of delegates? Would this be left to appointment by state legislatures or the one-man, one-vote electoral process? May a state legislature withdraw an application for a convention once submitted or rescind a previous ratification? Would issues arising in a convention be reviewable by the courts?

Prof. Lawrence H. Tribe of the Harvard Law School sees the primary threat imposed by an Article V convention as that of "a confrontation between Congress and such a convention," noting also that the dispute would inevitably draw into the confrontation the Supreme Court itself. The outcome could be constitutional upheaval at all levels. Thus, I cannot agree with James Davidson, chairman of the National Taxpayer's Union, the foremost group campaigning for a budget-balancing convention. He would justify that risky venture as a "fantastic national civics lesson, more exciting than 'Brideshead Revisited.'"

Considering the magnitude of our domestic problems, this is not the time to organize a "national civics lesson," which could be of unlimited scope once launched. Considering the instability, confusion and dangers abroad, the holding of a constitutional convention could be interpreted in other countries as a disintegration of our American institutions and a lack of high purpose, resolve and capacity to lead.

In three years our nation will celebrate the 200th anniversary of the adoption of its Constitution. Let us hope that meanwhile that historic event will not be marred by an imprudently called convention of unknowable authority.

Samuel W. Witwer is a Chicago attorney who served as president of the 6th Illinois Constitutional Convention, which drafted the state's present Constitution.

18th Anniversary Year



# The Phyllis Schlafly Report

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DECEMBER, 1984

## CON CON: Playing Russian Roulette with the Constitution

Russian Roulette is a deadly game of risk. You put one bullet in a revolver, leaving five empty chambers, spin it, aim it at your head, and fire. The odds are very favorable; you have five chances out of six of surviving, and only one chance out of six of being dead.

Most people think that it is irrational to play such a risky game with your own life. Society calls it murder if you play it with anyone else's life. Many of us feel it would be just as irrational to play such a risky game with the U.S. Constitution -- our most precious document and the fountainhead of our unparalleled American freedom, independence, and prosperity.

A call for a Federal Constitutional Convention (popularly called Con Con) means playing Russian Roulette with our Constitution. The chances are good, perhaps very good, that our Constitution would survive. But it isn't rational to take such a risk with something so important as our Constitution.

Thirty-two state legislatures have passed resolutions calling for a Constitutional Convention to consider a Balanced Budget Amendment to the U.S. Constitution. A Balanced Budget Amendment is a desirable goal. But a good end does not justify a bad means, and Con Con would be a very bad and dangerous means.

A decade ago, when those supporting a Balanced Budget Amendment began their effort to pass Con Con resolutions in State Legislatures, it seemed a useful educational device. It dramatized the urgency of our horrendous Federal fiscal problems. It made a "Statement" that the American people are very serious about our demand for a Balanced Budget Amendment.

But now that our nation is only two states short of the actual call for a Con Con, it's time to stop dangerous bluffing about the Constitution and talk about risks and realities. If 34 states (2/3rds of the 50 states) pass resolutions calling for Con Con, the obligation to call one is mandatory on Congress. The roller-coaster ride will have started, and there will be no way to get off.

Article V of the U.S. Constitution provides two methods of amendment: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the

several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

The 26 existing amendments to the Constitution were all adopted by the first of the two amendment procedures specified in Article V. The alternate method, a Constitutional Convention, has never been used. That doesn't make it wrong; but it should require us to evaluate the risks before plunging into a radically different method which could put our entire Constitution on the bargaining table to be torn apart by the media, political factions, and special-interest groups.

### What Con Con Supporters Say

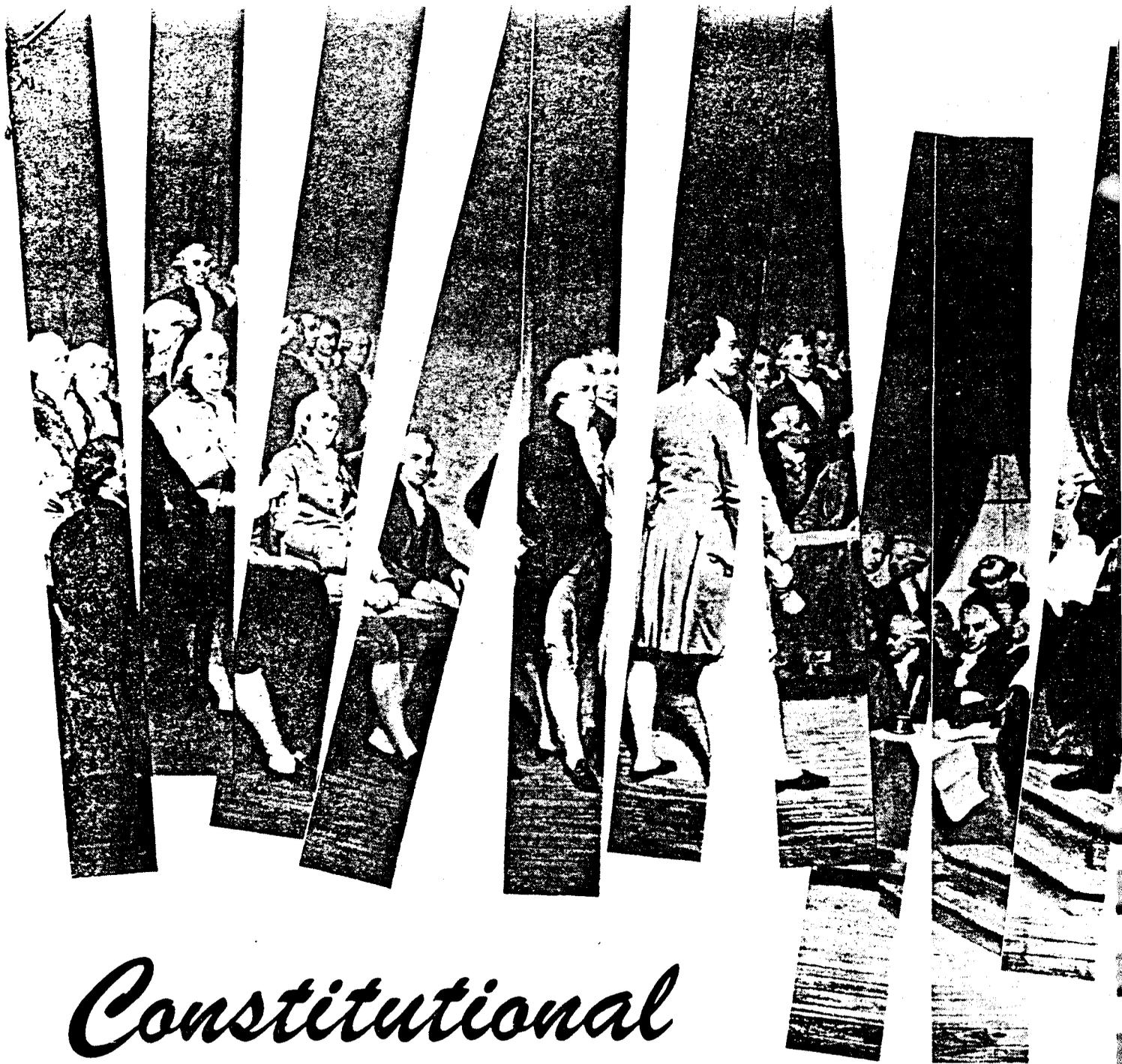
In talking with people who support Con Con as a device to get a Balanced Budget Amendment, several curious factors emerge.

(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 pigeon-hole everyone who opposes Con Con as "anti-Balanced Budget Amendment," which is false. Many of us do support a Balanced Budget Amendment but do NOT support Con Con. The intemperate language and the *ad hominem* attacks against anyone who opposes Con Con are offensive to fair-minded persons.

(4) Most remarkable, many advocates of Con Con, when pressed about the dangers of Con Con, say they really don't want Con Con and that it won't happen



# *Constitutional Brinksmanship:*

## Stumbling toward a Convention

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State legislatures are calling for a constitutional convention without comprehending the full dimensions of the risks.

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By Gerald Gunther

MOST of us identify the United States Constitution with what the Supreme Court says it is. But the Court usually deals with only a very few provisions of the Constitution — the First Amendment, equal protection, and due process, for example. Yet the Constitution contains a lot more than that. Most of its provisions rarely get to the courts, yet many unsettled questions lurk in those unadjudicated clauses. The undecided issues often are merely of academic interest. But there are times when some of those problems emerge as a reminder that constitutional questions can be genuine and important, al-





though the courts may never speak to them.

Many of these issues are now before the public. May Congress eliminate the power of the federal courts to rule on voluntary school prayers? May the president abrogate the obligations of a treaty ratified by the Senate? May Congress use the legislative veto to control executive action? May federal judges be removed without resort to the impeachment process? All of these are truly constitutional questions, although they have not been illuminated by the nine oracles in the Marble Palace on Capitol Hill.

But perhaps the most perplexing unresolved issue that has surfaced is this: the convention route for amending the Constitution. It is an issue that has entered our consciousness through the efforts of an expert at consciousness-

raising, California's governor, Jerry Brown. Early this year Governor Brown announced his support for a drive to call the first constitutional convention since the one that drafted our Constitution in Philadelphia in 1787.

Our remarkably brief Constitution has had only 26 amendments in almost 200 years. All of them have been adopted by the use of only one of the two methods provided by Article V of the Constitution — proposal by a two-thirds' vote of Congress, followed by ratification by three fourths of the states. But Article V sets forth another method as well. It provides that "on the Application of the Legislatures of two thirds of the several States," Congress "shall call a Convention for proposing Amendments," which become part of the Constitution if they are ratified by three fourths of the states. The ongoing campaign to press for a balanced budget amendment is a threat to use that second, untried constitutional convention route.

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 legislatures 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 brinksmanship if you will, a stumbling toward a constitutional convention that more resembles blindman's buff than serious attention to deliberate revision of our basic law.

While Governor Brown is largely responsible for making people aware that the campaign is in fact under way, he didn't initiate it. When he got aboard last January, about two dozen state legislatures already had asked Congress to call a convention, although the public was largely unaware of that. Most astounding, the campaign had gotten that much support with the most remarkable inattention in those state legislatures to what they were really doing. I gather that not a single one of them had even held a committee hearing on the unresolved questions of Article V. The legislative debates typically were brief and perfunctory—essentially up-and-down votes for or against the balanced budget. Yet what typically was adopted was a resolution that, unless Congress submitted a

budget amendment of its own, the state was applying under Article V for a constitutional convention. It is fair to say that the questions of what a convention might do, and especially whether it could and would be limited to the balanced budget issue, were largely ignored.

When Governor Brown joined the campaign, the public began to take it more seriously. In February a committee of the California Assembly became the first state legislative body to hold extensive hearings on what this convention process really might look like. California rejected the convention proposal after those hearings. A good many people then assumed that the drive was dead. But it continues. New Hampshire recently became the 30th state to ask for a convention, and the issue is pending in several other legislatures.

If four more states join the campaign, I suppose everyone will become aware that a truly major constitutional issue confronts us, for Congress will then have to decide whether 34 valid applications are at hand. If there are, Congress will be under a duty to call a convention—a convention for which there are no guidelines as to what its scope shall be, as to how the delegates are to be selected, and as to how long it shall meet, among many questions.

I am a constitutional lawyer, not an economist. I don't want to be taken as addressing the question of whether a balanced budget mandate promises effective solution of our fiscal problems, or even whether that mandate belongs in a basic law largely concerned with permanent values and structures rather than transitory policy disputes. I am concerned about the convention process of amendment.

One way of looking at the issues is to examine the assurances by the advocates of the budget amendment—assurances that the convention process won't get out of hand. I perceive three major recurrent themes in their arguments. First, we are told that a constitutional convention is not likely to come about, since the real aim of the drive is to spur Congress into proposing a budget amendment of its own. Second, we are told that even if a convention is called, it will be confined to the budget issue. And third, we are told that even if the convention were to become a "runaway" convention (as the one in 1787 was) and even if it were to propose amendments going beyond the budget issue, those proposals would

never become part of the Constitution because three fourths of the states would never ratify them.

There is no adequate basis for those assurances, and certainly not for the confidence with which they are presented. The convention route promises uncertainty, controversy, and divisiveness at every turn. With respect to the central constitutional question — whether a convention could and would be limited to a single subject—there is a serious risk that it would not in fact be so limited.

The claim that seems to me the simplest to challenge is that the campaign is simply a device to press Congress into proposing a budget amendment of its own. If the movement is to be a spur to induce congressional action, it needs to be a credible threat. One of the very few issues about the convention route on which there is full agreement among scholars is that, once 34 proper applications for a convention are before Congress, Congress is under a duty to call a convention and does not have a legitimate discretion to ignore the applications. In short, a strategy that rests on the threat of a convention must surely take account of the possibility that a convention in fact will be convened.

The assurance that any convention would be limited to the subject matter of the state applications touches on the central constitutional problem, and it raises a number of questions for which there are no authoritative answers.

Recall the various steps spelled out in the Constitution. The first is "the Application of the Legislatures of two thirds of the several States" for a convention. After proper "Applications" are received, Congress, as the second step, "shall call a Convention for proposing Amendments." Then, as the third step, the convention meets. After the convention reports its proposals, Congress is called on to take the fourth step: to choose the "Mode of Ratification"—ratification either by the "Legislatures of three fourths of the several States" or by ratifying conventions in three fourths of the states. The fifth and final step is the actual consideration of ratification by the states.

With respect to the first step, there are some scholars who believe that the only valid "Application" is one calling for a general, unlimited convention. A larger number of scholars believe that applications that are somewhat limited can be considered valid, as long as they are not so narrowly circumscribed as to

deprive the convention of an opportunity to deliberate, to debate alternatives, and to compromise among measures. I do not know of any scholar who believes that a specific application — that is, to vote up or down on the text of a particular amendment—is the kind of "Application" contemplated by Article V. The typical budget amendment proposals adopted by the states so far are quite specific, and they are open to the charge that they are not proper "Applications" in the Article V sense.

But the question of what constitutes a proper "Application" is only preliminary. The main difficulties lie in what Congress and a convention could and would do. First, as to Congress, in the second step of the convention route: If it adopted the position that only unlimited applications are proper, it could simply ignore the limited ones, and the process would stop right there. Or, still acting on the belief that all conventions had to be general ones, it might disregard the specification of the subject matter in the applications and issue a call for a general convention.

### Could Congress stop a "runaway" convention?

I suspect that Congress would adopt neither of those alternatives. I think that the most probable congressional action would be to attempt to heed the limited concern that stirred the applications and call a convention with a scope broad enough to still the qualms about excessively narrow conventions. Congress might call a convention limited to the issue of fiscal responsibility, a convention that, for example, could consider the spending amendment supported by economist Milton Friedman as well as the balanced budget proposal supported by Governor Brown. If Congress took that route, it would probably enact — at last — some legislation to set up machinery for a convention.

But all that takes us only through the first two steps of the convention route. The uncertainties at those stages are grave enough, but they are as nothing compared to what confronts us at the all-important third stage: the convention itself. Even if Congress were satisfied that the specific balanced budget applications constituted valid "Applications" and that it had the power to confine a convention to the subject matter it defined (both debatable assumptions), that would not resolve the prob-

lem as to what might take place at the convention itself.

The convention delegates would gather after popular elections — elections in which the platforms and debates would be outside of congressional control, in which interest groups would probably seek to raise issues other than the budget, and in which some successful candidates no doubt would respond to those pressures. The delegates could legitimately speak as representatives of the people and could make a plausible case that a convention is entitled to set its own agenda. They could claim, for example, that the limitation in the congressional "call" was to be taken as a moral exhortation, not as a binding restriction on the convention's discussions. They could argue that they were charged with considering all the constitutional issues perceived as major concerns to the people who elected them. Acting on those premises, the convention might well propose a number of amendments — amendments going not only to fiscal responsibility but also to nuclear power, abortion, defense spending, mandatory health insurance, or school prayers.

If the convention were to report those proposals to Congress for submission to ratification, the argument would be made that the convention had gone beyond the bounds set by Congress. I have heard it said that Congress could easily invalidate the efforts of a "runaway" convention by simply ignoring the proposed amendments on issues exceeding the limits. I do not doubt that Congress could make a constitutional argument for refusing to submit the convention's "unauthorized" proposals to ratification, but that veto effort would run into substantial constitutional counterarguments and political restraints.

Consider the possible context — the legal and political dynamics — in which a congressional effort to veto the convention's proposals would arise. The delegates elected to serve at "a Convention for proposing Amendments" (in the words of Article V) could make a plausible constitutional argument that they acted with justification, despite the congressional effort to impose a limit. They could make even more powerful arguments that a congressional refusal to submit the proposed amendments to ratification would thwart the opportunity of the people to be heard through the ratification process.

In the face of these arguments, might

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not Congress find it impolitic to refuse to submit the convention's proposals to ratification? It is not at all inconceivable that Congress, despite its initial belief that it could impose limits and its effort to do so, would find it to be the course of least resistance to submit all of the proposals emanating from a convention of delegates elected by the people to the ratification process, in which the people would have another say.

I am not reassured by the argument that if Congress attempted to submit "unauthorized" proposals to ratification, a lawsuit would stop the effort. There is a real question as to whether the courts would consider this an area in which they could intervene. Even if they decided to rule, there is the additional question of whether they would agree with the constitutional challenge. In any event, the prospect of litigation simply adds to the potential confrontations along the convention road.

That brings me to the third reassurance about the low-risk nature of the convention route. We are told that the requirement that three fourths of the states must ratify a proposed amendment guarantees that the convention won't run amok. There is a fatal flaw in that argument as well. It assumes that a convention would either limit itself to a narrow subject or "run amok" in the sense of making wild-eyed proposals. This overlooks a large part of the spectrum in between. Can there be confidence that there are no issues of constitutional dimensions other than a balanced budget that could conceivably elicit the support of the convention delegates and, ultimately, the requisite support in the states?

True, it can be argued that one should not worry about a method of producing constitutional amendments if three fourths of the states are ultimately prepared to ratify. But I am concerned about the process, a process in which serious focus on a broad range of possible constitutional amendments does not emerge until late in the process. Is it deliberate, conscientious constitution making to add major amendments through a process that begins with a mix of narrow, single-issue focus and of inattention and ignorance, that does not expand to a broader focus until the campaigns for electing convention delegates are under way, and that does not mushroom into broad constitutional revision until the convention and ratification stages?

It is a good deal easier to challenge

the reassurances of the proponents of the convention than to arrive at one's own understanding of how the process should work. I have examined the relevant materials with care, but neither I nor anyone else can make absolutely confident assertions about what the convention process was intended to look like.

My own best judgment is that "Applications" from the states can be limited in subject matter, so long as they are not too specific. I believe, moreover, that Congress can specify the subject for discussion at the convention in its "call." But I also believe that specification should be viewed as largely an informational device and as essentially a moral exhortation to the convention. Most important, I do not think that the convention can be effectively limited to that subject by Congress or by the courts. If the convention chooses to pursue a broader agenda, it has a persuasive claim to have its proposals submitted to ratification.

### **Don't take risks without knowing the genuine hazards**

That understanding can be attacked as making the convention route terribly difficult to use, because single issue applications may mushroom into multi-issue convention proposals. The understanding can be attacked, moreover, as construing the state-initiated amendment route as different from (as well as more difficult than) the congressionally initiated amendment process.

Those criticisms, however, overlook important historical lessons. It is true that the 1787 convention deliberately gave the states an opportunity to initiate the amendment process. But that convention did not make the state-initiated process nearly identical to the congressionally initiated one. The records of the 1787 convention are illuminating on this. The convention did not accept a proposal by James Madison to make two thirds of the states coequal with Congress in proposing amendments. Instead, it limited the states' initiative to one of applying for a convention, and it inserted the convention as the institution that would undertake the actual proposing. That convention step inevitably makes the state-initiated route a different, not a synonymous or even closely parallel alternative.

What the framers had in mind was that the states should have an opportunity to initiate the constitutional re-

vision process, if Congress became wholly unresponsive and tyrannical. But that was viewed as a last resort for truly major constitutional crises. The notion of a convention most familiar to the framers in 1787 was precisely the kind of convention then meeting in Philadelphia — one that undertook a major overhaul of an unsatisfactory basic document.

That does not mean that any convention called under Article V must be as far-reaching as the one in 1787. But I believe that the convention contemplated was one that would consider all major constitutional issues of concern to the country. If the balanced budget were the only major issue of concern today, a single-issue balanced budget convention might be entirely feasible. But the actual, unavoidable problem today is that there are other constitutional issues of concern. And if they are of concern, in my view the convention may consider them.

That is my best judgment, but it is by no means an authoritative one, no more so than that of anyone else who has made an effort to make sense of Article V. The ultimate reality is that there are many questions, many uncertainties, and no authoritative answers.

If the nation, with open eyes and after more careful attention than we have so far had in most state legislatures, considers a balanced budget amendment so important as to justify the risks of the convention route, that path ought to be taken. But surely it ought not to be taken without the most serious thought about the road ahead. It is a road that promises controversy, confusion, and confrontation at every turn, and that may lead to a general convention able to consider a wide range of constitutional controversies.

My major concern is to argue that, as we proceed along this road, we should comprehend the full dimensions of the risks ahead. It is that conviction which leads me to urge that state legislatures not endorse the balanced budget-constitutional convention campaign on the basis of overconfident answers to unanswered and unanswerable questions, or of blithe statements that inadvertently or intentionally blind us to the genuine hazards. ▲

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*(Gerald Gunther is William Nelson Cromwell Professor of Law at Stanford Law School. This article is adapted from an address Professor Gunther made to the Commonwealth Club of California.)*

FROM: *Phyllis Schlafly*

RELEASE: AUGUST 10, 1984

68 FAIRMOUNT, ALTON, ILLINOIS 62002 (618) 462-5415

PLANS TO REWRITE THE U.S. CONSTITUTION

An amazing group of prominent and powerful persons is waiting in the wings to bring about a radical restructuring of our American Constitution. Just to call the roll of the big names is enough to reveal what enormous power in business, finance, the media, politics, and academia is behind this plan.

The co-chairmen of this group are C. Douglas Dillon, former Secretary of the Treasury and a powerful Wall Street figure, and Lloyd N. Cutler, former counsel to President Jimmy Carter. Others participating in working panels include former Defense Secretary Robert McNamara, former Senator J. William Fulbright, Congressman Henry Reuss, and representatives from the Brookings Institution, the Rockefeller Foundation, the Woodrow Wilson Center, the Sloan Foundation, and the University of Chicago Law School.

It would be premature to say that the following are final recommendations, but the "Summary" of the "Report of Third Meeting, September 9-10, 1983," held at the Woodrow Wilson Center in Washington, D.C., and only recently released, shows that a consensus of this elite group is building for the following objectives.

1. Allow or require the President to appoint members of Congress to some or all Cabinet positions.
2. Increase the terms of U.S. House members from two to four years, with all elections held in Presidential election years.
3. Force the American people to cast a single vote for a package slate consisting of the President, Vice President, and the voter's own House and perhaps Senate candidates.
4. Eliminate the present prohibition against members of Congress serving as Presidential electors.
5. Change a large number of U.S. House seats from election by district to election "at large" in order to increase the possibility that the political party which wins the White House will also control the Congress, and that the "at large" members would be more likely to take a "nationwide view" of the issues.

6. Devise a "more realistic, feasible" method of Presidential removal by an extraordinary majority in both Houses of Congress.

7. Permit the President to dissolve Congress (when he thinks Congress is "intractable") and call for new Congressional elections.

8. Reduce the two-thirds requirement for Senate ratification of treaties to a simple majority only.

9. Give the President an item veto over the budget.

10. Give the President the power of the legislative veto.

11. Eliminate the 22nd Amendment which limits Presidents to two terms.

12. Eliminate the Electoral College and allocate each state's electoral votes directly.

13. If no candidate receives a majority of the electoral college vote, then elect the President and Vice President at a joint session of both Houses of Congress, with each member having one vote (instead of the present system of one vote per state).

14. Eliminate the requirement that appropriation bills must originate in the U.S. House.

15. Overturn the Buckley v. Valeo Supreme Court decision which upheld the right of individuals to contribute to political campaigns.

16. Force the taxpayers to finance Congressional election campaigns so that political expenditures by the candidate and by PACs can be limited or prohibited.

17. Reduce the cost of Presidential and Congressional elections by holding them at irregular intervals so that the date would not be known very far in advance.

18. Give the Federal Government -- instead of the state governments -- the power to regulate and supervise cities. And there is much, much more.

Meanwhile, other groups of people who want a Balanced Budget Amendment have gotten 32 state legislatures to ask Congress to call a Constitutional Convention. Our present Constitution provides that, if 34 states pass such a resolution, Congress "shall call" such a convention.

And all ready to take advantage of this unique opportunity to achieve their goals is that small elite group of powerful men who want to junk the American constitutional republic, with our traditional separation of powers, in favor of a European system which they can more easily control.

FROM: *Phyllis Schlafly*

RELEASE: DECEMBER 18, 1984

68 FAIRMOUNT, ALTON, ILLINOIS 62002 (618) 462-5415

WOULD A CON CON BECOME A RUNAWAY CONVENTION?

If two more state legislatures pass resolutions asking Congress to call a Constitutional Convention (Con Con) to consider a Balanced Budget Amendment, Congress will be obliged to issue the call. Could the Con Con then be limited to consideration of a Balanced Budget Amendment, or might it become a runaway convention that could junk our entire Constitution and substitute an entirely different one?

Con Con advocates claim there are eight checks on a runaway convention. Examination shows that none of these "checks" stands up as a safeguard in which we can place any confidence. Let's consider them.

1. "Congress could avoid the Con Con by acting itself." The authors must not have read the U.S. Constitution. Congress does NOT have this option. Article V imposes the obligation on Congress to call a Con Con if 34 states request it.

The Con Con advocates also base their #1 argument on speculation that Congressmen would rather live with a Balanced Budget Amendment which they drafted than one drafted by a Con Con. But those are not the alternatives. Since Tip O'Neill's Congress does NOT want a Balanced Budget Amendment at all, it would make more sense for him to plunge us into the uncertainties of Con Con, where the emergence of a Balanced Budget Amendment would be uncertain, than to send the Balanced Budget Amendment out to achieve probable speedy ratification by the states.

2. "Congress establishes the Con Con procedures." It is true that Congress has the power to pass a law limiting Con Con to one topic, but nobody knows if Congress has the right to limit Con Con or if this would be upheld by the Supreme Court.

No one can assure us what the Con Con agenda, procedures, or method of election would be. Would the Con Con, for example, be able to propose amendments by a simple majority vote instead of by the 2/3rds majority required in Congress? Nobody knows.

3. "The delegates would have both a moral and legal obligation to stay on the topic." That assertion is false. There is no legal obligation whatsoever. The anti-tax groups

have no mandate to determine the moral obligations of others. Other people have different ideas of what their moral obligations are.

4. "Voters themselves would demand that a Con Con be limited." On the contrary, it is far more probable that voters would demand that the Con Con agenda be opened up to other issues. How could a Human Life Amendment be barred when some 20 states have passed a Con Con resolution on that very issue?

What about a School Prayer Amendment, which polls have consistently shown is supported by enormous majorities? Other constitutional amendment issues that could be demanded by the voters include forced busing, abolishing the Electoral College, reapportioning state legislatures, and limiting the life tenure of Federal judges.

5. "Even if delegates did favor opening the Con Con to another issue, it is unlikely that they would all favor opening it to the same issue." Maybe that is true, but it sets the stage for a very practical compromise -- "You vote to open up Con Con to consider my amendment, and I'll vote to open it up to consider yours." That type of bargaining would put many amendments out on the table to be wrangled about.

6. "Congress would have the power to refuse to send a nonconforming amendment to ratification." It could, but the Con Con by this time might have produced several amendments, or an entirely new Constitution, agreeable to Tip O'Neill's Congress and the liberal media. So this is no safeguard at all.

7. "Proposals which stray beyond the Con Con call would be subject to court challenge." That's the understatement of the year. The Con Con route plunges us into a hundred constitutional uncertainties, all of which would require decisions by the Supreme Court. One of the real defects of the whole idea is that it injects the Supreme Court into the middle of the amendment process.

8. "Thirty-eight states must ratify." That is true, but it doesn't have to be 38 State Legislatures. If the liberal machinery in Congress by this time had pinned its sails to the Con Con idea, Congress can specify that state ratifications must take place by conventions, too, thereby bypassing the State Legislatures altogether.

The U.S. Constitution has served us well for nearly 200 years. It doesn't deserve the risks of a Con Con. The Balanced Budget Amendment and all other proposed amendments should be debated on their own merits.



\*\*\*TESTIMONY\*\*\*

HJR 29  
2/20/85

Mr. Chairman. Members of the Committee, I am Tony Jewett, Executive Director of the Montana Democratic Party. The Democratic Party is opposed to HJR 29.

Last Monday we appeared before the Senate State Administration Committee and testified in favor of Senator Chris Christieans' bill calling on the President to submit a balanced federal budget to Congress. Today we are appearing before this committee in opposition to what is being touted as another balanced budget resolution.

The Democratic Party is solidly in favor of balancing the federal budget; the position is in our state platform and was adopted unanimously at our convention last June. However, HJR 29 is not a balanced budget resolution; it is a call for a Constitutional Convention, to which the Democratic Party is solidly opposed.

The proponents of this bill argue that the call for a Con/Con is necessary to put teeth into the legislation. The call for a Con/Con doesn't put teeth into this resolution, it puts fangs into it -- fangs that are ready to strike and poison the foundation principles of the country, our Constitution.

Montana Democratic Central Committee • Steamboat Block, Room 306 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board

Bruce Nelson Chairman	Donna Small Vice Chairman	Mary Hempleman Secretary	Bobble Wolfe Treasurer	Tony Jewett Executive Director	James Pasma Nat'l Committeeman	Dorothy Bradley Nat'l Committeewoman
Phil Campbell	Helen Christensen	Virginia Egli	Wendy Fitzgerald	Chas Jeniker	Les Morse	Les Pallett
Sharon Peterson	Gracia Schall	Barb Skelton	Clara Spotted Elk	Chuck Tooley	Mike Ward	Blake Wordal
Sen. Chet Blaylock	Rep. Dan Kemmls	Jim Foley	Rep. John Vincent	Phillis Moore		

If there is anyone in this room who can look at this legislation and say to themselves with certainty that a Constitutional Convention can be limited in scope, than they have better foresight than some of the country's best legal scholars who have grappled with the issue for years:

- a) Duke University Law Professor Walter Dellinger points out that Article V of the U.S. Constitution provides for "...a convention for proposing admendments" and notes that admendments is plural.
- b) Harvard Law Professor Laurence Tribe has stated that: "If and when a new convention is called, its potential will be hard to confine; there are numerous opinions about what a convention would or could not do, but are no precedents, and there can be no confident answers."
- c) Melvin Laird, former Secretary of Defense for President Nixon, has stated that "there is no certainty that our nation would survive a modern day convention with its basic structures intact and its citizens traditional rights retained".

In fact the only precedent we have for a constitutional convention took place in Philadelphia in 1787. That convention broke every legal restraint designed to limit its power and agenda; it violated specific instructions from Congress and instead discarded the Articles and wrote the present Constitution.

And if there are those in this committee who believe that opposition to this course of action is limited to one political party or one political spectrum, they should be aware that Phyllis Schafly of the conservative Eagles Forum has called this effort a "game of Russian Roulette" and conservative columnist George Will has called it a "trivialization of the Constitution".

If the case for the dangerousness of this legislation is not enough, consider the case for its effectiveness. If a Constitutional Convention were called and if that call was limited to balancing the budget, the process is estimated to take upwards of 8 years. Can we as a nation wait 8 more years to balance the

federal budget?

Members of the Committee, the headlines and the major topic of public discussion over the last year is reducing the federal deficit and balancing the federal budget. The Congress is all too aware of the absolute necessity of the action; Republican Senate Leader Robert Dole has challenged the President's out-of-balance budget and even Senate Republicans are working on alternatives. I submit that the public is dead serious about reducing the deficit and balancing the budget, and that Congress knows it, and that Congress is dead serious about doing something about it, and doing it now.

This legislation is dangerous; it has the potential of becoming lethal to the foundation principles of our country. As you consider your action on this HJR 29, I would urge you to keep in mind that if this body passes this bill, Montana becomes the 33rd state to issue such a call. Your vote will therefore be a vote for sending our nation into a process that has the potential to bring enormous change to the country, change that Montanans would have very little say in.

I urge your rejection of HJR 29.

WITNESS STATEMENT

Name Wendy Tupper Committee On House State Admin  
Address Helena Date 2/20/85  
Representing Mont. State Growers - Wildgrowers Support X  
Bill No. HJR 29 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This resolution addresses a pressing need. Since 1960 the fed. govt. had deficits in every year but one! This has lead to increased interest rates & inflation. If the Congress ~~can~~ won't address this issue forthrightly, the constitution should require them to do so.
2. Our organizations supported the Bal Budget Initiative this past year and our support is unwavering.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



502 South 19th

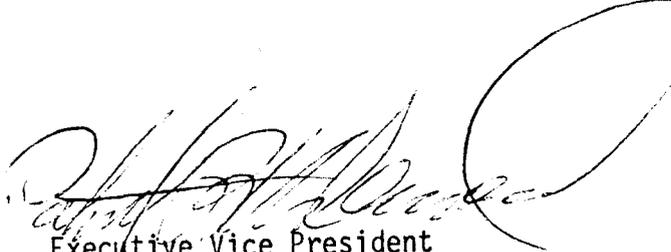
Bozeman, Montana 59715  
Phone (406) 587-3153

TESTIMONY BY: Patrick R. Underwood

BILL # HJR 29 DATE Feb 20, 1985

SUPPORT X OPPOSE \_\_\_\_\_

The Montana Farm Bureau supports this resolution. The Farm Bureau's across the nation have long had policy supporting this type of legislation. We strongly urge you to give HJR a "Do Pass".

  
Executive Vice President  
SIGNED \_\_\_\_\_

Nadrian Jensen, AFSCME

2-20-85

### The Balanced Budget Amendment Effects on Montana

If a Constitutional Amendment requiring a balanced federal budget were enacted, its implementation would require steep cuts in both federal and state and local government expenditures. Cuts of the size required to balance the budget would cause sharp drops in economic activity. They would reduce tax revenues at all levels of government and in turn force even greater cuts in federal expenditures to maintain a balanced budget.

- \* According to a study prepared by Data Resources, Inc. (DRI) for AFSCME, balancing the federal budget under the conditions of a Constitutional Amendment would require federal tax increases and/or expenditure cuts of a size 1.5 to 2.0 times the amount of the federal budget deficit at the time of implementation.

Every state in the country would be seriously hurt by the loss of both federal aid to state and local governments and federal transfer payments to individuals within the state, and by the immediate recession and slow recovery that would grip the nation. Montana would suffer its share of the ensuing chaos.

If a constitutionally mandated balanced budget were implemented at the beginning of federal Fiscal Year 1987, the DRI study (based on the implementation scenario detailed below) shows the following impact on Montana by the year 1989:

- \* The unemployment rate in Montana would rise to 7.9%, as compared to the 5.8% projected by DRI under normal conditions for 1989.
- \* Employment in Montana would drop by nearly 14,000, or 4%.
- \* Personal income of Montana residents would drop by 7 percent, a loss equal to an average of \$1,213 for every man, woman and child in Montana.
- \* Federal grants-in-aid to Montana would decline by \$248 million, or 52%.
- \* If Montana state and local governments did not increase their own tax rates to compensate for the loss in tax base due to economic decline, Montana's tax revenues would drop 6.4%, or \$115 million in 1989.

- \* If Montana wanted to maintain expenditures from its own tax sources and replace the losses in federal grants-in-aid -- without even trying to replace the loss in transfer payments made directly by the federal government to Montana residents -- it would have to generate an additional \$363 million in revenue. Since combined state and local revenues under the balanced budget would total only \$1.67 billion, tax rates would have to be increased by approximately 22%.

### Assumptions

The following assumptions were supplied by AFSCME to DRI for the balanced budget simulation.

- \* Revenue increases to achieve the balanced budget are limited, in each year, to the rate of growth in National Income in the previous year, pursuant to Section 2 of Senate Joint Resolution 5.
- \* The spending cuts necessary to achieve a balanced budget are allocated as follows:
  - Real military spending is held at its FY 1986 level;
  - Federal spending on civilian goods and services (general government spending) is cut 50% from its FY 1986 level;
  - Federal grants-in-aid to state and local governments are cut 50% from their FY 1986 level;
  - Any additional cuts needed to reach a balanced budget are made in transfer payments to individuals.
- \* All other factors, such as federal monetary policy and international economic policy were held constant.

The specific results for the State of Montana were produced by DRI from their Regional Information Service Forecast.

AFSCME  
 Department of Public Policy  
 July 5, 1984

TESTIMONY BEFORE THE HOUSE STATE

ADMINISTRATION COMMITTEE

HJR 29

My name is Pat Callbeck Harper, and I speak as the Vice President of the Women's Division of the General Board of Global Ministries of the International United Methodist Church.

Offering the official policy statement of the United Methodist Church, and its 9 million members and 30,000 members in Montana. The General Conference of our denomination in 1980 considered the Call for a Constitutional Convention and voted in its 1,000 member legislative assembly to adopt the enclosed policy statement.

We oppose the call for a Constitutional Convention for any issue, feeling that the regular process of amending the U. S. Constitution is more democratic and more thorough an examination of amendments to our 200-year-old guide document.

I offer this policy statement for your consideration and urge you to recommend a do not pass to HJR 29.

confined residents of jails; to support chaplaincy programs within jails; and to diligently seek the alleviation of the present inhumane conditions while working for the eventual elimination of jails, except as necessary places of detention for dangerous criminals. Members of churches are further urged to support and fund organizations in their local communities which advocate the protection of the rights of all citizens. Where conditions are found to be substandard, United Methodist Church members are urged to request formal inquiry procedures.<sup>35</sup>

#### National Academy of Peace and Conflict Resolution

WHEREAS, the Congress of the United States has approved the Commission on Proposals for the National Academy of Peace and Conflict Resolution; and

WHEREAS, the Congress has appropriated funds for the work of the commission; and

WHEREAS, the three members have been named by the President, the Senate President *pro tempore*, and the Speaker of the House:

*Be It Resolved*, that the General Board of Church and Society identify areas of work of the commission, publicize the work and findings of the commission, publicize United Methodist membership as to the implications of the task of the commission for them.<sup>36</sup>

#### Opposition to a Call for a Constitutional Convention

As United Methodists, we are grateful that for almost 200 years the Constitution of the United States has provided a

<sup>35</sup>See Social Principles V-F; "Criminal Justice," 1984.

<sup>36</sup>See Social Principles VI-C; "The United Methodist Church and Peace," 1980.

#### OPPOSITION TO A CALL FOR CONSTITUTIONAL CONVENTION

basis for cherished religious and civil liberties. The document, drawn up by persons, including many descendants of those who fled to America because of persecution for their religious beliefs, has served as the cornerstone of our freedoms. The Social Principles statement of The United Methodist Church "acknowledge(s) the vital function of government as a principal vehicle for the ordering of society." With the rules for governing, a constitutional convention would become a vehicle of disorder rather than order.

We are therefore deeply concerned about state efforts to mandate that Congress call a convention which would re-open the Constitution and possibly jeopardize its provisions.

#### I. Background

Unknown to most citizens of the United States, state legislatures have petitioned Congress for a constitutional convention. Only seven more are needed to make up the three-fourths required by the Constitution. This would be the first constitutional convention since 1787 which was called to amend the Articles of Confederation. There are two forces behind the movement. One desires to add an amendment declaring a fetus a human person at the moment of conception, thus prohibiting abortions for any reason. Another force seeks an amendment to require a balanced federal budget.

The Constitution provides two methods for proposing amendments. One is the familiar route used to adopt all of the twenty-six present amendments. Five others were approved by Congress but not ratified by the states. Two are still pending. Both methods are described in Article V of the Constitution:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid

to all intents and purposes of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

Since 1787 there have been over 300 applications for a constitutional convention but no single proposal has ever been endorsed by two-thirds of the states at the same time. The closest approach occurred in the mid-1960's when thirty-three state legislatures petitioned Congress to call a convention to overrule the "one person, one vote" decision of the Supreme Court dealing with equitable apportionment of state legislatures.

## II. *Reasons for Opposition to a Constitutional Convention*

We state the following concerns as our reasons for opposing a constitutional convention.

1. There are virtually no guidelines regarding the specific rules for calling a convention and, if it were called, for determining how it would be run.

Since the language of the Constitution is vague, serious questions have been raised which constitutional scholars and jurists are unable to answer. What constitutes a valid application to Congress by a state legislature for an amending convention? Do all state petitions have to have the same wording, the same provisions, and the same subject matter? If the two-thirds of the legislatures do adopt a resolution, is Congress obliged to call a convention? Must all applications for a convention on a given issue be submitted to the same Congress, or is an application adopted in 1975, for example, still valid? If an amending convention were called, could it be limited to a single issue or might it open the entire constitution for change? How would delegates be selected and how would votes in the convention be allocated? What would Congress' role be in this amending method? Would disputes over calling a convention and over its procedures be reviewable by the courts?

The complexity of the questions, and the fact that

"experts" have no answers, illustrates the seriousness of attempting an uncharted route for changing the most fundamental document of our government.

2. This Constitutional convention process of amendment has been a less democratic procedure than the traditional means of amendment.

The fact that in almost 200 years there have been only twenty-six amendments to the Constitution attests to the fact that the traditional amendment route is constructed to assure wide national debate on each amendment and careful consideration by a three-fourths majority of the legislatures.

The process of calling for a constitutional convention has not been marked by careful consideration and democratic procedures. Of the twenty-seven states which have adopted the resolution, only six legislatures held hearings where the public was able to testify on the implications of the convention. In most instances there has been only cursory debate before adopting the resolution. In two states no committees considered the petitions before they were passed by the two bodies of the legislature. Committee reports were issued in only six states, explaining the proposed action. In one state, the senate committee discussed the petition for thirty minutes; the house committee discussed it six minutes.

Further, the people of the United States would have no direct vote on the results of the convention. State constitutional conventions, which are quite common, submit the proposed state constitutional changes to the voters. This has prevented the passage of changes pushed by small pressure groups, frequently over highly emotional issues. But the voters would have no ability to vote on a national constitutional revision, a matter affecting their most precious liberties.

3. Forces behind the call for a constitutional convention are dealing with highly emotional and highly complex issues which should be dealt with in the established manner for amending the Constitution.

"Right to Life" advocates, frustrated by their inability to succeed in their goals of eliminating all abortions through

## BOOK OF RESOLUTIONS

the normal legislative process are now trying the constitutional convention route. Yet such an amendment, declaring the fetus a person from the moment of conception, would be, in effect, to write one theological position into the Constitution. Various faith groups, including the United Methodist Church, do not share that theology. Such a position would be tantamount to declaring an abortion for any reason a murder. It would also inhibit the use of contraceptives such as the inter-uterine device (IUD). This would be contrary to the doctrine of separation of church and state embodied in the Constitution, and would impinge on freedom of religion, guaranteed in the First Amendment.

While the idea of a balanced federal budget has wide popular support, economists are highly uncertain of its effect on the economy. Many believe that it would not cut spending, as the public believes, but instead might require higher taxes and higher revenues. Both Republican and Democratic leaders oppose such an amendment because of its inflexibility. The budget and the economy are closely interrelated. When unemployment goes up only one percentage point, the deficit swells by some \$20 billion due to lost tax revenues and increased social welfare costs such as unemployment compensation. A constitutional amendment would make it impossible to deal with such situations. Congressional leadership also points to the fact that the federal budget could be balanced fairly easily—by eliminating the current \$82 billion in aid to state and local governments. But the same states calling for an amendment do not want the budget balanced at the cost of lost revenue to their states.

In summary, the present move towards a constitutional convention is ill-conceived and is being promoted by persons looking for easy solutions to complex problems. The Constitution should not have to suffer at the expense of frustrations that should be dealt with in the normal procedural manner which has served us well for two centuries.

*Therefore, Be It Resolved, that the General Conference:*

1. Oppose efforts of state legislatures to petition Congress to call a constitutional convention;

2. Inform local congregations regarding the factors involved in proposing a constitutional convention; and

3. Urge United Methodists to communicate their opposition to such a convention to their state legislatures and, in states that have adopted such a resolution, to urge its withdrawal.

## Penal Reform

Our Lord began his ministry by declaring "release to the captives . . ." (Luke 4:18) and he distinguished those who would receive a blessing at the last judgment by saying, "I was in prison and you came to me." The Christian, therefore, naturally has concern for those who are captive, for those who are imprisoned, and for the human conditions under which persons are incarcerated.

The Social Principles of The United Methodist Church asserts the need for "new systems of rehabilitation that will restore, preserve, and nurture the humanity of the imprisoned."

There is not one, but many correctional systems in the United States which bear the responsibility for the confinement or supervision of persons convicted of crimes. For the most part the systems are capable neither of rehabilitating criminals nor of protecting society. They are, in fact, institutions where persons are further conditioned in criminal conduct and where advanced skills in crime are taught. More often than not correctional institutions have created crime rather than deterred criminals. They represent an indescribable failure and have been subjected to a gross neglect by the rest of society.

The Church has participated in the neglect of the correctional system by being blind to the inhumanities which the system perpetuates and being silent about the social ills that it intensifies. The Church has challenged neither society nor itself to accept responsibility for making

VISITORS' REGISTER

COMMITTEE

BILL NO. HJR 29

DATE \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Donna Mae</i>	<i>Commonwealth Box 822 Helena mt</i>		<input checked="" type="checkbox"/>
<i>Susan Coughlin</i>	<i>Helena - Mt Claret ACW</i>		<input checked="" type="checkbox"/>
<i>John W. Linn</i>	<i>Montana Taxpayers Political Tax Committee</i>	<input checked="" type="checkbox"/>	
<i>Ken Hoover</i>	<i>MT Snowmobile Assn</i>	<input checked="" type="checkbox"/>	
<i>Butt Conaway</i>	<i>Helena MT</i>		<input checked="" type="checkbox"/>
<i>Jeanne Charter</i>	<i>Shepherd mt</i>		<input checked="" type="checkbox"/>
<i>Phil Campbell</i>	<i>Helena - MESA</i>		<input checked="" type="checkbox"/>
<i>Carol Mesher</i>	<i>Montana Cow Belles</i>	<input checked="" type="checkbox"/>	
<i>Shirley Kasper</i>	<i>MT SEN CITY HOUSE MONT WELFARE COM</i>		<input checked="" type="checkbox"/>
<i>Pat Callahan Kasper</i>	<i>U Meth Church #0 - Helena</i>		<input checked="" type="checkbox"/>
<i>Larry Bennett</i>	<i>MT - Democratic PARTY</i>		<input checked="" type="checkbox"/>
<i>Jim Perry</i>	<i>Mont. AFL-CIO</i>		<input checked="" type="checkbox"/>

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

COMMITTEE

BILL NO. HSR 29

DATE \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Mrs Norm Waelen	Bozeman		✓
Marilyn Foss	Missoula	X	
PAT UNDERWOOD	MONT. FARM BUREAU 1362 E Main, MT.	X	
Terry Comady	Helena	X	
DAVID BISHOP	HELENA	X	
DAVID KEATING	SILVER MOUNTAIN	X	
Betty J. Babcock	Helena, Mont.		X
Lady Fabrice	Helena, MT.		X
George Fabrice	Helena MT		X
Jeanne Charter	Shepherd mt		X
Lauretta S. Skeithka	1114 S. 3 <sup>RD</sup> , Bozeman		X
MIL THURM	Washington DC	X	
Nadlean Jensen	Helena		X
Mons Teigen	MT Stockgrowers-Weeders	X	
Rozdy E. Crawford	Helena, MT		X
Sen F. Blanchet	Helena, mt.		X
Richard Roddy	Bozeman, mt	X	
Joan Zormeir	Lewistown, MT.		X
Velen Hanson	Helena, MT.		X

KEITH ANDERSON HELENA, MT. ALOWTAX X  
 IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

State Admin.

COMMITTEE

BILL NO. HB 806

DATE 2/20/85

SPONSOR O'Connell

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Tom Schurack</i>	<i>Helena MESA</i>	<input checked="" type="checkbox"/>	
<i>Nadrian Jensen</i>	<i>Helena</i>	<input checked="" type="checkbox"/>	
<i>Rhonda Boyle</i>	<i>Helena</i>	<input checked="" type="checkbox"/>	
<i>Earl Romney</i>	<i>Helena</i>		<input checked="" type="checkbox"/>
<i>ROD SUNDTED</i>	<i>HELENA</i>		<input checked="" type="checkbox"/>
<i>Eileen Robbins (MLA)</i>	<i>Helena</i>	<input checked="" type="checkbox"/>	
<i>John H McEwen</i>	<i>Helena</i>		<input checked="" type="checkbox"/>

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.







WITNESS STATEMENT

Name Betty L. Babcock Committee On \_\_\_\_\_  
Address 720 Madison Date 2/20/85  
Representing Eagle Forum Support \_\_\_\_\_  
Bill No. NJR 29 Oppose ✓  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Left with the Committee*

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Lauretta S. Shekita Committee On \_\_\_\_\_  
Address 1114 S. 3<sup>rd</sup>, Bozeman 59715 Date 2/20/85  
Representing Eagle Forum Support \_\_\_\_\_  
Bill No. HJR 29 Oppose   
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Left with the committee
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Riley Johnson Committee On \_\_\_\_\_  
Address Hillman Date \_\_\_\_\_  
Representing NFIB Support X  
Bill No. HJR 29 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

*Left with  
Committee*

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME F. Robert Johnson BILL NO. 780  
ADDRESS 1431 Missoula Ave DATE 2/20/55  
WHOM DO YOU REPRESENT? Teachers' Retirement  
SUPPORT \_\_\_\_\_ OPPOSE  AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Copy to Secretary