1979

Senate History, Sixtieth Session

S. J. R. 8—Gibson, Close, Echols, Dodge, Blakemore, Lamb, Keith Ashworth, Glaser, Jacobsen, Raggio, Don Ashworth, Young, Sloan, Hernstadt, Wilson, McCorkle, Neal and Faiss, Jan. 23.

Summary—Requests Congress to call convention for proposing amendment to Constitution of the United States to require balanced budget in absence of national emergency. (BDR 893)

Jan. 23—Read first time. Referred to Committee on Finance. To printer.

Jan. 24—From printer. To committee. 2-1

Feb. 1—From committee: Do pass.

Feb. 2—Read second time. To engrossment. Engrossed.

Feb. 5—Taken from General File. Placed on Secretary's desk.

✓Feb. 8—Taken from Secretary's desk. Placed on General File. Read third time. Amended. To printer.

Feb. 9—From printer. To re-engrossment. Re-engrossed. First reprint.✓

Feb. 12—Taken from General File. Placed on General File for next legislative day.

✓Feb. 13—Read third time. Passed, as amended. Title approved. Preamble adopted. To Assembly. In Assembly. Read first time. Referred to Committee on Government Affairs. To committee. 3-1; 3-5

Mar. 5—From committee: Do pass.

Mar. 6—Read second time.

✓Mar. 7—Read third time. Passed. Title approved. Preamble adopted. To Senate.

Mar. 8—In Senate. To enrollment.

Mar. 9—Enrolled and delivered to Governor.

Mar. 12—Approved by the Governor. File No. 39.

S. J. R. 8*

SENATE JOINT RESOLUTION NO. 8—SENATORS GIBSON, CLOSE, ECHOLS, DODGE, BLAKEMORE, LAMB, KEITH ASHWORTH, GLASER, JACOBSEN, RAGGIO, DON ASHWORTH, YOUNG, SLOAN, HERNSTADT, WILSON, McCORKLE, NEAL AND FAISS

JANUARY 23, 1979

Referred to Committee on Finance

SUMMARY—Requests Congress to call convention for proposing amendment to Constitution of the United States to require balanced budget in absence of national emergency. (BDR 893)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

SENATE JOINT RESOLUTION—Requesting the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would require a balanced budget in the absence of a national emergency.

WHEREAS, Proper economic planning, fiscal prudence and common sense require that the federal budget include all federal spending and be in balance; and

WHEREAS, The annual federal budgets continually reflect the unwillingness or inability of the legislative and executive branches of the Federal Government to balance the budget; and

WHEREAS, The national debt now amounts to hundreds of billions of dollars and is increasing enormously each year as federal expenditures exceed federal revenues; and

WHEREAS, The inflation and other results of the fiscal irresponsibility of the Federal Government demonstrate the need for a constitutional restraint upon excessive spending; and

WHEREAS, Article V of the Constitution of the United States provides that on the application of the legislatures of two-thirds of the states, Congress shall call a convention for proposing amendments to the Constitution; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must

*Library Note: Introduced bill, page 2, is missing from library collection.

Committee in session at 8:30 a.m. Senator Floyd R. Lamb in the Chair.

PRESENT: Senator Floyd R. Lamb, Chairman
Senator James I. Gibson, Vice Chairman
Senator Eugene V. Echols
Senator Norman D. Glaser
Senator Thomas R. C. Wilson
Senator Lawrence E. Jacobsen
Senator Clifford E. McCorkle

OTHERS PRESENT: Mr. Ronald W. Sparks, Chief Fiscal Analyst
Mr. Eugene Pieretti, Deputy Fiscal Analyst
Mr. Howard Barrett, Budget Director.
Mr. William Hancock, Secretary-Manager, Public Works Board
Mr. Andrew Grose, Research Director, Legislative Counsel Bureau
Mrs. Peggy Glover, Director, Department of General Services
Mrs. Eunice Garrett, Principal Accountant, Dept. of General Services
Mr. Michael F. Meizel, Superintendent of Buildings and Grounds Division
Mr. Gordon Harding, Administrator, Central Data Processing
Mr. Fred Dugger, Central Data Processing
Mr. Terry Sullivan, Administrator, Purchasing Division
Mrs. Ruth Rink, Purchasing Division
Mr. Donald L. Bailey, Sr., Superintendent, State Printing Division
Ms. Alice McMorris, KOLO TV and Radio
Mr. Lester Wisbrod, KLAS TV

S.J.R. 8 - Requests Congress to call convention to amend the U.S. Constitution. Senator Lamb read the summary of the bill. (See Attachment A.)

Senator McCorkle moved "Do Pass" on S.J.R. 8.

Seconded by Senator Jacobsen

Discussion

Senator Wilson asked if testimony would be taken on whether the Convention would be bound to the issue raised by the resolution. Senator Gibson referred the Committee members to a 1974 study by the American Bar Association (see Attachment B). He said the study concluded that it could be limited. Senator Gibson referred to Article V of the U.S. Constitution, describing methods of Amendments (see Attachment C). He said whatever comes from the Constitutional Convention is still submitted to the states for approval, of which three-fourths of the states must approve. He said there have been two attempts in Congress to set up rules for a Convention. They passed the Senate but were not processed in Congress because there was nothing pending. Senator Gibson said he thought S.J.R. 8 would pressure Congress into starting the Constitutional Amendment.

He added that the Amendment of the Constitution that set up the present method of electing U.S. Senators was finally enacted because they came within one state of calling a Constitutional Convention. Senator Gibson said 25 states have approved a version of S.J.R. 8 so far. He said, "Congress is already starting to squirm on this thing, and if control is ever gotten of federal spending, it has to come from the people. Congress will not do it."

Senator Glaser asked Senator Gibson how many times Congress has reacted to this type of a mandate from the states. Mr. Grose answered over 350 requests have been made from the states calling for Constitutional Conventions. The State of Nevada has requested

them 12 times, 6 times regarding the direct election of Senators. He remarked that in 1967 the U.S. came within one state of having a Convention called on reapportionment, trying to revise the one man-one vote rulings of the Supreme Court. He said that historically Congress has reacted as the number of states has grown behind an issue.

Senator Wilson said his only reservation to backing this bill is if it should endanger the Convention process. Senator Gibson referred to a copy of the Constitutional provision (see Attachment C). He read Article V and said the same language prevails either amendment route that is pursued. Mr. Grose said, regarding safeguards, according to the two bills passed by the U.S. Senate, Congress determines what petitions are valid, that is if there are 34 petitions on the same subject, then Congress issues the call for the Convention where Congress also defines the subject of the Convention. After the Convention has done its work, Congress has another opportunity, at which time they say whether the product of the Convention was within the parameters of the call of the Convention.

Senator Wilson stated that the parameter of the call itself is jurisdiction.

Senator Gibson said they contacted Senator Sam Ervin, who was Chairman of the Senate Judiciary Committee at that time. He indicated the premise on which those bills were introduced, and it is still valid. Senator Gibson said an initiative was being started in North Carolina to request Congress to develop the bill controlling the Constitutional Convention.

Senator Jacobsen asked Mr. Grose if those bills already proposed are alike enough. Mr. Grose said he did not know at this time. Senator Gibson said Senator Jim Clark, Chairman of the Finance Committee in Maryland, is spearheading this effort and the language in the Nevada bill is the standard language adopted by almost all or all of those states that have adopted this bill. Three states have approved it since January 1.

Senator McCorkle asked what keeps the federal government from continually raising taxes to balance the budget, thus defeating the purpose of this measure. Senator Gibson replied that they do not raise taxes because pressure on Congress keeps taxes down.

Senator Glaser said a liberty amendment has already been passed to go along with this which will take away one large source of revenue from Congress (income tax).

Senator Lamb called for a vote on the motion.

Motion carried unanimously.

DIVISION OF BUILDINGS AND GROUNDS - Page 69

Senator Lamb told Mr. William Hancock, Secretary-Manager of the State Public Works Board, that the Committee was concerned about elected officials wanting to rent space outside the Capitol Building. He said he would like to see elected officials in the Capitol Building. He asked Mr. Hancock how the space is to be allocated and what it would take to renovate the Octagon Building at the Capitol. Mr. Hancock said the Capitol Building is adequate for the staffs of everyone except the Controller's staff. He said the Controller's staff was never in the Capitol Building. He said his office has provided space for everyone who was previously in the Capitol Building. He said they have a plan to adapt the Octagon Building and his Board and the Governor's Office supports the renovation of this building. Mr. Hancock said it would cost about $300,000 to do it. He said the building itself does not have the structural problems the Capitol Building had; but due to its shape it is not a flexible building and should be designed for a specific purpose and left that way.

** ATTACHMENT A **S.J.R.8**

SENATE JOINT RESOLUTION NO. 8—SENATORS GIBSON, CLOSE, ECHOLS, DODGE, BLAKEMORE, LAMB, KEITH ASHWORTH, GLASER, JACOBSEN, RAGGIO, DON ASHWORTH, YOUNG, SLOAN, HERNSTADT, WILSON, McCORKLE, NEAL AND FAISS

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STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
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INTERIM FINANCE COMMITTEE (702) 885-5
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Ronald W. Sparks, Senate Fiscal Analyst
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ANDREW P. GROSE, Research Director (702) 885-5637

January 30, 1979

M E M O R A N D U M

TO: Senator James I. Gibson

FROM: Andrew P. Grose, Research Director

SUBJECT: Amendment of the U.S. Constitution by the Convention Method

The U.S. Constitution has never been amended as a result of a constitutional convention. There has never been a convention called. Therefore, no one can say with absolute certainty what the exact form of convention calls must be, how delegates would be selected or how the convention would operate. There are, however, a number of authorities on the Constitution who have given opinions both on the way a convention would work and on the advisability of a convention. In addition, the U.S. Senate twice passed legislation providing for procedures for a convention. Those bills offer guidance to Congressional thinking. It seems appropriate first to look at what the framers had to say.

In the Federalist No. 43, Madison said:

> "That useful alterations [in the Constitution] will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other."

EXHIBIT B

294

In Federalist No. 85, Hamilton said:

> In opposition to the probability of subsequent amendments it has been urged, that the persons delegated to the administration of the national government, will always be disinclined to yield up any portion of the authority of which they were once possessed. * * * I think there is no weight in the observation just stated. * * * [But] there is yet a further consideration, which proves beyond the possibility of doubt, that the observation is futile. It is this, that the national rulers, whenever nine states concur, will have no option upon the subject. By the fifth article of the plan the congress will be obliged, "on the application of the legislatures of two-thirds of the states (which at present amounts to nine) to call a convention for proposing amendments, which shall be valid to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof." The words of this article are peremptory. The congress "shall call a convention." Nothing in this particular is left to the discretion of that body.

Clearly Madison and Hamilton saw the convention method as a safety valve for those subjects on which Congress would not initiate action but about which there was considerable concern in at least two-thirds of the states. In fact, it has tended to work that way. There have been over 350 applications, representing every state, calling for a convention on one subject or another. Nevada has done this 12 times on five subjects. Texas with 15 calls, leads all states. Many of the states have used conventions for revisions of their own constitutions. There have been about 200 state constitutional conventions. The 17th amendment providing for the direct election of senators was proposed by Congress when the call for a convention was only two states short. In 1967, the call for a convention to offset in some way the effects of the several one man-one vote decisions of the

Supreme Court fell only two states short. Many issues raised by calls for a convention have been disposed of by the normal amendment procedure. The Bill of Rights, prohibition and limit to presidential terms are only three examples.

It was the reaction of the states to reapportionment that caused Senator Sam Ervin to introduce a bill to establish ground rules for the convention method of amendment proposal. That was S 2307 of 1967. It was not until 1971 that a similar bill, S 215 passed the Senate 84-0. The House took no action. The Senate passed S 1272 in 1973. Again, it died in the House and no subsequent action has been taken. It is anticipated that a similar bill will be introduced this year by Senator Bayh's Constitution Subcommittee of the Senate Judiciary Committee. In a conversation with Senator Ervin, we learned that he still strongly favors such legislation and that he intends to urge the North Carolina legislature to pass a resolution calling for a convention on a balanced budget.

The 1967 hearings on Ervin's bill brought together many of the foremost constitutional scholars who offered their understandings of Article V. Unfortunately, it is a subject on which great and respected legal minds differed. Any analysis of the several questions that everyone asks on this issue can only report on the weight of opinion. There are no sure, definitive opinions. A listing of the major questions follows with a conclusion, where possible, on the weight of opinion. The conclusions are not those of the Research Division but rather of the American Bar Association's Special Constitutional Convention Study Committee.

1. If the legislatures of two-thirds of the states apply for a convention limited to a specific matter, must Congress call the convention?

   The Constitution provides for a convention on a limited subject or a general convention. In either event, Congress' duty to call the convention is mandatory.

In the absence of statutory guidance, of course, there is room for disagreement as to whether the requisite number of state petitions are sufficiently similar to be calls for the same purpose. The Federalist Papers quoted as well as Madison's record of the Debates of the Convention all attest to the mandatory nature of Congress' responsibility.

2. If a convention is called, is the limitation binding on the convention?

Congress has the power to make available to the states a limited convention when that is the type convention applied for. Such legislation could not prevent a call for a general convention as there is nothing in the history of Article V that would support a precluding of a general convention if the states petitioned for one. In the case of a call for a particular subject, Congress would have to define the subject at least to the extent necessary to determine if the several petititons were all on the same subject.

3. What constitutes a valid application which Congress must count and who is to judge its validity?

The approach used in S 1272 is endorsed by the ABA. That bill would require the passage of a resolution by the state legislatures calling for a convention to propose one or more amendments. The resolution would be passed in the same manner as a statute in each state, except the governor would not have the right to veto. The ABA believes that Congress' judgment as to validity should be reviewable by the courts. S 1272 gives Congress sole authority. This is a matter of preference. The ABA does not say that the S 1272 approach is unconstitutional. A resolution would have to make it clear that a convention was being called for. A call for a convention simply to vote a proposal

up or down would not likely be valid. A convention would have to have latitude. The late Professor Bickel of Yale strongly supported the latter point and Professor Phillip Kurland of the University of Chicago concurs.

4. What is the length of time applications for a convention will be counted:

There is nothing in the history of Article V to answer this question. It is a political judgment. In S 1272, 7 years was set as the limit for a state resolution to be considered active.

5. How much power does Congress have as to the scope of a convention; as to procedures such as the selection of delegates; as to voting requirements in the convention; as to refusing to submit to the states for ratification the product of a convention?

Congress could establish the scope of a convention consistent with the resolutions calling for the convention but no more than that.

The ABA believes that delegates would have to be apportioned on a one man-one vote basis, such as seats in the House of Representatives. Other authorities cite the original constitutional convention and its votes by state. On balance, it seems that population will have to play a major role. S 1272 gives each state delegates equal to its senators and representatives, thus following the Electoral College model. Delegates would be elected one from each congressional district and two at-large in each state under S 1272.

Opinion is divided over whether the convention could be required to propose an amendment by more than a majority. The ABA feels that the voting rules of a convention must be left to the convention. S 1272 requires a

EXHIBIT B

two-thirds vote to propose an amendment, making the requirement analogous to that for Congress in proposing an amendment.

Expert opinion is divided on whether or not Congress has any discretion in sending an amendment proposed by convention to the states for ratification. S 1272 allows Congress, by concurrent resolution, to disapprove of an amendment outside the scope of the convention and to refuse to send it out for ratification.

6. What are the roles of the President and state governors in the amending process?

In Hollingsworth v. Virginia, the Supreme Court confirmed the prevalent practice saying in regard to the President, "* * * he has nothing to do with the proposition or adoption of amendments to the Constitution." Most constitutional opinion agrees that this observation applies in the convention method too. The President will have a role in the approval of a bill setting up procedures for a convention, just as he would on any bill.

The experts are similarly agreed that state governors would have no role either in resolutions calling for a convention or in the ratification of amendments sent to the states. S 1272 specifically excludes governors from any role in the process.

There is no certainty as to whether or not a state may rescind its call for a convention. The ABA thinks it should be able to and the Senate in S 1272 made such a provision allowing a recission at any time prior to the receipt by Congress of petitions from two-thirds of the states. After that, recission would not be allowed.

8. Are issues arising in the convention process justiciable?

In S 1272, the Senate provided to Congress the sole role in deciding all questions arising under the convention method. It is not clear whether such an approach would, in fact, preclude a role for the courts. It is especially doubtful that the courts could be excluded if Congress refused to act in the face of the requisite number of apparently valid petitions for a convention.

9. Who is to decide questions of ratification?

Congress, under Article V, has the power to decide whether ratification will be by state legislature or state convention. Only for the repeal of prohibition were state conventions used.

Conclusion

In the absence of legislation passed by Congress, there are many questions about the amendment by convention method that must remain unanswered. S 1272 at least offers a guide to probable congressional thinking and its provisions are referred to extensively in the foregoing. It is clear that Congress must convene a convention if two-thirds of the states petition. Few other matters on the subject are clear. Based on S 1272, it appears that Congress could define the subject matter of the convention, determine how delegates would be chosen and what the internal rules of the convention would be. It could also refuse to submit to the states a proposed amendment that was outside the guidance provided by Congress as to subject. Finally, Congress would determine how a proposed amendment would be submitted for ratification; by state legislatures or state conventions.

On advisability of a constitutional convention, opinions cover the full spectrum. Among those in the negative is political scientist C. Herman Pritchett saying:

EXHIBIT B

> These unknowns are so serious that it would be well for Congress to adopt general implementing legislation before it is faced with a valid convention call. However, it would be preferable not to use the convention method at all. The principal support for the convention device has come from interests sponsoring proposals which could not gain congressional approval. It is an alternative attractive to manipulators of opinion who find it more congenial to work in the recesses of fifty state legislatures than in the glare of the congressional spotlight. The national interest in the amending process is best protected by leaving the responsibility for proposing amendments in the halls of Congress.*

The framers of the Constitution, of course, put the convention method in to guard against a situation in which the national government had a certain vested interest in conflict with the interests of the people or the states. In the hearings on S 2307, the predecessor of S 1272, Senator Roman Hruska said:

> Much in the manner of Chicken Little skittering to and fro telling all who would listen the sky is falling, much alarm has been expressed at what a Constitutional Convention might do. "The Bill of Rights will be repealed," "the Supreme Court will be abolished," are just two of the more irrational alarms being trumpeted from the rooftops by some who have felt compelled to exclaim rather than reason.
>
> Fears of this kind have no foundation in reason, logic, or experience. They should be dimissed.

*Pritchett, C. Herman, The American Constitution, 3rd Ed. (McGraw-Hill, New York, 1977), p. 27.

I think it is more important to recognize a Constitutional Convention for what it is and what it can do. First, it is a perfectly valid method of proposing amendments to the Constitution. It is a right reserved to the States and guaranteed by article V of the Constitution. The fact that we have never had one does not diminish the right of the people to have one if they wish.

As to what a Constitutional Convention might do to existing rights or to governmental structure, it could do nothing more than what the Congress has authority to do--it can propose amendments to the Constitution. Alone, it can make no change in the Constitution; it can change no rights. In the final analysis, three-fourths of the States, a total of 38, either by legislative action or by State convention, must ratify any amendment the Convention might propose before it becomes a part of the Constitution. Precisely the same procedure that applies to amendments proposed by the Congress must be observed so far as ratification is concerned.*

*Senate Judiciary Committee, Subcommittee on Separation of Powers, Ninetieth Congress, First Session, Hearings on S 2307, October 30 and 31, 1967, p. 220.

APG/jld

EXHIBIT B

SOURCES

American Bar Association, Special Constitutional Convention Study Committee, Amendment of the Constitution: By the Convention Method Under Article V (American Bar Association, Chicago, IL., 1974).

Black, Charles L., Jr., "Amending the Constitution: A Letter to a Congressman," The Yale Law Journal, Vol. 82, No. 2, December 1972.

Harvard Law Review, "Proposed Legislation on the Convention Method of Amending the United States Constitution," unsigned note, Harvard Law Review, Vol. 85, No. 8, June 1972.

Pritchett, C. Herman, The American Constitution, 3rd Ed. (McGraw-Hill, New York, 1977).

Senate Judiciary Committee, Subcommittee on Separation of Powers, Hearings Before the * * *, S 2307, Oct. 30-31, 1967 (U.S. Government Printing Office, Washington, D.C., 1968).

As of January 30, 1979, the following states had passed resolutions calling for a constitutional convention to propose an amendment on balanced budget:

Alabama
Arizona
Arkansas
Colorado
Delaware
Florida
Georgia
Illinois
Kansas
Louisiana
Maryland
Mississippi
Nebraska
New Mexico
North Carolina
North Dakota
Oregon
Oklahoma
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Virginia
Wyoming

Total 25

The following have resolutions introduced:

Alaska
California
Idaho
Indiana
Iowa
Montana
Nevada
South Dakota
Vermont

Total 9

EXHIBIT B

Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. **Republican form of government and protection guaranteed to states.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

Mode of Amendment

Amendments to 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, 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; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

ARTICLE. VI.

Miscellaneous Provisions

Constitution, federal laws and treaties are supreme laws; oaths of federal, state officers to support Constitution; religious test as qualification to office or public trust. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

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Arizona
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Colorado
Delaware
Florida
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Illinois
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Louisiana
Maryland
Mississippi
Nebraska
New Mexico
North Carolina
North Dakota
Oregon
Oklahoma
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Virginia
Wyoming

Total 25

The following have resolutions introduced:

Alaska
California
Idaho
Indiana
Iowa
Montana
Nevada
South Dakota
Vermont

Total 9

EXHIBIT B

Senate Joint Resolution No. 8.

Resolution read third time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 54.

Amend the resolution, page 2, after line 2, by inserting:

"*Resolved,* That this legislature conditions this request upon the Congress of the United States' establishing appropriate restrictions limiting the subject matter of a convention called pursuant to this resolution to the subject matter of this resolution, and if the Congress fails to establish such restrictions, this resolution has no effect and must be considered a nullity; and be it further".

Senator Gibson moved the adoption of the amendment.

Remarks by Senators Gibson, Young, Raggio and McCorkle.

Amendment adopted.

Resolution ordered reprinted, engrossed and to third reading.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 8, 1979

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 7.

MOURYNE B. LANDING
Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 7.

Senator Gibson moved that the resolution be referred to the Committee on Human Resources and Facilities.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Bills Nos. 73, 104.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Keith Ashworth, the privilege of the floor of the Senate Chamber for this day was extended to Messrs. Art Smith, Richard Carlson, Ken Sullivan, Bob Sullivan, George Akers and George Vargas.

On request of Senator Ford, the privilege of the floor of the Senate Chamber for this day was extended to Ms. Vera Matthews and Ms. Andrea Mason.

On request of Senator Faiss, the privilege of the floor of the Senate Chamber for this day was extended to Mr. Lou Tabot.

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to Mayor Bruno Menicucci.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S. J. R. 8

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WHEREAS, The national debt now amounts to hundreds of billions of dollars and is increasing enormously each year as federal expenditures exceed federal revenues; and

WHEREAS, The inflation and other results of the fiscal irresponsibility of the Federal Government demonstrate the need for a constitutional restraint upon excessive spending; and

WHEREAS, Article V of the Constitution of the United States provides that on the application of the legislatures of two-thirds of the states, Congress shall call a convention for proposing amendments to the Constitution; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must

not exceed the total of the estimated federal revenue for that year; and be if further

Resolved, That this legislature conditions this request upon the Congress of the United States' establishing appropriate restrictions limiting the subject matter of a convention called pursuant to this resolution to the subject matter of this resolution, and if the Congress fails to establish such restrictions, this resolution has no effect and must be considered a nullity; and be it further

Resolved, That a copy of this resolution be immediately transmitted by the legislative counsel to the Vice President of the United States as President of the Senate and the Speaker of the House of Representatives of the United States, to each member of the Nevada congressional delegation and to the presiding officer of each house of the legislatures of the several states; and be it further

Resolved, That this resolution shall become effective upon passage and approval.

(30)

It was incredible to me, there we were running the halls looking for a small token that might generate something that could have a good statewide effect, national effect and possibly international effect, and it took us four days and we got a commitment for it. The amazing thing is four or five agency heads sitting in a room for two hours, we had about six meetings, it had to cost the taxpayers $35,000.00 for the agency heads that were paid for those hours.

I just wanted to relate to the body here, I wish each one of you had been right with me side-by-side and had seen some of the things that happened. It was really and truly an exciting trip and I thank you again for excusing me from the Senate and I would be glad to share it more in detail with any of the members who are interested. Thank you very much.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Close moved that Senate Bill No. 98 be taken from the Secretary's desk and be placed on the General File.

Motion carried.

Senator Close moved that Senate Bill No. 129 be taken from the Secretary's desk and be placed on the General File.

Motion carried.

Senator Keith Ashworth moved that Senate Bill No. 22 be re-referred to the Committee on Finance.

Motion carried.

Senator Hernstadt moved that Senate Joint Resolution No. 11 be taken from the General File and be placed on the Secretary's desk.

Remarks by Senator Hernstadt.

Motion carried.

Assembly Concurrent Resolution No. 10.

Senator Gibson moved that the resolution be referred to the Committee on Legislative Functions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Government Affairs, to which was referred Senate Bill No. 141, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JAMES I. GIBSON, *Chairman*

Mr. President:

Your Committee on Judiciary, to which was referred Senate Bill No. 99, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MELVIN D. CLOSE, JR., *Chairman*

Mr. President:

Your Committee on Judiciary, to which was referred Senate Bill No. 130, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MELVIN D. CLOSE, JR., *Chairman*

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 8.

Resolution read third time.

Remarks by Senators Gibson, Wilson, Echols and Neal.

Senator Gibson requested that the following remarks be entered in the Journal:

Mr. President, Senate Joint Resolution No. 8 is a part of a nationwide campaign which was inaugurated by the National Taxpayers Union two years ago in an effort to curtail and contain the runaway inflation of our country by controlling and eliminating the deficit spending of our national government. As of this date, 26 states of the required 34 have passed this resolution in nearly the form we have before us or substantially the same form. This resolution is presently pending in all of the other states except Kentucky which will not have a session this year. None of the states considering the resolution have defeated it. It passed in Nevada last session. Governor O'Callaghan vetoed it and there is some question as to what the status of that vetoed resolution is. For that reason the resolution has been re-introduced in this session.

The authority for these resolutions comes from Article V of the Constitution which outlines the mode of amendment. You will recall last year the resolution was introduced as a companion measure to another resolution which requested Congress to initiate the amendment we are talking about through the normal Congressional path. This is the alternative method of proposing amendments to the Constitution. Article V indicates that on application of the legislatures of two-thirds of the several states, Congress shall call a convention for proposing amendments which in either case shall be valid to all intents and purposes, as part of this Consitution when ratified by the legislatures of three-fourths of the several states or by conventions in three-fourths as the mode of ratification may be proposed to the Constitution.

In the same article it mentions that no state without its consent shall be deprived of its equal suffrage in the Senate. We have attempted to reassure those that are concerned that the affect of this request as to a wide-open convention in that we have limited the call that we are making in its being effective only if the convention called as a result or it is limited to the subject of the budget of the national government and not a wide-open convention.

We think there is a great need for us to express ourselves to Congress in this manner. I am convinced and especially so after listening the last two or three days to several Congressional spokesmen who are reacting to the state's action in this matter. The only way we can get any action that will be decisive in limiting federal expenditures to within federal income is through this method. I think we are seeing that come about.

We have been told that Congress and the President are embarking on a path of limiting the budget and I would like to read some remarks from a recent news publication. "President Carter's 1980 budget calls for a total federal spending of 532 billion dollars. This is an increase of 39 billion dollars over last year's budget. The deficit included in this budget is 29 billion dollars, the nineteenth red ink budget in the last twenty years. It will raise the national debt to an astronomical 899 billion, more than $4,000 for every man, woman and child in the country. It is that increasing deficit which causes inflation resulting in price increases averaging 9.25 percent last year on everything we buy."

Incidentally, within this budget the figure that is allocated to pay the interest on the national debt is something like 60 billion dollars. "The government will be pumping out not only 29 billion in deficit, but at least 60 billion more in the unspecified accounts other than the direct budgetary process."

In Time magazine on January 29th, the following statement was made: "A big deficit causes the Federal Reserve to create huge amounts of new money so that banks can lend money to the Treasury to cover its bills. A rapid run-up in money supply is definitely inflationary (in fact, it is inflation!) Though the effects may not be felt for eighteen months or two years, the alternate is not much better, if the Federal Government does not cover the deficit by creating new money, the Treasury has to sell bonds that are paid for out of private savings. From fiscal 1970 through 1979, the total deficits have amounted to 354 billion dollars and all that money flooding into the economy has surely created inflation."

Not all of the Congressional reaction to the proposed Constitutional convention is negative. Senator William Proxmire is one of the fiscal watch dogs of the Congress and made this statement: "More than sixteen years of service in the United States Senate has convinced me that the most unrepresented cause in this country is that of the taxpayers. Time after time Congress appropriates literally billions of dollars with virtually no consideration for the American taxpayer. In hundreds of hours of testimony on bills that create obligations that will burden taxpayers for years to come, it is rare that there are even a few minutes of testimony of the impact of this spending on the man and woman who pays for it through his taxes.

In the intensive lobbying that characterizes every big new spending measure, there will usually be great pressure from the businesses that benefit, often intense supplication from the labor unions whose members will get jobs from the project, impressive representations from the public officials representing the states or cities that will share in the expenditures, but there is rarely any voice from the taxpayer who is required to bear the burden by paying for the project through his taxes or going to jail."

Representative Andrew Jacobs, Jr., Democrat from Indiana on the House Ways and Means Committee made this statement: "It is not a question of whether we should have 'liberal' or 'conservative' government. The issue is more basic than that. Without a constitutional amendment forcing a balanced federal budget, there is little chance that we can halt the process which threatens to bury the American way of life under an avalanche of inflation and debt. Balanced budgets are a progressive cause also. Without them, the poor, the weak and the helpless suffer most."

I think in consideration of what we are asking here, we must realize that when we ask it, probably the first place that Congress is going to look to is the federal monies that are coming into the states and localities. In fact, they have already indicated that this will be the case. For one, I am ready to face this possibility because I think this matter is so important to all of us. Frankly, it seems to me that if we can bring about by this device a limiting of the inflation, we will more than recoup enough of the financial support we need to make up whatever loss of federal funds we have.

There is one other thing. In listening to our Congressmen on this subject, they talk about the tax money as though it were theirs. As far as I am concerned, it is not theirs, it is our money that they are spending and we can do a lot better job with it if we keep it at home.

Senator Gibson requested that all remarks concerning Senate Joint Resolution No. 8 be entered in the Journal.

SENATOR WILSON:

Mr. President and members of the Senate, I rise in opposition to this Resolution. I concur with what my colleague and good friend, Senator Gibson, has said, except that the appropriate remedy is a Constitutional Convention. Ever since George Washington threw the dollar across the Potomac, the federal government has been throwing money away. I despair of Congress and the Executive. This is not just a national crisis; it is a national disgrace.

However, the basis of my difference is not with the reason why we are here today; it is with the wisdom of the remedy of a Constitutional Convention. I rather expect this Resolution will pass handily. I only impose upon your time with these remarks so that we may vote with a full understanding of precisely what we do.

I do not want to minimize or at all to diminish the reason for this Resolution. That is the federal deficit. My colleague is quite correct that from 1946 to 1980, the federal deficit now aggregates $899 billion dollars. Between 1960 and 1969, $57 billion of that deficit was accrued by the Congress and Executive.

During the last decade, in 1979 it was increased by $2.8 billion; in 1971 by $23.0 billion; in 1972 by $423.4 billion; in 1973 by $14.8 billion; in 1974 by $4.7 billion; in 1975 by $45.2 billion; in 1976 by $66.4 billion; in 1977 by $45.0 billion; in 1978 by $48.8 billion; and in 1979 by $37.4 billion. The estimate for 1980, as my colleague told you, is $29.0 billion.

I recite those numbers to illustrate that this is not an occasional lapse. It is a trend, a pattern, a design, if you will. Of course, only a part of the revenues so spent came from your tax bill. The rest came from borrowing from the deficit.

Between 1946 and 1980, as my colleague pointed out to you, 899 billion has been borrowed as a deficit on which interest accrues. And, I must correct my colleague in this respect. The interest is not $60 billion per annum, it is $65.7 billion per annum.

This is a crisis of major proportion. Our spending now represents over 22 percent of the gross national product. Its consequence is not the concern just of the stockbroker, the banker, the savings and loan, the thrift company, the financial institution, or Wall Street. It really is the concern of the wage earner, the salaried worker, the retired citizen who lives on a fixed amount of money and sees his salary reduced annually by inflation. There are really no pay raises any more. There are

only reductions in pay by the loss of spending power. We continue to dilute the dollar.

The result, of course, is what Alfred Cahn, the President's inflation fighter somewhat said caustically the other day: "People are tired of living like gerbils. You run like hell just to stand still." That does sum it up. I cannot disagree with the reasons for this Resolution. They are very real. They are reasons with which I sympathize. I favor a balanced budget and that constraint upon the Congress and the Executive, except in times of national emergency.

What we see across the country now in propositions like 13 and 6 is a rebellion against taxes, but also a rebellion against inflation. Any of you who campaigned for the elections this last November saw that people are not doing very well. There is a vast discontent. A discontent that has its roots in the erosion of inflation.

So the motives for this Resolution are honest. The pervading danger is that the country will slip on down the road year after year, adding to the federal deficit until we finally cross that undefined and blurred line, which is realized only afterwards when looking back, to the same position that England is in today. That crossing is the departure from the private enterprise and free market system to a federally-supported economy. And then, as England is discovering, it is awfully hard to get back. That is the grave danger of this crisis.

I despair of the Congress.

What concerns me is that a Constitutional Convention is not the wise remedy. It is only for that reservation that I rise to speak against this Resolution. In point of fact the only real assurance that we have against amendments to the federal Constitution that are beyond this Resolution is the requirement that three-quarters of the states must ratify. Of course, it is Congress who will determine whether the states will ratify by their respective legislatures or by respectively called state constitutional conventions. But that is the only check and balance. As long as we understand that, as long as we are not misled by the hope that we can limit the jurisdiction of a Constitutional Convention once convened, then we know what we are about to do.

As my colleague told you, two-thirds of the states must make application to Congress. Upon applications from two-thirds of the states, the Congress shall call a Convention for proposing Amendments pursuant to Article V. That is the only language which appears in the Constitution which provides the function of the Congress; except with respect to ratification.

I have reviewed with interest the memorandum which you all received from our Research Division. The first page is clear. It advises: "No one can say with absolute certainty what the exact form of the convention calls must be, how delegates would be selected or how the convention would operate." However, I must go further and take exception to some of the other general conclusions which are expressed by the memorandum. On page 3: "The constitution provides for a convention on a limited subject or a general convention." I do not find that in the Constitution. That may be an interpretation, but the Constitution does not say so. On page 4 we are advised: "Congress has the power to make available to the states a limited convention when that is the type of convention called for." That is an assumption and I do not think it is an assumption which we can accept. On page 5: "Congress could establish the scope of the convention consistent with the resolutions calling for the convention." Those assumptions are subject to serious question and I rise to assert that very serious question today.

The Congressional Research Service memorandum from the Library of Congress states that "Unresolved are questions such as ..., whether petitions must all relate to the same subject matter for a convention to be called, how the delegates to a convention would be selected or whether a convention could consider amendments on subjects other than the ones specified in the petitions requesting the convention."

Most of the materials available to us are briefs and law school commentary by legal scholars addressing proposed legislation sponsored by Senator Sam Ervin a number of years ago to provide for national legislation governing the jurisdiction and procedures of a convention. That Congressional report cites language by Professor Charles L. Black of the Yale Law School. He takes exception to the premise upon which this Resolution is made and he states that Article V is clearly specific that the Congress "shall call a Convention for proposing Amendments", not the amendment applied for by two-thirds of the states, but generally "for proposing Amendments."

He states, "This record in overwhelming preponderance supports the view that,

for about a hundred years after the adoption of the Constitution, the Legislatures themselves thought that Article V required them to ask for the thing, and only the thing, named in Article V: a Convention for proposing Amendments - with no limitations unsupported by the text." In effect he states that the words of Article V mean what they say and that to suggest limitations which do not appear in Article V itself is only wishful thinking.

Two law school journals which address the point and have been referred to. Professor Black's view is expressed in the Yale School Journal of December, 1972 which is entitled, *Amending the Constitution: A Letter To a Congressman.* The Senate had passed a measure by Senator Ervin providing for procedures to govern a Constitutional Convention and to limit the jurisdiction of a convention to the subject of the states' applications. That legislation never passed the House and is not law today.

Professor Black opposed that legislation because the Congress did not have jurisdiction to pass it in the first place. He states: "It is my contention that Article V, properly construed, refers, in the phrase 'a Convention for proposing Amendments', to a convention for proposing such amendments as to that convention seem suitable for being proposed."

He goes on to state that you cannot have it both ways. If the states make application to the Congress for a Constitutional Convention, the Congress is mandated to call the Convention itself. If what the states do is less than apply for the convention, that is, limit the application conditionally to only one subject matter to be considered, then in that case it is something less than an application for a Constitutional Convention and is void, not binding on the Congress, and does not obligate the Congress to call the Constitutional Convention at all.

He argues that you have to take your choice. You cannot have it both ways. Either you apply as Article V provides, which vests a Convention with jurisdiction "for proposing Amendments" as the Convention may desire, or you don't make application at all. You cannot compromise between those two and have something in between. He takes the language of Article V literally and says it means what it says and says precisely what it means.

He makes a general comment which is worth sharing: "Aside from the history available, there is nothing but text and common sense to resolve the present question. It seems to me that the most natural meaning of the words 'a Convention for proposing Amendments' is a convention for proposing such amendments it decides to propose' - that is, a general convention - and the importation of a limitation not in the text is quite unwarranted. Common sense would advise me that where one method is entirely satisfactory (and there he refers to a resolution of amendment by Congress to be ratified by the states), has always been used, and fully registers the requisite consensus of the people of the States, the alternative method ought to be construed to cover extraordinary occasions, which may have been feared at first, but which now are quite unlikely to arise—occasions where, by some unforseeable mischance, there may be urgently needed the very thing the text seems most certainly to refer to—the general convention."

I find that article persuasive and I find the doubt concerning our ability to limit the jurisdiction of the convention to be a serious one indeed. The June 1972 Harvard Law School Journal, which is relied upon by those supporting this Resolution of Application, has an interesting observation of the reason for the proposed legislation: "Following the realization in 1967 that Congress was close to being compelled to call a constitutional convention, commentators and legislators expressed the fear that the convention, once convened, would go beyond the subject matter defined by the applicant states and propose amendments significantly altering the structure of the federal government or abolishing the Bill of Rights. In apparent response to such fears, the Ervin Bill provides..." The Ervin Bill is the subject of the quoted articles.

The question really comes down to the issue of whether the Congress can by legislation (which has not yet passed) limit the jurisdiction of the Convention once called, where that jurisdiction is provided by the federal Constitution itself. Until that question is adjudicated in the affirmative by the U.S. Supreme Court, I submit to you that no one in this Chamber can stand up and assume that our Resolution by its subject matter will limit the jurisdiction of the Constitutional Convention itself.

The American Bar Association opinions that representation to a Constitutional

Convention must be on the basis of population, or one man, one vote. In short, Nevada may have one delegate or vote in 435. I put to you the question of whether there is any assurance that what such a Convention may do is always likely to be consistent with the interest of this State, whether that pertains to the reservation to the states of all other powers in Article X, under which we regulate gaming as a privilege, or to federal lands and their use by Nevadans, or to the Bill of Rights, or to the Fourteenth Amendment or to any number of special causes being advocated by various groups around the country.

These are the risks I think we take in passing this Resolution of Application for a Convention. It is upon that basis that I oppose it. I apoligize for the length of time I have taken in this discussion. However, when twenty-six states have now passed similar resolutions out of the necessary thirty-four, then we are about to join the necessary two-thirds. We should do so only after some patient and thoughtful analysis and consideration of our reasons and the consequences.

Thank you, Mr. President.

SENATOR NEAL:

Mr. President and fellow Senators, I am disappointed at this juncture of the debate and a little confused as to what we are attempting to do. I find myself dealing between what Senator Gibson had to say and what Senator Wilson had to say and it reminds me of a comment I heard Senator Cannon make some time ago when he said that "it was an issue of great importance before the Senate" and he was asked what he thought about it. He said, "some of my friends are for it and some of my friends are against it and I am with my friends." There was an approach some weeks ago to place my name on this SJR 8 and since then a lot has happened and I guess that at the time I was mostly controlled by a simple phrase, that is the "balancing of the budget." Then the words began to flow and the Evening Gazette began to write and a lot of editorials began to be printed. Senator Hernstadt placed a copy of the Wall Street Journal article on my desk which I read. At this particular point, I don't know where I am on this subject because there was so much information to consider, so many implications to this particular question that it seems one would take a year to actually explore it and then he would not come up with the proper answer. Because if I hear Senator Wilson correct in reading of the Yale Law Journal and all the other documents and research that has been done on this issue, we still are in a quandry as to whether or not this convention can take place with the perimeters that we are proposing to direct Congress to institute.

With that, I guess I had better sit down and watch the board and see who votes.

SENATOR ECHOLS:

Mr. President, I completely agree with everything Senator Gibson put in the record. I would like to quote my colleague, Senator Glaser, who said, "Let's get the hay down where the calves are."

I am a pretty simple guy and I speak a pretty simple language. I'd like to quote Senator Huey Long of Louisiana who said, "My sincerity makes up for my lack of letters."

This trip to Washington, D.C., indicated to me that we can do something about our big government. I highly encourage you to vote in favor of this resolution. I just want to make two points. Number one - most of you heard United States Senator Garn the other night at the CPE (Citizens for Private Enterprise) banquet. He said to us, or at least I heard him say to me, that our Congress passed an appropriation bill of six billion dollars and the President signed it before the bill was printed. He gave an indication of how big a billion dollars is. If you had a billion dollars when Christ was on the earth and you started spending one thousand dollars a day, you would still have eight hundred years to go. Now, I think it is time that all of us in this nation began to face the fact that we are in high inflation and we better cut these budgets and cut them down to where we can live with them and the taxpayers of this nation and the businessmen of this nation can continue to function in an economically sound manner.

Most of us, if not all, have received Bill Simon's book, *Time for Truth* from the CPE people. I urge any of you who haven't read that book to get it and read it. And if there are any arguments from any of my associates here, I would like somebody to tell me where the man is wrong. I share his thoughts exclusively unless somebody can convince me that I am wrong; so I again urge passage of SJR 8.

Senators Lamb, Dodge and Young moved the previous question.
Motion carried.
The question being on the passage of Senate Joint Resolution No. 8.
Roll call on Senate Joint Resolution No. 8:

YEAS—13.
NAYS—Faiss, Ford, Kosinski, Wilson and Young—5.
Absent—Hernstadt.
Not voting—Neal.

Senate Joint Resolution No. 8 having received a constitutional majority, Mr. President declared it passed, as amended.
There being no objections, Mr. President declared the Preamble adopted.
Resolution ordered transmitted to the Assembly.

Senator Gibson moved that Senate Bills Nos. 98 and 129 be placed at the top of the General File for the next legislative day.
Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Joint Resolution No. 21 of the 59th Session.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Close the privilege of the floor of the Senate Chamber for this day was extended to Ms. Connie Dratten, Miss Melissa Dratten, Ms. Rennie Schrieber and Misses Kathy and Beth Schrieber.

On request of Senator Young the privilege of the floor of the Senate Chamber for this day was extended to Mr. and Mrs. Mark Nesbitt and Dr. Neal Nesbitt.

On request of Senator Raggio the privilege of the floor of the Senate Chamber for this day was extended to Mr. Michael P. Lindell.

Senator Gibson moved that the Senate adjourn until Wednesday, February 14, at 11:00 a.m.
Motion carried.

Senate adjourned at 11:41 a.m.

Approved:

MYRON E. LEAVITT
President of the Senate

Attest: LEOLA H. ARMSTRONG
Secretary of the Senate

MEMBERS PRESENT:

CHAIRMAN PRICE
VICE CHAIRMAN CRADDOCK
ASSEMBLYMAN CHANEY
ASSEMBLYMAN COULTER
ASSEMBLYMAN DINI
ASSEMBLYMAN MANN
ASSEMBLYMAN BERGEVIN
ASSEMBLYMAN MARVEL
ASSEMBLYMAN RUSK
ASSEMBLYMAN TANNER
ASSEMBLYMAN WEISE

MEMBERS ABSENT:

NONE

GUESTS PRESENT:

J. E. Matthews, Measure #6
W. C. Andrews, Department of Taxation
Jeanne Hannafin, Department of Taxation
Doub Webb, Assemblyman Washoe #32
Marvin Leavitt, City of Las Vegas
Chuck King, Central Telephone Co.
Joyce Woodhouse, NSEA
Dick Kipers
Roy Tennison, State Athletic Commission
Frank Daykin, Legislative Counsel
Ernest Newton, Nevada Taxpayers Association

Chairman Price called the meeting to order at 1:40 p.m. He stated the purpose of the meeting was to hear testimony on AJR 7, AB 233, AB 32 and a bill just introduced, AB 439.

AJR 7

Assemblyman Rusk, sponsor of the bill, spoke in support of AJR 7. He presented a position paper on the subject, which is attached to these minutes as Exhibit A. He made a comparison of AJR 7 with SJR 8. The distinction between the two resolutions is that SJR 8 calls for a consitutional convention and AJR 7 calls for Congress to do the same thing on their own.

Mr. Rusk ended his statement by stating that the average tax burden of each taxpayer is now in the area of 41%. Government's share of our income. This could exceed in the next few years 50%, if the trend is not stopped. In 1977, Americans spent more on taxes then on food, clothing and shelter combined.

AB 439

Roy Tennison, Executive Secretary, Nevada State Athletic Commission, spoke in support of this bill. Mr. Tennison began his remarks by acknowledging several corrections that should be made in the bill. The first correction is found on page 2, in Section 2, subsection 2, the permit fees should remain as they were. The second is found on page 2, Section 3, subsection 1, the figure should be $1,000,000

MEMBERS PRESENT

Chairman Dini
Mr. Marvel
Mr. Fitzpatrick
Dr. Robinson
Mr. Craddock
Mr. Jeffrey
Mr. Getto
Mr. Bedrosian
Mr. Bergevin

GUESTS PRESENT

See Guest List attached

* * * * * * *

Chairman Dini called the meeting to order at 8:00 A.M.

SJR 8 - REQUESTS CONGRESS TO CALL CONVENTION FOR PROPOSING AMENDMENT TO CONSTITUTION OF THE UNITED STATES TO REQUIRE BALANCED BUDGET IN THE ABSENCE OF NATIONAL EMERGENCY

Senator Gibson, one of the sponsors of the Joint Resolution, advised the Committee he had distributed to them copies of the information they had accumulated in the study of the justification of the Resolution. Senator Gibson stated the resolution was part of a nation-wide campaign inaugurated by the National Taxpayers Union two years ago in an effort to curtail and contain the run-away inflation of our country by controlling and eliminating the deficit spending of our national government which is felt to be one of the prime contributors to that inflation. Senator Gibson stated as of this date 26 or 27 of the required 34 states have passed this resolution in nearly the form before the Committee. He stated a similar resolution passed the Nevada Legislature in the last session; it was vetoed by Gov. O'Callghan because of his concern in regard to the impact of a convention. Senator Gibson advised the authority for the resolutions comes from Article V of the Constitution. Senator Gibson stated what they are asking for in SJR 8 is that Congress look to its responsibility to propose modification of the Constitution; in other words, the real thrust is to get Congress to act. Senator Gibson stated it was his hope there would be no Constitutional Convention and Congress would be motivated to propose an amendment which would take care of the problems that they feel would develop out of a Convention proposed

amendment and then submit it to the states for their ratification.

A general discussion ensued between Committee members and Senator Gibson running the gamut from world trade, balancing the budget, and Constitutional amendments.

MYLAN ROLOFF, Member, Legislative Committee, N.O.W.

Mrs. Roloff read from a prepared statement which had been distributed to the Committee, a copy of which is attached hereto and made a part hereof. Mrs. Roloff's statement was in opposition to SJR 8.

The testimony on the resolution was then concluded and Chairman Dini announced that no action would as yet be taken.

SB 42 - EXTENDS TIME FOR DIVISION OF COLORADO RIVER RESOURCES OF THE DEPT. OF ENERGY TO ISSUE BONDS

DUANE SUDWEEKS, Administrator, Div. of Colorado River Resources

LEE BERNSTEIN, Deputy Administrator

JIM LONG, Financial Manager

Mr. Sudweeks had a prepared statement and read the same into the record, a copy of which is attached hereto and made a part hereof. He stated he was in support of the Bill which amends Chapter 462, Statutes of Nevada, 1975, and seeks approval enabling the State of Nevada to buy 105,000 acres of federal land near Boulder City to be held until Commissioners can make a decision if they want to purchase the land for the County. He also stated it could be used as the site for a new county airport and it also extends the state's option to issue bonds to buy the land. He advised the Committee that the Dept. of Interior first indicated in 1958 that it was interested in selling the land but has not yet exercised its option because there is no viable method yet of disposing of the land. He also stated the land was suited for industrial purposes. He also advised the Committee it was the recommendation of the Division that the words "water and "water rights" be deleted from the Bill in both places it is set forth.

Constitutional Convention Poses Questions

Although the United States has not held a national constitutional convention in 192 years, the threat of the states calling another convention has become a useful political tool in the 20th century.

Since the Constitutional Convention of 1787, nearly 400 petitions have been submitted by the states for constitutional conventions. But no constitutional convention has been called because no movement for a convention has resulted in applications from the required two-thirds of the states on any one subject.

That failure, however, has not prevented the thwarted convention applications — most of which have been submitted since 1900 — from having an impact on the American political system. Calls for constitutional conventions have become an effective mechanism to prod Congress to act. In the last 80 years requests for constitutional conventions on specific subjects have preceded the Congress on its own submitting four constitutional amendments and passing one major legislative program.

The current drive by the National Taxpayers Union for a constitutional convention to consider a mandatory balanced federal budget amendment may have a similar effect on the 96th Congress. The NTU claims 27 of the required 34 states have applied for a convention.

"A new political wave has been sweeping across America, and it is beginning to break over Washington," Rep. Peter W. Rodino Jr., D-N.J., said Feb. 8 in announcing that he would hold hearings — perhaps within two or three months — on proposals pending in Congress to ban deficit budgets by the federal government.

—By Charles W. Hucker

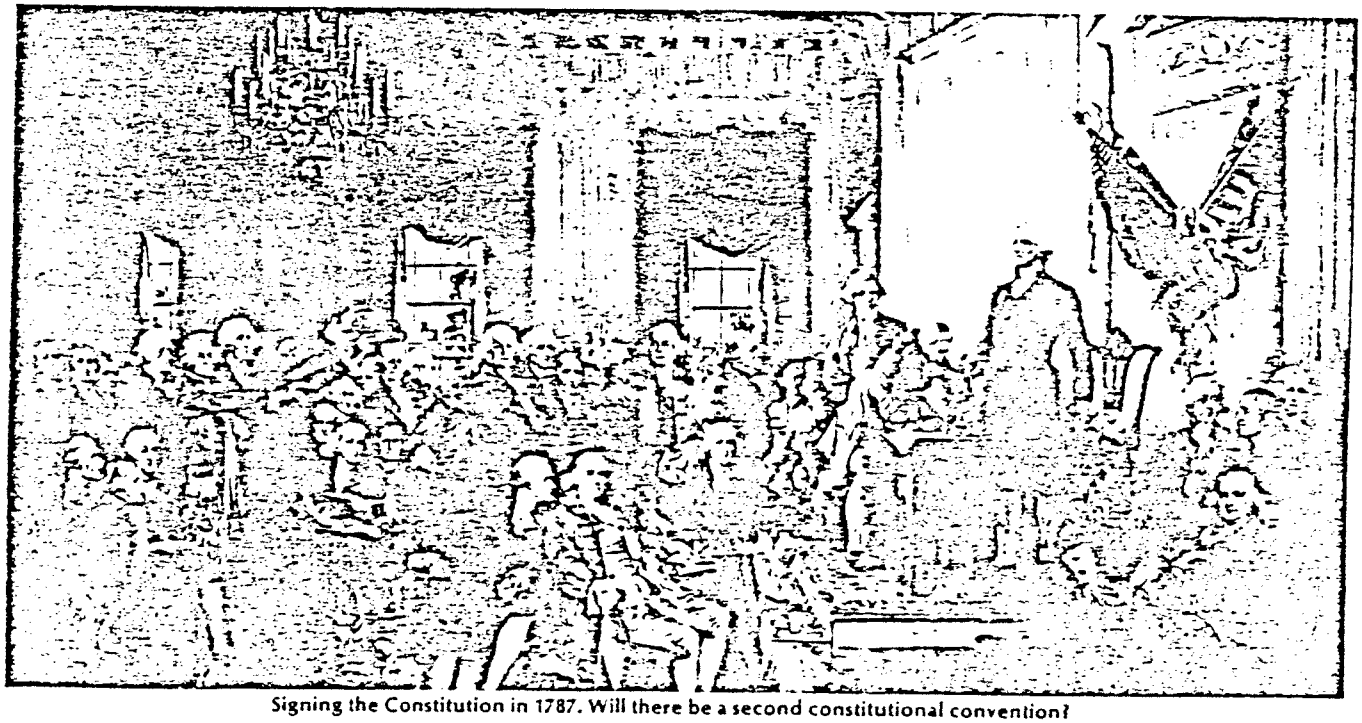
Spur to Action

Part of the prodding effect of requests from the states for a constitutional assembly results from a fear of the unknown. There are few, if any, clear answers to myriad legal questions that would surround the calling of a convention to propose amendments to the Constitution.

Apprehension that such a convention would become a runaway and propose rewriting the country's fundamental law prompts some legislators to seriously consider proposals states want added to the Constitution. Not all legal scholars, however, believe that a constitutional convention is such a fearsome prospect, but that does not detract from the motivating effect of state convention calls.

The direct election of U.S. senators is the most notable example of how a constitutional convention drive by the states helped spur Congress to propose an amendment on its own. In the 1890s public sentiment grew for popular election of senators instead of election by state legislatures.

In 1900 the House voted 240-15 in favor of submitting a direct election amendment to the states, but the Senate still would not act. That failure provoked states to call for a constitutional convention to propose the direct election amendment. As state convention calls approached the required two-thirds by 1912, the Senate — with many of its



Signing the Constitution in 1787. Will there be a second constitutional convention?

EXHIBIT —

members by then designated in preference primaries — relented and the direct election amendment was submitted by Congress to the states.

Action by Congress submitting constitutional amendments to repeal Prohibition, to limit a president to two terms and to provide for presidential succession in case of the chief executive's disability was in each instance preceded by national convention calls from a handful of states. In the late 1960s and early 1970s more than a dozen states asked for a constitutional assembly concerning a federal revenue sharing program. Congress established revenue sharing by statute in 1972.

While other political forces also were at work in each of these cases, the constitutional convention calls provided Congress with concrete evidence of serious interest in these issues among the states.

Amendment Methods

The convention route is one of two basic methods provided in Article V of the Constitution for originating amendments. One is for two-thirds of both chambers of Congress to submit amendments to the states and the second is for two-thirds of the states to call for a convention which would submit amendments to the states. All 26 amendments to the Constitution have been proposed under the first method.

The Constitution also provides for two methods of ratification — either by legislatures in three-fourths of the states or by special conventions in three-fourths of the states. The convention ratification method has been used only once — to approve the 21st amendment that repealed Prohibition. *(Article V text, this page)*

The proceedings of the 1787 federal convention suggest that the delegates did not view the national convention method of originating amendments simply as a mechanism to prod Congress to act. The convention method was inserted late in the 1787 convention's deliberations to provide an alternative to Congress controlling completely the offering of changes in the Constitution. *(1787 convention background, CQ Guide to Congress p. 217)*

Constitutional Uncertainties

Every time a drive for a constitutional convention approaches support from the two-thirds of the states required, questions and fears are brought out of hibernation. Arguments on the disputed points are spirited because the debates of the 1787 federal convention, Supreme Court cases and congressional procedures offer only limited guidance.

U.S. Constitution, Article V

"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 Congress. . . ."

The details of calling a new constitutional convention are perplexing not only to modern-day politicians and legal scholars. They also were puzzling to former President James Madison, a member of the 1787 federal convention. Madison told his fellow delegates that he had no objection to providing for a convention to propose amendments, "except only that difficulties might arise as to the form, the quorum etc. which in constitutional regulations ought to be as much as possible avoided."

Birch Bayh, D-Ind., chairman of the Senate Judiciary Committee's Constitution Subcommittee, has spoken of the balanced budget convention drive as threatening "a constitutional crisis." Don Edwards, D-Calif., chairman of the House Judiciary Committee's Civil and Constitutional Rights Subcommittee, also is alarmed by the specter of a constitutional assembly.

"We've had only one constitutional convention and it tore up the Articles of Confederation."

—Rep. Don Edwards, D-Calif.

"There is no assurance that [a constitutional convention] could not be a runaway," Edwards told Congressional Quarterly. "We've had only one constitutional convention and it tore up the Articles of Confederation."

But that trepidation is not shared by a special constitutional convention study committee of the American Bar Association (ABA). The committee's report, which was adopted in August 1973 by the ABA, said the convention method of proposing amendments could be "an orderly mechanism of effecting constitutional change when circumstances require its use."

"The charge of radicalism does a disservice to the ability of the states and people to act responsibly when dealing with the Constitution," the ABA report continued. In any event, the work of a "runaway" convention would require the approval of three-fourths of the states.

Several 20th century drives for constitutional conventions gained substantial support from the states. Each time questions were raised about how such an assembly would operate.

Some have claimed that the effort for a constitutional convention on direct election of senators obtained the necessary two-thirds (31 of 46 states in 1911), but it is unclear whether that actually occurred. One academic study has identified 30 states that made applications for a constitutional convention from 1901 to 1911. An 1895 resolution by the Wyoming Legislature apparently was a request for passage by Congress of a direct-election amendment rather than an application for a convention on the subject.

From 1906 to 1916, 26 states requested a constitutional convention to propose an amendment prohibiting polygamous marriages.

EXHIBIT

Long Countdown for Constitutional Convention

The National Taxpayers Union lists 27 states as having called for the assembling of a national constitutional convention to propose a balanced federal budget amendment.

The NTU count includes Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Louisiana, Maryland, Mississippi, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

Idaho, which approved a convention application Feb. 13, is the most recent addition to the list. The Senate and the House of the Iowa Legislature have passed applications in different forms and now must reconcile them. The NTU does not count the 1957 application of Indiana.

The total listed by NTU is seven short of the 34 states required to convene a constitutional assembly, but several factors make the calling of such a covention less imminent than it might first seem.

First, the validity of several of the applications listed by the NTU are subject to challenges in Congress. Second, at least three states say that their applications would become void if Congress on its own proposes a balanced budget amendment.

One of the state's whose current application might be contested as invalid is Nevada. Its 1977 convention resolution was vetoed by the governor.

NTU officials concede that the application of North Dakota may have validity problems because it does not specifically ask Congress to call a convention and because no provision was made for it to be sent to Congress. An effort is under way in North Dakota to pass an application that repairs the defects.

Several applications, particularly Delaware's, might be challenged because they appear to attempt to limit a constitutional convention to considering only certain specific language. A study by a special American Bar Association committee concluded that it would be invalid to take away from a convention its deliberative function.

If Congress were to submit its own balanced federal budget amendment, it appears that several state applications would no longer be in effect. The resolutions of both Kansas and South Dakota state that their calls "shall no longer be of any force" if Congress submits such an amendment. The Tennessee application says if the Congress approves a balanced budget amendment prior to 60 days after 34 states apply for a convention then the convention is unnecessary and should not be held.

The NTU count is not accepted in all quarters of Congress. The staff of the Senate Judiciary Committee's Constitution Subcommittee reported on Feb. 6 that it found in its files only 16 applications that appeared to be in good order. But that number did not include documents from the five states that have passed convention requests since Jan. 1.

Although the NTU last summer listed 22 states as requesting a convention, the drive did not receive widespread national attention until California Gov. Jerry Brown said Jan. 8 that he favored a convention if Congress did not approve its own balanced budget amendment.

While Brown's comments brought the drive more notice, the attention is likely to focus greater scrutiny on the merits of a balanced budget amendment itself and on the convention method to achieve that goal.

—By Charles W. Hucker

In the 1940s and 1950s a substantial drive was made to call a convention to deal with the limitation of federal taxes, but a number of states repealed their applications.

By one count 33 states (one short of the necessary two-thirds) had applied by 1969 for a constitutional convention to allow at least one house of each state legislature to be apportioned on a basis other than population, such as geography or political subdivisions.

That drive prompted former Sen. Sam J. Ervin Jr., D-N.C. (1946-1974), to introduce legislation in 1967 that would establish procedures for calling and running a constitutional convention. The Ervin legislation did not pass. *(Background, 1967 CQ Almanac p. 461)*

Ervin again introduced the procedures bill in 1969, but no action was taken.

The North Carolina senator had better luck in 1971 when it passed the Senate by an 84-0 vote. The House did not act on the bill. *(Background, 1971 CQ Almanac p. 758)*

In 1973 the Senate passed the Ervin procedures bill by a unanimous voice vote, but again the House took no action.

Bills similar to Ervin's have been introduced in the 96th Congress, but so far have not aroused great interest from key legislative leaders. An aide to Bayh said it "would be putting the cart before the horse" to hold hearings on a convention procedures bill before scheduling hearings on balanced budget amendment proposals themselves.

Edwards also is reluctant to have his civil and constitutional rights subcommittee explore the procedures bills. "We have never felt it was significant enough to hold hearings," Edwards said.

Edwards also fears that passage of a procedures bill would encourage the push for a constitutional convention. "Anything that encourages this sort of utilization of Article V is unwise," he said.

The ABA's special committee endorsed congressional action to enact a statute dealing with convention procedures, but criticized several items in the Ervin bill.

Legal Questions

The legal questions spawned by constitutional convention drives provoke little agreement as to their answers. Some questions have given rise to diametrically opposed answers that often appeal to the same precedents. Among the constitutional uncertainties:

Valid Call. What constitutes a valid call for a convention by the required two-thirds of the state legislatures?

There appears to be little dispute that the petitions of the state legislatures must specifically ask Congress to call

EXHIBIT 33

a national convention for proposing amendments. A legislature's resolution stating merely that it favored a certain amendment or asking Congress to submit an amendment to the states would not be sufficient, according to the ABA.

The ABA study doubted that an application would be valid if it proposed a specific amendment, giving the convention no function other than to approve or disapprove its specific proposal. Yale law professor Charles L. Black Jr. contends that the Founding Fathers intended any convention called under Article V to be without limitation, and that applications calling for a convention limited to a specific subject are not valid in that light.

The question also arises whether applications must be identical in their wording and, if not, how similar must they be. And if conventions may be limited to one subject area, how closely worded must the applications be in order to be considered valid?

The validity of a state's application could be thrown into doubt if it had not passed both chambers of the state legislature in the same form or if it was not properly certified by state officials.

A state's application also might have trouble being counted as valid if the resolution were not sent to Congress. "We cannot count what we don't have," commented a staff aide to Bayh's Constitution Subcommittee.

Time Periods. In what time period must the required two-thirds of the states submit their resolutions?

The Constitution says nothing about this, but the Supreme Court has upheld the right of Congress to set time periods for ratification of amendments it has proposed. A 1973 Senate Judiciary Committee report on the Ervin bill said that the applications for a convention should be "contemporaneous," but it is unclear what period would fit that standard.

State Rescission. Can a state rescind its own previous call for a convention?

The Constitution is also silent on this question, but the Ervin bill and the ABA study both endorse the right of states to rescind their applications.

Congress' Role. If the required two-thirds of the legislatures apply for a national constitutional convention is Congress obligated to call the convention?

Once the previous three questions are answered in the context of a particular convention drive, this question would become easier for Congress to answer. If Congress determined it had received valid applications from two-thirds of the states, the explicit languange of the Constitution suggests that Congress would have no choice but to call the convention.

However, Congress' determination whether it had valid applications from two-thirds of the states might be challenged, and it is unknown whether the courts would consider Congress the final judge of those petitions.

It has been argued that the phrase in Article V "shall call" may be interpreted as "may call" for all practical purposes because the courts are not likely to try to enforce the obligation if Congress wishes to evade it.

Convention Scope. Does Congress have the power to limit the scope and authority of a constitutional convention called by the states?

This is probably the most debated question surrounding the calling of a constitutional convention and the one on which opinions are the most vehement and divided.

The ABA study and the 1973 Senate Judiciary Committee report support the view that Congress can limit the subject matter in convening a convention.

"A failure to provide for such limitation would be inconsistent with the purposes of Article V and, indeed, would destroy the possibility of the use of the convention method for proposing amendments," the 1973 Senate committee report says.

That view apparently is supported by most of the state legislatures. Virtually all state applications for conventions made in the 20th century have been limited in subject area. Indeed, one state currently calling for a convention on a balanced federal budget specifically declares that its application is null and void if Congress does not limit a convention to that subject.

Attorney General Griffin B. Bell also believes that Congress can place limits on a constitutional convention.

Yale's Black and others take a totally opposite view. Black believes that the language of Article V refers to a convention "for proposing such amendments as to that convention seem suitable for being proposed," in other words, an illimitable convention.

The 1787 federal convention has been cited as an example of a body that exceeded its authority. Congress, acting under the Articles of Confederation, called the 1787 convention "for the sole and express purpose of revising the Articles of Confederation." Instead the convention scrapped the articles and proposed a new constitution.

The 1973 Senate Judiciary Committee report argues that the events of 1787 are not a good precedent for a modern-day convention exceeding its authority. The Senate committee report notes that the Articles of Confederation did not have a satisfactory means of amendment (unanimous approval of the states was required) and Congress approved the new constitution when it submitted it to the states for ratification.

Representation. How would delegates be apportioned among the states for a constitutional convention?

Again the Constitution is silent on this point. At the 1787 convention each state had only one vote, but there were differing numbers of delegates from the various states. Ervin initially favored this idea, but later changed his bill to provide for a convention giving each state the number of delegates that equaled its senators and representatives in Congress, and allowing each delegate one vote.

However, the ABA study criticized that method as being out of line with the one man-one vote rulings of the Supreme Court and suggested that each state could have the number of delegates that equaled its members of the House of Representatives.

Choosing Delegates. How would delegates be chosen?

This question could be answered by Congress or left to each state to decide. The Ervin bill provided for two delegates to be elected at-large in each state and one to be elected from each congressional district.

The question also arises whether members of Congress would be eligible to run for the delegate positions. Article I, Section 6, of the Constitution prohibits members of Congress from "holding any office under the United States." However, the ABA study said it did not believe that provision would be a bar to members of Congress being delegates to a constitutional convention.

Procedural Bills

Four bills introduced in the 96th Congress attempt to provide answers to some of the legal and procedural questions surrounding a constitutional convention. The bills have been introduced by Sen. Jesse Helms, R-N.C., (S 3);

(Constitutional Convention continued on p. 279)

EXHIBIT

tion or asked Congress to pass a constitutional amendment to require a balanced budget.

According to Bonner, NTU began to actively engage in building grass-roots coalitions five years ago. "For awhile we naively thought we could just spill the beans and tell the story of government waste, but it didn't work."

So more recently NTU has sought instead to "find operatives and activists in various communities" who are willing to work with the national organization.

In a typical state, NTU will work with one of its stronger affiliates, picking one or two strong leaders to present the case for the convention to state legislators. NTU may also encourage its members in the state to write letters, make phone calls or visit key members in the legislature. And the national organization may run newspaper ads to generate public support for a local effort. In some states, such as California, the mail and lobbying effort were targeted at key members of committees responsible for the constitutional convention measure.

NTU rarely funds local organizations to any large extent, although it provided $2,400 to start a group in Oregon and has loaned money to other organizations to keep them afloat.

The California Campaign

One exception to NTU's standard approach is California, where the organization has 20,000 members. NTU set up an office there in July 1978 to lobby the state legislature for the constitutional convention. That office is designed to work with the Santa Barbara-based Local Government Center, an NTU-funded research affiliate that makes recommendations on how local governments can cut spending. Bonner estimated NTU would spend $30,000 to $40,000 on its California effort. "California is where skateboards and Hula-Hoops come from. If California does something there's a good chance the rest of the country will follow."

California may indeed be a turning point. NTU counts 27 state legislatures that have voted for a constitutional convention. Both NTU and its opponents are devoting considerable resources to the battle now being fought in the Ways and Means Committee of the California House. There, Speaker Leo McCarthy, D, has positioned himself against the governor in a fight that is viewed not only as a bellwether for states yet to take up the issue but as a test of Brown's strength as a presidential candidate.

Brown's support for the convention route has been a key factor in focusing national attention on the issue. But Brown's support is viewed as a mixed blessing by convention advocates who would normally welcome support from such a high visibility public figure.

"It would have been better to let a sleeping dog lie," said Bonner, acknowledging that NTU would like to have gotten closer to the required 34 states before the national media began examining the issue. "There was no point in heating things up. When Brown announced, we had to go more public."

Brown not only focused attention on the issue in the nation's most populous state, but generated the first wave of serious criticism of the proposal at the national level by economists, congressmen and other tax and spending limitation groups. And Brown may have made it more difficult for state legislators to support what until then had been a relatively easy vote. Now with serious questions being raised about the dangers of a constitutional convention, legislators may be more reluctant to approve the proposal. ■

Constitutional Convention

(continued from p. 276)

Rep. Robert McClory, R-Ill., (HR 84), and Rep. Henry J. Hyde, R-Ill., (HR 500 and HR 1964).

The bills are similar to each other and to the Ervin bill that passed the Senate in 1971 and in 1973. The 1973 Senate committee report on the Ervin bill said the legislation was needed "in order to avoid what might well be an unseemly and chaotic imbroglio if the question of procedure were to arise simultaneously with the presentation of a substantive issue by two-thirds of the state legislatures. Should Article V be invoked in the absence of this legislation, it is not improbable that the country will be faced with a constitutional crisis the dimensions of which have rarely been matched in our history."

But Black of Yale contends that such legislation would be "both unconstitutional and unwise." Black believes it would be unconstitutional on the basis that one Congress cannot bind a later Congress on questions of constitutional law and policy. He also argues that it would be unwise because the conditions of the future are unknowable.

All four bills would require state legislatures, when calling for a constitutional convention, to specify the nature of the amendment to be proposed. None of the bills requires approval by a state's governor of its application for a convention.

The bills provide for the states to transmit applications to the President of the Senate and to the Speaker of the House. Applications would remain effective for seven years and states would be permitted to rescind their applications.

When applications on one subject were received by Congress from two-thirds of the states, the four bills would require each chamber to determine whether the applications were valid. If there were a proper number of valid applications, Congress would be required to pass a concurrent resolution calling for the convening of a convention, designating the place and time of the convention and the subject of the amendments to be considered.

The bills all specify that each state would elect two delegates at-large and one from each congressional district in the state.

All the bills except HR 1964 provide for the convention to submit proposed amendments to the states by a simple majority vote of the convention delegates. HR 1964 calls for a two-thirds vote. That is the same requirement contained in the 1971 and 1973 bills passed by the Senate. The ABA study criticized this requirement, stating it was of questionable validity for Congress to attempt to regulate the internal proceedings of a constitutional convention.

The four bills allow Congress to prohibit a convention-initiated amendment from being submitted to the states that is outside the subject named in the call.

All the bills provide for Congress to be the final arbiter of questions about the validity of state applications for constitutional conventions and about whether a convention-initiated amendment exceeded the subject of the convention's call. The bills would prohibit any court from reviewing Congress' decisions in those areas. Identical provisions in the Ervin bill were criticized by the ABA study as too far-reaching. Instead, the ABA proposed the right of limited judicial review in cases where the findings of Congress were "clearly erroneous." ■

EXHIBIT 35

Background Paper 79-12

AMENDMENT OF THE U.S. CONSTITUTION BY THE CONVENTION METHOD

EXHIBIT —

AMENDMENT OF THE U.S. CONSTITUTION
BY THE CONVENTION METHOD

I

Background

The U.S. Constitution has never been amended as a result of a constitutional convention. There has never been a convention called. Therefore, no one can say with absolute certainty what the exact form of convention calls must be, how delegates would be selected or how the convention would operate. There are, however, a number of authorities on the Constitution who have given opinions both on the way a convention would work and on the advisability of a convention. In addition, the U.S. Senate twice passed legislation providing for procedures for a convention. Those bills offer guidance to Congressional thinking. It seems appropriate first to look at what the framers had to say.

In the Federalist No. 43, Madison said:

> "That useful alterations [in the Constitution] will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other."

In Federalist No. 85, Hamilton said:

> In opposition to the probability of subsequent amendments it has been urged, that the persons delegated to the administration of the national government, will always be disinclined to yield up any portion of the authority of which they were once possessed. * * * I

EXHIBIT

> think there is no weight in the observation just stated. * * * [But] there is yet a further consideration, which proves beyond the possibility of doubt, that the observation is futile. It is this, that the national rulers, whenever nine states concur, will have no option upon the subject. By the fifth article of the plan the congress will be obliged, "on the application of the legislatures of two-thirds of the states (which at present amounts to nine) to call a convention for proposing amendments, which shall be valid to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof." The words of this article are peremptory. The congress "shall call a convention." Nothing in this particular is left to the discretion of that body.

Clearly Madison and Hamilton saw the convention method as a safety valve for those subjects on which Congress would not initiate action but about which there was considerable concern in at least two-thirds of the states. In fact, it has tended to work that way. There have been over 350 applications, representing every state, calling for a convention on one subject or another. Nevada has done this 12 times on five subjects. Texas with 15 calls, leads all states. Many of the states have used conventions for revisions of their own constitutions. There have been about 200 state constitutional conventions. The 17th amendment providing for the direct election of senators was proposed by Congress when the call for a convention was only two states short. In 1967, the call for a convention to offset in some way the effects of the several one man-one vote decisions of the Supreme Court fell only two states short. Many issues raised by calls for a convention have been disposed of by the normal amendment procedure. The Bill of Rights, prohibition and limit to presidential terms are only three examples.

II

How Would the Convention Process Work?

It was the reaction of the states to reapportionment that caused Senator Sam Ervin to introduce a bill to establish

EXHIBIT

ground rules for the convention method of amendment proposal. That was S 2307 of 1967. It was not until 1971 that a similar bill, S 215 passed the Senate 84-0. The House took no action. The Senate passed S 1272 in 1973 (see Appendix B). Again, it died in the House and no subsequent action has been taken. It is anticipated that a similar bill will be introduced this year by Senator Bayh's Constitution Subcommittee of the Senate Judiciary Committee. In a conversation with Senator Ervin, we learned that he still strongly favors such legislation and that he intends to urge the North Carolina legislature to pass a resolution calling for a convention on a balanced budget.

The 1967 hearings on Ervin's bill brought together many of the foremost constitutional scholars who offered their understandings of Article V. Unfortunately, it is a subject on which great and respected legal minds differed. Any analysis of the several questions that everyone asks on this issue can only report on the weight of opinion. There are no sure, definitive opinions. A listing of the major questions follows with a conclusion, where possible, on the weight of opinion. The conclusions are not those of the Research Division but rather of the American Bar Association's Special Constitutional Convention Study Committee.

1. If the legislatures of two-thirds of the states apply for a convention limited to a specific matter, must Congress call the convention?

   The Constitution provides for a convention on a limited subject or a general convention. In either event, Congress' duty to call the convention is mandatory.

   In the absence of statutory guidance, of course, there is room for disagreement as to whether the requisite number of state petitions are sufficiently similar to be calls for the same purpose. The Federalist Papers quoted as well as Madison's record of the Debates of the Convention all attest to the mandatory nature of Congress' responsibility.

EXHIBIT —

2. If a convention is called, is the limitation binding on the convention?

Congress has the power to make available to the states a limited convention when that is the type convention applied for. Such legislation could not prevent a call for a general convention as there is nothing in the history of Article V that would support a precluding of a general convention if the states petitioned for one. In the case of a call for a particular subject, Congress would have to define the subject at least to the extent necessary to determine if the several petititons were all on the same subject.

3. What constitutes a valid application which Congress must count and who is to judge its validity?

The approach used in S 1272 is endorsed by the ABA. That bill would require the passage of a resolution by the state legislatures calling for a convention to propose one or more amendments. The resolution would be passed in the same manner as a statute in each state, except the governor would not have the right to veto. The ABA believes that Congress' judgment as to validity should be reviewable by the courts. S 1272 gives Congress sole authority. This is a matter of preference. The ABA does not say that the S 1272 approach is unconstitutional. A resolution would have to make it clear that a convention was being called for. A call for a convention simply to vote a proposal up or down would not likely be valid. A convention would have to have latitude. The late Professor Bickel of Yale strongly supported the latter point and Professor Phillip Kurland of the University of Chicago concurs.

4. What is the length of time applications for a convention will be counted:

There is nothing in the history of Article V to answer this question. It is a political judgment. In S 1272, 7 years was set as the limit for a state resolution to be considered active.

EXHIBIT

5. How much power does Congress have as to the scope of a convention; as to procedures such as the selection of delegates; as to voting requirements in the convention; as to refusing to submit to the states for ratification the product of a convention?

Congress could establish the scope of a convention consistent with the resolutions calling for the convention but no more than that.

The ABA believes that delegates would have to be apportioned on a one man-one vote basis, such as seats in the House of Representatives. Other authorities cite the original constitutional convention and its votes by state. On balance, it seems that population will have to play a major role. S 1272 gives each state delegates equal to its senators and representatives, thus following the Electoral College model. Delegates would be elected one from each congressional district and two at-large in each state under S 1272.

Opinion is divided over whether the convention could be required to propose an amendment by more than a majority. The ABA feels that the voting rules of a convention must be left to the convention. S 1272 requires a two-thirds vote to propose an amendment, making the requirement analogous to that for Congress in proposing an amendment.

Expert opinion is divided on whether or not Congress has any discretion in sending an amendment proposed by convention to the states for ratification. S 1272 allows Congress, by concurrent resolution, to disapprove of an amendment outside the scope of the convention and to refuse to send it out for ratification.

6. What are the roles of the President and state governors in the amending process?

In Hollingsworth v. Virginia, the Supreme Court confirmed the prevalent practice saying in regard to the President, "* * * he has nothing to do with the proposition or adoption of amendments to the Constitution."

EXHIBIT

Most constitutional opinion agrees that this observation applies in the convention method too. The President will have a role in the approval of a bill setting up procedures for a convention, just as he would on any bill.

The experts are similarly agreed that state governors would have no role either in resolutions calling for a convention or in the ratification of amendments sent to the states. S 1272 specifically excludes governors from any role in the process.

There is no certainty as to whether or not a state may rescind its call for a convention. The ABA thinks it should be able to and the Senate in S 1272 made such a provision allowing a recission at any time prior to the receipt by Congress of petitions from two-thirds of the states. After that, recission would not be allowed.

7. Are issues arising in the convention process justiciable?

In S 1272, the Senate provided to Congress the sole role in deciding all questions arising under the convention method. It is not clear whether such an approach would, in fact, preclude a role for the courts. It is especially doubtful that the courts could be excluded if Congress refused to act in the face of the requisite number of apparently valid petitions for a convention.

8. Who is to decide questions of ratification?

Congress, under Article V, has the power to decide whether ratification will be by state legislature or state convention. Only for the repeal of prohibition were state conventions used.

III

Conclusion

In the absence of legislation passed by Congress, there are many questions about the amendment by convention method that

EXHIBIT

must remain unanswered. S 1272 at least offers a guide to probable congressional thinking and its provisions are referred to extensively in the foregoing. It is clear that Congress must convene a convention if two-thirds of the states petition. Few other matters on the subject are clear. Based on S 1272, it appears that Congress could define the subject matter of the convention, determine how delegates would be chosen and what the internal rules of the convention would be. It could also refuse to submit to the states a proposed amendment that was outside the guidance provided by Congress as to subject. Finally, Congress would determine how a proposed amendment would be submitted for ratification; by state legislatures or state conventions.

On advisability of a constitutional convention, opinions cover the full spectrum. Among those in the negative is political scientist C. Herman Pritchett saying:

> These unknowns are so serious that it would be well for Congress to adopt general implementing legislation before it is faced with a valid convention call. However, it would be preferable not to use the convention method at all. The principal support for the convention device has come from interests sponsoring proposals which could not gain congressional approval. It is an alternative attractive to manipulators of opinion who find it more congenial to work in the recesses of fifty state legislatures than in the glare of the congressional spotlight. The national interest in the amending process is best protected by leaving the responsibility for proposing amendments in the halls of Congress.*

The framers of the Constitution, of course, put the convention method in to guard against a situation in which the national government had a certain vested interest in conflict with the interests of the people or the states. In the hearings on S 2307, the predecessor of S 1272, Senator Roman Hruska said:

*Pritchett, C. Herman, The American Constitution, 3rd Ed. (McGraw-Hill, New York, 1977), p. 27.

EXHIBIT

Much in the manner of Chicken Little skittering to and fro telling all who would listen the sky is falling, much alarm has been expressed at what a Constitutional Convention might do. "The Bill of Rights will be repealed," "the Supreme Court will be abolished," are just two of the more irrational alarms being trumpeted from the rooftops by some who have felt compelled to exclaim rather than reason.

Fears of this kind have no foundation in reason, logic, or experience. They should be dismissed.

I think it is more important to recognize a Constitutional Convention for what it is and what it can do. First, it is a perfectly valid method of proposing amendments to the Constitution. It is a right reserved to the States and guaranteed by article V of the Constitution. The fact that we have never had one does not diminish the right of the people to have one if they wish.

As to what a Constitutional Convention might do to existing rights or to governmental structure, it could do nothing more than what the Congress has authority to do--it can propose amendments to the Constitution. Alone, it can make no change in the Constitution; it can change no rights. In the final analysis, three-fourths of the States, a total of 38, either by legislative action or by State convention, must ratify any amendment the Convention might propose before it becomes a part of the Constitution. Precisely the same procedure that applies to amendments proposed by the Congress must be observed so far as ratification is concerned.*

*Senate Judiciary Committee, Subcommittee on Separation of Powers, Ninetieth Congress, First Session, Hearings on S 2307, October 30 and 31, 1967, p. 220.

EXHIBIT

SOURCES

American Bar Association, Special Constitutional Convention Study Committee, Amendment of the Constitution: By the Convention Method Under Article V (American Bar Association, Chicago, IL., 1974).

Black, Charles L., Jr., "Amending the Constitution: A Letter to a Congressman," The Yale Law Journal, Vol. 82, No. 2, December 1972.

Harvard Law Review, "Proposed Legislation on the Convention Method of Amending the United States Constitution," unsigned note, Harvard Law Review, Vol. 85, No. 8, June 1972.

Pritchett, C. Herman, The American Constitution, 3rd Ed. (McGraw-Hill, New York, 1977).

Senate Judiciary Committee, Subcommittee on Separation of Powers, Hearings Before the * * *, S 2307, Oct. 30-31, 1967 (U.S. Government Printing Office, Washington, D.C., 1968).

APPENDIX A

As of January 30, 1979, the following states had passed resolutions calling for a constitutional convention to propose an amendment on balanced budget:

Alabama
Arizona
Arkansas
Colorado
Delaware
Florida
Georgia
Illinois
Kansas
Louisiana
Maryland
Mississippi
Nebraska
New Mexico
North Carolina
North Dakota
Oregon
Oklahoma
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Virginia
Wyoming

Total 25

The following have resolutions introduced:

Alaska
California
Idaho
Indiana
Iowa
Montana
Nevada
South Dakota
Vermont

Total 9

APPENDIX B

The underlinings and strike-throughs in S. 1272 represent the recommendations for changes made by the American Bar Association's Special Constitutional Convention Study Committee.

93rd Congress
1st Session
S. 1272

IN THE SENATE OF THE UNITED STATES
March 19, 1973
Referred to the Committee on the Judiciary
Passed the Senate July 9, 1973

A BILL

To provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Federal Constitutional Convention Procedures Act".

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

SEC. 2. The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States on and after the enactment of this Act, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more amendments to the Constitution of the United States and *stating the nature of the amendment or amendments to be proposed.*

EXHIBIT

APPLICATION PROCEDURE

SEC. 3. (a) For the purpose of adopting or rescinding a resolution pursuant to section 2 and section 5, the State legislature *shall follow the rules of procedure that govern the enactment of a statute* by that legislature, but without the need for approval of the legislature's action by the governor of the State.

(b) Questions concerning the adoption of a State resolution cognizable under this Act shall be [determined]
~~determinable~~ by the Congress of the United States ~~and its decisions thereon shall be binding on all others, including State and Federal courts~~.

TRANSMITTAL OF APPLICATIONS

SEC. 4 (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of state of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution;

[(2) *to the extent practicable a list of all state applications in effect on the date of adoption whose subject or subjects are substantially the same as the subject or subjects set forth in the application;*]

[3]
~~(2)~~ the exact text of the resolution signed by the presiding officer of each house of the State legislature; and

[4]
~~(3)~~ The date on which the legislature adopted the resolution; and shall be accompanied by a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

[(c) Upon receipt, an application shall be deemed valid and in compliance with article V of the Constitution and this Act, unless both Houses of Congress prior to the expiration of 60 days of continous session of Congress following the receipt of such application shall by concurrent resolution determine the application is invalid, either in whole or in part. Failure of Congress to act within the specified period is a determination subject to review under section 16 of this Act. Such resolution shall set forth with particularity the ground or grounds for any such determination. The 60-day period referred to herein shall be computed in accordance with section 11(b) (2) of this Act.]

[d]

~~(e)~~ Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is the presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. [Within the 60-day period provided for in Section 4(c),] the President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States, [provided, however, that an application declared invalid shall not be so transmitted.]

EFFECTIVE PERIOD OF APPLICATION

SEC. 5 (a) An application submitted to the Congress by a State, unless sooner rescinded by the State legislature shall remain effective for seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the *same subject* all such applications shall remain in effect until the Congress has taken action on a concurrent resolution pursuant to section 6, calling for a constitutional convention.

(b) A State may rescind its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of rescission *in conformity with the procedure specified* in sections 3 and 4, except that no such rescission shall be effective as to any valid application made for a

constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subjects.

Questions concerning the recission of a State's application shall be determined by the Congress of the United States ~~and its decisions shall be binding on all others including State and Federal courts~~.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject. Whenever applications made by two-thirds or more of the States with respect to the same subject have been received, the Secretary and the Clerk shall so report in writing to the officer to whom those applications were transmitted, and such officer thereupon shall announce on the floor of the House of which he is an officer the substance of such report. It shall be the duty of such House to determine that there are in effect valid applications made by two-thirds of the States with respect to the same subject. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject. *Each such concurrent resolution shall* (1) designate the place and time of meeting of the convention, and (2) *set forth the nature of the amendment or amendments for the consideration of which the convention is called.* A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the Governor and to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than one year after adoption of the resolution.

EXHIBIT

DELEGATES

SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of each state.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the Vice President of the United States the name of each delegate elected or appointed by the Governor pursuant to this section.

(c) Delegates shall in all cases, except treason, felony; and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.

(d) Each delegate shall receive compensation for each day of service and shall be compensated for traveling and related expenses. Provision shall be made therefor in the concurrent resolution calling the convention. The convention shall fix the compensation of employees of the convention.

CONVENING THE CONVENTION

SEC. 8. (a) The Vice President of the United States shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to refrain from proposing or casting his vote in favor of any proposed amendment to the Constitution of the United States relating to any subject which is not named or described in the concurrent resolution of the Congress by which the convention was called. Upon the election of permanent officers of the convention, the names of such officers shall be transmitted to the President of the Senate and the Speaker of the House of Representatives by the elected presiding officer of the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) There is hereby authorized to be appropriated such sums as may be necessary for the payment of the expenses of the convention.

(c) The Administrator of General Services shall provide such facilities, and the Congress and each executive department and agency shall provide such information and assistance, as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. (a) Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a vote of *two-thirds of the total number of delegates to the convention.*

(b) No convention called under this Act may propose *any amendment or amendments of a nature different from that stated* in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts~~.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

EXHIBIT

(b) (1) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such amendment to the Administrator of General Services upon the expiration of the first period of ninety days of continuous session of the Congress following the date of receipt of such amendment unless within that period both Houses of the Congress have agreed to (a) a concurrent resolution directing the earlier transmission of such amendment to the Administrator of General Services and specifying in accordance with article V of the Constitution the manner in which such amendment shall be ratified, or (B) a concurrent resolution stating that the Congress disapproves the submission of such proposed amendment to the States because such proposed amendment *relates to or includes a subject which differs from or was not included among the subjects named or described in the concurrent resolution* of the Congress by which the convention was called, or because the procedures followed by the convention in proposing the amendment were not in substantial conformity with the provisions of this Act. No measure agreed to by the Congress which expresses disapproval of any such proposed amendment for any other reason, or without a statement of any reason, shall relieve the President of the Senate and the Speaker of the House of Representatives of the obligations imposed upon them by the first sentence of this paragraph.

(2) For the purposes of paragraph (1) of this subsection, (A) the continuity of a session of the Congress shall be broken only by an adjournment of the Congress sine die, and (B) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the period of ninety days.

(c) Upon receipt of any such proposed amendment to the Constitution, the Administrator shall transmit forthwith to each of the several States a duly certified copy thereof, a copy of any concurrent resolution agreed to by both Houses of the Congress which prescribes the time within which and the manner in which such amendment shall be ratified, and a copy of this Act.

EXHIBIT

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified.

(b) Acts of ratification shall be by convention or by State legislative action as the Congress may direct or as specified in subsection (c) of this section. For the purpose of ratifying proposed amendments transmitted to the States pursuant to this Act the *State legislatures shall adopt their own rules of procedure.* Any State action ratifying a proposed amendment to the Constitution shall be valid without the assent of the Governor of the State.

(c) Except as otherwise prescribed by concurrent resolution of the Congress, any proposed amendment to the Constitution shall become valid when ratified by the legislatures of three-fourths of the several States within seven years from the date of the submission thereof to the States, or within such other period of time as may be prescribed by such proposed amendment.

(d) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RECISSION OF RATIFICATIONS

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendments by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c) Questions concerning State ratification or rejection of amendments proposed to the Constitution of the United States, shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts.~~

EXHIBIT

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 15. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

JUDICIAL REVIEW

[SEC. 16. (a) Determinations and findings made by Congress pursuant to the Act shall be binding and final unless clearly erroneous. Any person aggrieved by any such determination or finding or by any failure of Congress to make a determination or finding within the periods provided in this Act may bring an action in a district court of the United States in accordance with 28 U.S.C. § 1331 and 28 U.S.C. § 2201 without regard to the amount in controversy. The action may be brought against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. The district courts of the United States shall have exclusive jurisdiction of any proceedings instituted pursuant to this Act, and such proceedings shall be heard and determined by three judges in accordance with 28 U.S.C. § 2284. Any appeal shall be to the Supreme Court.]

EXHIBIT

Northern Nevada NOW
P.O. Box 1265
Sparks, Nevada 89431

Testimony of Mylan Roloff
Legislative Committee Member
Northern Nevada Chapter
National Organization for Women

Mister Chairman and members of the Committee;

My name is Mylan Roloff and I am a member of the Legislative Committee for the Northern Nevada chapter of the National Organization for Women (NOW). In that role I am here today to speak against Senate Joint Resolution 8.

I would like to begin my statement with a quotation from Laurence H. Tribe, a professor of law at Harvard University This quotation illustrates the major concern of those who question the need of a constitutional convention. "If and when a new convention is called, its potential for radical change will be hard to confine; there are numerous opinions about what such a convention could and could not do, but there are no precedents, and there can be no confident answers."[1]

It seems that most people, including the Senators who introduced this Resolution, are concerned about an unlimited or general convention. On page two of SJR 8, lines 3 through 8, you can find an attempt to deal with this Constitutional Pandora's box. I believe that lines 3 through 8, however, may lull Nevadans into a false sense of security. We cannot have our cake and eat it too. Once the Nevada Legislature sends SJR 8 to the National Congress, how are we to continue our control? Once Nevada has called for a Constitutional convention, it is up to the Congress to interpret the request. Congress will decide if the request is valid and the Nevada Legislature will no longer have any say in the matter. Consider the following quotation from Charles L. Black, professor of Jurisprudence at Yale Law School. "It seems to me that the most natural meaning of the words 'a Convention for proposing Amendments' is 'a convention for proposing such amendments it decides to propose' -- that is, a general convention -- and that

the importation of a limitation not in the text is quite unwarranted... I have said enough to show that the weight of argument and history is on the 'unlimited convention' side." [2]

What is Nevada to do if the Congress acts in the manner described by Professor Black? Are we going to walk out of the convention in protest and leave the constitutional decisions to the other 49 states? Are we to bring suit against the Congress for misinterpretting SJR 8 and could we win such a suit? Somehow I feel the answers to these questions are all no.

While the issue of a general or limited convention dominates the debate on SJR 8, there are other issues. Primary among them is the role the Judiciary branch of government will play in establishing the fiscal policy of this country. By placing an amendment in the Constitution on budgeting, have we opened the door to the federal courts ruling on the Constitutionality of any given budget? Have we opened the door to class action suits against the federal government by groups who feel left out of the budget?

The points I have discussed thus far have dealt with the impact of a convention on the Constitution and on our form of government. Now let's turn our attention to the effect of a convention on the state of Nevada. Also, the effect Nevada can have on such a convention.

How will Nevada's delegates to the convention be selected? Will Nevada make this decision or will the National Congress? How many delegates will Nevada have? Will the delegates be versed in fiscal matters and will they be heard among all of the delegates from the other states? Will Nevada have any real impact or voice at such a convention?

There are also fiscal matters of concern to Nevadans. What will the impact of a balanced federal budget be on this State? How much federal money will Nevada lose and will the State realistically be able to pick up the burden? What will this convention cost the taxpayer?

I have asked these questions in the rhetorical sense because I do not know the answers. But I do feel there is a need for answers. I also feel there is a great danger in Nevada having so few delegates as to be overwhelmed by the larger states and special interest groups.

I must admit that in this era of tax revolt, Proposition 13, and Question 6; I rather feel like the Greek messenger bearing bad news. Of course we all want tax relief, of course we all want better economic planning, and of course we all want more prudent federal spending. The question is, however; Is SJR 8 worth the risk it poses to the United States Constitution? Just as I began with a quotation from Laurence Tribe, I would like to end with one. "I believe it should be reserved for an occasion on which Congress itself seems to present an intolerable threat to the states. Short of such a crisis, attempts to amend the Constitution should be limited to efforts to persuade Congress to propose amendments."[3]

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1. Testimony of Laurence H. Tribe, Professor of Law, Harvard University, given before the Massachusetts House and Senate, April 4, 1977 (Emphasis added)

2. Amending the Constitution: A Letter to a Congressman, Charles L. Black, Yale Law Journal, Vol. 82, No. 2, December 1972 (Emphasis added)

3. Laurence H. Tribe, Ibid.

EXHIBIT

Constitutional Amendment By Convention: An Untried Alternative

As a basic document granting powers to the national government and protecting the rights of its citizens, the U.S. Constitution has stood the test of time. It has served the nation well as the framework for a governmental system that has had to deal with many varied events and crises in our history.

Still, the framers of the Constitution understood that even the best-crafted document in the world would need to be modified occasionally to meet changing societal needs. They therefore provided amending procedures that offer two routes for *proposing* amendments and two routes for *ratifying* them, as Article V describes:

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: Provided that . . . no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

So sound was the work of the framers that the Constitution has in fact been amended only twenty-six times.* Congress, as Article V directs, has chosen the method of ratification for each amendment. *All* 26 amendments adopted and the pending 27th one were acted upon under the first alternative in Article V—they were proposed by Congress after approval by two-thirds of each house.

All amendments except the 21st were ratified by the legislatures of three-fourths of the states after Congress submitted the amendments for approval. The 21st, repealing Prohibition which had been established by the 18th, was approved by ratifying conventions in three-fourths of the states.

The alternative procedure for proposing amendments—a constitutional convention called by Congress on application of two-thirds of the states—has *never* been used. However, periodically a move for an amending convention gains momentum, usually fueled by groups motivated by a single issue. The groups may be opting for this amending route because they are unable to get "their" amendment approved by the needed two-thirds of each house of Congress or may for other reasons prefer to work thrcugh state legislatures rather than Congress.

A current move for an amending convention once again is focusing public attention on this untried alternative. The impetus has come from groups dissatisfied with a 1973 Supreme Court decision guaranteeing women freedom of choice in deciding about abortions.

The prospect of a convention called to propose amendments to the U.S. Constitution raises very grave questions, the answers to which are clouded in legal debate and political uncertainty. A brief look at the experience the nation has had in dealing with petitions for an amending convention—limited though it is—may be useful before considering some of these unanswered questions. (Readers should distinguish between an amending convention for the U.S. Constitution and state constitutional conventions for changes in state governmental structure. The latter are common in state political history.)

Background

Although the convention method for proposing amendments has never been used, since the nation's beginning more than 300 applications on varying subjects have gone to Congress from state legislatures asking for amending conventions. But applications on any one subject have never reached the requisite number. Sometimes pressure for an amending convention has been used as a tactic to try to get Congress to approve an amendment; such seems to have been the case with direct election of U.S. senators. Sometimes support on an issue has been so spotty that only a few legislatures have applied to Congress for a convention on that issue. In other instances, the timeliness of an issue has faded and it has dropped from the national political scene.

Among the issues that have prompted convention applications, besides those already mentioned, are world government, school prayers, revenue sharing, school busing, taxes (various aspects), presidential tenure and treaty procedures. Not every application has been tied to a single subject. Some twenty have called for a general constitutional convention.

The most widely supported effort to use the alternative amending method came in the 1960s over the issue of equitable apportionment of state legislatures. In 1964 the Supreme Court ruled that both houses of state legislatures had to be apportioned on the basis of population. In opposition to this ruling, thirty-two states (just two short of the required two-thirds) applied to Congress for an amending convention to allow state legislatures to have the seats in one house apportioned on a basis other than population, for instance, along county lines.

Because it is the closest the U.S. has ever come to using this method, the prospect generated wide public debate and discussion of this amending method. As legal scholars, members of Congress and concerned citizens made state legislators aware of the

*Five other amendments were approved by Congress but not ratified by the states. The 27th amendment—the Equal Rights Amendment—is still pending.

Order from League of Women Voters of the United States, 1730 M Street, N.W., Washington, D.C. 20036
Pub. No. 125, 20¢, 20/$1.

MEMBERS PRESENT

Chairman Dini
Mr. Marvel
Mr. Fitzpatrick
Mrs. Westall
Mr. Harmon
Mr. Craddock
Mr. Jeffrey
Mr. Robinson
Mr. Getto
Mr. Bedrosian
Mr. Bergevin

GUESTS PRESENT

See Guest List attached

* * * * *

Chairman Dini called the meeting to order at 9:00 A.M.

AB 387 - MAKES VARIOUS CHANGES IN LAW RELATING TO LEGISLATIVE COUNSEL BUREAU

JOHN CROSSLEY, Legislative Auditor, L.C.B.

Mr. Crossley had distributed to the Committee a document outlining the main objectives of the Bill which are contained in Sections 2 and 3, a copy of which is attached hereto and made a part hereof. The document also contains the proposed Amendments. Mr. Crossley went on to elaborate on each item independently.

AB 411 - PROHIBITS ALLOWANCE FOR LODGING TO STATE OFFICERS AND EMPLOYEES IF LODGING IS FREE

PAUL PRENGAMAN, Assemblyman, District 26

Mr. Prengaman stated the intent of AB 411 was to begin a review of the comp policy in Nevada. He stated the Bill attempts to prohibit public officers and employees from receiving lodging for allowance if, in fact, that lodging has been provided to them free. He stated in section 2 he attempted to set up a formula for use of the $30 flat fee but at the time he was not clear on what was being done at the present time and he now understands it

SJR 8 - Mr. Harmon moved DO PASS, seconded by Mr. Getto, nine in favor, one absent, Mr. Bedrosian opposed; carried unanimously.

There being no further business to come before the meeting, the same was adjourned.

Respectfully submitted,

Sandra Shatzman
Assembly Attache

Assemblyman Getto moved that Assembly Bill No. 49 be taken from the Chief Clerk's desk and placed on the General File.

Remarks by Assemblyman Getto.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 330.

Bill read third time.

Remarks by Assemblyman Dini.

Roll call on Assembly Bill No. 330:

YEAS—40.

NAYS—None.

Assembly Bill No. 330 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 351.

Bill read third time.

Remarks by Assemblyman Dini.

Roll call on Assembly Bill No. 351:

YEAS—40.

NAYS—None.

Assembly Bill No. 351 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 8.

Resolution read third time.

Remarks by Assemblymen Harmon, Cavnar, Wagner, Mann, Coulter, Getto, Mello, Weise, Bennett, Horn, Rusk, Robinson, Craddock, Westall, Chaney and Dini.

Assemblyman Banner requested that the following remarks be entered in the Journal:

ASSEMBLYMAN HARMON:

Mr. Speaker, S.J.R. 8 is part of a nationwide campaign inaugurated by the National Taxpayers Union two years ago in an effort to curtail and contain the runaway inflation of our country by controlling and eliminating the deficit spending of our national government, which is felt to be one of the prime contributors to that inflation. The 59th Session of the Nevada Legislature passed a similar resolution but it was vetoed by Governor Mike O'Callaghan because of his concern in regard to the impact of the convention. What we are asking for in S.J.R. 8 is that the Congress look to its responsibility and act.

There has been a lot of concern about a convention concerning what would be discussed. I think that Nevada's posture as to what would be discussed is very clear and in lines 3 through 8 on page 2 of the resolution there is language that is more or less a self destruct clause in case Congress fails to establish strict restrictions.

I urge the passage of this resolution thus making Nevada the 29th state to do so.

ASSEMBLYMAN CAVNAR:

Thank you, Mr. Speaker. I rise in support of S.J.R. 8. It is about time our state, along with some other states who are very, very concerned about the national balanced budget, enact S.J.R. 8. Many concerns have existed because of the call for a constitutional convention; I do not share in those concerns. The reason that I don't is that in order to call a constitutional convention it requires two-thirds of the states to do so. Anything that would result from the convention then requires three quarters of the states to pass. There is nowhere else in the constitution that

requires this type of percentage and this is the safeguard that our forefathers included in Article Five of the Constitution so that the Federal Government would be responsible to the needs of the states. I urge your passage.

ASSEMBLYMAN WAGNER:

Mr. Speaker, I did not support this resolution in 1977 and cannot again. An amendment attached by the Senate, specifying that the resolution would have no effect if the convention could not be limited to one topic, probably does more clearly define Nevada's intent, but does not answer some basics.

I am well aware of what emerges from a Constitutional Convention must be ratified by 38 states—however many Americans and Constitutional scholars agree with Charles Black and Henry Luce, professor of jurisprudence at Yale Law School, that this method of amending the constitution was not meant to create conventions limited to consideration of a single subject. For over 100 years after the adoption of the Constitution the Legislatures themselves thought that Article V required them to ask for a "convention for proposing amendments, with no limitations."

A major concern I have is the absence of statutory guidelines as Congressional legislation spelling out specifics of a constitutional convention. However, Charles Black argues that bills providing for procedures for a constitutional convention are beyond Congress' authority. So you can see there are even differing opinions on this issue. No one really knows.

But let's assume, for that's all this would be, an assumption as well as most questions on this subject, that Congress does have the authority to spell out specifics of a constitutional convention. Reports from the Senate Judiciary Committee suggests they do.

Attempts have been made to spell out these specifics in the form of legislation beginning in 1967 - but no bill has passed. So there are no statutory guidelines.

There are no definitive opinions on what a call to convention would mean. In fact, there are many differing opinions and reports but no specific answers.

Let me raise a few questions to show the lack of absolutes about a convention call. There is room for disagreement as to whether the requisite number of state petitions are sufficiently similar to be calls for the same purpose. There are no statutory guidelines.

Opinion is divided over whether the convention could be required to propose an amendment by more than a majority: 1) some feel voting rules must be left to the convention; 2) others (Ervin) suggest a 2/3's vote to propose amendments. There are no statutory guidelines.

Expert opinion is divided on whether or not Congress has any discretion in sending an amendment proposed by a convention to the states for ratification. There are no statutory guidelines.

It is not clear whether the courts would be precluded from decisions arising under the convention method. It is not clear how delegates would be selected and how many each state would have.

Congressional bills that have been introduced spell out each state would have as many convention delegates at it had members in the House and Senate and each delegate would have one vote. I suggest if this did become the guideline it should be of major concern to Nevada, with only 3 Congressional delegates. But there are no statutory guidelines.

Who would fund it? How long would it stay in existence? There are differing opinions, suggestions and recommendations to answer these questions and many more about a Constitutional Convention, most remain unanswered.

I would feel at least somewhat more comfortable if Congress adopted general implementing legislation (If Congress has the authority) before a convention call, so we, in Nevada, could analyze its effect upon us. However, if this did occur, I suspect this implementing language would be ineffective for another Congress. For there is a fundamental principle that no Congress can bind its successors to vote against there own consciences on issues of constitutional law or of high policy.

As an old history teacher, I would conclude by pointing to the precedent of the original Constitutional Convention in 1787. Instead of amending the Articles of Confederation, as has been their instructions, the Founding Fathers scrapped the Articles and drafted an entirely new constitution. There were no guidelines then either.

ASSEMBLYMAN MANN:

Mr. Speaker, to you and through you to the body, I rise in support of S.J.R. 8 for some very basic reasons. I think that some of the things my colleague from Washoe has left out is the importance of sending a message to Congress. I think the founding fathers in their wisdom offered us this opportunity to say that if Congress doesn't act on certain issues that the people have the right to their states petitioning to have them act on those issues. I could point out historically that every time you get near the magic number to call a convention the Congress in its wisdom then decides to do the will of the people and generally passes the amendment themselves. I would suggest also to my colleague in Washoe that if we had to deal in absolutes in government we probably would not send anybody into Washington because none of them have ever dealt with absolutes so I am not sure that is a valid argument. Also, she quotes Mr. Black and several others. You can find on the other side of the question as many scholars that would say that they are probably in error. I think it points to the fact that we have to go on historical precedent, and the precedent has been once the number reached twenty-eight, twenty-nine or thirty the Congress acts and meets the will of the people. I think that is what this does; it says to them that they better act because the people want them to act.

ASSEMBLYMAN COULTER:

Thank you Mr. Speaker. Like many of us, I support a balanced budget, but I am concerned about the resolution before us. The last time we had a Constitutional Convention, the United States got a new form of government.

The 1787 Convention was called for the sole and express purpose of revising the Articles of Confederation. But the Convention—despite its specific instructions—decided the Articles were unworkable and drafted a new constitution.

Certainly one of our biggest concerns today is whether a call for a Convention can be limited to a specific subject. The experts disagree on this. Some say we are entering into a constitutional no-mans land uncharted by the Founding Fathers. Some say we are playing constitutional Russian roulette.

The American Bar Association Committee, in a report some years ago, said it believed the subject matter could be restricted to one subject—but also stated that it doubted that an application would be valid if it proposed a specific amendment giving the convention no function other than to approve or disapprove its specific proposal.

Yale law professor Charles Black, Jr., one of the nation's leading consitutional scholars, contends that the Founding Fathers intended any convention called under Article V to be without limitation, and that applications calling for a convention limited to a specific subject are not valid.

What does Article V say? "The Congress...on the Application of the Legislatures of two thirds of the several states, shall call a convention for proposing Amendments." The term is plural—Amendments. To the strict constructionist, the language is clear and absolute—no limitations.

If a convention is called, what happens if it decides to deal with more than one subject? Will the President send in federal marshalls and order the convention to stop? Congress could refuse to accept the amendments but what if the Convention sent them directly to the states? The constitutional and legal quagmire that could result is of epic proportions.

What if the states should call two Constitutional Conventions—one on the budget and the other on abortion? Should there be two conventions or one limited to those two topics?

There have been over 350 applications, representing every state, calling for a convention on one subject or another. Abortion and the balanced budget are the best known. States have also called for conventions limited to: prayer in the schools, revenue sharing, school busing, treaty procedures, repeal of income tax, reapportionment, direct election of senators, polygamy, presidential tenure, slavery, world government and various aspects of taxation. Twenty states have actually called for a general convention to re-write the whole constitution. The pressure groups descending on such a convention, indeed perhaps even working as delegates, likely would produce many strange alliances. Such an opportunity only knocks every two hundred years.

The argument is made that we are protected because 3/4ths of the state legislatures must ratify any amendments.

We would like to think that this is always a long and serious process. But the long and diligent examination given by the state legislatures to the Equal Rights Amendment was really an exception to the rule. Usually state legislatures engage in a pell-mell race to have the honor of ratifying amendments, and most amendments have been ratified in a matter of weeks.

Another question is delegates. Congress has the authority to set guidelines. The ABA believe that representation must be on the basis of a population, or one man one vote. That would mean Nevada will have one vote in 435, as we do in the House of Representatives. The western United States would be overwhelmed in voting strength.

Former Senator Sam Ervin proposed two delegates at large in each state and one elected from each Congressional District. Nevada would have three votes out of 550. Will our best interests be represented? Interestingly, the ABA study says it is possible that members of Congress could themselves be named the delegates to such a Convention.

Constitutional scholars have debated for years how to draft a balanced budget amendment—so far nothing much has resulted. How do you restrict the budget? S.J.R. 8 would lift the limitation in times of "emergencies." But the federal government has declared emergencies frequently over the past decades and conceivably Congress could declare that we are in a constant state of emergency, in which case the whole Pandora's box of a Constitutional Convention would be useless. Indeed, the United States actually existed under several Presidential declarations of emergency from 1932, through the three war periods, and into the 1970's until those declarations were lifted by Congressional action only five years ago.

Certainly one option open to Congress in balancing the budget would simply be to raise taxes. Another, suggested by Senator Cannon and Congressman Santini, would be to lop off federal aid to local and state governments. The amount of such aid in the current federal budget is $30 billion, the same size as this year's deficit.

The author of this resolution wrote a letter to the editor of the Nevada State Journal. He said he did not really want a convention to be called—only to force Congress to put out an amendment on a balanced budget to the states.

The Journal editorialized: "We believe the risks of a Constitutional Convention are far too grave to allow the threat of such a convention to be used as a tool to force Congress to act."

Some 29 states have passed similiar resolutions—34 are needed. If Nevada goes along, that magic number could be reached just as presidential politics gets into full swing. Governor Brown has already seized upon it as a campaign gimmick. Senator Dole has expressed public concern that Republicans risk losing it as a campaign issue if they don't unite behind it.

Somehow I can't believe that a committee of 500 or 5,000 in the midst of a presidential campaign under the blaring lights of TV cameras will give us the kind of amendment or amendments to balance the budget, ease inflation and put the country on a sound economic footing.

The risks are so great and the prospects for meaningful results are small. I don't believe America needs the kind of trauma S.J.R. 8 invites. Our vote today is not on just another resolution. It is entirely possible it is the most important vote we shall cast as legislators in our terms of office.

ASSEMBLYMAN GETTO:

Thank you Mr. Speaker. My remarks will be very brief. I would just like to address a couple of points. Number one, the point that has twice been reiterated, is the fact that our original Constitutional Convention scrapped the Articles and also came forth with a new Constitution. There is quite a difference between our present Constitution and the Articles, and there is that built-in protection of the thirty eight states, or three-forths of the states, ratifying the Constitution; so I think that's a very moot threat or fear. Also the threat that if we call a Constitutional Convention and balance the budget all the federal aid would be lopped off to the states. I am not afraid of that. In fact, if they did cut off all the federal aid and just left it to the states to handle, it would be much better than the federal aid we are getting today. A government closest to the people is the best form of government.

ASSEMBLYMAN MELLO:

Mr. Speaker, Members of the Assembly, I handled this resolution last session on the floor and, I thought, for good reason; and I support it this time for the same reason. Perhaps I am backed up more by the people of this state because we had a vote on something that really relates to what we are talking to and that is Question 6. Three and a half-to-one the people wanted us to hold spending down. We have irresponsible spending in the Federal Government today: some 798 billion dollars in debt; 50 billion dollars a year in interest. Serving on Ways and Means, and those of you who serve on Ways and Means, know what irresponsible spending means to the taxpayers of this state and that was one reason why the taxpayers voted for Six. Because of the irresponsible spending that our colleagues in D.C. push upon us, we have millions of dollars of programs shoved down our throats and as taxpayers of this state put up more money to take programs that we don't want, we haven't asked for. So I ask that you support this.

ASSEMBLYMAN WEISE:

Mr. Speaker, I rise in support. We have been apprised of the risk in the arguments on both sides, but I think if you look at how inflation is ravaging this country; even our current President ranks it as a more pressing problem than any of our foreign relations problems that exist at this time. I would urge support; I think that if we don't soon balance this budget that this country is well on its way to another depression and devastating economic results.

ASSEMBLYMAN BENNETT:

Mr. Speaker, I rise in opposition to this amendment. For the first time, I guess, I agree two hundred percent with every word that Mrs. Sue Wagner has said in this regard. I guess we want the best of two worlds, but I think this resolution would create more problems than it would solve. Particularly, I think the risk is too dangerous to Nevada, being a very small state, to participate in this conspiracy. We talk about all those federal monies and irresponsibility but these federal dollars are going out to support the people of this country and I like to think that we are all a part of the Federal Government. If we really want to do something, it seems to me that we in Nevada could first refuse to take all the federal dollars that support this state at the present time. In my judgment, it is like taking the lid off of a bunch of rattlesnakes — you don't know what's going to happen. Somebody said that a wise man ought to be like a pin; his head will keep him from going too far. I think that today we should at least be as wise as a pin.

ASSEMBLYMAN HORN:

Thank you Mr. Speaker. I rise in support of S.J.R. 8 calling for the constitutional convention to balance the budget, and I hope in all seriousness that Congress gets the message of balancing the budget from the legislatures, for I am sure that the senators and congressmen will get the message from the voters on election day. The people have spoken; they want a balanced budget; they want less spending and less government, and I urge your adoption.

ASSEMBLYMAN RUSK:

Thank you Mr. Speaker. Perhaps the tip of the iceberg is best exemplified in a letter, that I think we all received, from Senator Edmund S. Muskie, Chairman of the Senate Committee on the budget. In part he stated that over the last few years as Chairman of the Senate Budget Committee he had been working with other determined members of Congress to control the size of government and eliminate the federal deficit. He said he intended to pursue those goals with continued vigor, but for the reasons outlined in the enclosed statement he believed that requiring here a balanced budget amendment with a Constitutional Convention is the wrong approach. He said he was deeply committed to balancing the federal books but he is very much opposed to the Constitutional route. In closing, he said that he hoped that I would give these thoughts a serious consideration. In the back up material that I read, and there were several pages involved, there are a few paragraphs that I would like to pass along.

He said where do we make the cuts? Where do we get the 45 billion dollars this year? Our cities and states are drawing on Washington for every conceivable need from health and education of children to the ways that the men trim the state house

lawns. That's CETA. Over the last thirty years several grants and aids to state and local governments have grown five times faster than the Gross National Product. During the 75-76 session the Pennsylvania Legislature passed its call for a balanced federal budget. That was resolution No. 236, Mr. Muskie pointed out. Resolution No. 235 demanded a renewal of revenue sharing. We could save 31 billion dollars, he said, 2 billion more than the President's projected deficit, merely by killing revenue sharing, educational grants, EPA sewage construction, community development block grants and CETA program. My letter in return to Mr. Muskie stated, "Dear Senator Muskie: Thank you for enclosing your recent letter on background information regarding your position on a balanced budget. Perhaps the complexities of running a large federal bureaucracy have clouded your thoughts. As a county commissioner for the past eight years and now as an elected Assemblyman, I have always found that every level of government within the State of Nevada has had to balance its budget. For that reason we have an extremely healthy economy coupled with a strong economic base provided by tourism. You think that you have been working with your determined members of Congress to control the size of government and eliminate the federal deficit. I think it is worthy that you intend to pursue those goals with continued vigor. I can readily agree to go along with cutting out the federal programs that you suggest including EPA sewage construction, community development block grants, educational grants. Because revenue sharing is the only return of our federal dollars with no strings attached, I respectfully suggest you reduce foreign aid by a like amount and continue revenue sharing. Sincerely, Bob. P.S. No fair raising our federal income taxes."

ASSEMBLYMAN ROBINSON:

I rise in support of the resolution. I am not too hopeful of what results might come from it, but I don't see that it is going to hurt anything. Those of us who draw personal budgets to manage our own homes and those who have had experience in city and county and state budgets, here in Nevada at least, try to keep them in the black. In our homes if we don't we go bankrupt. In Washington, D.C., with that foggy-bottom philosophy they have, I am afraid that if we mandate that they balance the budget instead of cutting expenses, which everyone seems to be worried about, they'll let the expenses go the way they are and raise the taxes to meet the demand. I think that the answer was brought up by one of the other speakers. If this is the case, then the ballot box is where we are going to have to straighten them out. I would hope that they would get the message from it before it gets to the point that they have to call a convention and that Congress will act the same as we are reacting here to Proposition 6, and in other states to similar propositions.

ASSEMBLYMAN CRADDOCK:

Mr. Speaker, to you and through you to the Assembly, I would briefly address the charge of the earlier Constitutional Convention, and I will submit to you that redrafting of the Articles of Confederation was an all-inclusive subject and did not in any way attempt to restrict the earlier convention to any single item.

ASSEMBLYMAN WESTALL:

Mr. Speaker, if we defeat this resolution, I wonder how much faith the people of the state are going to have in us to deal with Question 6.

ASSEMBLYMAN CHANEY:

Mr. Speaker, I rise in opposition to this resolution basically for many reasons that have been stated today. I guess number one, Dr. Robinson stated that we'd like to keep Nevada black, and that is exactly what I would like to do. I am deeply concerned about some of the things that could happen in the event that the convention was convened, and I think that we could send a message to Congress and to our representatives just like they did to us with Question 6. They told us what they wanted and, God knows, we are here trying to do something about it, and I think we could handle that in the same manner rather than opening up a big can of worms.

ASSEMBLYMAN DINI:

Mr. Speaker, members of the Assembly, I think at the last session of the legislature I had some cool reception towards this resolution, and I think I voted against it based on some inbred fears about a runaway convention, but if you look back on

history as a practical matter, these resolutions for a constitutional convention many times have caused Congress to finally take some action without calling the constitutional convention. It happened on direct election of senators, on prohibition, and a two-term rotation of president, among others. What I am hoping is that the constitutional convention really won't have to be called but that Congress will finally get off its duff and do something about this runaway inflation. I think that is what the American public is really afraid of. This runaway inflation is destroying the ideal life that everybody has worked for in America today. I think the concern about the small states having a problem of losing their respresentation in the Senate might be addressed in Article V of the Constitution that says "no state without its consent shall be deprived of its equal suffrage in the Senate." This means no amendment could change the state's equality in the Senate. I think that all Americans should be concerned about a constitutional convention, even a limited one. It is not a step to be taken lightly. I did not change my attitude toward support of this until I was thoroughly convinced that first, we could call a convention based on one subject and second, I feel so confident that inflation and deficit spending are serious enough things to give us a bigger threat than the effects of a constitutional convention.

Assemblymen Vergiels, Jeffrey and Bedrosian moved the previous question.

Motion carried.

The question being on the passage of Senate Joint Resolution No. 8.

Roll call on Senate Joint Resolution No. 8:

YEAS—31.

NAYS—Banner, Barengo, Bedrosian, Bennett, Chaney, Coulter, Glover, Prengaman, Wagner—9.

Senate Joint Resolution No. 8 having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Assembly Bill No. 355.

Bill read third time.

Remarks by Assemblyman Dini.

Roll call on Assembly Bill No. 355:

YEAS—39.

NAYS—Cavnar.

Assembly Bill No. 355 having recevied a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Joint Resolution No. 20.

Resolution read third time.

Remarks by Assemblyman Chaney.

Assemblyman Bennett requested that Assemblyman Chaney's remarks be entered in the Journal:

Mr. Speaker, to you and through you to the members of the Assembly, I rise in support of A.J.R. 20. As you know, there has been a lot of talk about closing gas stations on weekends; now, I guess it is getting to be a little serious. I have an article in the paper where Senator Cannon addressed the Senators and mentioned it to them—also the effect that closing gas stations on weekends would have on Nevada. He also mentioned that 20 million people visited Nevada last year, and the majority of those people came by automobile. I think to close the gas stations on weekends would deeply hurt Nevada. I think that with this resolution we are sending our message to the President of the United States and Congress telling them that we are also concerned about the conservation of energy, but we are just as deeply concerned about keeping Nevada in the black.

bonds of any county in the State of Nevada; or in loans at a rate of interest of not less than six per cent per annum, secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title and free from all encumbrances, said loans to be under such further restrictions and regulations as may be provided by law;] provided, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary may be appropriated for the support of the state university.

Senate Joint Resolution No. 8—Senators Gibson, Close, Echols, Dodge, Blakemore, Lamb, Keith Ashworth, Glaser, Jacobsen, Raggio, Don Ashworth, Young, Sloan, Hernstadt, Wilson, McCorkle, Neal and Faiss

FILE NUMBER 39

SENATE JOINT RESOLUTION—Requesting the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would require a balanced budget in the absence of a national emergency.

WHEREAS, Proper economic planning, fiscal prudence and common sense require that the federal budget include all federal spending and be in balance; and

WHEREAS, The annual federal budgets continually reflect the unwillingness or inability of the legislative and executive branches of the Federal Government to balance the budget; and

WHEREAS, The national debt now amounts to hundreds of billions of dollars and is increasing enormously each year as federal expenditures exceed federal revenues; and

WHEREAS, The inflation and other results of the fiscal irresponsibility of the Federal Government demonstrate the need for a constitutional restraint upon excessive spending; and

WHEREAS, Article V of the Constitution of the United States provides that on the application of the legislatures of two-thirds of the states, Congress shall call a convention for proposing amendments to the Constitution; now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, jointly, That this legislature requests the Congress of the United States to call a convention limited to proposing an amendment to the Constitution of the United States which would provide that, in the absence of a national emergency, the total of all federal appropriations for any fiscal year must not exceed the total of the estimated federal revenue for that year; and be if further

Resolved, That this legislature conditions this request upon the Congress of the United States' establishing appropriate restrictions limiting the subject matter of a convention called pursuant to this resolution to

the subject matter of this resolution, and if the Congress fails to establish such restrictions, this resolution has no effect and must be considered a nullity; and be it further

Resolved, That a copy of this resolution be immediately transmitted by the legislative counsel to the Vice President of the United States as President of the Senate and the Speaker of the House of Representatives of the United States, to each member of the Nevada congressional delegation and to the presiding officer of each house of the legislatures of the several states; and be it further

Resolved, That this resolution shall become effective upon passage and approval.

Assembly Joint Resolution No. 20—Assemblymen Chaney, Bennett, Hickey, Mann, Hayes, Harmon, Dini, Horn, Price, Webb, Malone, Rusk, Marvel, Bergevin, Weise, Wagner, Westall, Glover, Sena, Fielding, Craddock, Stewart, Brady, FitzPatrick, Prengaman, May, Cavnar, Tanner, Banner, Polish, Robinson, Getto, Mello, Barengo, Jeffrey, Rhoads, Bedrosian, Vergiels, Bremner and Coulter

FILE NUMBER 40

ASSEMBLY JOINT RESOLUTION—Urging the Congress and the President of the United States to exempt Nevada and the surrounding area from any requirement that gasoline stations be closed on weekends.

WHEREAS, The problems of increasing costs of energy and shortages of resources of energy affecting our nation require the conservation of those resources; and

WHEREAS, There is a likelihood of greater shortages in resources of energy because of the recent stoppage of oil production in Iran; and

WHEREAS, A proposal for mandatory closing of gasoline stations across the nation on weekends is receiving increased attention; and

WHEREAS, Nevada is uniquely dependent on tourism, its main industry, and tourism in this state would be severely hampered by a mandatory shutdown of gasoline stations each weekend; now, therefore, be it

Resolved by the Assembly and Senate of the State of Nevada, jointly, That Congress and the President of the United States exempt the State of Nevada and locales within 100 miles of its borders from any requirement that gasoline stations be closed on weekends; and be it further

Resolved, That copies of this resolution be prepared and transmitted forthwith by the legislative counsel to the President of the United States, the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives, the Secretary of Energy and to the members of the Nevada congressional delegation; and be it further

Resolved, That this resolution shall become effective upon passage and approval.

SUPPLEMENTAL MATERIALS

Senate Bill No. 577 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 27.

Resolution read third time.

The following amendment was proposed by Senators Kosinski, Ford and Sloan:

Amendment No. 1270.

Amend the resolution, page 1, by deleting line 5 and inserting:
"must remain inviolate; and

Whereas, This constitutional right to life includes concern for the healthy growth and development of every child; now, therefore, be it".

Amend the resolution, page 1, be deleting lines 9 and 10 and inserting:
"the United State to protect human life by restricting abortion and to establish the rights of children to adequate food, shelter, health care and education; and be it further".

Amend the resolution, page 1, lines 11 and 12, be deleting
"suggests to the convention so to be called" and inserting 'requests'.

Amend the resolution, page 1, line 12, by deleting "should".

Amend the resolution, page 1, line 19, by deleting the comma after "abortion" and inserting "and the establishment of childrens's rights,".

Amend the title of the resolution, line 3, by deleting the period and inserting "and establish children's rights.".

Senator Kosinski moved the adoption of the amendment.

Remarks by Senators Kosinski, Ford, Gibson and Echols.

Senators Kosinski, Neal and Ford requested a roll call on Senator Kosinski's motion.

Remarks by Senator Echols.

Roll call on Senator Kosinski's motion:

YEAS—8.

NAYS—Don Ashworth, Keith Ashworth, Blakemore, Close, Echols, Faiss, Gibson, Glaser, Jacobsen, Lamb, McCorkle, Raggio—12.

The motion having failed to receive a majority, Mr. President declared it lost.

SPECIAL ORDERS OF THE DAY

VETO MESSAGES OF THE GOVERNOR

The hour of 11:30 a.m. having arrived, vetoed Senate Bill No. 73 of the 60th Session was considered.

Vetoed Senate Bill No. 73 of the Sixtieth Session.

Bill read.

Governor's message stating his objections read.

STATE OF NEVADA
EXECUTIVE CHAMBER
Carson City 89710
May 15, 1979

To the Secretary of the Nevada State Senate:

There is herewith deposited in your office for filing within the constitutional time limit and without my approval, Senate Bill 73, entitled: "An Act relating to legislation; repealing the authority of the Governor to veto joint resolutions; and providing other matters properly relating thereto".

Nevada law specifically empowers the Governor to take action on all laws and joint resolutions passed by the Legislature, unless the joint resolutions propose amendments to the State Constitution and thereby require a concurring vote of the people.

Dating to the territorial era, we repeatedly see laws and joint resolutions receiving like treatment in the statutes. Territorial laws of 1862 and 1865 both refer to laws and joint resolutions similarly, as does the Nevada Constitution of 1864.

As long as joint resolutions deal with substantive matters, and possess the form and impact of law, they must subsequently be validated by the Executive Branch of Government. This seems to me a wise and prudent safeguard, fundamental to the basic philosophy of separation of powers and essential to the checks and balances of democracy.

In most states, a clear distinction exists between the components of resolutions and laws. Resolutions reflect the desire of legislative bodies merely to express opinions on given matters where the effect on such matters will be transitory; laws, conversely, are intended as permanent expressions which direct and control matters applying to persons or things in general.

Nevada is unique in that we have combined the procedure for passage and approval of laws and joint resolutions and the distinction between the two simply does not exist. Accordingly, joint resolutions passed by the Nevada Legislature would, if subsequently acted upon, affect the lives of every citizen and the entire tapestry of our free society.

For examples we need look no further than the current session. Senate Joint Resolution 10 calls upon Congress to maintain friendly relations with the National Republic of China (Taiwan) while Senate Joint Resolution 8 importunes Congress to call a Constitutional Convention of the United States to require a balanced Federal budget in the absence of a national emergency. The first addresses the sensitive dominion of international affairs and the second goes to the heart of the Federal Constitutional process. They are serious matters indeed.

It is my conviction that no determination should have the force of law, nor be binding upon others save members of the House or Houses adopting it, without the essential element of review by the Executive Branch. Such review guarantees that government will not direct the lives of its people without check and balance.

While I respect the spirit in which Senate Bill 73 was tendered, I am at this time exercising veto over that measure.

ROBERT LIST
Governor

The question was put: "Shall the bill pass, notwithstanding the objections of the Governor?"

Remarks by Senators Gibson, Neal, Wilson, Hernstadt, Ford and Kosinski.

Senators Close, Echols and Jacobsen moved the previous question.

Motion carried.

The question being on the passage of vetoed Senate Bill No. 73 of the 60th Session, notwithstanding the objections of the Governor.

The roll was called, and the Senate sustained the veto of the Governor by the following vote:

YEAS—10.

NAYS—Dodge, Faiss, Hernstadt, Jacobsen, McCorkle, Neal, Raggio, Sloan, Wilson, Young—10.

Senator Gibson moved that the Senate recess until 2:00 p.m.

Motion carried.

Senate in recess at 11:53 a.m.

SENATE IN SESSION

At 2:00 p.m.

President Leavitt presiding.

Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Keith Ashworth moved that the Senate adopt the report of the first Committee on Conference concerning Assembly Bill No. 222.

Motion carried.

REPORT OF CONFERENCE COMMITTEE

Mr. President:

The first Committee on Conference concerning Assembly Bill No. 269, consisting of the undersigned members, has met, and reports that:

It has agreed to recommend that the amendment of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Amendment No. 107 C which is attached to and hereby made a part of this report.

JOE NEAL	NASH M. SENA
WILBUR FAISS	JOHN M. POLISH
LAWRENCE E. JACOBSEN	JANSON F. STEWART
Senate Committee on Conference	*Assembly Committee on Conference*

Amendment No. 107 C.

Resolves conflict with Senate Bill No. 72.

Amend the bill as a whole by renumbering sections 3 through 9 as sections 4 through 10 and adding a new section, designated section 3, following section 2, to read as follows:

"Sec. 3. Section 125 of Senate Bill No. 72 of the 60th session of the Nevada legislature is hereby amended to read as follows:

Sec. 125. NRS 706.881 is hereby amended to read as follows:

706.881 1. NRS 706.8811 to 706.885, inclusive, and section 1 of *Assembly Bill No. 269 of the 60th session of the Nevada legislature* apply to any county whose population is [200,000] *250,000* or more. [, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce.]

2. Within any such county, the provisions of this chapter which confer regulatory authority over taxicab motor carriers upon the public service commission of Nevada do not apply.".

Amend section 9, page 4, line 14, by deleting "6, 7 and 8" and inserting "7, 8 and 9".

MOTIONS, RESOLUTIONS AND NOTICES

Senator Neal moved that the Senate adopt the report of the first Committee on Conference concerning Assembly Bill No. 269.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 27.

Resolution read third time.

Remarks by Senators Gibson, Neal, Ford, Wilson, Echols, Hernstadt and Don Ashworth.

Senator Neal requested that the following remarks be entered in the Journal:

SENATOR NEAL:

Mr. President, I do not have to say to you and the body that this is a controversial issue, even from the time that it was introduced into this house. It has been very controversial, even the means by which it arrived on the General File today.

Most of you who read my little biographical sketch in our books here, happen to know that my religion is Catholic. And that we do have many of that faith who support the idea that there should not be any abortion. But, today I'm going to

depart from those who share this particular idea and vote against the resolution for the following reasons:

First of all, Senate Joint Resolution No. 27 calls for a constitutional convention. A convention which has not been settled as to how it would take place. We don't know whether or not if such a constitutional convention were called, that the delegates would be able to deal with this particular issue and this particular issue alone. I think that when we had the resolution sometime ago calling for a balanced budget, my colleague, Senator Wilson, spoke very eloquently about some of the ramifications that might occur in calling a constitutional convention. I would not dare to go into those because they already have been adequately stated.

The amendment that we had on this bill earlier this morning I think was a mandate to us to look beyond the fetus which is carried for six or nine months, or whatever time, and share the responsibility for that child or children that might come into this world. We rejected that idea. And, I wonder, what is this saying? To me, it is saying, that we don't care about the children that may result from a pregnancy, but we do care about whether or not they are aborted. Well, how do the children get to the position that they are going to be aborted? They get there by artificial insemination or a sexual act. And, I know that we all enjoy sex, but nobody is talking about not having sex. That is a grand thing. It makes us feel good, and we enjoy it, as judged by some of the snickers that we heard when we had the pornography legislation that came before this body. There is a greater responsibility when the child is born. And much more than it had been carried for nine months. Because then we have the living human being.

Now, I have heard some comments that are being made and it is on the record when the testimony was given in favor of this bill. Some gentleman made the statement that the reason why we need Senate Joint Resolution No. 27 is because something is now happening with the white race. He gave some figures, that you might recall, you who served on that Committee. The figures indicated that the nonwhites are proliferated much greater than the whites. This raises the question of racism on Senate Joint Resolution No. 27.

I notice that we had the newspaper on the desk here the other morning about the black lady who had seventeen children. And, I know that has probably made some of you push harder for this particular resolution. You received on your desk this morning, an article that was written by Sidney J. Harris, which came from the "Valley Times". He quoted a Sister Rosemary Mayer who spoke about the responsibility that we should have towards one another. That it should extend much further than the issue with which we are attempting to deal with here.

One of the other reasons that I feel that I should vote against this bill is that the bill is on the file as a new bill. It got on the file by spurious means. We already had a bill, Assembly Joint Resolution No. 17, which went to the Judiciary Committee of this house, failed to get the necessary votes for its return. Someone decided that we should get a new bill and put it on the file. If this question is an issue that has great concern to the people of this State, then there should also be a time when people can have the opportunity to comment. But we have not had this on Senate Joint Resolution No. 27. The people have not commented. It is just an issue that some feel that they should ramrod through this Legislature, in violation of all of the rules. Mr. President, I know that the Right-to-Life people, whom I supported on some of their issues in the past through this house, will probably come down on me for this. But, be that as it may, I feel that I must take a position on this, and I intend to do so.

Senator Ford requested that the following remarks be entered in the Journal:

SENATOR FORD:

Mr. President, I rise in opposition to the Resolution. I certainly would agree with many of the reasons that have been given by Senator Neal. I was on the Committee that processed the bill in the proper manner as far as our procedure goes. There have been bills in other committees that I was sorry could not come to the floor so that I could indicate my opinion. I also object to having this measure before us in the manner that it has arrived here.

I too believe that it is the inappropriate use of a constitutional convention even if I were not afraid of how that constitutional convention might be put together. According to these two resolutions, one of which this body has adopted, and I assume will also be adopted, are calling for two constitutional conventions. Depending on which one gets held first, I suppose that we will get some good

exercise on how that is put together so we will know better what to do with the second one. We have asked that the balanced budget convention be only a one item convention, and now we are asking for another one.

I also believe that it is a federal intervention of the worst kind. I also believe that it interferes with a person's personal moral convictions and a person's right to choose. I have problems with the issue of unwanted children that will result. And, I know for a fact that making abortion unconstitutional will not stop it from being a reality. I certainly believe it to be an invasion of privacy. But I think the major reason, and I think one that only I in this body can give, is that I speak as a woman who has taken the subject of both abortion and motherhood very seriously. And I want all women to have the right to make a decision on this matter. Each woman for herself.

So, when I vote 'no', I am voting for the Peggy Westalls and the Ruth McGroartys, as well as myself, to have the right to make that very difficult decision.

I would just like to read very briefly from one letter, one of many that I have received over the last five months on this issue, from a woman. She states, "I believe that unlike any other amendment, including the Equal Rights Amendment, and unlike any other issue, the anti-abortion amendment has the potential of becoming the basis for an incredible revolution. It could polarize women into camps far more revolutionary and radical than you can imagine." She said, "Remember that you are taking from women something to which they have become accustomed, a form of freedom that they may value much more than you, as a predominately male body, can estimate." She goes on to question the right of this body to restrict her freedom to make this decision, and then she says, "This amendment will teach women to act in utter defiance of the law." And I believe that she is right.

We have seen in newspapers that we have on our desks, and in other publications recently, the statistic that one in four pregnancies around the world now ends in abortion and one-half of the abortions are performed illegally. Also the article states that the ones that are illegal are especially common in Latin America, the Middle East and Africa, areas where strict anti-abortion laws are on the books.

I recall the day when we had just gone into session during the 1973 Session when the 1973 Supreme Court decision was handed down. I believe that it was a good opinion, a reasonable opinion. And, I believe that Senate Joint Resolution No. 27 is an extreme and destructive reaction to that court decision. I think that it is a negative and a discriminatory response to a very real social problem. Quoting from the "Los Angeles Times" in an editorial in 1974,

> "The court's decision affirmed a woman's right to terminate a pregnancy within carefully circumscribed periods of time. It did not advocate abortion. It did not make it mandatory. But, it did find that this decision by a woman falls within the area protected by constitutional guarantees of privacy. The court recognized a legitimate limit for the role of government in this case. And properly left it to each American woman to make her own decision within limits designed to protect her health, and the health of the fetus once it is viable. The court forced nothing upon anyone, but those who oppose what the court did, would impose their will on all of us."

I think this is a question to be decided by the individual citizen, not by government. Any effort to limit a woman's choice should be rejected, just as any effort to impose abortion should also be rejected. I made some comments, when I was speaking about the proposed amendment this morning, on what I consider are some important legal questions that will arise, if we indeed give a constitutional guarantee to a right-to-life. This is a question that the courts would have to define. What is now a right-to-life, under this resolution? The question is raised in actually carrying out the intent of this, that we would arrive at a wholesale invasion of the right of privacy of all women of child bearing age. It would necessitate a law enforcement apparatus that would threaten the privacy of all of us. In fact the kind of bureaucracy that a lot of people have suggested might come about as a result of other amendments that we have debated in the past.

I suggest, would not prosecutors be under a duty to investigate every miscarriage, to see if it resulted from abuse, or carelessness or recklessness on the part of the pregnant woman? It is estimated that approximately 30% of all conceptions result in a spontaneous miscarriage. I ask you, would the woman who spontaneously miscarried, automatically be under suspicion of murder? The question is also raised as to additional problems arising in the area of malpractice. If every fetus

had a constitutionally guaranteed right-to-life, it is likely there would come into being a new variety of malpractice actions against doctors charged with negligence in connection with pregnancies. We would add additional problems in this area. I think my final point is that, something I made earlier but I do want to repeat: government has never stopped abortion, and no law ever will. The laws can only succeed in making it dangerous again, or inconvenient, or expensive. I believe that women are going to determine their reproductive lives as they wish, I think this is the essence of dignity and personal freedom. I treasure my daughters, as all children should be treasured; I saw both of them yesterday. And I think women should not have to bear children because they are accidents or duties or someone else's expectations.

I am not for abortion, I am not anti-life. I am for each woman's right to make this decision for herself.

Senator Wilson requested that the following remarks be entered in the Journal:

SENATOR WILSON:

Mr. President, I don't think anything said here today is going to change any votes, and indeed that hasn't been the reason for any comment on the floor today. We know what the vote is, and I don't think rhetoric will change that. Any comment made here because this issue has become so emotional and polarizing that to have reservations about the wisdom or propriety of a constitutional convention or the question has been equated by some as being pro-abortion. That is too bad. It is because of that, that I would like to make a few comments.

I don't happen to approve of abortion; that is a matter of personal faith and private principle. However, I do have reservations about dealing with this problem, in this way. I would ask that my comments with respect to debates on Senate Joint Resolution No. 8 be incorporated, (Reference: *Senate Daily Journal,* Tuesday, February 13, 1979) for in that rather extensive discussion on the operation of Article V of the Federal Constitution, and the applications made for a constitutional convention by two-thirds of the states, I base my opposition to a convention to balance the federal budget on rather specific grounds.

I recognize the difficulty with the U.S. Supreme Court ruling on the matter of abortion. It has been controversial and has not satisfied too many people. I dissent from the proposition that a Supreme Court decision places the matter in the Constitution; it does not. The court from time to time modifies its decisions.

The language appearing at lines 16 - 21, which is the limiting language, is illusory as I have said during the debate of Senate Joint Resolution No. 8, I suppose you may have two conventions. But, if you have one, either you make an application for a constitutional convention, which is what our resolution is, or you do not. If two-thirds of the states concur, the convention has jurisdiction. I recognize that others may not agree, but that's my view, and I must vote it.

This companion resolution, Senate Joint Resolution No. 27, is mutually exclusive from the first. For if this were to exclude Senate Joint Resolution No. 8 and Senate Joint Resolution No. 8 were to exclude any full subject, including Senate Joint Resolution No. 27, the limiting provisions of both are not effective at all and they can be considered in one convention; or the resolutions are legally inoperative and has an application for a constitutional convention as required by Article V which is for the convention to be convened and to consider such amendments as it may wish that is with full jurisdiction to consider any subject.

I won't repeat the remarks that I made earlier, you know my views. But, I frankly think that self-limiting language as that which appears on Lines 16 - 21 is largely cosmetic, largely designed for appearances, and largely designed to suggest without legal effect, that we need not fear the full and plenary jurisdiction of such a constitutional convention.

There is one last reason I wish to touch on briefly. Mr. President, if the debates on Senate Joint Resolution No. 8 and this Senate Joint Resolution No. 27 indicate anything, it is the extent and nature and the depth of the disagreement over what the jurisdiction of a constitutional convention would be. With some thirty or thirty-one states having now made application for a constitutional convention for a balanced budget under Senate Joint Resolution No. 8, we are about to cross the threshold where the convention itself is convened. And there will follow an extensive and intense national debate over what precisely the jurisdiction of the convention will be. Will it be limited only to a balanced budget? Will that convention be

able to entertain the subject of this Senate Joint Resolution No. 27, or any other matter that comes before it? And, no matter how that question is resolved, it will not be to the national satisfaction. It will generate great disagreement, distress, national trauma, political controversy, and turbulence over this issue. So for those reasons, largely constitutional in nature, largely which bear on the real effect and meaning of Article V of the Federal Constitution, I must indicate that I intend to cast a negative vote.

Roll call on Senate Joint Resolution No. 27:

YEAS—12.

NAYS—Dodge, Ford, Hernstadt, Kosinski, Neal, Sloan, Wilson, Young—8.

Senate Joint Resolution No. 27 having received a constitutional majority, Mr. President declared it passed.

There being no objectons, Mr. President declared the Preamble adopted.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 27.

Bill read third time.

Roll call on Assembly Bill No. 27:

YEAS—20.

NAYS—None.

Assembly Bill No. 27 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 224.

Bill read third time.

Roll call on Assembly Bill No. 224:

YEAS—19.

NAYS—McCorkle.

Assembly Bill No. 224 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 413.

Bill read third time.

Remarks by Senators Glaser, Young and Ford.

Senators Gibson, Lamb and Echols moved the previous question.

Motion carried.

The question being on the passage of Assembly Bill No. 413.

Roll call on Assembly Bill No. 413:

YEAS—17.

NAYS—Ford, Kosinski, Young—3.

Assembly Bill No. 413 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 474.

Bill read third time.

Roll call on Assembly Bill No. 474:

YEAS—20.

NAYS—None.

Assembly Bill No. 474 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

AR20 - 65th Session (1989)

Introduced on: Jun 24, 1989

By: (**Bolded** name indicates primary sponsorship)
Price , McGaughey , Gaston , Schofield , Sedway , Thompson , Adler , Lambert , Spinello , Callister , Fay , Marvel , Gibbons , Chowning , Regan , DuBois , Bergevin , Myrna Williams , Jeffrey , Kerns , Garner , Freeman , Swain , Arberry , Humke , Wendell Williams , Wisdom , Nevin , Porter , Bogaert , Spriggs , Diamond , Triggs , McGinness , Kissam , Sheerin , Carpenter , Evans , Brookman , Sader , Dini

Expunges call for Constitutional Convention from records of Assembly. (BDR R-1426)

Fiscal Notes:

Most Recent History Action:
(See full list below)

File No. 157.

Votes

Bill History

Jun 24, 1989	Resolution read and adopted. (Voice vote.) To printer.
	From printer. To enrollment.
Jun 26, 1989	Enrolled and delivered to Secretary of State.
	File No. 157.

A.R. 20

ASSEMBLY RESOLUTION NO. 20—ASSEMBLYMEN PRICE, MCGAUGHEY, GASTON, SCHOFIELD, SEDWAY, THOMPSON, ADLER, LAMBERT, SPINELLO, CALLISTER, FAY, MARVEL, GIBBONS, CHOWNING, REGAN, DUBOIS, BERGEVIN, MYRNA WILLIAMS, JEFFREY, KERNS, GARNER, FREEMAN, SWAIN, ARBERRY, HUMKE, WENDELL WILLIAMS, WISDOM, NEVIN, PORTER, BOGAERT, SPRIGGS, DIAMOND, TRIGGS, MCGINNESS, KISSAM, SHEERIN, CARPENTER, EVANS, BROOKMAN, SADER AND DINI

JUNE 24, 1989

Read and adopted

SUMMARY—Expunges call for Constitutional Convention from records of Assembly. (BDR R-1426)

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

ASSEMBLY RESOLUTION—Expunging a certain call for a Constitutional Convention from the records of the Assembly.

WHEREAS, The original support by Nevada for requesting the Congress of the United States to call a Constitutional Convention was based upon the representation that the Convention would be limited to proposing a balanced budget amendment to the Constitution of the United States of America; and

WHEREAS, The Constitution of the United States does not provide for a Constitutional Convention to be restricted to a single subject; and

WHEREAS, The Constitution of the United States does not need to be changed in order to balance the budget of the United States, but the existing provisions which limit the expenditures to those purposes authorized by the states when they agreed to the Constitution of the United States need to be enforced; and

WHEREAS, The adoption by the Nevada Assembly of Senate Joint Resolution No. 8 of the 60th session of the Legislature (File No. 39) requesting the Congress of the United States to call a Constitutional Convention was therefore induced by fraud; and

WHEREAS, "Fraud colors everything it touches," and the appropriate remedy is for the Assembly to expunge from its Journal its passage of Senate Joint Resolution No. 8 of the 60th session of the Legislature requesting the Congress of the United States to call a Constitutional Convention; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, That the Chief Clerk of the Assembly draw a black border around the portion of the 1979 Assembly Journal whereby the Assembly passed Senate Joint Resolution No. 8 and write across the face thereof: "Expunged by order of the Assembly this 24th day of June, 1989"; and be it further

RESOLVED, That certified copies of this resolution, together with the expunged portion of the Assembly Journal be forwarded to the Governor, the Senate of the State of Nevada, the Speaker of the House of Representatives of the United States, the Vice President of the United States as President of the Senate and the Nevada Congressional Delegation.

⑳

Senate Bill No. 232.

Assemblyman Jeffrey moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 534.

Assemblyman Jeffrey moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 542.

Assemblyman Jeffrey moved that the bill be referred to the Committee on Transportation.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 499.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 1665.

Amend the bill as a whole by deleting section 1 and renumbering sections 2 through 6 as sections 1 through 5.

Amend the bill as a whole by deleting sec. 7 and renumbering sections 8 through 12 as sections 6 through 10.

Amend the bill as a whole by deleting sec. 13 and renumbering sec. 14 as sec. 11.

Amend the title of the bill, first line, by deleting "the several" and inserting "certain".

Assemblyman Thompson moved the adoption of the amendment.

Remarks by Assemblyman Thompson.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

By Assemblymen Price, McGaughey, Gaston, Schofield, Sedway, Thompson, Adler, Lambert, Spinello, Callister, Fay, Marvel, Gibbons, Chowning, Regan, DuBois, Bergevin, Myrna Williams, Jeffrey, Kerns, Garner, Freeman, Swain, Arberry, Humke, Wendell Williams, Wisdom, Nevin, Porter, Bogaert, Spriggs, Diamond, Triggs, McGinness, Kissam, Sheerin, Carpenter, Evans, Brookman, Sader and Dini:

Assembly Resolution No. 20—Expunging a certain call for a Constitutional Convention from the records of the Assembly.

WHEREAS, The original support by Nevada for requesting the Congress of the United States to call a Constitutional Convention was based upon the representation that the Convention would be limited to proposing a balanced budget amendment to the Constitution of the United States of America; and

WHEREAS, The Constitution of the United States does not provide for a Constitutional Convention to be restricted to a single subject; and

WHEREAS, The Constitution of the United States does not need to be changed in order to balance the budget of the United States, but the existing provisions which limit the expenditures to those purposes authorized by the states when they agreed to the Constitution of the United States need to be enforced; and

WHEREAS, The adoption by the Nevada Assembly of Senate Joint Resolution No. 8 of the 60th session of the Legislature (File No. 39) requesting the Congress of the United States to call a Constitutional Convention was therefore induced by fraud; and

WHEREAS, "Fraud colors everything it touches," and the appropriate remedy is for the Assembly to expunge from its Journal its passage of Senate Joint Resolution No. 8 of the 60th session of the Legislature requesting the Congress of the United States to call a Constitutional Convention; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, That the Chief Clerk of the Assembly draw a black border around the portion of the 1979 Assembly Journal whereby the Assembly passed Senate Joint Resolution No. 8 and write across the face thereof: "Expunged by order of the Assembly this 24th day of June, 1989"; and be it further

RESOLVED, That certified copies of this resolution, together with the expunged portion of the Assembly Journal be forwarded to the Governor, the Senate of the State of Nevada, the Speaker of the House of Representatives of the United States, the Vice President of the United States as President of the Senate and the Nevada Congressional Delegation.

Assemblyman Price moved the adoption of the resolution.

Remarks by Assemblyman Price.

Assemblyman Gaston requested that Assemblyman Price's remarks be entered in the Journal.

Thank you, Mr. Speaker. First, I want to thank my colleagues in this honorable house for their support over the last two sessions in our effort to stop the headlong rush that some special interest groups and constitutional revisionists are making toward convening a constitutional convention in their hopes of scrapping that beloved 202-year-old document that has served us so well for two centuries and 41 presidents, the Constitution of the United States.

As you know, in 1987 and earlier this session, the assembly forwarded to the senate, resolutions to rescind Nevada's 1979 petition to Congress calling for a constitutional convention. Both resolutions died in the Senate Finance.

Today, I am asking this honorable house for its continued support by using a procedure first implemented 156 years ago by Senator Thomas Hart Benton, Democrat of Missouri, in 1833 during a four-year fight with Daniel Webster, John C. Calhoun and Henry Clay. By the way, I have distributed a short history and explanation of the "Motion to Expunge" on your desks.

Benton (father-in-law of John C. Fremont) was a zealous supporter of western interests and frontier explorations.

In 1837, Senator Benton was successful in getting the U.S. Senate to pass a motion to expunge from the record a stinging resolution passed in 1833 censuring President Jackson.

On your desks, I have also placed a xeroxed copy of section 444, "Motion to Expunge," taken from Mason's Manual. As you can see, this motion is used when it is desired to not only rescind an action, but to express a very strong disapproval of prior actions. Let me say that this is also a strong disapproval of my own prior actions since I voted for S.J.R. 8 in 1979.

The purpose of this action today is to send a strong, clear message to Congress that after 14 years there is no longer a "consensus" in Nevada desiring to call a constitutional convention. Not only is there not a consensus, but the 1979 action was so objectionable that we have expunged it from the record.

It is my hope that other states will follow Nevada's lead.

The founding fathers designed Article V of the Constitution to provide a means of action for the citizens when there was a "consensus" of two-thirds of the several states desiring some action and Congress refused to respond.

In the event that the proponents of a constitutional convention are able to persuade four more states to petition Congress for a convention, our action here today, and hopefully future actions of other states, will provide constitutional lawyers' strong, solid arguments that there is no longer a "consensus" in many states that had years earlier petitioned Congress.

Hopefully our Constitution will remain safe.

Resolution adopted unanimously.

Assemblyman Price moved that the rules be suspended and that Assembly Resolution No. 20 be immediately transmitted to enrollment.

Motion carried unanimously.

Mr. Speaker announced that if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 1:29 p.m.

ASSEMBLY IN SESSION

At 1:42 p.m.

Mr. Speaker presiding.

Quorum present.

GENERAL FILE AND THIRD READING

Senate Bill No. 537.

Bill read third time.

Remarks by Assemblyman Sheerin.

Roll call on Senate Bill No. 537:

YEAS—41.

NAYS—None.

Absent—Carpenter.

Senate Bill No. 537 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 487.

Bill read third time.

The following amendment was proposed by the Committee on Commerce:

Amendment No. 1527.

Amend section 1, pages 1 and 2, by deleting lines 3 through 22 on page 1 and lines 1 through 18 on page 2, and inserting:

"1. Any person doing business under the laws of this state, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, common and consumer finance companies, industrial loan companies, credit unions, thrift companies or insurance companies [.] , *unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.*

2. A real estate investment trust as defined in 26 U.S.C. § 856 [.] , *unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.*

THE ONE HUNDRED AND SIXTY-FIFTH DAY

CARSON CITY (Thursday), June 29, 1989

Assembly called to order at 10:43 a.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, The Reverend Ruth Hanusa.

The button says, "Free the Nevada 63." Moses said, "Let my people go." We ask You, Lord, to lead us out of all our bondages, through our desert places. From slavery to freedom, from death to life, lead us out with a strong arm and a mighty hand. AMEN.

Pledge of allegiance to the Flag.

Assemblyman Jeffrey moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Price moved that the Assembly execute the order of Assembly Resolution No. 20 of June 24, 1989, whereby the Assembly ordered the Chief Clerk of the Assembly to expunge from the record this Assembly's passage of Senate Joint Resolution No. 8 of the Sixtieth Session.

Remarks by Assemblyman Price.

Motion carried unanimously.

The Chief Clerk of the Assembly expunged the record.

REMARKS FROM THE FLOOR

Assemblyman Jeffrey requested that Assemblyman Price's remarks be entered in the Journal.

Thank you, Mr. Speaker. To this honorable body, I would like to take a moment to explain what we're going to do this morning. We have our Secretary of State with us and our State Archivist. Since we passed A.R. 20 expunging the record of the 1979 session of the legislature, we met, myself, the State Archivist, the Attorney General's office and the Secretary of State to agree on the proper way of executing it and we've reached that agreement. This morning we are going to execute that here with you and before we go home. I will be making a motion to execute the order and upon its passage, our Chief Clerk will go through the ceremony of actually blocking out the passages. There are 7 pages from 1979 concerning S.J.R. 8 and I would also like to give credit to our State Archivist; there was some discussion about how to do this so that it would be permanent and yet not defacing the original records, etc., and they, as they always do, came up with a wonderful idea. They designed some little mylar sleeves that have been placed over the pages in the book and they are attached by archivist tape and we are actually going to write over those clear mylar sleeves, "Expunged by order of the Assembly." With that explanation, Mr. Speaker, I would move to execute the order of A.R. 20 of June 24, 1989, whereby the Assembly ordered the Chief Clerk to expunge from the record this Assembly's passage of S.J.R. 8 of 1979 and may we now execute that.

Assembly Resolution No. 19—Committee on Legislative Functions

FILE NUMBER 156

ASSEMBLY RESOLUTION—Providing for the appointment of an additional attaché.

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, That Don Cummings is elected as an additional attaché of the Assembly for the 65th session of the Legislature of the State of Nevada.

Assembly Resolution No. 20—Assemblymen Price, McGaughey, Gaston, Schofield, Sedway, Thompson, Adler, Lambert, Spinello, Callister, Fay, Marvel, Gibbons, Chowning, Regan, DuBois, Bergevin, Myrna Williams, Jeffrey, Kerns, Garner, Freeman, Swain, Arberry, Humke, Wendell Williams, Wisdom, Nevin, Porter, Bogaert, Spriggs, Diamond, Triggs, McGinness, Kissam, Sheerin, Carpenter, Evans, Brookman, Sader and Dini

FILE NUMBER 157

ASSEMBLY RESOLUTION—Expunging a certain call for a Constitutional Convention from the records of the Assembly.

WHEREAS, The original support by Nevada for requesting the Congress of the United States to call a Constitutional Convention was based upon the representation that the Convention would be limited to proposing a balanced budget amendment to the Constitution of the United States of America; and

WHEREAS, The Constitution of the United States does not provide for a Constitutional Convention to be restricted to a single subject; and

WHEREAS, The Constitution of the United States does not need to be changed in order to balance the budget of the United States, but the existing provisions which limit the expenditures to those purposes authorized by the states when they agreed to the Constitution of the United States need to be enforced; and

WHEREAS, The adoption by the Nevada Assembly of Senate Joint Resolution No. 8 of the 60th session of the Legislature (File No. 39) requesting the Congress of the United States to call a Constitutional Convention was therefore induced by fraud; and

WHEREAS, "Fraud colors everything it touches," and the appropriate remedy is for the Assembly to expunge from its Journal its passage of Senate Joint Resolution No. 8 of the 60th session of the Legislature requesting the Congress of the United States to call a Constitutional Convention; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, That the Chief Clerk of the Assembly draw a black border around the portion of the 1979 Assembly Journal whereby the Assembly passed Senate Joint Resolution No. 8 and write across the face thereof: "Expunged by order of the Assembly this 24th day of June, 1989"; and be it further

RESOLVED, That certified copies of this resolution, together with the expunged portion of the Assembly Journal be forwarded to the Governor, the Senate of the State of Nevada, the Speaker of the House of Representatives of the United States, the Vice President of the United States as President of the Senate and the Nevada Congressional Delegation.

Assembly Concurrent Resolution No. 48—Assemblyman Wendell Williams

FILE NUMBER 158

ASSEMBLY CONCURRENT RESOLUTION—Directing the Executive Director of the Department of Employment Security to develop contingency plans for alternative employment of the workers at the Nevada Test Site in case operations are substantially reduced or closed.

WHEREAS, A significant number of southern Nevada residents are employed at the Nevada Test Site; and

WHEREAS, The employment of those persons contributes millions of dollars to the economy of southern Nevada; and

WHEREAS, Various proposals have been made to the Federal Government to cut back or eliminate nuclear testing which would result in a reduction of the number of persons employed at the Nevada Test Site; and

WHEREAS, The closing of the Nevada Test Site or a substantial reduction in its workforce would have an enormous impact on the economy of southern Nevada; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Executive Director of the Department of Employment Security is hereby directed to develop contingency plans for alternative employment of the workers at the Nevada Test Site in case employment at the site is substantially reduced or the site is closed; and be it further

RESOLVED, That the Executive Director of the Department of Employment Security submit the plans to the 66th session of the Nevada Legislature; and be it further

RESOLVED, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the Executive Director of the Department of Employment Security.
