SCOMM

99:17

Status Report on 4-3-95 -- 1:00 p.m. EST.

■ *States that have passed a resolution in both chambers: (13 states)*	*Party control* Governor	Senate	House
Arizona	Rep.	Rep.	Rep.
Arkansas	Dem.	Dem.	Dem.
Delaware	Dem.	Dem.	Rep.
Idaho	Rep.	Rep.	Rep.
Iowa	Rep.	Dem.	Rep.
Kentucky	Dem.	Dem.	Dem.
Missouri	Dem.	Dem.	Dem.
Nebraska (unicameral)			
Ohio	Rep.	Rep.	Rep.
South Dakota	Rep.	Rep.	Rep.
Utah	Rep.	Rep.	Rep.
Virginia	Rep.	Dem.	Dem.
Wyoming	Rep.	Rep.	Rep.

■ *States that have passed the resolution in at least one chamber: (10 states)*

Alaska House
Colorado Senate
*Indiana House
Michigan Senate
Minnesota House
New Jersey Senate
New York Senate
Pennsylvania Senate
Tennessee House
Texas Senate

*Indiana SCR22 has been superseded by a new resolution which must be passed by the Senate

■ *States that have introduced the resolution in at least one chamber: (12 states)*

Florida House
Hawaii House
Illinois House
Maryland House and Senate
Nevada Assembly
Louisiana House
North Carolina House
Rhode Island House
South Carolina House
Vermont Senate
Washington House
Wisconsin Senate

■ *States where introduction is pending: (4 states)*

Alabama convenes (4/18/95)
Connecticut
Maine
Massachusetts

■ *States where the resolution has been defeated or was not considered: (11 states)*

New Hampshire
North Dakota
Oklahoma
West Virginia
Georgia
New Mexico
Mississippi
Montana (House committee tabled COS on 3/23)
Kansas (COS language stripped from resolution)
California
Oregon

Delegation Size By State

State	House Version	Senate Version
Arizona		
Arkansas	five	seven
Delaware	seven	seven
Idaho		
Iowa	seven	seven
Kentucky	five	five
Missouri	seven	seven
Nebraska (unicameral)		
Ohio		
South Dakota	seven	seven
Utah	five	five
Virginia	five	five
Wyoming	five	five

Note: In the states where the approved delegation size is different in the other chamber, these states are moving toward amending their resolutions to send a seven-member delegation.

Op Ed column, by Sen. Jeff Wells -- Colorado Springs Gazette Telegraph

Last November's election results sent a clear message to politicians across this country that it's time for a change. It's time for the states to mount a new initiative against the concentration of power in Washington and to reclaim the power of the states.

The Conference of the States is a creative new way to address the current imbalance in our federal-state system. The Conference will present an opportunity for the states to make a more powerful statement than each state can make alone. We can gather together, debate the issues, resolve any differences over details, and speak out for what all of us, regardless of region or party, believe is needed to restore the principles of the Tenth Amendment.

While there are plenty of examples of federal authority run rampant, two will illustrate the problem. First, unfunded federal mandates, such as those in the welfare and environmental areas, make writing the state budget a nearly impossible task. Colorado's tax money is being commandeered for a federal agenda -- money that could be used to solve Colorado's problems. Second, court decisions ignore the Tenth Amendment and diminish state sovereignty, turning states into agents of the federal government in implementing federal policy.

The purpose of the Conference of the States is to address the imbalance that exists between federal and state power. The Conference will convene when a majority of the states have agreed to send delegates. Its function will be to suggest measures that can make the principles of the Tenth Amendment a reality once again.

The Conference could recommend legislation, a litigation strategy, and

ultimately federal constitutional proposals to restore a proper balance between the federal government and the states. An example might be a Balanced Budget Amendment. Votes in Congress may be swayed if a substantial majority of states supported such a measure.

However, it is crystal clear that the Conference of the States has no legal authority, only the moral force of its proposals. The Conference should not be mistaken for the process prescribed by the U.S. Constitution to propose federal constitutional amendments. Arguments that the Conference might set in motion a process to completely rewrite the constitution are based on fear, not the facts.

Here are the facts:

The U.S. Constitution requires that the *federal Congress* propose constitutional amendments. As an alternative, *Congress* is required to call a convention, which could then propose an amendment, if two-thirds of the state legislatures apply. The resolutions introduced in state legislatures to authorize participation in the Conference of the States simply cannot be read as applications for a constitutional convention. They are not directed to Congress. Many of them, including Colorado's, say that they are not applications for a constitutional convention. In fact, since the convention that wrote our original constitution, we have never had a constitutional convention.

Nothing in the constitution gives the Conference any standing to seek recognition from Congress as a constitutional convention. No group of citizens, even governors or legislators, can call themselves into a constitutional convention -- it takes action by Congress. Furthermore, Congress has no power to recognize the Conference as a constitutional convention, since it can call a convention only upon application by 34 states.

Sen. Hank Brown and Sen. Jesse Helms, two senators not noted for their liberalism, are not worried about the Conference of the States. In fact, these

senators have introduced a resolution in Congress asking that the states convene a Conference of the States for the express purpose of suggesting changes to require a balanced budget and to prohibit unfunded federal mandates. If the Conference they support recommends these measures, the recommendations will still have to clear the procedural hurdles prescribed by our federal constitution.

Those who are afraid that the Conference of the States might turn into a "runaway" constitutional convention assume a series of improbable, illogical, and even illegal events. On the contrary, the people who would be involved in the Conference have no authority to participate in a constitutional convention and must apply the law -- after all, they are public figures who must answer to the people.

If unbased fears block the Conference of the States, the states will have lost an important opportunity to begin to redress the imbalance between the federal and state governments. The defeat of the Balanced Budget Amendment makes it clear that such a Conference is required to urge Congress to take the states, their problems, and their desires seriously. The holding of a Conference of the States will actually help remove the threat of a runaway constitutional convention. This is a responsible, bipartisan effort which deserves widespread support.

LONG VERSION

JEFFREY M. WELLS
State Senator
524 South Cascade #1
Colorado Springs, Colorado 80903
471-4110

Senate Chamber
State of Colorado
Denver

SENATE MAJORITY LEADER

U.S. Senate Judiciary Subcommittee on the Constitution, Federalism, and Property Rights - March 24, 1995

Testimony of Sen. Jeff Wells (CO)

Good morning. I am State Senator Jeff Wells from Colorado, and I appreciate the opportunity to testify before this committee at such a critical time and on such an important topic. I have been in state government for thirteen years and just recently completed a term as chairman of CSG's Western Legislative Conference -- comprised of the House and Senate leaders from all 13 states and 3 territories in the West. I am the current Vice-Chairman of CSG. I am also a member of the Conference of the States' Steering Committee.

It seems to me that the Conference is a creative new way to address the current imbalance in our federal-state system. The Conference will present an opportunity for the states to make a more powerful statement than each of us can make alone. We can gather together, debate the issues, resolve any differences over details, and speak out for what all of us, regardless of region or party, believe is needed to restore the principles of federalism.

In 1989 the Council of State Governments issued a report that states, "One of the virtues of our federal system is its flexibility which, among other things, enables one or another of our constitutional partners to rise to the challenges of particular moments in our history. So long as the challenges are met and our federalism is brought back into balance on a higher plane, then our federal republic is strengthened by this dynamism. However, when the challenges

are not adequately met, and when one constitutional partner becomes [so?] preeminent as to begin to endanger the constitutional integrity of the other partners, then our federalism is placed in jeopardy." That statement is as applicable now as it was five years ago.

I would like to make some comments about the legal status of the Conference of the States. The Conference is not, and cannot be construed to be, a threat to turn into a "runaway" constitutional convention. The U S. Constitution requires that the *federal Congress* propose constitutional amendments. As an alternative, *Congress* is required to call a convention, which could then propose an amendment, if two-thirds of the state legislatures apply. The resolutions introduced in state legislatures to authorize participation in the Conference of the States simply cannot be read as applications for a constitutional convention. They are not directed to Congress. Many of them, including Colorado's, say that they are not applications for a constitutional convention. In fact, since the convention that wrote our original constitution, we have never had a constitutional convention.

Nothing in the constitution gives the Conference any standing to seek recognition from Congress as a constitutional convention. No group of citizens, even governors or legislators, can call themselves into a constitutional convention -- it takes action by Congress. Furthermore, Congress has no power to recognize the Conference as a constitutional convention, since it can call a convention only upon application by 34 states. Those who are afraid that the Conference might turn into a runaway constitutional convention are assuming a series of improbable, illogical, and even illegal events.

For most of our history, the states and the federal government were partners in governing our citizens. Each respected the role of the other. However, in the last twenty or thirty years, a combination of unfunded federal

mandates and unfounded federal court decisions has put the states in the position of mere agents of the federal government, carrying out a federal policy agenda. Rather than partners, the states have become administrative agencies.

One of the most discouraging developments was the Supreme Court's 1985 decision in Garcia v. San Antonio Metropolitan Transit Authority. That decision involved application of the federal Fair Labor Standards Act to states and local governments. I do not need to remind you that the FLSA contains many detailed requirements that can impact heavily on an employer's budget. In reversing the earlier case of National League of Cities v. Usery and holding that states and cities are subject to the FLSA, the Garcia case had a devastating impact on the ability of the states and local governments to manage their own budgets.

But the more devastating impact of Garcia was the ground for the decision. The Supreme Court, for all practical purposes, abdicated its authority and responsibility to decide questions of federal-state relationships and instead instructed states which were dissatisfied with federal preemptions to look to the political process. States could only read that to mean that they should get in line before Congress, along with other special interest groups, and lobby for their governing rights.

More recent legal developments indicate there is a ray of hope. In New York v. United States, a 1992 decision, the Supreme Court did adjudicate federal-state relationships in the context of a particularly egregious statute concerning disposal of hazardous waste. There the Supreme Court held that the Tenth Amendment forbids Congress to order states as governments to take any action. Although it may put pressure on states, in the form of preemptive legislation and incentive grants, it cannot "commandeer" state financial or regulatory resources.

The New York case built on a 1991 case from Missouri called Gregory v. Ashcroft. In Gregory, the Supreme Court upheld the application of Missouri's

constitutional provision on mandatory retirement for state judges over a challenge based on the federal Age Discrimination in Employment Act.

Further litigation is working its way through the judicial system. The Supreme Court will decide the case of United States v. Lopez this term. That case presents a Commerce Clause challenge to the federal law that makes it a crime to possess a firearm within 1,000 feet of a school. Finally, there are a number of cases that challenge the constitutionality of the Brady Act's commandeering of state law enforcement officials to implement the federal law. You might be interested to know that federal district courts in Montana and Arizona have declared the applicable portion of the Brady Act unconstitutional, while a federal court in Texas has upheld it.

This very quick review shows the *lack* of judicial consensus on federal-state relationship issues. It also illustrates why I and many of my colleagues feel a great deal of frustration in regard to state relations with the federal government. This is not simple frustration with a case or two I believe to be wrongly decided. It is a frustration with the system and the process that calls not just for a litigation strategy but perhaps for structural change and amendment of the constitution. I am hopeful that the Conference of the States will provide that opportunity.

You may wonder why states are so concerned about these issues, especially when a measure like the Unfunded Mandates Act is on its way to the President. The reason is that legislation can only go so far to address what is a massive problem facing state governments today. Mandates are only a major symptom of a much larger crisis facing our federalist system -- that of the federal government's refusal to acknowledge states as partners in governance and the powers reserved to the states under the Tenth Amendment.

There has been opposition to the Conference of the States and undue fear

of a constitutional convention. Opposition has come from both conservative and liberal groups, and unfortunately it has been successful in delaying resolutions of participation in a few states, including Colorado. It is crystal clear, however, that no change can be made to the federal constitution without following the procedures set forth in Article V of the constitution. Nobody involved with the Conference of the States intends otherwise. Moreover, the holding of a Conference of the States will actually help remove the threat of a runaway constitutional convention.

Thank you for according me the opportunity to speak about the Conference.

1

1 of 1 items CQ's WASHINGTON ALERT 04/06/95

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: SRes82

SPONSOR: Brown (R-CO)

OFFICIAL TITLE: A resolution to petition the states to convene a Conference of the States to consider a balanced budget amendment to the Constitution.

INTRODUCED: 03/02/95

COSPONSORS: 1 (Dems: 0 Reps: 1 Ind: 0)

COMMITTEES: Senate Judiciary

CRS DIGEST:
Petitions the States to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States. Requires the States to consider whether it is necessary to convene a Constitutional Convention in order to adopt such Amendment.

CRS SUBJECT INDEX TERMS:
Federal budgets
Balanced budgets
Budgets
Conferences
Congress
Constitution
Constitutional amendments
Constitutional conventions
Federal-state relations
Government regulation
Intergovernmental fiscal relations
Legislation--Costs
Politics and government
Regulatory reform
State and local government

LEGISLATIVE ACTION:

03/02/95 Referred to Committee on the Judiciary (Text of resoultion appears on pg. S3427 of the March 2, 1995, Congressional Record) (CR p. S3390)

03/02/95 Original cosponsor(s): 1
Helms (R-NC)

There are no more items to display.

(1)

1 of 1 items CQ's WASHINGTON ALERT 04/06/95

SRES82 Brown H. (R-CO) 03/02/95 (55 lines)
Introduced in Senate

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

Special typefaces used in this bill version:
// \\ Italic
Item Key: 2339

104TH CONGRESS
1ST SESSION

S. RES. 82

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

IN THE SENATE OF THE UNITED STATES

March 2 (legislative day, FEBRUARY 22), 1995

Mr. BROWN (for himself and Mr. HELMS) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

Whereas Article I of the Constitution of the United States of America provides that the Congress is vested with the authority to lay and collect taxes, to pay the debts of the United States, to borrow money on the credit of the United States, and to appropriate money from the Treasury;

Whereas for the past quarter century Congress has been unable to balance the Nation's budget in any year;

Whereas the President of the United States has submitted a budget which increases the deficit in future years;

Whereas Members of Congress have been unable to agree on language for an Amendment to the Constitution which would require a balanced budget; and

Whereas Congress has therefore attempted to deny the several States

of the United States the opportunity to vote on a Constitutional Amendment requiring a balanced budget: Now, therefore, be it

//Resolved, That Congress hereby petitions the several States of the United States of America to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution of the United States requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States, and that such States then consider whether it is necessary for the States to convene a Constitutional Convention pursuant to Article V of the Constitution of the United States in order to adopt such Amendment.\\

There are no more items to read.

Enter one or more numbers or ALL to display item(s),
Enter another display command and one or more numbers or ALL,
Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Or enter BACK, HELP, or STOP
>

Status Report on 4-3-95 -- 1:00 p.m. EST.

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Iowa	Rep.	Dem.	Rep.
Kentucky	Dem.	Dem.	Dem.
Missouri	Dem.	Dem.	Dem.
Nebraska (unicameral)			
Ohio	Rep.	Rep.	Rep.
South Dakota	Rep.	Rep.	Rep.
Utah	Rep.	Rep.	Rep.
Virginia	Rep.	Dem.	Dem.
Wyoming	Rep.	Rep.	Rep.

■ *States that have passed the resolution in at least one chamber: (10 states)*

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Colorado Senate
*Indiana House
Michigan Senate
Minnesota House
New Jersey Senate
New York Senate
Pennsylvania Senate
Tennessee House
Texas Senate

*Indiana SCR22 has been superseded by a new resolution which must be passed by the Senate

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Illinois House
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Nevada Assembly
Louisiana House
North Carolina House
Rhode Island House
South Carolina House
Vermont Senate
Washington House
Wisconsin Senate

■ *States where introduction is pending: (4 states)*

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Connecticut
Maine
Massachusetts

■ *States where the resolution has been defeated or was not considered: (11 states)*

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North Dakota
COS on 3/23)
Oklahoma
resolution)
West Virginia
Georgia
New Mexico
Mississippi
Montana (House committee tabled
Kansas (COS language stripped from
California
Oregon

Delegation Size By State

State	House Version	Senate Version
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Idaho		
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South Dakota	seven	seven
Utah	five	five
Virginia	five	five
Wyoming	five	five

Note: In the states where the approved delegation size is different in the other chamber, these states are moving toward amending their resolutions to send a seven-member delegation.

TAPE 95-2, SIDE B
Number 000

HJR 20 - A Resolution relating to unfunded federal mandates and the Conference of the States

CHAIRMAN BARNES stated that this resolution authorizes the State of Alaska to send a delegation to represent the people of Alaska at a Conference of the States. This conference would be the first formal meeting of the 50 states since 1786. She noted that the conference will convene no later than 270 days after at least 26 legislatures adopt similar resolutions and that Alaska would be represented by five voting members consisting of the governor and four legislators, two from each body. The action plan to be voted on at this conference will be called a States' Petition. It will be presented to each state in the form of a resolution for ratification, then presented to Congress as the will of the states of the Union. Chairman Barnes said that since 1990 alone, the federal government has enacted over 40 major statutes imposing expensive regulations and requirements on state and local governments. This is first step toward reversing the trend and restoring the balanced system of government envisioned by the Tenth Amendment.

Number 100

BRIAN WEBERG, Program Director, National Conference of State Legislators, supports the measure and adds that three states (Kentucky, Utah, Virginia) as of January 27, 1995 had passed this resolution and six other states, it has passed at least one house chamber and introduced in 19 other states. He anticipates more states becoming interested in this type of legislation. Mr. Weberg stated that many states have Tenth Amendments before them.

Number 142

CHAIRMAN BARNES added that she's pleased to see NCSL take a more active part in State's Rights' issues.

REPRESENTATIVE ELDON MULDER echoed Chairman Barnes remarks about the leadership role that NCSL has taken in regards to states' rights.

Number 155

REPRESENTATIVE PHILLIPS asked what kind of feedback had NCSL received from Congress.

MR. WEBERG reported that Congress was very receptive to this kind of initiative. He stated that a meeting would take place in March in Washington, D.C., where state legislators with the new congressional leaders and administration and get a good notion of how they feel and probably at that point NCSL would know if this is going to go forward.

MR. WEBERG also said that since no states' conference of this nature had taken place in over 200 years, both the press and public would be focused on this. So if a unified opinion comes out of this, it's going to be heard.

Number 188

MR. KREINHEDER offered a statement of support from the Knowles administration for HJR 20. The administration believes some of the important areas would be welfare reform, education, environmental protection and health care. In many of other cases, what works for some states will not work in some places.

CHAIRMAN BARNES expressed to Mr. Kreinheder how appreciative she was of the administration's support and asked him to convey her sentiments to the administration.

Number 214

REPRESENTATIVE MULDER voiced concern that the proposed Convention through this legislation was a viable alternative to a Constitutional Convention.

REPRESENTATIVE DAVIS made the motion to move HJR 20 out of committee.

CHAIRMAN BARNES asked if there were any objections. Hearing none, the motion was adopted.

Number 230

CHAIRMAN BARNES announced that the next World Trade committee meeting will be a joint committee meeting with International Trade and Tourism on Thursday, February 9, 1995 at 5 p.m. in the Butrovich Room. We will hear from John Sibert, Executive Director of the Alaska Science and Technology Foundation.

There being no further business to come before the House Special Committee on World Trade and State/Federal Relations, Chairman Barnes adjourned the meeting at 6:08 p.m.

The Conference of the States

A state movement demands equal partnership with the federal government.

State legislatures across the country this year will consider convening a Conference of the States to fix an imbalance of power between the states and the federal government.

The Conference will take place when 26 states approve an identical resolution calling for it.

A bipartisan group of four governors and dozens of officials from almost every state approved the idea Dec. 4 at a meeting of the Governing Board of The Council of State Governments, a 61-year-old nonprofit, nonpartisan institution.

"We have moved from the talk stage to the action stage," said Gov. Ben Nelson, a Democrat from Nebraska and the outgoing president of CSG. "It is time for us to move even further here today. States, counties and cities need to have the authority to take care of the issues close to their people."

A Conference of the States would attempt to shore up the powers of the states in the federal system, a problem state leaders say has intensified in the last two decades. Examples of this problem include a growing number of underfunded and unfunded mandates from Congress, expansion of the federal bureaucracy and the restraints that federal laws place on state attempts to improve services, like health care and welfare.

Republican Gov. Mike Leavitt of Utah quoted passages from James Madison's Federalist Papers during the meeting as he urged state officials to pass the plan. "James Madison might well have known that a meeting like this might need to occur," he said. ". . . That there would be a need for states to band together."

The proposal to convene a Conference of the States was approved almost unanimously in a voice vote after state officials questioned Govs. Nelson and Leavitt about the idea: How would it work? Who would participate? What is the next step?

The Conference of the States would work like this: States will receive a proposed resolution supporting the idea for introduction in their legislative chambers. When a majority of legislatures passes the resolution, a steering group will convene the Conference, probably in the fall of 1995. Each state that passes the resolution will send a five-member delegation consisting of the governor and a bipartisan mix of legislators. If the governor from that state were unwilling or unable to attend, then a fifth delegate would be elected.

Delegates to the Conference will debate remedies that states could use to correct the imbalance of power and then adopt an action plan. Remedies could range from legislative to legal strategies to possible constitutional solutions. The plan then will be sent back to state legislatures for ratification.

At the very least, the Conference of the States will be a good opportunity for states to get the word out about what they have accomplished, officials said.

"States really have become the engines of innovation and change," said CSG Executive Director Dan Sprague. "Every state has revised its constitution, updated its ethics laws and lives within its means. People need to hear how states have become leaders in reinventing government."

Concerns about the Conference of the States were raised by Wisconsin Sen. Fred Risser, who said he was concerned the process might become an opportunity for special interest groups to further their goals. "Unless you can convince me," he said, "I am quite apprehensive."

In response, Leavitt said that any action proposed by the Conference of the States would have to be approved by three-quarters of the state legislatures before it could become an official statement of that body. "If 75 percent approve it," he said, "then I think it is wise."

Leavitt said there were three things that could kill the Conference of the States, which he termed deadly sins:

- If the Conference becomes a partisan issue, then it will fail. Of the four governors at the CSG meeting who spoke in favor of the plan, two were Democrats and two were Republicans.
- If the Conference became tied to an issue like gun control, abortion or school prayer, then it would fail. Supporters have been careful to say that this effort is not an attempt to turn back the clock. Rather, it is an attempt to correct the imbalance so that government is more efficient.
- And if the Conference becomes tied to any group or personality, then it would not succeed.

After reciting these deadly sins, Leavitt looked to the dozens of state officials gathered at the table. He said, "The time has arrived. This may be a historic moment."

CSG will continue to communicate with state leaders about the next steps for the Conference of the States. □

WESTERN LEGISLATIVE CONFERENCE THE COUNCIL OF STATE GOVERNMENTS
121 SECOND ST. 4TH FL. SAN FRANCISCO, CA 94105 PHONE (415) 974-6422 FAX (415) 974-1747

WESTERN STATES
ALASKA
ARIZONA
CALIFORNIA
COLORADO
HAWAII
IDAHO
MONTANA
NEVADA
NEW MEXICO
OREGON
UTAH
WASHINGTON
WYOMING
PACIFIC ISLANDS
AMERICAN SAMOA
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
GUAM

March 9, 1995

INFORMATIONAL ONLY

Speaker Gail Phillips
House of Representatives
State Capitol
Juneau, AK 99801

Dear Speaker Phillips:

You know about a pending resolution in your Legislature that calls for the first formal gathering of the states in more than 200 years. It's called the Conference of the States. We are pleased to report that 12 states have already passed a Resolution of Participation in both chambers; 10 others have passed it one chamber; 23 more have introduced it and will be acting soon.

Unfortunately for state government, a few well-organized groups are now attempting to discredit the Conference of the States saying it is a covert attempt to call a Constitutional Convention to scrap the founding principles of our country. We are writing to tell you it is literally impossible for the Conference of the States to mutate into a Constitutional Convention and none of the sponsoring organizations --CSG, NCSL, and NGA--want one.

The Conference of the States is a well-reasoned, scrupulously bipartisan effort to examine the growing imbalance of power between the states and federal government. The Conference of the States will be a formal, yet nonlegal, assembly of the states to discuss long-term, structural imbalances. There is no reason to fear it becoming a Constitutional Convention for three important reasons:

1. The United States Constitution plainly mandates procedures for calling a Constitutional Convention and for amending the Constitution. The Founders carefully built in hurdles and safeguards to ensure that the Constitution could not be amended on impulse or caprice. The Conference of the States does not follow the necessary procedures or meet the constitutional requirements to amend the Constitution. Article V of the Constitution gives power to Congress to propose constitutional amendments "whenever two-thirds of both Houses shall deem it necessary." A second method of proposing amendments gives Congress the authority to call a convention "on the application of the legislatures of two-thirds of the several states." In either case, any amendment proposed must go back to the states for ratification by three-fourths of the legislatures. The resolutions being passed in state legislatures calling for the Conference of the States do not remotely fulfill these constitutional requirements. They do not make application to Congress to convene a convention.

2. The delegates to the Conference of the States will be the nation's governors and legislative leaders from all 50 states. These are careful, thoughtful, elected officials directly accountable to the voters. These delegates respect the Constitution and the ideals of this country's Founders--that's why the Conference of the States is being convened.

3. Proposals made at the Conference of the States will have no binding legal or constitutional authority. They will merely be suggestions, relying entirely upon the power of persuasion, that will be taken back to state legislatures where they will be voted on by all legislators to determine the depth and breadths of support. Only if they have support of most of the state legislatures in the country will they then be taken to Congress. If any of the proposals suggest a constitutional amendment, the Congress will have to approve it by two-thirds votes then send it back to the states for ratification by three-fourths of the legislatures. The safeguards outlined in Article V of the Constitution are extremely rigorous and can in no way be circumvented or ignored.

We urge you to give strong support to the Conference of the States and, if desirable, your state might even want to consider language prohibiting your state delegation from participating in a constitutional convention. Two sample amendments are attached to this letter.

Thomas Jefferson envisioned states convening once "every generation or so," precisely as is now being proposed. It is indeed disappointing that the first open, bipartisan, non-binding effort in 200 years to bring states together for this very purpose is being resisted and misrepresented by a few. States have a unique and extraordinary responsibility to function as a co-equal partner in our great American federalist system. Passing the resolution for The Conference of the States now is the best way to fulfill this commitment. If you have further questions on this issue we urge you to call our information hotline at (606)-244-8158.

Assemblyman David E. Humke
Chairman, Western Legislative Conference

Attachment

NATIONAL CONFERENCE OF STATE LEGISLATURES

1560 BROADWAY SUITE 700 DENVER, COLORADO 80202
303-830-2200 FAX: 303-863-8003

JANE L. CAMPBELL
ASSISTANT HOUSE MINORITY LEADER
OHIO
PRESIDENT, NCSL

TED FERRIS
DIRECTOR, JOINT LEGISLATIVE
BUDGET COMMITTEE
ARIZONA
STAFF CHAIR, NCSL

WILLIAM POUND
EXECUTIVE DIRCTOR

MEMORANDUM

To: NCSL Executive Committee
NCSL Federalism Task Force

From: Bill Pound

Date: January 12, 1994

Subject: Conference of the States

The attached material on the Conference of the States was recently sent to Presiding Officers from the Council of State Governments. It contains the "Resolution of Participation in a Conference of the States" that was agreed to by the steering committee representing NCSL, NGA and CSG, as well as background information on the proposed conference. The resolution of participation will be introduced in many legislatures this month.

If you have questions, please call me.

Conference of the States

Restoring Balance in the Federal System

January 6, 1995

Dear Legislative Leader:

The Steering Committee of The Conference of the States (COS) hereby transmits the proposed "resolution of participation" to all 50 state governors and legislative leaders. We ask that you take whatever steps are necessary and appropriate to gain broad, bipartisan sponsorship for this resolution and to introduce it for early endorsement by each legislative chamber.

Attached are a few supporting documents for your information. A national press conference about The Conference of the States will be scheduled for a later date. After that press conference, CSG will assist individual states in coordinating press conferences in their capitals. Also, additional information on The Conference of the States will be sent out as it becomes available.

At this time, we expect that the cost to each state in travel and related expenses for participation in a Spring organizing meeting and the formal Conference in the Fall will be between $10,000 and $20,000.

In closing, we want to stress our conviction that The Conference of the States must remain a nonpartisan, non-ideological, non-single issue, group- or individual-identified initiative. It is a fundamental, structural, long-term American federalism concern in which all states have a responsibility to engage. We hope all 50 states will do so in a constructive manner. Thank you in advance for your support.

Gov. Howard Dean NGA, Chairman	Gov. Ben Nelson CSG Immediate Past President	Rep. Jane Campbell NCSL President
Gov. Tommy G. Thompson NGA, Vice-Chairman	Assemblyman Bob Wertz CSG Chairman	Sen. Jim Lack NCSL President-Elect
Gov. Mel Carnahan CSG President	Sen. President Stan Aronoff CSG Chairman-Elect	Sen. Bob Connor NCSL Immediate Past President
Gov. Mike Leavitt CSG President-Elect	Sen. Jeff Wells CSG Vice Chairman	Rep. Bob Hunter CSG Immediate Past Chairman

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Conference of the States

Restoring Balance in the Federal System

FACT SHEET

I. OVERVIEW

- The call for The Conference of the States (COS) is attracting broad support from state officials as a historic formal convocation of the states to communicate at the highest level important federalism principles to Congress and the American people.

- COS is a non-legal, yet formal process to develop an action plan to restore balance to the federal system.

- COS will be convened when a majority of states pass identical resolutions of participation.

- It is anticipated that each state will vote to send a five-member delegation to COS -- the governor and four legislators -- two from each chamber and each party. Two alternate legislators, one from each party, also will be appointed from each chamber.

- It is expected COS will occur in the Fall of 1995 in a historically symbolic location such as Philadelphia. It will be the first formal meeting of the states since 1787.

- The end product of COS will be an agreed-to action plan, written in the form of a States' Petition -- a new instrument in the American democracy -- specifying a set of statutory, legal and constitutional measures essential to an effective, balanced state-federal partnership.

II. DEFINING CHARACTERISTICS

- COS enjoys broad, bipartisan support from state leaders in both parties. It is guided by a national, bipartisan steering committee of state elected officials under the auspices of The Council of State Governments, in cooperation with the National Governors' Association and the National Conferences of State Legislatures.

- COS is not a Republican or Democrat vehicle -- it is an initiative of, for, and by the states to advocate a balanced federal system -- with a strong, yet limited, federal government -- and with states (and local governments) handling a larger share of the domestic governance role.

- COS does not address or advocate any single or special issue interests, nor does it identify with any group or individual.

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- COS is a forum for the states to formally, collectively, and responsibly define their rightful roles in the federal system, based upon past principles and the new governance challenges of the 21st century.

III. STATES AS AGENTS OF REFORM

- State governments, along with local governments, have become positive forces of governmental change and reform in recent years. Yet, with the national media's preoccupation with Washington, D.C., there has been little or no public recognition of these facts:
  - All states have updated and modernized their constitutions in the last 30 or so years.
  - Most states have thoroughly revised their ethics codes and standards in the last five years.
  - Most states have restructured, downsized and privatized key functions in the last few years.
  - Most states elect more women and minorities to office, as do local governments, than does the federal government. They are more representative of, and responsive to, citizens.
  - And, virtually all states are living within their budgetary limits, in contrast to the federal level, which has been overspending in recent years more than all 50 state general fund budgets combined.
- In domestic policy areas, states are the acknowledged leaders and innovators in:
  - Health care redesign; welfare reform; education restructuring; corrections policy; environmental innovation; and in many management areas -- including TQM, customer service and benchmarking to improve accountability for outcomes and for efficiency.

IV. CONCLUSION

- Convening The Conference of the States provides an invaluable forum to develop an accurate picture of the positive things states are doing and to address a profound structural distortion in the American political system.
- COS offers states and citizens a historic opportunity to revisit our founding governing principles and the appropriate state-federal structural balance best suited to American society in the 21st century.
- COS is a non-constitutional, non-binding vehicle for American states to reclaim their rightful, co-equal status in the federal system and to work closely with citizens on the public challenges ahead.

RESOLUTION OF PARTICIPATION IN A CONFERENCE OF THE STATES

[Whereas clauses to be provided by individual states - see attached Council of State Governments' Governing Board resolution as sample]

The following identical language needs to be incorporated into each state's resolution:

Now, Therefore, Be It Resolved:

That the following be adopted:

(1) A delegation of five voting persons from the State of shall be appointed to represent the State of at a Conference of the States for the purposes described in Section (2) to be convened as provided in Section (3). The delegation shall consist of five voting persons as follows: (a) the governor or, if the governor does not wish to be a member of the delegation then a constitutional officer selected by the governor; and (b) four legislators, two from each house selected by the presiding officer of that house. No more than two of the four legislators may be from the same political party. Each presiding officer may designate two alternate legislator delegates, one from each party, who have voting privileges in the absence of the primary delegates.

(2) The delegates of The Conference of the States will propose, debate and vote on elements of an action plan to restore checks and balances between states and the national government. Measures agreed upon will be formalized in an instrument called a States' Petition and returned to the delegation's state for consideration by the entire legislature.

(3) The Conference of the States shall be convened under the §501(c)3 auspices of The Council of State Governments in cooperation with the National Governors' Association and the National Conference of State Legislatures no later than 270 days after at least 26 legislatures adopt this resolution without amendment.

(4) Prior to the official convening of The Conference of the States the steering committee will draft:

- **(a) the governance structure and procedural rules for the Conference;**
- **(b) the process for receiving rebalancing proposals; and**
- **(c) the financial and administrative functions of the Conference, including The Council of State Governments as fiscal agent.**

(5) The bylaws shall:

- **(a) conform to the provisions of this resolution;**
- **(b) specify that each state delegation shall have one vote at the Conference; and**
- **(c) specify that the Conference agenda be limited to fundamental, structural, long-term reforms.**

(6) Upon the official convening of The Conference of the States, the State delegations will vote upon and approve the Conference governing structure, operating rules and bylaws.

Resolution
Calling for a Conference of the States
to be promoted and convened by
The Council of State Governments

For the purpose of restoring
balance in the federal system

Pinehurst, North Carolina

Whereas: The United States' Constitution established a balanced compound system of governance and through the Tenth Amendment reserved all non-delegated and non-prohibited powers to the States or to the people; and

Whereas: Over many years, the Federal government has dramatically expanded the scope of its power and pre-empted state government authority and increasingly has treated States as administrative subdivisions or as special interest groups, rather than co-equal partners; and

Whereas: The Federal government has generated massive deficits and continues to mandate programs that State and Local governments must administer; and

Whereas: The number of federal unfunded mandates has grown exponentially during the last 30 years and has profoundly distorted State budgets, thereby handcuffing the ability of State leaders to provide appropriate and needed services to their constituencies; and

Whereas: Since 1990, the Federal government has enacted at least 42 major statutes imposing burdensome and expensive regulations and requirements on States and Localities, which is nearly equal to all those enacted in the prior two decades combined; and

Whereas: Persistent, State-led endeavors have consistently failed to generate any substantial reaction or remedy from the Federal government; and

Whereas: The U.S. Supreme Court has repeatedly determined that the States must look to the Congress and related political remedies for protection against Federal encroachments on the reserved powers of the States; and

Whereas: The Council of State Governments, through its Intergovernmental Affairs Committee, has been the champion of State sovereignty for many years; and

Whereas: In recent years, States have been the principal agents of government reform, including updating their constitutions, modernizing and restructuring governmental institutions, and, along with Local governments, have been the pioneers of government innovation, thus responding to the needs of their citizens; and

Whereas: The Council of State Governments recognizes a sense of urgency in calling for The Conference of the States, whereby each State government would send a delegation to develop a comprehensive Action Plan to restore balance in the Federal system; and

Whereas: The aforementioned experience of The Council of State Governments, in conjunction with its regional structure and groupings of elected and appointed officials from all three branches of State government, reflects an entity ideally suited to promote and facilitate such a conference; and

Whereas: The Conference of the States will communicate broad bipartisan public concern on the extent to which the American political system has been distorted and provide a formal forum for State governments to collectively propose constructive remedies for a more balanced State-Federal governance partnership for the 21st century.

Now Therefore Be It Resolved:
By the Intergovernmental Affairs Committee and the Executive Committee of The Council of State Governments that these Committees recommend to the Governing Board that CSG fully endorse the concept of The Conference of the States; and

Be It Further Resolved:

That these Committees also recommend to the Governing Board that The Council of State Governments be the primary catalyst for all State governments, to organize and convene The Conference of the States, with the following stipulations:

I. That the Council create a bipartisan Steering Committee representing a cross-section of State leaders to guide the promotion, planning and convening of The Conference of the States; and

II. That the Council maintain ongoing consultation with the National Governors' Association, the National Conference of State Legislatures and other appropriate State governmental organizations in this process; and

III. That the Council and The Conference of the States Steering Committee strictly avoid identification with special interests and individuals by focusing activities on working with State government leaders in each geographic region and each State to ensure that The Conference of the States is an initiative of and for the States and the people they represent.

CSG President
Governor E. Benjamin Nelson

CSG Chairman
Representative Robert C. Hunter

The Conference of the States An Action Plan For Balanced Competition in the Federal System

Convener: The Council of State Governments in conjunction with the National Conference of State Legislatures and the National Governors' Association
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The Conference of the States

It is an unfortunate fact of American political life that the national government has become so dominant in our federal system that the checks and balances established by the nation's founders are eroding. James Madison, Thomas Jefferson and Alexander Hamilton would be dismayed by the dysfunction and lack of public confidence this imbalance have engendered in the government they formed.

Whenever state and local officials get together, the discussion naturally turns to this problem. In the last few years, the rhetoric has become especially heated over unfunded federal mandates. Local and state leaders across the nation are in near unanimous agreement that something must be done. They introduce legislation, testify before Congress, pass resolutions and give impassioned speeches ... but little changes. State leaders do not lack the desire or energy to take action; what they lack is a plan, a real process. This paper offers a simple but powerful plan.

But first, a dose of reality. Even with the changed political landscape as a result of the last election, we cannot count on Congress to fix this problem by itself. In fact, with the likely prospect of a Balanced Budget Amendment and tax cuts on the horizon, states are at considerable risk that Congress could push its budget problems down to the states. No matter which party controls Congress, it is not likely to relinquish power without feeling the pressure of an electorate that demands it. States must protect the balance that Jefferson, Hamilton and Madison created by advancing structural, permanent reform that will not be subject to the whims of whoever controls Congress. States also cannot depend on the courts or the federal bureaucracy to restore balance in the system. Over the last 60 years, the federal courts generally have not been friendly to states in their disputes with the federal government.

Balance will only be restored in the way intended by Madison, Jefferson and Hamilton -- when states take the initiative. As state leaders (with our allies in local governments), we must step up to our constitutional obligation and compete for power in the federal system. States have a place at the constitutional table. It is the proper role, in fact the obligation and stewardship, of states to be jealous and protective of their role and to fight for balance.

In this quest, state and local leaders face what can best be described as a "dilemma of extremes." At one extreme is the effort currently under way, consisting mostly of complaining, hoping and waiting for more flexibility. Congress has paid lip service, but little has changed. At the other extreme, some activists are calling for states to convene a constitutional convention, a politically unlikely event that is fraught with danger and opposition.

The purpose of this paper is to offer a middle ground, between the two extremes. This plan must be more forceful and assertive than hoping, complaining and waiting, but not so radical as a constitutional convention.

Our tools to create leverage for states fall into three categories: political (in the sense of winning the people's support), legal and constitutional. All three are important. Citizen support for this effort is strong. People feel alienated and disconnected from the federal government. If government is going to make decisions that affect their lives, people want decisions made in their hometown or state capital -- not in Washington, D.C. State leaders recognize they need a formal legal strategy. Too often, important federal court cases have been left to individual states that were inadequately prepared and poorly financed.

Constitutional tools are also crucial. For at least 15 years, respected state and local government organizations like the National Governors' Association, the National Conference of State Legislatures, The Council of State Governments and the U.S. Advisory Commission on Intergovernmental Relations have joined prominent academic and legal scholars in proposing various constitutional amendments that would help restore proper balance between states and the national government.

Using the political, legal and constitutional tools, we believe it is time for states to take the initiative. States must employ a means of communicating their resolve and commitment to Congress and to the American people. It is our job, our responsibility, our stewardship. State leaders must act or be held responsible by history for allowing the brilliant federalist creation of Madison, Jefferson and Hamilton to expire from neglect.

We propose a process that would consolidate and focus state power. This process would culminate in a historic event called The *Conference of the States*. The following is an outline of the process:

- In each state legislature, a Resolution of Participation in The Conference of the States will be filed early in the 1995 legislative session. The resolution authorizes the appointment of a bipartisan, five-person voting delegation of legislators and the governor from each state to attend the Conference.

- When a majority of states have passed Resolutions of Participation, an entity called The Conference of the States will be formed by the delegates from each state. A Steering Committee for the Conference has been formed to propose rules, assuring that each state delegation receives one vote.

- The Conference of the States then will be held, perhaps in a city with historic constitutional significance such as Philadelphia or Annapolis. At the Conference, delegations will consider, refine and vote on ways of correcting the imbalance in the federal system. Any item receiving the support of the state delegations will become part of a new instrument of American democracy called a *States' Petition*. The States' Petition will be, in effect, the action plan emerging from The Conference of the States. It will constitute the highest form of formal communication between the states and the Congress. A States' Petition gains its authority from the sheer power of the process the states follow to initiate it. It is a procedure outside the traditional constitutional process, and has no force of law or binding authority. But it must not be ignored or taken lightly because it symbolizes a test of the states' relevance. Ignoring the Petition would signal to the states an intolerable arrogance on the part of Congress.

- The States' Petition then will be taken back to the states for the approval of each state's legislature. Constitutional amendments included in the Petition will require approval by a super-majority of state legislatures to continue as part of the State's Petition.

- Armed with the final States' Petition, the representatives of each state then will gather in Washington to present the Petition and formally request that Congress respond.

While the Petition would have no force of law and would not be binding on Congress, it is likely that Congress would respond. To ignore the carefully reasoned, formal Petition of America's state legislatures would be unthinkable. Rejection of the Petition would communicate to the people that Congress is unwilling to listen. It would confirm an arrogance that states could not ignore. Rejection also would ignite a national political debate that no candidate for Congress, for president, for governor or for any state legislative race could avoid. The questions of Madison, Jefferson and Hamilton would be asked again: Do we want a government dominated by Washington or a balanced federalist system? The answer to that question is the same today as it was in 1787.

The Conference of the States initiative must be based on some important principles:

- It must be scrupulously bipartisan;
- It must seek fundamental, long-term, structural change, as opposed to attempting to resolve the specific issues of the day;
- It must avoid single-issue causes and proponents. No special-interest groups or individuals can be allowed to co-opt the initiative for their own purposes; and
- It must concentrate state power and focus national attention on federalism.

The Conference of the States
QUESTIONS AND ANSWERS

Who will organize The Conference of the States?

The Conference of the States will be formally organized by governors and delegates appointed by legislative leadership from each participating state. The preliminary work will be overseen by a national steering committee comprised of state elected leaders appointed by The Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), and the National Governors' Association (NGA). CSG, a respected bipartisan organization made up of leaders from all three branches of state government, will be the convener and fiscal agent. The state delegations to The Conference of the States will have final approval of all proposed Conference governance issues and organizational rules.

When will The Conference of the States be held?

It is anticipated that if as many as 26 states pass Resolutions of Participation during the 1995 legislative season, the Conference will be held in the fall of 1995. This would allow a States' Petition to be presented in state legislatures in early 1996, and to Congress later in 1996. If states quickly pass the Resolutions of Participation, this timetable could be accelerated.

Who supports The Conference of the States?

A broad, bipartisan coalition of governors and state legislative leaders from every region of the country has agreed to help plan, organize and participate in The Conference of the States. CSG, NCSL and NGA have all formally endorsed the Conference. Besides governors and state legislators, the coalition of supporters includes other state and local government officials and associations, academics and scholars, and business leaders.

Who will select the participants in the Conference?

The Resolution of Participation, which has been sent to legislatures in every state, provides for five voting delegates from each state. Four of the delegates will be legislators, two from each party and two from each house, appointed by the presiding officers of the houses. The other is the governor. If the governor cannot not attend, he or she can appoint a constitutional officer in his/her place. This process will give the Conference 250 voting delegates, assuming every state participates. Each state will have one vote. Each presiding officer also may appoint two legislative alternate delegates, one from each party, who shall vote in the absence of primary delegates. If a state legislature does not pass the Resolution of Participation, a nonvoting delegation from the state may attend the Conference. The states' final ratification of the States' Petition that emerges from the Conference will be the true test of support by states.

What is a States' Petition?

The action plan produced by The Conference of the States will be called a States' Petition, a new instrument in American democracy. The Petition will be presented to each state in the form of a resolution for ratification. If ratified by the legislatures, the petition will be presented to Congress as the will of the states of the Union. Because the Petition will have gone through such a formal and rigorous process of approval and consensus, it should be considered the highest and most serious level of communication by the states to Congress. If ignored by Congress, states will know they must look to other means to bring a better balance to the federal system.

The States' Petition drafted at The Conference of the States will ignite a major political debate, forcing candidates to take positions on federalism issues. The matter of federal/state competition and balance will become a pre-eminent political issue of the day, providing leverage and making states more competitive. The Petition also will provide a rallying point for citizens who are frustrated and who want responsible change. A number of years ago, the Equal Rights Amendment became a national issue around which debate occurred at all levels of government and in every district. While that amendment did not pass, it had an enormous impact on how Americans view gender and equity issues. In the same way, The Conference of the States and the resulting States' Petition will elevate the issue of federalism to a high level of consciousness and debate.

Where will the Conference be held?

There would be historic symbolism in holding the Conference in Annapolis, Md. That is where a group of states held a conference in 1786 that was a precursor to the Constitutional Convention held the next year in Philadelphia. However, the Steering Committee, in consultation with official state delegations, will determine the location.

Does this effort mean that states can stop fighting against unfunded mandates and other such concerns?

Absolutely not. States must use every means to address this issue. The excellent effort by NGA and NCSL to win passage of unfunded mandates legislation should be pursued aggressively. All of these efforts will complement each other. As The Conference of States moves forward, it will motivate Congress to act on these related issues. States must use legislative, legal and constitutional means to restore balance to the system.

How will the Conference be financed?

It is likely that state legislatures will be asked to appropriate a small amount of money from each participating state to pay the actual costs of the Conference.

What could hurt this effort?

Partisanship and special interests' influence are the two factors that could seriously damage the initiative. Bipartisan support is crucial, or the Conference simply will not be successful. And if any special interest group or single-issue organization takes over or unduly influences the process, it will collapse. Supporters must be willing to put aside partisanship and their concerns on specific issues and focus on broad, fundamental, structural, long-term reforms if the effort is to be efficacious. The Conference must not become a forum for pro- or anti-abortion, or pro- or anti-gun control groups that might want amendments of their own. There are hundreds of causes that people would like to address with constitutional amendments. The Conference is not a forum for such discussions. It must remain focused on the fundamental issue of providing leverage and bringing balance to federal/state relationships. Also, the Conference must not attempt to swing the pendulum too far in the other direction by proposing too much authority for the states. A strong national government is still needed.

How will the Conference of the States agenda be limited to structural reform so that it doesn't get bogged down with myriad special interest issues?

Two important ways: (1) The language of the Resolution of Participation limits the Conference to fundamental structural change, and (2) The rules proposed for the Conference must be consistent with the Resolution of Participation in limiting the conference agenda to fundamental long-range reforms.

Is the Conference anything like a Constitutional Convention?

The Conference will be a forum for states to express their will, but it will have no binding authority or force of law. It is the most powerful way for states to express their will to Congress and the American people short of a Constitutional Convention. Even after the States' Petition is ratified by a super-majority of states, it will merely represent the states' wishes. But it is expected that it will have enough power and influence to motivate Congress to act. The Conference of States is not a constitutional convention, but its process will provide more clout than continuing the hoping and complaining that is presently going on.

Is this a Republican plan or a Democratic plan?

The plan has nothing to do with political partisanship. It is not a Republican or a Democrat plan. It builds upon the research and work accomplished over several years by many groups, including the National Governors' Association, the National Conference of State Legislatures, The Council of State Governments and others. It is supported by governors, legislators and other local leaders of both

major political parties. The fact is that political partisanship will kill this effort faster than anything else. Anyone who tries to make this initiative partisan is an enemy of The Conference of the States, not a supporter. Bipartisanship is a cardinal rule that must be adhered to by all who want to be involved. The plan is motivated by much more than political ideology. While balanced competition in the federal system is important for maximum personal liberty, it is also important for reasons of efficiency, cost-effectiveness and global competitiveness.

Where will the proposals come from that will be considered at The Conference of the States?

The Steering Committee will propose rules governing this matter. However, to ensure that reform proposals considered at the Conference have been carefully analyzed, we anticipate that major national organizations of elected officials (NGA, NCSL, CSG, mayors, county leaders, etc.) will be invited to submit proposals. Thus, all proposals will have been scrutinized before being submitted to The Conference of the States.

Will a conference of a few days provide enough time to adequately discuss and approve these important matters?

The Conference process will likely include more than one meeting. An initial meeting to organize the Conference, receive input and proposals, and establish rules and procedures will be necessary. Then, the official Conference will meet later to discuss, refine and pass the proposals.

What is the role of Congress in this initiative?

We anticipate that a delegation from Congress will be invited to participate in discussions at the Conference, but not be allowed to vote.

Has a Conference of the States ever been held before?

It is fascinating to note that the problem we confront today regarding balance in the federal system is similar to what the founding fathers of this country faced more than 200 years ago with regard to the Articles of Confederation -- only just the reverse. Then, the national government was too weak and the states too strong. Today, the national government is too powerful and the states too weak. In both cases, a lack of checks and balances had thrown the system out of kilter. It is important to see how the founding fathers solved the problems of the weak Confederation. Some of what occurred then can help guide us today in properly balancing the federal system.

The 13 states were, in effect, nearly autonomous countries under the Articles of Confederation. States had all the power. The Confederation Congress had little power. The Congress could not require the states to carry out any of its decisions. Every bill that Congress passed had to be approved by nine of the 13 states. There was no national military; no ability to regulate foreign trade or commerce among the states; no ability to resolve arguments over state boundaries.

George Washington, who became increasingly angry during the Revolutionary War at the national government's inability to provide food, clothes and armaments, sadly described the Confederation as a "rope of sand" and observed that "the Confederation appears to me to be a shadow without substance." Something had to be done, but where would the political will come from to strengthen the national government? It would take courageous people of good will to initiate changes.

The first break came at the instigation of Alexander Hamilton, James Madison and the Virginia Legislature. They called for a Conference of States to consider common interests in commercial regulations. Only five states attended that historic meeting in 1786 in Annapolis, Md. But it was clear to them that something fundamental and structural needed to be done to properly balance

federal-state interests. Out of that conference came a report asking that all states send delegates to another meeting in Philadelphia on the second Monday of the following May. Little did anyone know that invitation would be the thunderbolt that would lead to the birth of our government system. That meeting in 1786 in Annapolis provided a precedent for states to come together to resolve problems in the federal system.

What solutions might be proposed at The Conference of the States?

Before this process even takes place, it would be presumptuous of the supporters to suggest what solutions might emerge. However, there exist some good examples of possible solutions in the suggestions of past commissions and task forces that have addressed the issue. A great deal of important research has been done by NGA, NCSL, The Council of State Governments and the U.S. Advisory Commission on Intergovernmental Relations. With regard to constitutional solutions, most of the scholarly thinking over the past two decades has concluded that states should focus on "process amendments" to the Constitution that, over time, would bring a better balance in the system. It would be foolish for any individual or group to attempt to sort out the precise roles of the national and state governments in a constitutional amendment. No one is smart enough to assign specific programs and tasks to one level of government or the other, and make the system balance. Most programs have become such complex combinations of federal, state and local participation, that it would be disruptive and impractical to attempt swift and precise delineations.

Some parties have suggested amending the 10th Amendment to give it strength and teeth in clearly defining the roles of the two levels of government. But that is problematic because the outcomes of future court cases based on the strengthened 10th Amendment would be so unknown. Constitutional lawyers would argue for years over what impact revising the wording of the Tenth Amendment might have. States would be leaving the fate of federalism entirely to the federal courts and the result could be drastic changes in federal-state roles or no changes at all.

A better strategy would be to focus on "process amendments," the results of which would be much more predictable and that would naturally bring about a better balance in the system over a number of years. A number of individuals and task forces have recommended, for example, adding a clause to Article V that would put states on equal footing with the Congress in proposing constitutional amendments. It would provide a more direct method for states to propose constitutional amendments than the unworkable and never-used Constitutional Convention process. The founders clearly intended states to be able to initiate constitutional reform, as well as ratify amendments proposed by the Congress. Under this amendment, three-fourths of state legislatures could propose an amendment to the Constitution that would become valid unless within a two-year period the Congress rejected the amendment by two-thirds votes of both houses. While the Article V amendment would not immediately change federal-state relationships, it would over time help balance the system because the Congress would be respectful of states' ability to propose amendments and would thus be less officious and overbearing and more considerate of the states' equal role in the federal system. It would still be very difficult to amend the Constitution, but states could propose amendments through a mechanism similar to what Congress enjoys today. It would put the states and the Congress on a more equal footing.

Another example of a "process amendment" is one proposed by former Arizona Gov. Bruce Babbitt at an NGA meeting in 1980. It would give states by petition of two-thirds of the legislatures the power to sunset any federal law except those dealing with defense and foreign affairs. Such an amendment would be much more radical than the Article V amendment, but discussion of it at The Conference of States would certainly get the attention of the Congress.

In themselves, these "process amendment" proposals are neutral in that they are procedural and do not change public policy, appropriations or the roles of the levels of government. But they would

change the framework in which public policy is developed, assisting the states in addressing the imbalances of power.

One other possible amendment is worth mentioning. The Council of State Governments and other task forces have recommended that a sentence be added to the 10th Amendment clearly stating that the courts have responsibility to adjudicate the boundaries between national and state authority. Some feel that addition is necessary because the Supreme Court has ruled on two occasions that states and local governments must defend against federal encroachments by lobbying the Congress through the national political process rather than relying on the federal courts to act as "umpire." In other words, the court did not find any special equal constitutional role for the states, but rather treated them like any special interest group that must petition Congress to improve its lot. State leaders believe that states enjoy an equal role with the national government in the federal system and they should not be at the mercy of Congress in federal-state disputes. The amendment would clarify that the courts must act as neutral referees in such disputes.

Those amendments are simply ideas and suggestions that could be considered at The Conference of States, along with others. The authors are confident that the Conference would focus on reasonable, responsible process amendments that would not be overly disruptive or attempt to precisely delineate the role of the levels of government.

The Conference of the States
BACKGROUND INFORMATION

The evolution of federalism: How the federal government became pre-eminent

A 1989 report by a task force of The Council of State Governments says: "One of the virtues of our federalism is its flexibility which, among other things, enables one or another of our constitutional partners to rise to the challenges of particular moments in our history. So long as the challenges are met and our federalism is brought back into balance on a higher plane, then our federal republic is strengthened by this dynamism. However, when the challenges are not met adequately, and when one constitutional partner becomes so pre-eminent as to begin to endanger the constitutional integrity of the other partners, then our federalism is placed in jeopardy."

There is no question that the federal government has stepped forward at crucial times in the history of this country -- when states were unwilling, unable or slow to act -- to address important problems. In the natural and intended competition that exists among branches and levels of government, when a need arises or a power vacuum exists, it will be filled by whatever branch or level rises to the occasion. Citizens during the Progressive Era sought major social and economic reforms. States were slow to respond, so reforms occurred at the national level, led by the presidencies of Republican Theodore Roosevelt and Democrat Woodrow Wilson. State primacy was eroded. Industry misconduct then prompted unprecedented national intervention in economic affairs and a new willingness by the American people to look to Washington, rather than to state capitals, for protection against domestic threats to health and safety.

Any last resistance to an expanding national role was overwhelmed by President Franklin D. Roosevelt's vast responses to the Great Depression and World War II. National dollars pumped life into the economy and states surrendered autonomy in exchange for assistance. The states' reluctance to act on environmental regulation and civil rights matters further allowed the national government to usurp state prerogatives. President Lyndon Johnson's Great Society constituted another giant leap in the growth of the federal government. The states did not resist, and the age of fiscal federalism began. Governors and mayors were happy to receive a flood of federal dollars, even if accompanied by burdensome paperwork and regulation. All of this happened in relatively small increments and for

seemingly good purposes. In many cases, it was the fault of state and local governments, which did not respond promptly to serious problems or were willing to give up autonomy for federal dollars.

Today, however, the dynamics of society -- and of government and our federal system -- have changed dramatically. The Industrial Age of centralized authority and top-down management has ended and we are entering a new era, the Information Age, in which small, flexible, autonomous units, whether business or government, will out-compete and outperform their bureaucratic counterparts. Today, it is state and local governments that are meeting citizen needs, that are providing innovative and workable solutions to problems of health care, social services, education, crime and the environment. In almost every case, these innovative programs are difficult to create and implement because of federal regulatory barriers and constraints. Successful health care and welfare reform programs require dozens of waivers from federal regulations. With true freedom and flexibility -- and by leaving funding resources at state levels -- states would move much more rapidly to solve society's pressing problems. Today, it is the federal government that is bankrupt, financially and politically. It is the federal government where gridlock occurs, where there is much talk and little action, where one-size-fits-all programs and over-regulation don't fit this nation's diversity. It is a bloated and over-extended -- yet unresponsive -- federal bureaucracy that has left citizens surly and cynical, distrustful of government and disgusted with Washington. National survey research shows that unprecedented numbers of people feel impotent, unable to influence a government far from home that no longer reflects their interests, that hurts more than helps. Seventy percent of respondents to a Times Mirror survey said dealing with a federal bureaucracy is not worth the trouble. Two-thirds of Americans said Washington needs new leaders. Eighty-three percent said elected officials in Washington "lose touch with the people pretty quickly."

While the federal government was pre-eminent and rose to the challenges of the Industrial Age, state and local governments are ready to rise to the challenges of this new era in history, the Information Age, when diversity, experimentation and local control are needed. States will bring our federalism back into balance on a higher plane, for a more just, clean, safer and prosperous America.

"Balanced competition" in the federal system

In the great debate of the Constitutional Convention in 1787, two issues were of paramount importance: 1) large states vs. small states; and 2) national government vs. state authority. To balance the interests of large and small states, the delegates produced a brilliant solution, today referred to as the Great Compromise. It gave each state equal representation in the U.S. Senate, with representation in the House determined by population. To balance power between the states and the national government, and to prevent domination by any branch of government, the Constitution created what Madison called a "compound republic," with power split between two levels -- national and state -- and then split again among three branches of government at both levels. "Hence, a double security arises to the rights of the people," said Madison. The new Constitution, along with the Bill of Rights, gave superior power in limited areas to the national government, but reserved all other authority to the states. It intended to keep most everyday governmental functions at the level closest to the people.

The Constitution established a balanced competition among levels and branches of government. The people are protected, and the best public policy emerges, only when those levels and branches are willing and able to compete for power, when checks and balances exist. If any one level or branch of government is unable to compete, power will be concentrated improperly and the rights of the people will be endangered. The Articles of Confederation failed because power was concentrated in states and the national government was unable to compete. The 10th Amendment reserved all nondelegated and nonprohibited power to the states or to the people, clearly reserving a major role for state and local officials. The fact that originally state legislatures elected U.S. senators was

another clear indication that states were to be major players and their interests well represented at the federal level.

As we know so well, over many years the original checks and balances created by the founders have been eroded and the national government has consolidated power and authority, while states have lost power and their ability to compete. The system is simply not working. States are no longer competitive forces able to act as a check and balance to the federal government. Instead of being a full-fledged counterbalance to federal dominance, states are being treated and viewed like administrative units. The protections offered by the Miracle of Philadelphia are significantly eroded. Thus, the federal government is running huge deficits, is over-regulating states and citizens, is imposing one-size-fits-all requirements, is out-of-touch with local concerns, and is engaging in the new dishonesty in government -- unfunded mandates. The solution is to restore competition and checks and balances in the system. States must obtain more leverage so they can compete for power. The Conference of the States is the best means to obtain that leverage.

How this effort differs from past movements like "States' Rights" and "New Federalism"

This initiative is much different than the failed efforts of the past. The states' rights movement became focused narrowly on specific issues and became a threat to civil rights and environmental progress. Under the banner of states' rights, some civil rights were trampled and some radical positions were taken. States' rights failed to acknowledge the need for a strong central government to coordinate state activity on major national issues, and it gained a reputation as being radical and far-out. New Federalism failed because it was not long-term reform. It amounted mostly to the federal government providing funding for states in block grants with some flexibility. New Federalism caused states to ask the wrong question: "Is this program funded?" rather than, "Is this the proper role of federal and state governments?" Later, the federal budget became tight, and some of the money dried up, leaving states to administer many programs without adequate funding.

By contrast, The Conference of the States effort seeks to use a reasoned, responsible process to find the proper federal-state balance. It focuses on fundamental, structural, long-term, rebalancing, not on specific issues or emotional hot buttons. It does not seek to determine the precise roles of state and national governments, but instead relies on a changed framework -- the marketplace -- to slowly sort out the roles over a period of years. This initiative also involves a much more powerful process to create change, bringing together leaders from every state in a bipartisan fashion. No other past federalism initiative has attempted to use such a structured and inclusive process to win consensus.

Timing is critical

The timing for this initiative is right, and it would be a mistake to postpone the Conference beyond 1995. We have just finished a highly partisan political year that has left the citizenry cynical and distrustful of big government. The time to move forward is now. In 1996 we will begin another highly partisan political year that will include a presidential election. That campaign will make it almost impossible to keep the effort bipartisan and to achieve consensus. Thus, the year 1995 is a window of opportunity that we must not miss. There exists plenty of time for this initiative to receive consideration and scrutiny in every state in the country.

How centralization at the federal level hurts states

As the federal government has become pre-eminent, Congress and the bureaucracy have imposed innumerable regulations and mandates that stifle states. Unfunded federal mandates rob states of

innovation capital. They remove incentives and add barriers for states to fulfill their important role as "laboratories of democracy," as described by Supreme Court Justice Louis Brandeis: "There must be power in the states and the nation to remold, through experimentation, our economic practices and institutions to meet changing social and economic needs ... Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Today, states are doing their best to experiment, and they have come up with innovative solutions to problems. But thanks to myriad federal regulations in every area of government, there is not enough experimentation. States could be far more innovative and find more solutions with more freedom.

Another casualty of federal uniformity and one-size-fits-all regulations is values in government. Many politicians are now talking about values, alarmed at the increasing numbers of fatherless children, children giving birth to children, youth violence and structural welfare dependency. But it is very difficult to insert values and standards in public policy when that policy comes from Washington. Public policy from Washington is almost always values-neutral, devoid of values or reflects the values of the lowest common denominator. It can't be any other way because Washington policy applies equally to the smallest rural town and the biggest big city. Only when public policy is formed at state and local levels can local values and standards be applied. Federal regulations and guidelines preclude the application of values and standards in almost every area of governance.

How states can best compete for power

It is natural and proper for states to compete for power in the federal system. Few people, even many federal officials, disagree that the system is out of balance. It needs fixing. Without a Conference, states truly face a "dilemma of extremes." On one hand, they can go on hoping and complaining, which just hasn't worked. On the other hand, they can call a Constitutional Convention, which is radical and has proven unworkable. The Conference offers a middle ground. It is based on sound principles and requires the support of a super-majority of state legislatures to be successful. It is reasonable and makes sense. It is not radical or extreme. It provides states a powerful tool that they did not have to this point. Even if no amendment is ever adopted, the Conference will have the effect of elevating federalism to a new level of national consciousness. It will have salutary effects, whatever stage it gets to.

Individual states constitute good government because they represent power dispersed through 50 separate entities. That keeps states close to the people and responsive to their concerns. While that quality has virtue as a principle of governance, it makes competing with a monolithic force like the federal government difficult. State power is dispersed. Federal power is concentrated. Dispersed power is at a disadvantage when competing with concentrated power. In order to challenge and compete for their rightful role, states require a rallying event, a means of consolidating their power, showcasing the collective will of the states, and taking collective action. It should be the middle ground between the two extremes ... a process less disruptive than calling a constitutional convention, but one that is more than complaining, hoping and waiting. It should demand results and response and should elevate federalism to a new level of national consciousness. It should be a call to action.

The proper federal/state balance

Our system of federalism was skillfully crafted by the far-sighted founders of this nation to protect individual rights. A system in which states were too powerful and the national government too weak would be just as bad (or worse) than the situation we find ourselves in today. Balanced federalism has provided the framework within which generations of Americans have prospered and enjoyed freedom. For many decades, balanced federalism provided government close to home,

increasing flexibility and innovation in public policy. It has supported the diversity that has made this nation great. "Our federalism," says a 1989 report by a task force of The Council of State Governments, "is a precious form of government that has stood the test of time against the twin perils of anarchy and tyranny which have heretofore dominated the history of mankind."

The supporters of this plan believe in a reasonably strong central government, as outlined in the Constitution. This effort is not an attempt to destroy the federal government or to make states the dominant players in our system. The intent is to restore necessary checks and balances, with balanced competition -- a level playing field -- between the states and federal government. In a balanced system, state and federal leaders will still compete and disagree with each other. Each level will still try to address problems. There will still be discussions, negotiations and compromise on a wide range of issues. But the negotiations will be peer-to-peer, rather than master-to-servant. And discussions will focus not just on "Is it a good program?", but also, "Is it a state or national function?" That's what balanced competition is all about. Even with aggressive state action and some structural change, it will take a number of years for proper balance to be restored. There is no quick fix or silver bullet. Sixty years of centralization will not be undone overnight.

A new era in society with new governance needs

The present arrangement of centralized control at the federal level, with programs administered by huge bureaucracies, is not positioning our country for growth and prosperity in the next century. It is somewhat ironic and is an enormous tribute to the inspired work of our country's founders that the form of government they instituted more than 200 years ago -- a national government with limited, but pre-eminent duties, and state and local governments charged with all other functions -- remains the best form of government in the new high-tech era we are entering. Our country will be well-served by a return to that form of government. We might call it "Information Age Federalism."

Successful organizations everywhere are de-centralizing and downsizing. Bureaucracies are being dismantled across the world. Futurist John Naisbitt said, "In one of the major turnarounds in my lifetime, we have moved from 'economies of scale' to 'diseconomies of scale;' from bigger is better to bigger is inefficient, costly, wastefully bureaucratic, inflexible and now, disastrous" (John Naisbitt, Global Paradox William Morrow & Company, Inc., New York 1994). He added that the almost perfect metaphor for the movement from bureaucracies of every kind to small, autonomous units, is the shift from mainframe computers to PCs, networked together. "Whether president or CEO, if you are an old mainframe thinker, you are no longer relevant."

Centralized, bureaucratized government -- one huge mainframe -- is obsolete. In modern government, the deployment of power must shift from vertical to horizontal; from hierarchy to networking; from central government to states and citizens. As Naisbitt says, politics must begin to re-emerge as the engine of individualism.

Futurist Alvin Toffler said, "The diversity and complexity of Third Wave (Information Age) society blow the circuits of highly centralized organizations. Concentrating power at the top was, and still is, a classic Second Wave (Industrial Age) way to try to solve problems" (Alvin Toffler, Creating a New Civilization: The Politics of the Third Wave The Progress & Freedom Foundation, Washington, D.C., 1994) Overcentralization puts too many decisional eggs in one basket, said Toffler. The result is decision overload. "Thus, in Washington today Congress and the White House are racing, trying to make too many decisions about too many fast-changing, complex things they know less and less about." Leaders and citizens at local levels have better information and can respond faster to both crises and opportunities. In this necessary decentralizing effort, Toffler said, "The private sector is charging ahead on a supersonic jet. The public sector hasn't even unloaded its bags at the airport yet." It is necessary, Toffler said, to "move a vast amount of decision-making downward from the national level. There is no possibility of restoring sense, order and management

efficiency to government without a substantial devolution of power. We need to divide the decision load and shift a significant part of it downward."

It is not possible, Toffler said, for a society to de-massify economic activity, communications and other crucial processes without also being compelled to decentralize government decision-making as well. However, "nowhere is obsolescence more advanced or more dangerous than in our political life. And in no field today do we find less imagination, less experimentation, less willingness to contemplate fundamental change. The decisive struggle today is between those who try to prop up and preserve industrial society and those who are ready to advance beyond it. This is the super-struggle for tomorrow."

But even as the world's successful business leaders decentralize and move power to the lowest possible point in the organization, our national government grows ever bigger and more bureaucratic. It is outdated and old-fashioned. It is not suited for the fast-paced, high-tech, global marketplace we are entering.

Conclusion

This process is reasoned; it is careful. It relies on the good sense and patriotism of governors, state legislators and local government officials from across this country. This effort is bipartisan and free from special-interest group influence.

The process outlined in this paper gives state and local leaders a plan. It gives them a "big gear" to ultimately solve many of the lesser problems they encounter with the federal government. They can do more than just complain and talk. They can act. They are the only ones who will work to restore balanced competition in our federal system. Congress never will. The bureaucracy never will. The courts never will. The president never will. But state leaders working closely with their citizens will.

The Wall Street Journal, Tuesday, January 3, 1995

REVIEW & OUTLOOK

Federalism, Too

The eyes of the nation will be on the new GOP Congress when it opens for business tomorrow. However, as this drama unfolds, bear in mind that for all the focus on Washington, redistributing power and authority *away* from Washington is the goal of many of this new generation of Republicans. Both Newt Gingrich and Bill Bennett have urged the freshmen House Members to read the Federalist Papers to gain a better understanding of the proper balance between the federal and state governments. The nation's governors, however, aren't waiting for the Members to crack that book.

Led by Republican Mike Leavitt of Utah and Democrat Ben Nelson of Nebraska, the governors are talking about convening a "Conference of the States," which would debate specific ideas on how to correct the imbalance in power between Washington and the states.

The conference would then formally petition Congress to vote on its suggestions. While the petition wouldn't be binding, Congress would likely respond. To reject a reasoned appeal from the states would send a message that Congress is unwilling to listen. Such arrogance would become an instant political issue in every state in the 1996 elections.

How would the conference work? First, each legislature would designate four legislators and the governor as delegates. When a majority of states agreed to participate, the conference would be convened for a limited debate on long-term, structural changes that would enhance federalism. Specific proposals would be submitted in the form of a "States' Petition."

Among the ideas that Congress might be asked to consider are some Constitutional amendments. The Supreme Court has ruled that states and local governments must defend against federal encroachments by lobbying Congress rather than relying on the federal courts to protect their rights. The Court saw the states as just another special interest group, not as a co-equal Constitutional partner. A sentence clarifying the Court's duties could be added to the 10th Amendment, which reserves power not delegated to the federal government to the states or the people.

Another possible amendment was proposed in 1950 by then-Governor Bruce Babbitt of Arizona. He suggested giving two-thirds of state legislatures the power to sunset any federal law, except those dealing with defense and foreign policy. Mr. Babbitt is now President Clinton's Interior Secretary, and is under fire for overstepping the boundaries of federal power. It would be interesting to know if he still has the concerns over that power he expressed as a governor.

Another amendment in the air would add a clause to Article V of the Constitution and give the states another way to propose Constitutional amendments other than the unworkable and never-used Constitutional convention. Three-fourths of the states could be given the power to propose an amendment to the Constitution that would become valid within two years unless Congress rejected it.

Even governors who have substantive reservations about such amendments are nonetheless enthusiastic about a Conference of the States. "We need a national debate on the balance of powers," Governor-elect Tom Ridge of Pennsylvania told us recently. "I served in Congress for 12 years, and we trod on the rights of states every day. That will change only when they speak with a united voice."

States' rights earned a bad reputation when they were used to justify a lack of progress on civil rights. Today such concerns are much less valid, but states continue to be restricted. In an earlier era, states seemed "laboratories of democracy" to Supreme Court Justice Louis Brandeis. "Denial of the right to experiment may be fraught with serious consequences to the nation," he warned some 60 years ago. "A single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country."

Several states are serious about holding a Conference of the States, and if all goes smoothly it could be held as early as the fall of 1995. We're well aware of the long-stated dangers of opening up this subject, but that caution has to be set against the extraordinary encroachments Congress made against the states over the past 30 years. No such imbalance was intended 200 years ago. The new Congress should be open to efforts to smooth the transfer of public responsibilities out of Washington.

The Washington Post
December 11, 1994

David S. Broder

Federalism In a State of Ferment

At its simplest, it's three women representing local, state and national government forging a compact to let programs be judged by human results, not bureaucratic formulas. At a deeper level, it's a law that would try to stop Washington politicians from handing other people the bill for ideas dreamed up on the Potomac. At its most radical, it could bring back to Philadelphia next year a modern-day version of the Constitutional Convention of 1787.

All these things happening at once is a sure sign that federalism issues are back on the national agenda in a serious way for the first time in a dozen years. In 1982, President Reagan proposed a "New Federalism" initiative that he hoped would start a systematic devolution of power from Washington to the states.

That proposal went nowhere. But last week, two former governors, Lamar Alexander (R) of Tennessee and Sen. Bob Graham (D-Fla.), were independently promoting variants on the Reagan plan. Both see it as a way to respond to the anti-Washington message of the 1994 election. Alexander has put the proposal at the center of his campaign for the Republican presidential nomination. Graham argues that an "aggressive" effort to decentralize programs "is the best road for the president to take back to being the centrist Bill Clinton of the '92 campaign."

The administration is trying. At the beginning of last week, Vice President Gore officiated at a cross-country satellite conference in which Secretary of Health and Human Services Donna Shalala signed an agreement with Oregon Gov. Barbara Roberts, Portland Mayor Vera Katz and others to ease federal regulations on some programs and accept state-defined "benchmarks" as a gauge of success.

But even as such flexibility is added to the existing system, the federalism debate is moving boldly on to much broader and more basic questions.

A bill to bar the federal government from imposing any mandate for which it does not provide funds is the No. 1 item on the 1995 agenda of the new Republican Senate. Early passage by Congress is likely.

On a second front, Republican governors met at midweek with the incoming Republican leaders of the House and Senate, seeking a guarantee that their budgets will not be victimized as Congress drives to reduce federal spending. The governors know that the proposed balanced-budget constitutional amendment could be a disaster for the states if some future Congress decides to end red ink in Washington by shifting costs downward to states and cities. On a bipartisan basis, they made that same point to President Clinton—and received a sympathetic hearing.

The boldest step of all—which has drawn amazingly little notice—is the effort endorsed last weekend by the Council of State Governments to call a Conference of the States—first cousin to a Constitutional Convention—next year.

Utah Gov. Michael O. Leavitt (R), its chief promoter, and his partner, Nebraska Gov. Ben Nelson (D), say the conference would develop a package of statutes and constitutional amendments to "correct the balance" between the states and Washington.

The call for the conference—soon to be endorsed by the leadership of the National Governors' Association and the National Conference of State Legislatures—says that "over many years, the federal government has dramatically expanded the scope of its power and pre-empted state government authority and increasingly has treated states as administrative subdivisions or as special-interest groups, rather than as coequal partners."

Instead of complaining, the governors and legislatures want to come to Washington with the power to bargain. The project is on a fast track. Leavitt and Nelson hope to see legislatures approve resolutions of participation in January and name their bipartisan delegations of governors and legislative leaders. They want conference sessions in late spring, summer and the autumn of 1995, with the final session planned for Philadelphia's Independence Hall, site of the original Constitutional Convention. There, they hope to approve a States' Petition to Congress, which could be voted on by individual legislatures early in 1996 and presented in Washington, so it becomes a major point of debate in the presidential and congressional election that year.

The sponsors are thinking of bold, even radical, steps to "correct" what they see as the imbalance of power that gives Congress and the federal courts domination over state government. They talk of allowing states to initiate constitutional amendments, rather than simply ratifying them. They contemplate "sunsetting" or, in effect, nullifying federal statutes by action of two-thirds of the states.

They know this whole proposal will stir up controversy. "What could be better," Leavitt asks, "than to make the 1996 political year the occasion for another great debate on the issues that fascinated Jefferson and Madison

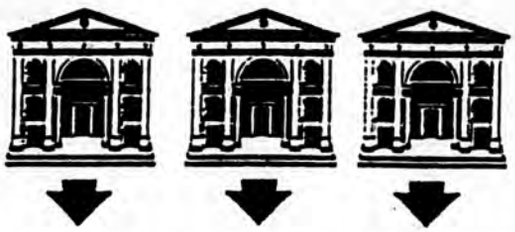
Conference of the States

Proposed by the Council of State Governments

Pictorial Summary

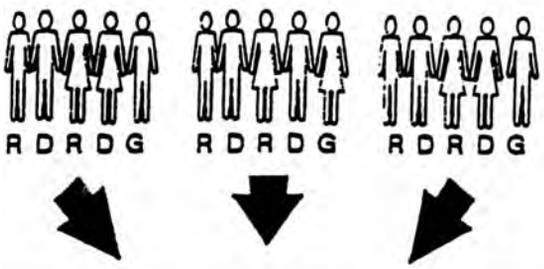
Step 1:

- Each state legislature adopts a Resolution of Participation
- Each legislature appoints a bipartisan delegation of four legislators and the Governor to attend the Conference of the States



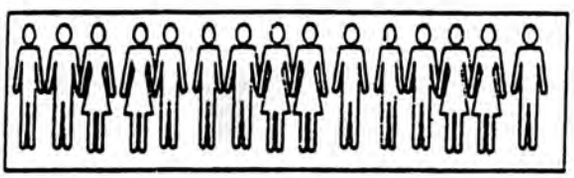
Step 2:

- When a significant majority of states have passed the Resolution of Participation, the Council of State Governments will convene bipartisan incorporators appointed by legislative leadership in the participating states



Step 3:

- The Conference of the States is held
- Solutions to restore balance are discussed, refined and voted upon



Step 4:

- The product of the Conference of States is a document, a new instrument in American democracy called a "States' Petition"
- The States' Petition constitutes the highest form of communication between the states and Congress

Step 5:

- The States' Petition is carried back by delegates to their respective state legislatures for approval.
- States' Petition items which involve constitutional amendments require approval of a constitutional majority of state legislatures

Step 6:

- The States' Petition is presented to Congress
- Ignoring a constitutional majority of states would signal an arrogance on the part of Congress--an arrogance the States and the American people would find intolerable

UPDATED RESOLUTION LANGUAGE

First paragraph reflects changes in delegation size

RESOLUTION OF PARTICIPATION IN A CONFERENCE OF THE STATES

[Whereas clauses to be provided by individual states]

The following language needs to be incorporated into each state's resolution:

Now, Therefore, Be It Resolved:

That the following be adopted:

(1) A delegation not to exceed seven voting persons from the State of , shall be appointed to represent the State of at a Conference of the States for the purposes described in Section (2) to be convened as provided in Section (3). The delegation shall not exceed seven voting persons as follows: (a) the governor or, if the governor does not wish to be a member of the delegation then a constitutional officer selected by the governor; and (b) a number of legislators not to exceed six; three from each house, of which at least one shall be from each major political party selected by the presiding officer of that house. Each presiding officer may designate two alternate legislator delegates, one from each party, who have voting privileges in the absence of the primary delegates.

(2) The delegates of The Conference of the States will propose, debate and vote on elements of an action plan to restore checks and balances between states and the national government. Measures agreed upon will be formalized in an instrument called a States' Petition and returned to the delegation's state for consideration by the entire legislature.

(3) The Conference of the States shall be convened under the §501(c)3 auspices of The Council of State Governments in cooperation with the National Governors' Association and the National Conference of State Legislatures no later than 270 days after at least 26 legislatures adopt a resolution of participation.

(4) Prior to the official convening of The Conference of the States the steering committee will draft:

- **(a) the governance structure and procedural rules for the Conference;**
- **(b) the process for receiving rebalancing proposals; and**
- **(c) the financial and administrative functions of the Conference, including The Council of State Governments as fiscal agent.**

(5) The bylaws shall:

- **(a) conform to the provisions of this resolution;**
- **(b) specify that each state delegation shall have one vote at the Conference; and**
- **(c) specify that the Conference agenda be limited to fundamental, structural, long-term reforms.**

(6) Upon the official convening of The Conference of the States, the State delegations will vote upon and approve the Conference governing structure, operating rules and bylaws.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 28, 1995

SUBJECT: Conference of the States (HJR 20)

TO: Representative Barnes, Chair House Special Committee on World Trade and State/Federal Relations

FROM: Tamara Brandt Cook TBC
Director of Legal Services

HJR 20 calls for the convening of a Conference of the States under the auspices of the Council of State Governments and for the appointment of a delegation to represent Alaska at that conference. You have provided me with a copy of an "Alert" and asked me to respond. As I understand the contents of the "Alert," it is asserted that the Conference of the States will amount to Constitutional Convention.

Under Article V of the United State Constitution, a constitutional convention is called by Congress ". . . on the application of the legislatures of two thirds of the several states. . . ." HJR 20 itself does not call for a constitutional convention. It is not even addressed to Congress. While it is possible that the question of trying to persuade state legislatures to call for a constitutional convention could be considered during the Conference of the States, the conference itself does not amount to a constitutional convention because it was not called by Congress and the required number of states have not applied to Congress for a convention.

TBC:klb
95-105.klb

(Adopted: January 11, 1995)

The American Legislative Exchange Council
***Conference of the States* Endorsement Resolution**

WHEREAS, The 10th Amendment to the Constitution of the United States reads as follows: "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;" and

WHEREAS, The 10th Amendment defines the total scope of federal power as being that specifically granted by the United States Constitution and no more; and

WHEREAS, The scope of federal power defined by the 10th Amendment means that the federal government was created by the states, with specifically delineated powers; and

WHEREAS, State authority has been eroded primarily by four developments: (1) Federal assumption of powers reserved to the states under the 10th Amendment; (2) Interpretations of the "commerce clause" which go beyond any reasonable conception, and in effect authorize federal pre-emption with respect to any issue for which some faint or circuitous connection can be made to interstate commerce; (3) By threat of withholding, withdrawing, or diverting federal funds to coerce compliance with federal policies; (4) Failure on the part of the states to challenge federal intrusions and by endorsing federal usurpation by seeking additional federal funding and acceptance of federal delegation of power; and

WHEREAS, Numerous resolutions have been forwarded to the federal government by individual states with little response or result from Congress or the U.S. Government; and

WHEREAS, A combined effort of the fifty state legislatures would communicate to Congress and the U.S. Government the broad opposition that exists to federal usurpation of state authority and also, provide an opportunity for states legislators to collectively propose constructive remedies to restore state sovereignty under the 10th Amendment to the U.S. Constitution.

NOW THEREFORE BE IT RESOLVED, that the American Legislative Exchange Council (ALEC), a membership organization representing both Republican and Democratic state legislators, endorses the concept of the *Conference of the States*.

BE IT FURTHER RESOLVED, that copies of this resolution be distributed to the ALEC membership and the *Conference of the States* Steering Committee members.

Office of the Governor
Office of Management and Budget
January 31, 1995

Position Statement

HJR 20

The Knowles Administration supports House Joint Resolution 20, relating to unfunded federal mandates and the Conference of the States. The Conference of the States, which is supported by this resolution, has received broad interest and support among the states as a forum for addressing the balance of state and federal powers.

For Alaska, one of the key issues in our relationship with the federal government is not just the funding of federal mandates, but also the flexibility to tailor our government services to meet the unique needs of our state. In many areas — including welfare reform, education, environmental protection and health care — Alaska could benefit from greater freedom to design out own solutions, rather than being required to follow rigid requirements dictated by Washington.

The Administration looks forward to working with the Legislature in presenting a unified Alaska position on the balance of state and federal powers at the Conference of the States.

Ban on unfunded mandates is first step

By TOM FINK

The U.S. House and the U.S. Senate have each passed their own versions of the unfunded mandates act. The versions aren't much different. In the normal course of events, the differences will be reconciled in a final bill and signed by the president before the end of the month.

If it turns out to be the first step towards a prohibition of unfunded mandates by the federal government, the unfunded mandates act will drastically change and improve our government structure.

This legislation is a big step forward, but by itself, it does not go far enough.

The bills passed by the House and Senate are quite limited. They only affect future legislation and leave all the existing unfunded mandates in force.

The legislation provides that if a federal government agency estimate of the cost of any proposed federal law exceeds $50 million to state and local governments, the law will not be effective unless there is a separate vote by Congress imposing the additional costs.

Further, the final bill will end up exempting some federal laws from the unfunded mandates prohibition, such as the American Disabilities Act.

Fink

I was very much involved in the unfunded mandate campaign as mayor of Anchorage. Our proposal and the one basically supported by the U.S. Conference of Mayors was very simple. It said that any federal law which places a cost on the state or local government can be ignored by state and local government unless it is fully funded by the federal government.

We, as mayors, argued the fairness concept. Congress shouldn't be able to say it is doing good things while making subordinate governments pay the cost.

We said there was no accountability on the part of Congress from such actions. We said that many federal laws apply very well in some regions of the country, but don't apply in other regions.

We said these laws made local government spend tax money on lower priorities.

To the extent that we have a federal law or constitutional amendment denying the federal government the power to impose costly legislation on state and local governments, the power of governance will shift to local and state governments.

"IT'S A SLOW RECOVERY, BUT IT IS A RECOVERY..."

The federal government certainly does not have the money to pay for all the laws that it passes. If Congress attempted to increase federal taxes to the level necessary to fund those mandates, the public would elect a new Congress because the increase would be so large.

Some people in the United States greatly fear unfunded mandates legislation. These generally are people who believe that government has all the answers. These are the people who feel that the citizens will not make good decisions on a local or state basis. They really believe that people only make decisions based upon what is in the best interest of society as a whole.

This legislation is a big step forward, but by itself, it does not go far enough.

These are people who have been able to change the structure of our government through the use of the courts and our federal Congress. They have successfully promoted federal laws that do not represent the will of the public in general.

If the federal government can't pass laws without funding them, we will approach a much more representative form of government.

Anyone who has been in government knows that local government is most responsive to the wishes of its constituency. The state government is the next most responsive. The federal government is the least responsive.

Congress is so far away, we can't track what the members are doing. We just cannot understand why federal lawmakers pass the laws that they do. When we quiz them, we are given examples wherein they voted on "our side."

It is only occasionally, such as in the last November elections, that the public gets so fed up that it creates a huge upheaval. The public said in November, *inter alia*, we don't want Congress deciding what we should spend our money on. Let local and state government decide for what our taxes are spent. We have more control over our state and municipal governments.

To the extent that you have any influence over your senators or your congressman, please encourage them to approve in final form an unfunded mandate bill that prohibits all unfunded mandates.

Businessman Tom Fink is a former speaker of the Alaska House and mayor of Anchorage.

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Anchorage Daily News 3/19/95

Let's join states in effort to alter Constitution

FRITZ PETTYJOHN

The latest plot to overthrow the Constitution of the United States involves all 50 of the nation's governors, spearheaded by Republican Mike Leavitt, governor of the hotbed of Bolshevism — Utah. In Alaska, the leading conspirator is the notoriously left-wing subversive, Rep. Ramona Barnes.

On a vote of 33 to 6, the state House recently passed HJR20, sponsored by Barnes, East Anchorage Trotskyite Eldon Mulder and fellow travelers Ben Grussendorf of Sitka and Richard Foster of Nome. The bill calls for Alaska's participation in a Conference of the States.

At the conference, governors and delegations of state legislators will meet to draft a petition to the U.S. Congress. Promoters of this event want to pressure Congress to pass an amendment to the U.S. Constitution that would set up a new way to amend it. The new procedure would allow state legislatures to propose amendments, giving Congress the power to ratify. This essentially reuses the method by which all amendments have been approved up to now.

According to the John Birch Society, the Conference of the States is a conspiracy. Once assembled, the governors and state legislators will transform themselves into a constitutional convention, a la Philadelphia in 1787. They will demand that Congress recognize their status and will then proceed to repeal the Bill of Rights, make atheism the state religion, replace the Goddess of Liberty with Madonna, etc.

The courts will not intervene because in the past they have given Congress wide latitude in determining if, in fact, constitutional amendments have been ratified properly by the states.

To allay such fears, our state House amended HJR20 to specifically state that Alaska's participation in the conference is in no way to be construed as calling for a constitutional convention.

No matter! Consumed with a lust for power, the delegates to the Conference of the States will, we are assured, ignore all such constraints in their rush to revolutionize our government and society.

If you think this is all silly, you're right — but it may not be without consequence.

About 20 years ago, a group of people led by Lew Uhler of California concluded Congress was eventually going to bankrupt this country. To stop it, a balanced budget amendment was needed. But how to force Congress to pass such an amendment?

The answer was to be Article V petitions for a constitutional convention. If two-thirds, or 34, of the state legislatures pass resolutions demanding a constitutional convention, Congress would be forced to issue such a call.

The Uhler strategy was not to actually have such a convention. Rather, the threat of a convention would be used to pressure Congress to pass a balanced budget amendment.

It almost worked. By 1982, about 30 states had passed Article V resolutions and momentum for a balanced budget amendment was building. Congress came within a few votes of passing it, so the campaign for more Article V resolutions continued. Led by the late Democratic Sen. Bob Ziegler of Ketchikan, Alaska became the 32nd state to pass one. Congress was getting nervous, and a balanced budget amendment seemed within grasp. Missouri, as I recall, was poised to be state No. 33. All was going according to plan.

And then along came Phyllis Schlafly and the Birchers. They decided the campaign for the balanced budget amendment was actually a plot to hold a constitutional convention at which American sovereignty would be ceded to the Soviet Union. A few credulous state legislators in Alabama and Florida were talked into repealing those state's Article V resolutions (in league with liberal Democrats who simply opposed a balanced budget amendment).

The tide was turned. Instead of having 32, going on 33, states calling for a limited convention, Uhler was reduced to 30. The pressure was off Congress and was never applied again. The balanced budget amendment was put on the back burner, and here we are, a couple of trillion dollars of debt later.

The lesson here is that the politics of hallucination is more than merely amusing.

The idea of a Conference of the States is timely, fully in keeping with the Excellent Great American Devolution (EGAD, to Ms. Schlafly). Let's hope our state Senate follows the House in getting the Great Land involved.

☐ Fritz Pettyjohn, an Anchorage lawyer, served in both the state Senate and House of Representatives.

THOMAS N. SCARBOROUGH
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RECEIVED
MAR 10 1995

March 8, 1995

Representative Ramona Barnes
State Capitol - Room 403
Juneau, Alaska 99801-1182

Re: Conference of the States

Dear Rep. Barnes:

Attached is information concerning the Conference of the States. A quick review will show that this is a back door method by those supporting ONE WORLD GOVERNMENT to amend our US Constitution. The Conference of the States is a 501C3 non profit corporation. I do not think there is any legal way for a corporation of any kind that should be attempting to reorganize the relationship between the Federal Government and the States.

I recommend that CSHJR 20 and HJR 21 both be placed in file 13. There is no way that we can allow our US Constitution to be destroyed by Gov. Mike Leavitt.

I suggest that the Unfunded Mandates issue be handled much in the same manner as Colorado and Montana. This should be accomplished by legislation and not a resolution.

I have access to considerable resources on the above issues. Please let me know if I can be of help to you.

Sincerely,

Thomas N. Scarborough

P.S. I am not a member of the John Birch Society, but they got the correct message.

Alert☆Alert☆Alert☆Alert☆Alert

Fact sheet for State Legislators regarding a resolution promoting a "Conference of the States"

The Council of State Governments (CSG), a private organization, and Utah's Governor Mike Leavitt are promoting a resolution calling for a national "Conference of the States."

PLEASE STUDY THE MEASURE CAREFULLY AND BEWARE ITS DANGERS!

Its passage would authorize a series of three extraordinary developments:

1. The formal calling of a convocation of the states is tantamount to, and in possession of, the process essential to a constitutional convention.

2. The formalized appointment of certified delegates empowered to vote at this federal convocation.

3. Resolutions which become legal instruments authorizing the delegates to deliberate, propose, and adopt long-term fundamental structural changes in the U.S. Constitution.

To put it more bluntly, the proposed resolution, if passed by at least 26 state legislatures, would concentrate sovereign powers in one place under the same revolutionary force that created our federal government in 1787!

It would not become merely an informal discussion of the state–federal relationship, or simply a forum for asserting the 10th Amendment rights of the states. This resolution would concentrate the sovereign powers of the people, through their state-appointed delegates, in a de facto constitutional convention — *without actually calling it one.*

Although there is need for the states to handle their own affairs without federal intervention, there is absolutely no popular support for a constitutional convention.

Passage of this resolution would amount to a misrepresentation of the people in your state. They have not prevailed upon you to amend the basic law of the land. Rather, most people who even know about it see the "conference" as only an assertion of state powers already guaranteed by the U.S. Constitution, which you have taken an oath to defend.

Please consider the following important points:

1. This resolution would circumvent the proper route for proposing amendments to the Constitution as established under Article V. Proposals must be submitted to Congress, and Congress is not obliged to call an amendment-empowered conference unless or until two-thirds (34) of the states apply for one.

More ☞

2. The name of the convocation is of no consequence. It would authorize the consolidation of sovereign powers whether termed a constitutional convention or not.

3. Earlier proposals submitted by Governor Leavitt and the CSG did not attempt to conceal the goal of a constitutional convention, but publicly called for one (see below).

4. The Constitution is not flawed. It does not permit federal welfare-state programs, whether funded or unfunded.

5. The Constitution guarantees freedom for the states to carry out all powers not prohibited by the Constitution and not delegated by it to the federal government. Enforcement of the 10th Amendment does not require more constitutional amendments.

6. A concurrence of the states in rejecting all unconstitutional federal programs could be accomplished by telephone. It would not need a formal resolution of any convention-empowered delegates.

7. If the majority of states pass this resolution and the conference takes place, media coverage would likely endorse the proceedings. This could create, after the fact, a majority of people favorable to the ratification of harmful amendments that would legalize the social welfare activities which are now carried out only by usurpation.

A closer look at the chief promoters of the "Conference":

In a speech in Arizona last April, Governor Michael Leavitt said he was considering a plan to call a constitutional convention. This upset his audience, and members of the Utah legislature. State Representative Met Johnson said:

> *Mike got all wild and weird on us with this constitutional-convention speech in Phoenix. The Constitution isn't broken; we don't want to open it up. When Michael started talking about that, we just put our heads in our mashed potatoes and groaned, "oh no."*
>
> — Salt Lake Tribune, April 25, 1994, Page 1A

It would appear that Governor Leavitt and the CSG have merely reworded their call for a constitutional convention to make passage of these state resolutions seem harmless.

In September of 1989 the CSG recommended that the following words be added to the Tenth Amendment:

> *Whether a power is one reserved to the states or to the people, shall be decided by the Courts.*

This incredible proposal, the transfer of state power to the federal Courts, should sound a clear alarm to any legislator who thinks that the Leavitt-CSG "Conference of the States" is intended to "restore balance to the state–federal relationship."

For more documentation, contact the
Research Department of The John Birch Society, Appleton, WI 54913-8040
Telephone: (414) 749-3780

CONSTITUTIONISTS NETWORKING CENTER
442 E 1250 RD., BALDWIN KS 66006
(913) 594-3367

EVAN MECHAM (AZ) - CHAIR.
WALTER MYERS (KS) - EXEC. DIR.
JUDGE (RET) J. J. BOESEL (OH)
SEN. DON ROGERS (CA)
DR. GREG DIXON (IN)
JIM THOMAS (IN)
JOE STUMPH (UT)
JOHN VOSS (CO)

Feb. 8, 1995

HONORABLE STATE LEGISLATORS, GOVERNORS AND MEMBERS OF CONGRESS:

As you know, President Clinton recently bypassed Congress and unilaterally bailed out speculators in the Mexican peso. It's self evident that this act was unconstitutional as our Constitution doesn't authorize Presidents to redistribute our money to other nations via foreign aid, bailouts, etc. Such acts by President Clinton and his predecessors generates a question: <u>where have they found the power to take such unconstitutional actions?</u>

If required to cite their authority, I suspect they would claim it's in the Emergency Powers provided Presidents by Title 12, USC 95 (b). U.S. Senate Report #93-549 says: *"This vast range of powers, taken together, confer enough authority to rule the country without reference to normal constitutional processes."*

Informed government watchers know these **"Emergency Powers"** transformed the U.S. into a Constitutional dictatorship. And after more than 60 years under **Emergency Powers**, few believe any President will ever terminate them. This belief is further substantiated by PL 313 dated 4-14-52 wherein the federal government admitted to the unconstitutionality of the UN Charter by saying: *"Whereas the existing state of war.... and the termination thereof...would render certain statutory provisions inoperative"* and *"Whereas some of these statutory provisions are needed to insure the...capacity of the United States to support the United Nations,...it is desirable to extend these statutory provisions."*

In November 1994, our Republican Governors unanimously adopted **THE WILLIAMSBURG RESOLVE.** It states: *"The founders of our Republic...did not pledge their lives, fortunes and sacred honor to achieve independence from an oppressive monarchy...only to surrender their liberties to an all-powerful central government on these shores."* In it, they pledged to restore *"to the States and the people the prerogatives and freedoms guaranteed to them under the Constitution."* Also, Gov. Leavitt of Utah has proposed a **Conference of the States** (COS) as "*an effort that will restore balance in the federal system.*"

For the Republican Governors pledge or Gov. Leavitt's desire to become reality, the Emergency Powers must be terminated and government returned to within the limits prescribed by the Constitution; the goal of CNC. This will restore the proper "balance in the federal system," restore "*to the States and the people the prerogatives and freedoms guaranteed to them under the Constitution,* and help calm the social unrest building in our Nation.

By having a formal delegation from each state, a COS has the potential of becoming a Constitutional Convention (ConCon); something those promoting the *NEW WORLD ORDER* have long advocated and made known that its target will be our precious Constitution. CNC therefore suggests that states not send a formal delegation to the COS, rescind any legislation they've passed to this effect, and that 38 or more of them or Congress act to terminate the **Emergency Powers.** This approach will reduce the risk of a ConCon and satisfy the Governors desire and pledge. Anyone desiring more information on **Emergency Powers** can contact the undersigned at 913-594-3367 or Dr. Gene Schroder at 719-787-9958.

Sincerely,

WALTER L MYERS
Exec. Dir.

upon precedents established by the Founding Fathers at the time of our nation's birth. It is also powerful because it provides a "big gear" to address this problem, focusing on fundamental, structural change, rather than fussing around with a lot of smaller gears – the day to day issues that frustrate state and local governments. Turning the "big gear" will get the smaller gears spinning, resolving most of the federal-state conflicts on specific issues.

This plan has nothing to do with political partisanship. It is not a Republican or a Democratic plan. And it is motivated by much more than political ideology. While restoring proper balance in the federal system is important for maximum personal liberty, it is also important for reasons of efficiency, cost-effectiveness and global competitiveness. The present arrangement of centralized control at the federal level, with programs administered by huge, inefficient, out-of-touch bureaucracies, is not positioning our country for growth and prosperity in the next century. Unfunded federal mandates rob states of innovation capital. Successful organizations are de-centralizing and downsizing. Bureaucracies are being dismantled across the world. Futurist John Naisbitt said, "In one of the major turnarounds in my lifetime, we have moved from 'economies of scale' to 'diseconomies of scale;' from bigger is better to bigger is inefficient, costly, wastefully bureaucratic, inflexible and now, disastrous." He added that the almost perfect metaphor for the movement from bureaucracies of every kind to small, autonomous units, is the shift from the mainframe computer to PCs, networked together. "Whether president or CEO, if you are an old mainframe thinker, you are no longer relevant."

The idea that a central government – one huge mainframe – is the most important part of governance is obsolete. The deployment of power must shift from the central government to states and individuals. From vertical to horizontal; from hierarchy to networking. As Naisbitt says, politics must begin to re-emerge as the engine of individualism.

But even as the world's successful business leaders decentralize and move power to the lowest possible point in the organization, our national government grows ever bigger and more bureaucratic. It is outdated and old-fashioned. It is not suited for the fast-paced, high-tech, global marketplace we are entering. There is a much better way.

It should also be said from the outset that the supporters of this plan believe in a strong central government, as outlined in the Constitution. This is not an attempt to destroy the federal government, or to make states the dominant players in our system. The intent is simply to restore a proper balance.

> *A free government is a complicated piece of machinery, the nice and exact adjustment of whose springs, wheels, and weights, is not yet well comprehended by the artists of the age, and still less by the people.*
> –John Adams to Thomas Jefferson, May 19, 1821

❖ History ❖
How We Got Where We Are

It is fascinating to note that the problem we confront today regarding balance in the federal system is similar to what the Founding Fathers of this country faced more than 200 years ago with regard to the Articles of Confederation – only just

Conference of the States

❖ An Action Plan to Restore Balance in the Federal System ❖

By Michael O. Leavitt
Governor of Utah

Whenever state and local officials get together, a great sport is made of bashing the federal government.

In the last several months, the rhetoric has become especially heated over unfunded mandates forced upon state/local leaders by paternalistic federal officials. Outrage and anger are displayed at meetings of the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, and the National League of Cities and Towns. State and local leaders are close to open rebellion.

But the reality is that despite all the talk . . . there's very little real action or real improvement.

Other than the psychological value of blowing off some steam and commiserating with one's peers, very little progress has emerged from such meetings. Speeches are made, resolutions are passed, lists of grievances are aired. But the federal bureaucracy, the Congress, and the president go right on consolidating power, usurping local authority, and viewing states as mere administrative units of the federal government.

State and local leaders have plenty of desire to do something about this matter. They have lots of energy, significant intellectual capacity. Hundreds of articles and many books have been written about federalism and states' rights, decrying centralization of power and the loss of flexibility at state and local levels. But like the weather, everyone talks about the erosion of states' rights . . . no one really does anything about it.

What has been lacking in all the talk is a real PLAN, a real PROCESS, to really do something . . . to actually engage in an effort that will restore balance in the federal system. States must take the initiative. Relying on the goodwill of the president (of whatever party), the Congress, the bureaucracy, or the courts to restore proper balance is so naive as to be laughable.

> *A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned -- this is the sum of good government.*
> --Thomas Jefferson

The purpose of this paper is to offer ideas for a PLAN. The message here is that the time of hoping, begging and waiting has ended. The time for action has come. It is time to re-establish states as major constitutional players.

This paper outlines a simple, but powerful, process for states to retake the initiative, to take control of their own destinies, to assume their rightful roles, to return proper authority, flexibility and stature to the states. It is powerful because it relies

the states and the national government, and to prevent domination by any branch of government, the Constitution created what Madison called a "compound republic," with power split between two levels – national and state – and then split again among three branches of government at both levels. "Hence, a double security arises to the rights of the people," said Madison. The new Constitution, along with the Bill of Rights, gave superior power in limited areas to the national government, but reserved all other authority to the states. It intended to keep most everyday governmental functions at the level closest to the people.

The Constitution established a balanced competition among levels and branches of government. The people are protected only when those levels and branches are willing and able to compete. If a level or branch is unwilling or unable to compete, power will be concentrated improperly and the rights of the people will be endangered. The Articles of Confederation failed because power was concentrated in states and the national government was unable to compete.

The 10th Amendment reserved all non-delegated and non-prohibited power to the states or to the people, clearly reserving a major role for state and local officials. One of Madison's arguments demonstrating that states had clear authority in the federal system, and that the proposed Constitution truly divided power, was that the states were the political units by which the people would approve it.

The powers not delegated to the United State by the Constitution, nor prohibited by it to the states, are reserved to the State respectively, or to the people.
– Article X of the Bill of Rights
(10th Amendment to the Constitution)

As we know so well, over many years the original intent of the founders has been eroded and the national government has consolidated power and authority, while states have lost power. Some of the erosion has been the states' own fault. Citizens during the Progressive Era sought major social and economic reforms. States were slow to respond, so reforms occurred at the national level, led by the presidencies of Republican Theodore Roosevelt and Democrat Woodrow Wilson. State primacy was eroded. Misconduct by industry prompted unprecedented national intervention in economic affairs and a new willingness by the American people to look to Washington, rather than to state capitols, for protection against domestic threats to health and safety.

Any last resistance to an expanding national role was overwhelmed by President Roosevelt's vast responses to the Great Depression and World War II. National dollars pumped life into the economy and states surrendered autonomy in exchange for assistance. The states' reluctance to act on environmental regulation and civil rights matters further allowed the national government to usurp state prerogatives. Lyndon Johnson's Great Society constituted another giant leap in the growth of the federal government. The states did not resist, and the age of fiscal federalism began. Richard Nixon's revenue sharing program is an example. Governors and mayors were happy to receive a flood of federal dollars, even if accompanied by burdensome paperwork and regulation.

All of this happened in relatively small increments and for seemingly good purposes. In many cases, it was the fault of state and local governments, which did

the reverse. Then, the national government was too weak and the states too strong. Today, the national government is too powerful and the states too weak.

It is vitally important to see how the Founding Fathers solved the problems of the weak Confederation. Some of what occurred then can help guide us today in restoring balance in the federal system.

The 13 states were, in effect, nearly autonomous countries under the Articles of Confederation. They had all the power. The Confederation Congress had little power. The Congress could not require the states to carry out any of its decisions. Every bill that Congress passed had to be approved by nine of the 13 states. There was no national military; no ability to regulate foreign trade or commerce among the states; no ability to resolve arguments over state boundaries; no power of taxation unless all 13 states agreed; and no common currency. Attendance at the Confederation Congress was poor.

George Washington sadly described the national government as a "rope of sand" and observed that "the Confederation appears to me to be a shadow without substance."

Something had to be done, but where would the political will come from to strengthen the national government? Who would initiate such a bold move? Each state legislature clung tenaciously to its power. Members of the Confederation Congress had no mandate or desire to begin such a movement. They might lose their jobs. It would take courageous people of good will to instigate changes.

The first break came at the instigation of James Madison and the Virginia Legislature. They called for a conference of states (remember that term) to consider common interests in commercial regulations. Only five states responded, and the major result of the conference was a report asking that all states send delegates to another meeting in Philadelphia on the second Monday of the following May. Little did anyone know that that invitation would be the thunderbolt that would lead to the birth of our present federal government.

One by one, the states accepted the invitation. Once seven states had agreed, the Confederation Congress acknowledged what was happening and tried to minimize the impact by officially recognizing it. However, the Congress tried to limit the convention's authority by stating that it would meet "for the sole and express purpose of revising the Articles of Confederation."

As we all know, the delegates to the great Constitutional Convention in 1787 in Philadelphia did much more than that. They threw out the Articles of Confederation and drafted a new constitution. Among others, two issues were important in that debate: 1) large states versus small states; and 2) national government versus states' rights.

> *It appears to me, then little short of a miracle, that the Delegates from so many different States (which States you know are also different from each other), in their manners, circumstances, and prejudices, should unite in forming a system of national Government . . .*
> --George Washington to Lafayette, Feb. 7, 1788

To balance the interests of large and small states, the delegates produced a brilliant solution, today referred to as the Great Compromise. It gave each state equal representation in the Senate, with representation in the House determined by population. To balance power between

Constitutional Tools (or the threat of constitutional action)

The drafters of the Constitution sensed that times would change. They knew adjustments would be necessary. They provided a process for change and gave tools to the states to restore balance in the system. While states have never used this particular tool, it is important to recognize that it exists and is available if balance can be restored in no other way. This tool is precious for states. It gives them high status in the federal system and provides a check on the federal government.

❖ Conference of the States ❖

Public support, legal standing, and constitutional options are potentially powerful tools, but to date have been little used. Individual states constitute good government because they represent dispersed power. While that quality has virtue as a principle of governance, it makes competing with a monolithic force like the federal government difficult.

In order to challenge for their rightful role, states require a rallying event, a means of consolidating their power. It should be a process less disruptive than calling a constitutional convention, but one that demands results and response . . . a call to action.

Were we directed from Washington when to sow and when to reap, we should soon want bread.
--Thomas Jefferson

History maps the way. When James Madison and others could see that the national/state relationship was out of balance in 1786, they called for an informal, grassroots conference of leaders from each state. The result of that meeting was a call for a formal convention, which resulted in the drafting of the Constitution and our present form of government.

Today, we propose a five-part plan:

1. Each state will send a delegation, presumably legislators and governors, to a "Conference of the States." To validate its participation, each state should pass a resolution in its Legislature authorizing an official delegation. States unable to pass resolutions could be represented by members of the Legislature willing to come on their own as a delegation. The conference would have rules defining how it operates.

2. At the informal "Conference of the States," one narrow purpose would be undertaken -- to develop an agenda or action plan to restore balance between the states and the national government. The action plan would consist of legal strategies and carefully crafted amendments to the U.S. Constitution.

3. If 75 percent of the state delegations to the "Conference of States" supported a resolution containing a proposed constitutional amendment, the members would take the proposals back to their states for presentation to their Legislatures.

4. The Legislatures would then act. If 75 percent of the Legislatures of this country formally endorsed a constitutional amendment, the "Conference of States" would ask Congress to certify the amendment. With so many states providing support, it is likely that Congress would give heed. One must suppose that any proposal that survived the careful consideration and scrutiny by that many legislatures must be good and badly needed public policy. If approved by Congress, any amendment would still have to be ratified by three-fourths of the states.

All of this happened in relatively small increments and for seemingly good purposes. In many cases, it was the fault of state and local governments, which did not respond promptly to serious problems or were willing to give up autonomy for federal dollars.

Whatever the reasons, the pendulum has swung too far. The federal government now has too much power, is too unresponsive and bureaucratic, and too expensive. The system is simply not working. States are no longer competitive forces able to act as a balance to the federal government. Instead of being a full-fledged counterbalance to federal dominance, states are being treated and viewed like administrative units of the federal government. The protections offered by the Miracle of Philadelphia are significantly eroded. Thus, the federal government is running huge deficits, is over-regulating states and citizens, is imposing one-size-fits-all requirements that make no sense, is out-of-touch with local concerns, and is engaging in the new dishonesty in government -- unfunded mandates.

The solution is to restore competition in the system by returning to the kind of balance intended by the founders. States must obtain more leverage so they can compete for power. But how?

I like a little rebellion now and then. The spirit of resistance to government is so valuable on occasion that I wish it to be always kept alive.
--Thomas Jefferson to Abigail Adams

❖ The Plan ❖
How to Restore Balance in the System

First, a dose of reality. Congress will not fix this. Congress has every incentive to continue the trend toward centralization. The federal bureaucracy has even less incentive than Congress to return authority to the states. Even if a president is so inclined to try to reverse the trend, he is limited by the Congress and the bureaucracy. And we cannot depend on the courts. The federal courts have generally not been friendly to the role of states over the past 60 years. The nationalist philosophy has prevailed. We simply cannot expect the federal government to voluntarily give up power.

Just as in the days of James Madison, if proper balance and competition are to be restored, the states will have to do it. States are the only players left that constitutionally have a place at the table. It is the proper role of states to bring balance by competing for power.

States have three tools to restore balance: public support, legal tools, and constitutional tools.

Public Support

Citizens generally support the states on this issue. They distrust Washington and the federal government. Voters have been prone to elect outsiders as president, like Jimmy Carter, Ronald Reagan and Bill Clinton (all former state governors). More candidates for offices at all levels of government should be recruited who want to bring balance back to the system. An army of governors, states legislators, mayors, county officials, members of Congress and even presidential candidates could have an impact. But the process will, again, be slow. More is required.

Legal Tools

States have not been aggressive enough in asserting claims under the Constitution protecting their role. Many of the most

Those three amendments, taken together, would turn the pendulum back toward the states and allow states to compete in the system.

❖ Conclusion ❖

This process is reasoned; it is careful. It relies on the good sense and patriotism of governors, state legislators and local government officials from across this country. This effort is non-partisan and free from special interest group influence.

The process outlined in this paper gives state and local leaders a plan. It gives them a "big gear" to ultimately solve many of the lesser problems they encounter with the federal government. They can do more than just complain and talk. They can act. They are the only ones who will work to restore balance in our federal system. Congress never will. The bureaucracy never will. The courts never will. The president never will. But state leaders will.

4. The Legislatures would then act. If, say, 75 percent of the Legislatures of this country formally endorsed the action plan, the "Conference of States" would then ask Congress to act. With so many states providing support, it is likely that Congress would give heed. One must suppose that any proposal that survived the careful consideration and scrutiny by that many legislatures must be good and badly needed public policy. If approved by Congress, any constitutional amendment would still have to be ratified by three-fourths of the states.

5. If Congress refused to consider or pass the amendments, the states would have the option themselves of calling a constitutional convention to consider the amendments. This threat would provide the leverage that has been missing in state dealings with the federal government. It would make states a competitive force to be reckoned with. It would act as a counterbalance to the arrogance of the Congress. Supporters of this proposal hope and believe that such dire action as calling a constitutional convention would not be necessary. But the threat must exist to motivate Congress to act. The Constitution provides for this action by states as a check on the federal government, to force progress when Congress refuses to act. It must be assumed that a gathering of delegates appointed by at least two-thirds of the states would be just as responsible and careful as is the Congress, which has the authority at any time to propose constitutional amendments.

The world is governed too much.
--Once the motto of the Boston Globe
I confess the motto of the "Globe" newspaper is so attractive to me that I can seldom find much appetite to read what is below in its columns.
--Ralph Waldo Emerson

❖Public Support ❖

Besides potential constitutional action, the agenda established by the Conference of States would also ignite a national political debate that no candidate for Congress, for president, for governor, or for any state legislative race could avoid. All would be forced to take positions on federalism issues, and this matter of federal/state balance could become the pre-eminent political issue of the day, again providing leverage and making states more competitive. The agenda would also provide a rallying point for citizens who are frustrated and who want responsible change.

The informal "Conference of the States" is a key and important element of this plan. Its purpose must be clearly defined and focused on broad, fundamental actions that would restore careful balance to the federal/state relationship. The Conference must not be allowed to become sidetracked on specific issues supported or opposed by any number of special interest groups. It must not be captured by the left or the right or any single group. It must not become a forum for pro-abortion or anti-abortion, or pro-gun control or anti-gun control groups who might want amendments of their own. There are hundreds of causes that people would like to address with constitutional amendments. The Conference is not a forum for such discussions. It must remain focused on the fundamental issue of providing leverage and bringing balance to federal/state relationships.

The Conference must not attempt to swing the pendulum too far in the other direction by proposing too much authority for the

Unfunded Mandates

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. – The 10th Amendment

The Untold Story

- **Alexandria, Virginia:** "Alexandria [VA] had a nationally acclaimed program for using local taxicab companies to transport disabled persons door-to-door to any local destination at city expense. However, after implementing a mandated requirement to modify local buses to permit access for the disabled, the city could not afford to provide the taxicab service. As a result, those using wheelchairs now have to get to and from bus stops that can be some distance from their homes and destinations" (GAO, 4/5/94).

- **Adams County, Pennsylvania:** "Rather than comply with strict federal water testing requirements, Adams County, PA commissioners are considering a cheaper option--buying and passing out bottled water to residents" (Rep. William Goodling (R-PA) testimony, 5/18/94).

- **Anchorage, Alaska:** "In Anchorage, Alaska, the city fathers had to ask local fish-processing plants to dump fish entrails into the city sewer system so the city would have some pollution to remove. Why? Because current law requires a certain percentage reduction in contaminants even from water that is already very clean. So Anchorage's only alternative would have been to build a new $135-million sewage treatment plant capable of finding and removing low levels of organic wastes from the city's normally very clean sewage inflow" (*Washington Post*, 1/15/95).

- **Arizona:** "[O]fficials in Arizona cities such as Tucson and Phoenix say studies of storm water runoff, required by the Environmental Protection Agency, are a waste of millions of dollars in arid regions where waterbeds are dry most of the year" (*CQ*, 12/31/94).

- **Aurora, Colorado:** "Aurora, Colorado ... calculates that it will have to repair some 28,000 curbs in order to comply with the 1990 Americans with Disabilities Act (ADA) at an average cost of $1,500 per curb" (Heritage Foundation, 12/94).

- **Welch, West Virginia:** The town of Welch, West Virginia (pop. 3,500) has been told federal regulations require the municipal government to "spend between $16 million and $22 million to build a new treatment plant and sewer lines up and down hills to serve all of the town's homes and businesses" (*Washington Times*, 12/1/93).

- **Atlanta, Idaho:** "[T]he mountain community of Atlanta, Idaho — population about 50 — has to comply with the same water quality standards as the city of Atlanta, Ga., and its population of 375,000. Meeting the standards isn't the issue, but both systems must conduct the same water quality tests. Needless the say, a $1,500 quarterly test can be absorbed by a large city, but it can break the bank for the town of Atlanta, Idaho" (Sen. Dirk Kempthorne, *Washington Times*, 8/28/94).

- **Columbia, Mississippi:** "The town of Columbia, Mississippi, is nearing completion of a $20 million EPA cleanup project. Soil tests turned up traces of compounds the federal government defines as hazardous, though the amount discovered was only about two ounces per ton of soil. Some experts say the best way to solve the problem was to spread a layer of cleaner soil on top of the contaminated soil at a cost of only $1 million, but the EPA insisted on the most expensive solution, which was to dig up more than 12,500 tons of soil and haul it away. *EPA's goal: to make the dirt so safe that a human could eat half a teaspoon every month for 70 years and not get cancer*" (Heritage Foundation, *Issues '94*, 1994). [emphasis added]

- **Phoenix, Arizona:** "New water quality standards were designed in Phoenix with humid watersheds in mind, like the Potomac basin, but are inappropriate for desert areas. Phoenix is required to 'protect aquatic organisms that cannot exist' in the dry river bed into which its wastewater treatment plants discharge effluent" (Center for the Study of American Business, 1993).

- **Los Angeles, California:** "The city of Los Angeles 'must expend hundreds of millions of dollars to treat water being discharged into the Los Angeles River so that the fish ... can have purer water than humans'" (Center for the Study of American Business, 1993).

- **Palm Springs, California:** "The Endangered Species Act required the city to pay $5,000 to an environmental consultant to search for desert tortoises in dry desert washes which faraway Washington bureaucrats define as 'navigable waterways' under the Clean Water Act's wetlands regulations. No such tortoises were found" (Center for the Study of American Business, 1993).

- **Garden City, Michigan:** "The city has spent over $250,000 over the past three years removing petroleum-contaminated soil so that an asphalt parking lot could be put on top of the soil. Asphalt, of course, is a petroleum product" (Center for the Study of American Business, 1993).

- **Columbus, Ohio:** "[A] Columbus, Ohio, Health Department official cited regulation of the herbicide atrazine, used widely on cornfields, as an example of the costliness of scientific uncertainty in federal Safe Drinking Water Act regulations. According to this official, because atrazine has been determined to be a potential carcinogen, EPA limits atrazine in drinking water to a maximum yearly average of 3 parts per billion. The Columbus official questioned the scientific basis for this limit and suggested that 'at this level an adult would have to ingest about 3,000 gallons of contaminated water per day to be at risk.' The Columbus official further noted that although the city's typical levels are far below 3 parts per billion, the city may be required to install costly EPA-specified technology for atrazine removal" (GAO, 4/5/94).

- "Under the Safe Drinking Water Act ... every water system in the nation is required to monitor for the herbicide used on pineapples, which are grown only in Hawaii, unless a specific waiver is attained. The waiver is expensive and difficult for the water system, and expensive again for the state, which has to judge the merits of the waiver application and tailor its program accordingly" (National Governors' Association, 10/18/93).

Cost Estimates

- "According to the EPA, complying with its rules costs the nation $140 billion in 1994, about 2.2 percent of our Gross Domestic Product" (*Washington Post*, 1/15/95).

- "California officials calculate that in order to comply with federal paperwork requirements mandated by the federal Nursing Home Reform Law of 1987, the state will have to increase Medicaid spending by between $400 million and $800 million" (Heritage Foundation, 7/31/92).

- "In 1980, [Mayor] Koch estimated the cost of converting the [subway] system to conform to federal mandates at $1.3 billion over 30 years, plus at least $50 million in operating expenses" (Heritage Foundation, 7/31/92).

- "Michigan estimated that its spending would rise from $39.6 million to $136.9 million (a 245-percent increase) over the 6-year period 1990 to 1995 due to federal Medicaid mandates" (GAO, 4/5/94).

- "A 1991 Columbus, Ohio, study of federal and state mandates estimated that compliance with existing environmental mandates alone would cost Columbus $1.1 billion over the next 10 years and consume nearly one-fourth of the city's budget by 1996." (GAO, 4/5/94).

- "A Chicago study estimated that between 1992 and 1995, the city would spend over $319 million on unfunded federal and state environmental mandates" (GAO, 4/5/94).

- "The city of San Diego was recently fined $500,000 by the EPA, made to pay $2.5 million for a water conservation program, and forced to spend $2.5 billion for secondary sewage treatment capacity" (Center for the Study of American Business, 1993).

- "Anchorage, Alaska, estimated federal environmental regulations would cost it over $429 million over the 10-year period 1991 to 2000" (GAO, 4/5/94).

- "A 1990 EPA study ... estimates that total costs of environmental mandates (from all levels of government) to State and local governments will rise (in constant 1986 dollars) from $22.2 billion in 1987 to $37.1 billion by the year 2000—a real increase of 67 percent. According to the Vice President's National Performance Review report on the EPA, this figure when adjusted for inflation reaches close to $44 billion on an annual basis by the year 2000" (*Congressional Record*, 1/9/95).

- "Sen. Hank Brown, Colorado Republican and member of the Budget Committee, said unfunded mandates are expected to eat up more than 22 percent of his state's general fund this year" (*Washington Times*, 1/6/95).

- "Between 1983 and 1990 alone, the Congressional Budget Office estimates, new federal regulations cost states and localities up to $12.7 billion" (*Wall Street Journal*, 1/9/95).

- "Gould estimates that federal mandates cost California $8 billion annually, mostly from implementing regulations attached to environmental and health and welfare legislation" (*Washington Post*, 1/9/95).

- "A survey commissioned by the U.S. Conference of Mayors last year asserted that 10 selected federal mandates cost cities $6.4 billion in 1993 and will cost $53.9 billion over the next four years" (*Washington Post*, 1/9/95).

- "The 'motor voter' law, which took effect January 1, has imposed such heavy costs that 13 states are refusing to implement it—and at least one, California, is suing the federal government, alleging that this mandate violates the 10th Amendment" (*Wall Street Journal*, 1/9/95).

- "Environmental activities alone, the EPA estimates, will swallow 30% of state and local government revenues by the year 2000" (*Wall Street Journal*, 1/9/95).

- "Required state spending on Medicaid increased to 17% of all state spending for fiscal 1992, up from 10% just five years earlier. In Los Angeles, thanks to federal mandates, wastewater treatment costs rose from $202 million in 1986 to $838 million in 1993" (Americans for Tax Reform, 1994).

- "The 1987 amendments to the Clean Water Act requiring local governments to rebuild wastewater treatment plants to federal standards, are the single most burdensome mandate imposed by the federal government. The federal government authorized $18 billion to help municipalities. But federal assistance to the states for this program is due to expire at the end of this fiscal year. .... The Congressional Research Service, citing Environmental Protection Agency and local studies, estimates that at least $83 billion in additional capital expenditures are needed to bring all the nation's wastewater treatment plants into compliance with EPA standards" (Americans for Tax Reform citing the U.S. Senate Republican Policy Committee, 10/93).

- Approximately $30 to $40 billion is spent annually by state and local governments to comply with EPA dictates (House Republican Conference, 2/1/94).

- "The so-called 1993 'Motor Voter' Act authorized almost no compensation to state governments for the more than $100 million in cost it will impose over five years" (Americans for Tax Reform citing *The Wall Street Journal*, 8/18/93).

Unfunded Business Mandates

- "Regulators ordered a Kansas City bank to install a Braille keypad, costing $5,000, on its drive-through automatic teller machine. Steve Mauer, the bank's lawyer, emphasized, 'Keep in mind this is a drive-through we're talking about.' As I see it, the only way this regulation makes sense is if it's a police entrapment scheme to arrest blind drivers" (Walter Williams, *Washington Times*, 1/12/95).

ON THE FLOOR

In the House

Environmental policy

Curbing unfunded mandates

Bill: Unfunded Mandate Reform Act of 1995.

Floor action: Scheduled to resume Monday. House Majority Leader Richard K. Armey (R-Texas) said last Friday that the Republican leadership is aiming for a final vote Tuesday. But there are numerous amendments still pending, and Democrats likely would have to agree to limit debate on their amendments if that schedule is to be met.

The House is operating under an open rule that allows members to bring up any amendments they choose.

The House began work on the bill Jan. 19 and continued consideration last week, pausing Wednesday and Thursday to take up the balanced budget amendment to the Constitution (H.J. Res. 1).

House Republican leaders have been frustrated with the pace of action on the bill. GOP lawmakers have unified to defeat Democratic amendments to exempt various programs from the restrictions set up by the bill. But there still are more than 30 exemption amendments pending, and the House, which is considering amendments to the bill section by section, has not even proceeded to Title I.

On Friday, after 10 full days of debate and amendments, the Senate finally completed work on its companion measure (S 1, S. Rpts. 104-1 and 104-2), voting 86-10 for approval. Over those 10 days, by Senate Majority Leader Robert Dole's (R-Kan.) count, senators submitted 211 amendments, 68 of which were actually proposed and 44 of which required roll-call votes.

Both bills are enthusiastically supported by major state and local government organizations. Halting the growth of federal requirements unaccompanied by federal dollars is a top priority of state and local officials, who long have chafed at Congress' penchant for establishing new programs and then mandating that states and localities administer them.

Much of local officials' ire is aimed at federal environmental laws, such as the Safe Drinking Water Act and the Clean Air Act, which place significant responsibilities on states and municipalities.

The bill also has the support of the U.S. Chamber of Commerce and other business groups.

Environmental groups and other public interest organizations oppose the measure and have pressed to have future bills dealing with public health, interstate pollution and other issues exempted from the unfunded mandates bill's restrictions. Environmentalists argue that the bill would erode federal standards designed to protect public health and the environment.

Bill: The bill, introduced by House Government Reform Committee Chairman William F. Clinger Jr. (R-Pa.), would require a Congressional Budget Office analysis for any legislation that would impose net costs on state and local governments of more than $50 million in a given year.

Any legislation — including floor amendments — imposing unfunded mandates costing more than $50 million then would be subject to a point of order against consideration unless a majority of members in both houses voted separately to waive the rule. An exception would be provided for bills addressing constitutional or civil rights, national security, emergencies or treaty obligations.

Bills proposing new mandates on state and local governments would be in order on the floor if they included provisions to pay for their implementation. Bills that merely authorize funding would be fully enforceable only in years that congressional appropriations were provided to pay for them.

The measure would apply only to new legislation and not existing laws. It also would not affect bills reauthorizing existing statutes if those reauthorizations do not add costly new requirements on states and localities.

In addition, the bill would not apply to proposed mandates on the private sector, except to require a CBO analysis when these requirements surpass $100 million a year. (For more bill details, see Jan. 16 *Weekly Bulletin*, p. A1.)

Last week: House Republicans, joined by some Democrats, defeated amendments to exempt various types of legislation from the proposed restrictions on mandates.

Among these was an amendment offered Jan. 23 by Rep. David E. Skaggs (D-Colo.) to exempt bills dealing with air pollution control. The House also turned back an amendment by Rep. Gene Green (D-Texas) to exempt bills addressing licensing and construction of nuclear reactors, and the disposal of nuclear waste. An amendment by Rep. John M. Spratt Jr. (D-S.C.) to keep the bill from applying to measures dealing with toxic, hazardous or radioactive waste disposal also was voted down.

On Jan. 24, the House rejected an amendment by Rep. Carolyn B. Maloney (D-N.Y.) to exempt bills designed to protect the health of children, which effectively would have shielded some environmental laws.

Amendments: Exemption amendments filed, but not yet offered, include language by Rep. Cardiss Collins (D-Ill.) to shield drinking water bills and by Rep. Robert A. Borski (D-Pa.) to protect bills meant to control water pollution that causes serious human health problems. Rep. Frank Pallone Jr. (D-N.J.) also has an amendment that would exclude bills pertaining "to the coastal waters of the United States."

In addition, Skaggs has filed an amendment that would remove lawmakers' ability to challenge bills on the floor with a point of order.

Other pending amendments would direct CBO to consider the benefits of proposed mandates, in addition to the costs, when analyzing legislation.

Democrats also are seeking changes to prevent federal agencies and Congress from being taken to court to enforce the

measure's provisions. Currently, the bill is silent on the issue of judicial review, and some members are concerned the lack of language will open up agency actions to frivolous legal challenges.

Rep. Paul E. Kanjorski (D-Pa.) has filed an amendment that would have the bill expire on Jan. 3, 2000. Democrats want to provide a "sunset" date for the measure to make sure Congress reviews how it is working.

Other amendments would address concerns about the potentially negative impact the bill would have on private businesses, such as waste disposal firms, that compete with municipalities. (For more details on pending amendments, see Jan. 23 *Weekly Bulletin*, p. A3.) H. Rpt. 104-1, parts I and II. — *Steve Daniels*

To: Rep Ramona Barnes

From: Patriot Party

RE: Conference of States

No pages to follow: 14

2-17-95

THE DENVER POST
LEGISLATURE '95

Foes fear convention could undermine U.S.

Tim Foster

By Steve Lipsher
Denver Post Capitol Bureau

Alarmed by the potential for completely rewriting the U.S. Constitution, a horde of angry people packed a House committee yesterday to protest a resolution that would send delegates to a conference of states.

"There actually exist dangers in the resolution and the conference," said Peter LePiscopo, a constitutional law attorney from San Diego. "While the conference of the states convenes in Philadelphia, it can apply to Congress for a constitutional convention. . . . If the train starts running down the track, there is no way to stop it."

The first of 33 witnesses to testify before the House Judiciary Committee against Senate Joint Resolution 9, LePiscopo warned that by passing a legislative resolution, Colorado's delegation would be considered official — grounds for a constitutional convention.

The committee hearing, highly unusual for a resolution, was prompted by public outcry after the Senate pushed the measure through quickly. Spurred by conservative talk-radio hosts, dozens of people lent their voices to the fight, and scores more besieged legislators with phone calls.

The resolution, by Senate Majority Leader Jeff Wells, R-Colorado Springs, and House Majority Leader Tim Foster, R-Grand Junction, was intended to let Colorado formally send a delegation to the conference this summer.

As part of a recent conservative push to assert states' rights, the conference then would discuss issues important to all 50 states and come up with a unified voice to Congress, Foster said.

"There are a number of issues we need to ask Congress to speak to. The balanced-budget amendment, if it goes through this time, would be one of those. . . . Rather than whining one state at a time, we could do it this way."

He argued that the intent was not to push a constitutional convention, and that it couldn't become one under the provisions of the Constitution.

But opponents argued the measure irrevocably could become a "con-con," and the states would have access to the full U.S. Constitution.

At the extreme end of the spectrum, some opponents fear the delegates are part of a conspiracy that would completely rewrite the Constitution and form a socialistic "one-world government."

Others believe a constitutional convention would simply add abortion and take away gun rights from the Constitution, or the converse.

"We don't want to leave a loaded gun on the living room table," said Tim Kern, a business teacher and conservative radio talk-show host. "You can't leave the tools around for people to play with."

Although testimony stretched into the night, the committee planned no action on the measure yesterday.

The chairman, Republican Rep. Jeanne Adkins from Parker, made it clear to those suspicious of legislators that she would announce and publish the date of the final vote well in advance.

"A constitutional convention," Foster told the group, "is a no-holds-barred kind of meeting. That makes me blanch a little bit, too."

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March 3, 1995

OPINION LETTER RE: CONFERENCE OF THE STATES

To: **HONORABLE MEMBERS OF THE CALIFORNIA SENATE & ASSEMBLY**

I have been requested by **Senators Lewis and Rogers** to prepare an opinion letter regarding The Conference of the States.

I. THE PROCEDURE FOR AMENDING THE U.S. CONSTITUTION:

It is worth reviewing the amendment procedure set forth in Article V of the U.S. Constitution in order to insure the proper context is established for analyzing the matters addressed in this opinion.

Article V establishes a two step process for amending the U.S. Constitution:

1. Methods of proposing amendments; and
2. Procedures for ratifying amendments.

Proposing Amendments:

Article V provides two methods for proposing amendments: (1) by two-thirds vote of both houses of Congress; or (2) on application of the Legislatures of two-thirds of the States to Congress to call a constitutional convention. My research indicates that all amendments made thus far have been pursuant to the first method and that no amendment has been proposed by a constitutional convention.

Ratifying Proposed Amendments:

Article V provides that proposed amendments can only become effective by either of two procedures: (1) by ratification of the Legislatures of three-fourths of the States; or (2) by conventions of three-fourths of the States. It is in Congress' sole discretion to decide which method of ratification is required. Both methods of ratification, by Legislatures or conventions, call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people.

II. THE CONFERENCE OF THE STATES:

The Conference of the States has been proposed by the Council of State Governments (the "Council"), whereby legislatures of the States adopt resolutions that commit them to participate in the Conference of the States. The purported object of the Council and The Conference of the States is to "*enhance excellence in state government through leadership*" and "*compete for power in the federal system.*"[1] The Council also contends that the Conference of the States will produce a result that "*has no force of law or binding authority.*"

In a Pictorial Summary the Council provides an overview of the six steps that comprise convening and conducting the Conference of the States. The following is a brief summary and critique of each of those six steps.

Step 1: Each state legislature passes a "*Resolution of Participation,*" which provides that a state will participate in a Conference of the States. In addition, each state legislature is to appoint a bipartisan delegation of four legislators (presumably two from each house, assuming a bi-cameral legislature) and the governor.

This step immediately raises the question: why must each state take legislative action (i.e., pass a *Resolution of Participation*) in order to attend a Conference that does not result in anything that has the "*force of law or binding authority?*" As will be demonstrated below, it is my opinion that the Conference of the States is intended to result in something that will have legal effect.

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[1] See "The Conference of the States An Action Plan For Balanced Competition in the Federal System" and "The Council of State Governments Fact Sheet."

Step 2: After a "*significant*" majority of states have passed *Resolutions of Participation* a Conference of the States will be held in an "historical city" such as Philadelphia. The term "*significant*" majority means, in reality, a constitutional majority, to wit: two-thirds of the States. This is made clear in Step 6. The question then becomes: Why must a constitutional majority of states pass *Resolutions of Participation*? It is my opinion that the answer is simple: if constitutional action is decided upon at the Conference of the States, then there will be the necessary *constitutional* majority present to take such action.

For all practical purposes once a constitutional majority of states have passed *Resolutions of Participation* the remaining states will want to be represented at the Conference. Accordingly, it is my opinion that all states will pass *Resolutions of Participation* and attend the Conference, thus presenting a number of states that exceed a *constitutional* majority.

Step 3: The Conference of the States is held and solutions to problems are "discussed, refined, and voted upon."

First, the use of the term "Conference" is troubling because it is my opinion that the Council was careful not to use the term "convention." In the context in which the Conference of States is being convened, the term "conference" is synonymous with "convention." This is true because the Constitutional Convention of 1787 was comprised of a group of delegates who were sent by the legislatures of the several States to propose recommendations to Congress regarding amending the Articles of Confederation.

Second, there is no precise agenda prior to convening the Conference; nor are there any restraints on the subject matters that can be raised at the Conference. Although the Council makes an oblique reference to the balance of power between the States and federal government, for all practical purposes any problem can be framed in those terms. Accordingly, it is probable, if not inevitable, that the Conference will raise, debate, and vote on issues never contemplated or debated by legislatures that passed *Resolutions of Participation*.

Third, the Conference will make its own rules and procedures, which were not approved by the legislatures.

Fourth, and most alarming, there is no guarantee that the Conference will not make "application" to Congress to call a constitutional convention. As mentioned above, there is no case law concerning the second method of proposing amendments to the Constitution. If the Conference decides that it wants to turn itself into a constitutional convention it need only make "application" to Congress. As will be discussed below, the Supreme Court has interpreted Article V to place

complete discretion in Congress when the amendment procedures set forth in Article V are invoked. Furthermore, and as will be discussed below, there is Supreme Court authority to support the proposition that the courts will not intervene in or interfere with the amendment process. If the Conference decides to become a constitutional convention that action might not be reviewable by the courts; thus no way to stop it once commenced.

Step 4: The Conference of the States will produce a written document entitled: "*States' Petition.*" The Council indicates that the *Petition* is "*a new instrument in American democracy*" and "*constitutes the highest form of communication between the states and Congress.*"

Presently, the highest form of communication between the States and the Congress is an "application" to convene a constitutional convention (see Article V). Does the Council mean to say that the Petition would be supreme to Article V? or, more likely, does it mean to say that the Petition is tantamount to an "application" to Congress pursuant to Article V? Whichever is the case, the Council is not being honest with its use of terms, nor with its intentions.

Step 5: A copy of the Petition is taken back by the delegates to their respective legislatures for approval, including ones that contain constitutional amendments. As mentioned above in Step 2, the document produced by the Conference clearly contemplates one that has "force of law" and "binding authority." In our constitutional form of government, there is nothing with greater force of law or binding authority than the Constitution and its amendments.

Step 6: After passed by a constitutional majority (i.e., two-thirds) of the legislatures of the States, the *Petition* is presented to Congress. Here the Council declares that "*ignoring a constitutional majority of states would signal an arrogance on the part of Congress.*" It is obvious that one consequence of the Conference can be a *Petition* that calls for a constitutional convention. Thus if the Conference does not convert itself into a constitutional convention during Step 3, it can still accomplish that end in Step 6.

III. DANGERS OF THE CONFERENCE OF STATES:

The predominate danger mentioned above is that in Step 3 the Conference will decide to make "application" to Congress to convert itself into a constitutional convention. Alternatively, there is a danger that the *Petition* will serve as an "application" to Congress to call a constitutional convention.

The hidden danger of all of this is raised by the question: what is the remedy if any of the these events takes place? The answer to this question proves most disturbing. In order to completely understand the import of the Conference of the States, a review of U.S. Supreme Court decisions interpreting Article V is necessary. It is important to again note that all Supreme Court decisions have dealt exclusively with the first method of proposing an amendment (i.e., the Congress proposes the amendment); whereas no case has addressed the situation where the Legislatures of the several States have made application to Congress to call a constitutional convention.

The first controversy over Article V occurred rather early in our history with the adoption of the Eleventh Amendment. In the case of *Hollingsworth v. Virginia*, 378 U.S. (Dall.) 378 (1798), the issue was: when Congress proposes an amendment must the president of the United States provide approval? The Supreme Court answered this question in the negative, reasoning that Article V is not a typical piece of legislation coming within Article I's law making power but rather is a specific procedure to amend the Constitution:

> "There can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition, or adoption, of amendments to the Constitution."

The next controversy occurred with ratification of the 18th Amendment, which concerned prohibition. In 1917 Congress passed a joint resolution proposing the prohibition amendment. In its resolution, Congress included a proviso that the amendment must be ratified by the necessary number of states within seven years. The controversy arose in the case of *Hawke v. Smith*, 253 U.S. 221 (1920), which concerned an Ohio statute that submitted approval of constitutional amendments to the people of Ohio through the referendum process. The Supreme Court concluded that Article V required approval of amendments not by the people directly but by three-fourths of either the legislatures of the several States or of conventions of the several States.

Another example of Congress' discretion under Article V is illustrated in *Dillon v. Gloss*, 256 U.S. 368 (1921)(the 18th Amendment), where the Supreme

Court held that Congress has complete discretion under Article V to fix specific time limits for ratification of proposed amendments.

The case that provides the Conference of States with the tools by which to harness the amendment process is *Coleman v. Miller*, 307 U.S. 433 (1939). In June, 1924, Congress proposed an amendment to the Constitution known as the Child Labor Amendment. In January, 1925, the Kansas Legislature passed a resolution rejecting that amendment. Twelve years later in January, 1937, the Kansas Senate re-introduced the amendment. Twenty senators voted in favor, and a like number voted against. The tie was broken by the lieutenant governor, who voted in favor of the amendment, which was subsequently passed by the Kansas House of Representatives.

A suit was filed in the Kansas Supreme Court by the twenty senators who voted against the amendment and members of the House of Representatives requesting the court to nullify the endorsement of the amendment. The senators and representatives contended that the lieutenant governor was not part of the Kansas Legislature for Article V purposes and, therefore, he could not cast the tie-breaking vote; that the previous rejection in 1925 served to kill the amendment in the state of Kansas; and that the amendment was not ratified in a reasonable time (i.e., the thirteen year hiatus between Congress' proposing and Kansas' ratification of the amendment). The Kansas Supreme Court would not nullify the approval of the amendment. The senators and representatives sought review in the U.S. Supreme Court.

In *Coleman* the Supreme Court concluded that the dispute was political in nature and, therefore, the courts should not interfere. Specifically, the Supreme Court concluded that:

> "The previous rejection [in 1924 and subsequent ratification in 1937] should be regarded as a political question pertaining to the political departments, with ultimate authority in Congress in the exercise of its control over the promulgation of the adoption of the amendment."

In short, in *Coleman* the Supreme Court concluded that if there was any impropriety in the manner in which a state ratified an amendment the remedy rests not in the courts but in Congress. In other words, if there is some perceived or actual irregularity in the proposal or ratification process the objections can be raised only in Congress. Accordingly, the hidden danger of the Conference of States is that if the Conference decides to convert itself into a constitutional convention or to treat the *Petition* as an "application" to Congress, then pursuant to *Coleman* the Conference's actions cannot be challenged in court (i.e., it cannot be stopped).

The political question doctrine is designed to remove controversies from the courts that are purely political in nature. It is my opinion that the Conference of the States and the methods used to facilitate it would be interpreted to be political in nature thus shielding it from judicial scrutiny. What follows are possible scenarios that might occur.

Scenario One: During Step 3, the Conference decides that it wants to make "application" to Congress to call a constitutional convention. Congress has two choices: one, it could determine that the Conference has no authority to make "application" under Article V; or two, it could accept the "application" and call a constitutional convention, whereby the Conference could be converted into such a convention. It appears that pursuant to *Coleman* Congress would be exercising its political discretion and exclusive power under Article V. Accordingly, no judicial review could be sought.

This is not far fetched if one recalls that the delegates sent to Philadelphia in 1787 went there with strict guidelines to consider only amendments to the Articles of Confederation. Once convened, however, the delegates converted into a constitutional convention, tossed the Articles of Confederation, and drafted a new document. It is my opinion that what occurred in Philadelphia from May through September, 1787, was guided by Divine Providence and will not occur again in the history of this Country. Accordingly, a constitutional convention must be avoided.

Scenario Two: Upon completion of Step 4, the Conference could send the *Petition* to the Congress as an "application." Similar to Scenario One Congress would have complete discretion under Article V to decide upon accepting or rejecting the *Petition* as an "application."

Scenario Three: In Step 6, the Petition is transmitted to the Congress. Similar to Scenario Two, Congress could accept the Petition as an "application" and call a convention.

One might argue that limiting provisions in the "*Resolution of Participation*" could serve to provide a basis for a court challenge. While this might work, it should not be considered 100% fail safe because *Coleman* could be applied to prevent a court challenge.

IV. RECOMMENDATIONS:

Based on the foregoing the following recommendations are made.

First, state legislatures should not pass any resolution to send any delegates to a Conference of the States. This is the only way to insure that a constitutional convention is not convened. This is not to say that a self-appointed delegation, which is not sponsored by the state legislature, cannot attend or visit the Conference of the States but rather state legislatures should not provide any legislative sanction to any delegation to the Conference of the States.

Second, there is nothing that prevents a state from debating certain proposed amendments within its own legislature and thus providing those amendments to its own congressional delegation for introduction in Congress. If it is desired, then the safest way to amend the Constitution is through the first method outlined in Article V (i.e., whereby the U.S. Congress proposes the amendment). This procedure insures that there will be no run-a-way convention that results in altering the foundation of our constitutional form of government.

Third, if any state legislature is resolved in sending delegates to attend the Conference of the States then I recommend that the following limiting language be inserted into the "*Resolution of Participation*"

> " *RESOLVED, that California's participation in any Conference of the States shall in no way be interpreted or construed to be consent by the State of California to be an application to Congress under the amendment procedure set forth in Article V of the Constitution of the United States.*
>
> *BE IT FURTHER RESOLVED, that California's participation in any Conference of the States shall in no way be interpreted or construed to be for the purpose of amending or proposing amendments to the Constitution of the United States."*

If I were a California legislator I would vote for the First Recommendation and not for Senate Concurrent Resolution 9.

Dated: March 3, 1995.

Respectfully submitted,

LAW OFFICES OF PETER D. LEPISCOPO

By: _____
Pete Lepiscopo

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March 3, 1995

VIA FACSIMILE (916-445-9754)

TO: SENATORS LEWIS and ROGERS AND HONORABLE MEMBERS OF THE CALIFORNIA SENATE

Re: SCR-9/The Conference of the States

Dear Senators Lewis and Rogers:

I have been informed by Colorado State Senator Charles Duke of the following information and have been authorized by him to release same to the California Senate.

Senator Duke was contacted last week by Utah Governor Mike Leavitt, who has been leading the charge for convening the Conference of the States. Governor Leavitt contacted Senator Duke in order to reach a compromise on this issue. Senator Duke indicated to Governor Leavitt that he was not against a meeting of legislators and governors but rather was against the sanctioning of state delegations by legislative resolutions. Governor Leavitt indicated that this was unacceptable because "we need the power of the legislative resolutions."

Senator Duke has been testifying around the country on this issue, and most recently last Wednesday and Thursday in the Maryland House of Delegates (SJR-13) and Pennsylvania House of Representatives (SCR-12). Senator Duke's testimony yesterday in Pennsylvania caused the House Intergovernmental Affairs Committee to table SCR-12 until further notice. In addition, the Council of State Governments (promotes the Conference of the States) scheduled an emergency meeting today in Harrisburg, Pennsylvania.

I believe it is imperative that Senator Duke testify to the Senate regarding the matter with Governor Leavitt and the Conference of the States. I will also make myself available to testify on Monday or any other date the Senate wishes for me to testify.

Senator Duke's telephone numbers: home: (719) 481-9289 or Capitol: (303) 866-4835/4866. My home telephone: (619) 440-1703.

Very Truly Yours,

LAW OFFICES OF PETER D. LEPISCOPO

Peter D. Lepiscopo

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CONGRESS FORWARDS THE CONSTITUTION TO THE STATES

James Madison to George Washington

New York, September 30, 1787

I found on my arrival here that certain ideas unfavorable to the Act of the Convention which had created difficulties in that body, had made their way into Congress. They were patronised chiefly by Mr. R.H.L. and Mr. Dane of Massts. It was first urged that as the new Constitution was more than an Alteration of the Articles of Confederation under which Congress acted, and even subverted these articles altogether, there was a Constitutional impropriety in their taking any positive agency in the work. The answer given was that the Resolution of Congress in Feby. had recommended the Convention as the best mean of obtaining a firm *national Government*; that as the powers of the Convention were defined by their Commissions in nearly the same terms with the powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new plan, than the Convention were from proposing it. If the plan was within the powers of the Convention it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to Concur in what was done, would imply either that the Convention had done wrong in exceeding their powers, or that the Government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new Western Governments, exercised assumed powers of a very high & delicate nature, under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, ecchoed by 12 States

in the Union, and confirmed by the general voice of the people.—An attempt was made in the next place by R.H.L. to amend the Act of the Convention before it should go forth from Congress. He proposed a bill of Rights—provision for juries in civil cases & several other things corresponding with the ideas of Col. M—He was supported by Mr. Mc— Smith of this State. It was contended that Congress had an undoubted right to insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty had been omitted. On the other side the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds. 1. that every circumstance indicated that the introduction of Congress as a party to the reform, was intended by the States merely as a matter of form and respect. 2. that it was evident from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries. 3. that it was clearly the intention of the States that the plan to be proposed should be the act of the Convention with the assent of Congress, which could not be the case, if alterations were made, the Convention being no longer in existence to adopt them. 4. that as the Act of the Convention, when altered would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the Legislatures, not conventions of the States, and require the ratification of thirteen instead of nine States, and as the unaltered act would go forth to the States directly from the Convention under the auspices of that Body—Some States might ratify one & some the other of the plans, and confusion & disappointment be the least evils that could ensue. These difficulties which at one time threatened a serious division in Congs. and popular alterations with the yeas & nays on the journals, were at length fortunately terminated by the following Resolution—"Congress having recd. the Report of the Convention lately assembled in Philada., Resold. *unanimously* that the said Report, with the Resolutions & letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by

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RESOLUTION

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

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

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

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

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

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

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

COUNCILMAN DAVID COHEN

March 16, 1995

RAMONA BARNES

PLEASE CONSIDER THE ATTACHED SRES 82 FROM 104TH CONGRESS WHERE THE STATED GOAL IS TO AMEND THE CONSTITUTION.

ALSO ATTACHED IS A OPION OF PROFESSORS OF LAW FROM FLORIDA STATE UNIVERSITY

STEVEN O GAY
NAT STURN

I AM NOW OPPOSED TO A CONFERENCE OF THE STATES AND HOPE TO PERSUADE YOU AND MY REPRESENTATIVES ALSO.

THANK YOU

Bob Deming
CHICKALOON ALASKA

FAX 745-3179

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution. (Introduced in the Senate)

SRES 82 IS

104th CONGRESS

1st Session

S. RES. 82

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

IN THE SENATE OF THE UNITED STATES

March 2 (legislative day, February 22), 1995

Mr. Brown (for himself and Mr. Helms) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

Whereas Article I of the Constitution of the United States of America provides that the Congress is vested with the authority to lay and collect taxes, to pay the debts of the United States, to borrow money on the credit of the United States, and to appropriate money from the Treasury;

Whereas for the past quarter century Congress has been unable to balance the Nation's budget in any year;

Whereas the President of the United States has submitted a budget which increases the deficit in future years;

Whereas Members of Congress have been unable to agree on language for an Amendment to the Constitution which would require a balanced budget; and

Whereas Congress has therefore attempted to deny the several States of the United States the opportunity

to vote on a Constitutional Amendment requiring a balanced budget: Now, therefore, be it

Resolved, That Congress hereby petitions the several States of the United States of America to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution of the United States requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States, and that such States then consider whether it is necessary for the States to convene a Constitutional Convention pursuant to Article V of the Constitution of the United States in order to adopt such Amendment.

The Florida State University
Tallahassee, Florida 32306-1601

College of Law

March 10, 1995

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

Dear Mr. Thorn:

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

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

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

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

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

Sincerely,

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

Nat Stern
Professor of Law

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 28, 1995

SUBJECT: Conference of the States (HJR 20)

TO: Representative Barnes, Chair House Special Committee on World Trade and State/Federal Relations

FROM: Tamara Brandt Cook TBC
Director of Legal Services

HJR 20 calls for the convening of a Conference of the States under the auspices of the Council of State Governments and for the appointment of a delegation to represent Alaska at that conference. You have provided me with a copy of an "Alert" and asked me to respond. As I understand the contents of the "Alert," it is asserted that the Conference of the States will amount to Constitutional Convention.

Under Article V of the United State Constitution, a constitutional convention is called by Congress ". . . on the application of the legislatures of two thirds of the several states. . . ." HJR 20 itself does not call for a constitutional convention. It is not even addressed to Congress. While it is possible that the question of trying to persuade state legislatures to call for a constitutional convention could be considered during the Conference of the States, the conference itself does not amount to a constitutional convention because it was not called by Congress and the required number of states have not applied to Congress for a convention.

TBC:klb
95-105.klb

LTN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 01
04/06/95 17:48:56
TCN: 50478 DATE & TIME: 04/06/95 15:30 TO 17:30 STATUS:5 IN PROG.

**** ORDER SUMMARY ****
SPONSOR: SSTA SENATE STATE AFFAIRS CHAIRS: SHARP
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: RUTH SKIDMORE TEL#: (907)465-4522
CHAIRING SITE: JUNEAU CAPITOL CAP211
TOLL FREE: (800)478-7612 DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:15
BACK-UP = DJT OTHER SITES MAY ADD THRU THE JNU LIO.
NIK VTS CONFIRMES 3/24.
TCN REQUESTED ON 04/06/95 AND HAS 6 UPDATES

**** AGENDA ****
1 HJR 20 CONFERENCE OF THE STATES

**** PARTICIPATING LIOS ****

	ANC	ANCHORAGE	716 W 4TH, #200		LOCATION STAFF
	BAR	BARROW	COURTHOUSE #305		LOCATION STAFF
	DJT	DELTA JCT.	JARVIS CTR. #210		LOCATION STAFF
	FBX	FAIRBANKS	119 N CUSHMAN ST		LOCATION STAFF
	GLN	GLENNALLEN	COMMUNITY LIB.		LOCATION STAFF
	HOM	HOMER	126 W PIONEER #4		LOCATION STAFF
*	JNU	JUNEAU	CAPITOL	CAP211	LOCATION STAFF
	MAT	MATSU	165 E PARKS HWY.		LOCATION STAFF
	SEW	SEWARD	2001 SEWARD HWY		LOCATION STAFF
	SOL	KEN/SOL	34824 KALIFONSKY		LOCATION STAFF
	TOK	TOK	MP 1314 AK. HWY		LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****
SOL NIK NIKISKI UNDETERMINED TIM NAVARRE (907)283-4470

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22	ROY	WHITTEN			OBSV. HJR 20	
	3700 SPENARD		ANCHORAGE	AK	99503	(907)561-1582
23	MARY	LOFLAND			OBSV. HJR 20	
	4061 EDINBURGH		ANCHORAGE	AK	99515	(907)248-3740
24	TANDY	LOFLAND			OBSV. HJR 20	
	4061 EDINBURGH		ANCHORAGE	AK	99515	(907)248-3740
25	GAYLORD	HERMAN			UNABL HJR 20	
	3605 ARCTIC BLVD 1453		ANCHORAGE	AK	99503	(907)562-2161
26	TO	OBSERVE			OBSV. HJR 20	
				AK		(907)000-0000
27	TO	OBSERVE			OBSV. HJR 20	
				AK		(907)000-0000
28	TO	OBSERVE			OBSV. HJR 20	
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29	TO	OBSERVE			OBSV. HJR 20	
				AK		(907)000-0000
30	TO	OBSERVE			OBSV. HJR 20	
				AK		(907)000-0000
31	TO	OBSERVE			OBSV. HJR 20	
				AK		(907)000-0000
32	TO	OBSERVE			OBSV. HJR 20	
				AK		(907)000-0000

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3	MS.	KATHLEEN	WEDEMEYER			TSFY. HJR 20
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					AK	(907)000-0000
8	MR.	PAT	COOK			TSFY. HJR 20
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9	MR.	DAVID	DOHNER			TSFY. HJR 20
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10	MR.	TOM	SCARBOROUGH			TSFY. HJR 20
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11	MS.	JOY	COOK			TSFY. HJR 20
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12	MS.	CARLA	VON RON CEILIER			TSFY. HJR 20
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2	MR	ED	KNOEBEL			TSFY. HJR 20
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3		TO	OBSERVE			OBSV. HJR 20
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		PO BOX 916		HOMER	AK 99603	(907)235-4070
3	MR.	JACK	POLSTER			TSFY. HJR 20
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4	MR.	KEITH	ELKINS			TSFY. HJR 20
		68170 CENTURION DR		HOMER	AK 99603	(907)235-6053
5	MR.	JOHN	GLANVILLE			TSFY. HJR 20
		PO BOX 1792		HOMER	AK 99603	(907)235-7703
6	MR.	LARRY	SLONE			TSFY. HJR 20
		1204 OCEAN DR #1		HOMER	AK 99603	(907)000-0000
7	MS.	KATHLEEN	MOORE			TSFY. HJR 20

04/06/95 17:48:56

TCN: 50478 DATE & TIME: 04/06/95 15:30 TO 17:30 STATUS:5 IN PROG.

PARTICIPANTS IN:HOMER			HOM			
	4631 KACHEMAK BAY DR		HOMER	AK	99603	(907)235-7959
8 MR.	BROTHER	ASAIAH			OBSV. HJR 20	
	PO BOX 504		HOMER	AK	99603	(907)000-0000
9	UNKOWN	DID NOT SIGN IN			OBSV. HJR 20	
				AK		(907)000-0000
PARTICIPANTS IN:JUNEAU			JNU			
1 SEN	B	SHARP	CHAIR		TSFY. HJR 20	
			JNU	AK		(907)000-0000
2 SEN	L	LEMAN			TSFY. HJR 20	
			JNU	AK		(907)000-0000
3 SEN	R	PHILLIPS			TSFY. HJR 20	
			JNU	AK		(907)000-0000
4	TO	OBSERVE			OBSV. ALL ITEMS	
5	TO	OBSERVE			OBSV. ALL ITEMS	
6	TO	TESTIFY			TSFY. ALL ITEMS	
7 SEN	D	DONLEY			TSFY. HJR 20	
			JNU	AK		(907)000-0000
PARTICIPANTS IN:MATSU			MAT			
1 MR	DAN	GIFFORD			TSFY. HJR 20	
				AK		(907)000-0000
2 MR	SHAYNE	HOLMES			TSFY. HJR 20	
				AK		(907)000-0000
3 MS	LAURA	WINEINGER			TSFY. HJR 20	
				AK		(907)000-0000
4 MR	CARMIE	GILBERT			TSFY. HJR 20	
				AK		(907)000-0000
5 MR	ROBERT	PONTIUS			TSFY. HJR 20	
				AK		(907)000-0000
6 MR	ANTHONY	MCNABB			TSFY. HJR 20	
				AK		(907)000-0000
7 MR	CLYDE	BEUTLER			TSFY. HJR 20	
				AK		(907)000-0000
8 MS	BARBARA	BROADWATER			OBSV. HJR 20	
				AK		(907)000-0000
9 MR	ROBERT	LINCOLN			TSFY. HJR 20	
				AK		(907)000-0000
10 MS	BARBARA	SWALLOW			TSFY. HJR 20	
				AK		(907)000-0000
11 MS	GRETCHEN	O'BARR			TSFY. HJR 20	
				AK		(907)000-0000
12 MR	DICK	STOFFEL			TSFY. HJR 20	
				AK		(907)000-0000
13 MR	MIKE	NELSON			TSFY. HJR 20	
				AK		(907)000-0000
14 MR	DAVE	RATZ			TSFY. HJR 20	
				AK		(907)000-0000
15 MR	RICHARD	STUDER			TSFY. HJR 20	
				AK		(907)000-0000
16 MR	DONALD	GRABER			TSFY. HJR 20	
				AK		(907)000-0000
17 MR	JOHN	THOMAS			TSFY. HJR 20	

TCN: 50478 DATE & TIME: 04/06/95 15:30 TO 17:30 STATUS:5 IN PROG.

PARTICIPANTS IN:MATSU MAT

				AK	(907)000-0000	
18 MR	DAVID	CRAWFORD			TSFY. HJR 20	
				AK	(907)000-0000	
19 MR	ROBERT	GABEL			TSFY. HJR 20	
				AK	(907)000-0000	
20 MR	MIKE	GABEL			TSFY. HJR 20	
				AK	(907)000-0000	

PARTICIPANTS IN:SEWARD SEW

1 MR.	BEN	SUDDATH	SELF		OBSV. HJR 20	
	PO BOX 1209		SEWARD	AK 99664	(907)000-0000	

PARTICIPANTS IN:KEN/SOL SOL

1 MR.	CHARLES	DICKSON	SELF		TSFY. HJR 20	
	PO BOX 2018		SOLDOTNA	AK 99669	(907)262-6020	
2 MR.	LEON	QUESNELL	SELF		TSFY. HJR 20	
	516 HEMLOCK AVE		KENAI	AK 99611	(907)283-4152	
3 MS.	SUSAN	ROSS	SELF		TSFY. HJR 20	
	PO BOX 198		KASILOF	AK 99610	(907)262-5479	
4 MR.	LEONARD	EFTA	SELF		TSFY. HJR 20	
	PO BOX 353		KENAI	AK 99611	(907)283-7670	
5 MR.	WESLEY	NEWCOMB	SELF		TSFY. HJR 20	
	PO BOX 1001		STERLING	AK 99672	(907)262-3135	
6 MR.	PETE	HOGGENBOOM	SELF		TSFY. HJR 20	
	PO BOX 198		KASILOF	AK 99610	(907)262-5931	
7 MS.	DAWN	CLEMENTS	SELF		TSFY. HJR 20	
	PO BOX 198		KASILOF	AK 99610	(907)283-5931	
8 MR.	W.K.	BREWIES	SELF		TSFY. HJR 20	
	PO BOX 1389		KENAI	AK 99611	(907)283-4070	
9 MR.	SEYMOUR	MILLS	SELF		TSFY. HJR 20	
	PO BOX 51		STERLING	AK 99672	(907)262-9289	
10 MR.	GARY	SUPERMAN	SELF		TSFY. HJR 20	
	PO BOX 8425		NIKISKI	AK 99635	(907)776-8448	
11 MR.	BRAD	TURKINGTON	SELF		TSFY. HJR 20	
	PO BOX 2889		SOLDOTNA	AK 99669	(907)776-5870	
12 MR.	BRIAN	HOOGENBOOM	SELF		TSFY. HJR 20	
	PO BOX 198		KASILOF	AK 99610	(907)283-5931	
13 MR.	KELLY	PERKINS	SELF		TSFY. HJR 20	
	PO BOX 1936		SOLDOTNA	AK 99669	(907)262-6663	

PARTICIPANTS IN:TOK TOK

1 MR.	MAURICE	STOUT			TSFY. HJR 20	
	PO BOX 279		TOK	AK 99780	(907)000-0000	
2 MS.	REBECCA	STOUT			OBSV. HJR 20	
	PO BOX 279		TOK	AK 99780	(907)000-0000	

**** UPDATES ****

01	03/22/95	10:56:14	ANNOUNCING TELECONFERENCE	
02	03/22/95	14:24:22	GLENNALLEN	ADDED ON
03	03/23/95	12:01:52	SEWARD	ADDED ON
04	03/24/95	16:14:34	TOK	ADDED ON
05	03/27/95	10:54:17	HOMER	ADDED ON
06	04/03/95	14:21:11	BARROW	ADDED ON

Suggested Language for Amendments to the Resolution of Participation

(7) Adoption of this Resolution does not constitute an application by the Legislature of _____ for the calling of a federal Constitutional Convention within the meaning of Article V of the United States Constitution.

-or-

(7) The Conference of the States may not be convened as a federal Constitutional Convention under Article V of the United States Constitution.

THE COUNCIL OF STATE GOVERNMENTS WESTERN OFFICE
121 SECOND STREET 4TH FLOOR SAN FRANCISCO CA 94105 · TELEPHONE (415) 974-6422

WESTERN STATES
ALASKA
ARIZONA
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IDAHO
MONTANA
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NEW MEXICO
OREGON
UTAH
WASHINGTON
WYOMING
PACIFIC ISLANDS
AMERICAN SAMOA
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
GUAM

TELECOPIER COVER SHEET

DATE: March 9

NUMBER OF PAGES (INCLUDING THIS COVER SHEET: 4

TO: Wayne Malone

RECIPIENT'S TELECOPY TELEPHONE NUMBER: 907-465-4565

FROM: Casey Shetterly

COMMENTS OR SPECIAL INSTRUCTIONS:

Per our conversation this morning.

This letter went only to Senate leadership and Senator Jim Kelly as Chair of your legislative services.

I doubt it is anything new to you but you may want to share it with Joe Ambrose so he is aware of what's coming.

Thank you so much for all your help during this ~ you definitely made my job easier!

TRANSMITTED FROM A XEROX FAX-3010
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WHILE THE ACTION PLAN WOULD NOT BE BINDING ON THE FEDERAL GOVERNMENT, IT WOULD BE IMPOSSIBLE FOR CONGRESS OR THE PRESIDENT TO IGNORE IT. THIS CONFERENCE WOULD RECEIVE NATIONAL AND INTERNATIONAL MEDIA ATTENTION, AND ACTIONS TAKEN WOULD HAVE TO BE CONSIDERED BY THE FEDERAL GOVERNMENT.

THE CONFERENCE WOULD OCCUR NO LATER THAN NINE MONTHS AFTER A TOTAL OF 26 STATES PASS RESOLUTIONS LIKE THE ONE BEFORE YOU TODAY.<<<<<<<<<<

SEVEN STATES,INCLUDING KENTUCKY, UTAH, ARKANSAS, DELAWARE, IOWA MISSOURI AND VIRGINIA HAVE ALREADY APPROVED THE RESOLUTION, AND IT IS UNDER CONSIDERATION BY MOST OTHER STATE LEGISLATURES THIS YEAR.

UNDER THE TERMS OF THE RESOLUTION, THE GOVERNOR AND FOUR LAWMAKERS, TWO FROM EACH HOUSE, WOULD BE VOTING DELEGATES AT THE CONFERENCE. IF EACH OF THE FIFTY STATES SENDS A DELEGATION, THERE WOULD BE A TOTAL OF 250 VOTING MEMBERS.<<<<<<

THIS NATIONAL INITIATIVE IS BEING ORGANIZED BY THE COUNCIL OF STATE GOVERNMENTS IN COOPERATION WITH THE N-C-S-L AND THE NATIONAL GOVERNOR'S ASSOCIATION.<<<<<<<<<<

IT ENJOYS SUPPORT FROM ALL POLITICAL PARTIES, AND IS BACKED BY THE KNOWLES ADMINISTRATION.

THE RESOLUTION IS AN IMPORTANT STEP TOWARD RESTORING THE BALANCED SYSTEM OF GOVERNMENT ENVISIONED BY THE TENTH AMENDMENT, AND I ASK THAT YOU VOTE TO MOVE IT FROM COMMITTEE.<<<<<<<<<<<

THANK YOU.

SPONSOR STATEMENT

BEFORE THE HOUSE FINANCE COMMITTEE

FEBRUARY 28, 1995
RAMONA BARNES, CHAIR
HOUSE SPECIAL COMMITTEE ON
WORLD TRADE AND STATE/FEDERAL RELATIONS

HJR 20 AUTHORIZES THE STATE OF ALASKA TO SEND AN OFFICIAL DELEGATION TO A CONFERENCE OF THE STATES TO BE HELD DURING 1996.<<<<<<<<<<

THIS CONFERENCE WOULD BE THE FIRST FORMAL MEETING OF THE FIFTY STATES SINCE 1786.<<<<<<<<<<

DELEGATES FROM ALL FIFTY STATES WOULD DEBATE AND VOTE ON AN ACTION PLAN DESIGNED TO RESTORE THE CHECKS AND BALANCES BETWEEN THE STATES AND THE FEDERAL GOVERNMENT.<<<<<<<<<<

/.

THE ACTION PLAN WOULD BE FORWARDED TO INDIVIDUAL STATES FOR APPROVAL AND WOULD NOT BE BINDING ON THE FEDERAL GOVERNMENT.

WHILE IT'S ACTIONS ARE NOT BINDING, THIS CONFERENCE WOULD RECEIVE NATIONAL AND INTERNATIONAL MEDIA ATTENTION, AND THE ISSUE OF STATES RIGHTS UNDER THE TENTH AMENDMENT WOULD BE IN THE FOREFRONT.....

THE CONFERENCE WOULD OCCUR NO LATER THAN NINE MONTHS AFTER A TOTAL OF 26 STATES PASS RESOLUTIONS LIKE THE ONE BEFORE YOU TODAY.<<<<<<<<<<

A DOZEN STATES,INCLUDING KENTUCKY, UTAH, ARIZONA, ARKANSAS, DELAWARE, IOWA, MISSOURI, OHIO,SOUTH DAKOTA, WYOMING,IDAHO AND VIRGINIA HAVE ALREADY APPROVED THE RESOLUTION, AND IT IS UNDER CONSIDERATION BY MOST OTHER STATE LEGISLATURES THIS YEAR.

UNDER THE TERMS OF THE RESOLUTION, THE GOVERNOR AND FOUR LAWMAKERS, TWO FROM EACH HOUSE, WOULD BE VOTING DELEGATES AT THE CONFERENCE. IF EACH OF THE FIFTY STATES SENDS A DELEGATION, THERE WOULD BE A TOTAL OF 250 VOTING MEMBERS.<<<<<<

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THE RESOLUTION IS AN IMPORTANT STEP TOWARD RESTORING THE BALANCED SYSTEM OF GOVERNMENT ENVISIONED BY THE TENTH AMENDMENT, AND I ASK THAT YOU VOTE TO MOVE IT FROM COMMITTEE.<<<<<<<<<<<

WITH US TODAY IS THE PRESIDENT OF THE COUNCIL OF STATE GOVERNMENTS, MR. ANDREW GROSE, AND I'VE ASKED HIM TO SAY A FEW WORDS ABOUT THE CONFERENCE....

Wayne in Rep. Barnes office

from Chris Schwarz CSG 606 244 8162

Status Report on 2-23-95

■ States that have passed a resolution in both chambers: (12 states)	Party control: Governor	Senate	House
Arizona	Rep.	Rep.	Rep.
Arkansas	Dem.	Dem.	Dem.
Delaware	Dem.	Dem.	Rep.
Idaho	Rep.	Rep.	Rep.
Iowa	Rep.	Dem.	Rep.
Kentucky	Dem.	Dem.	Dem.
Missouri	Dem.	Dem.	Dem.
Ohio	Rep.	Rep.	Rep.
South Dakota	Rep.	Rep.	Rep.
Utah	Rep.	Rep.	Rep.
Virginia	Rep.	Dem.	Dem.
Wyoming	Rep.	Rep.	Rep.

■ **States that have passed the resolution in at least one chamber: (10 states)**

Colorado Senate
Georgia House
Indiana Senate
Minnesota House
Montana Senate
New York Senate
North Dakota House
Oregon Senate
Pennsylvania Senate
Tennessee House

■ **States that have introduced the resolution in at least one chamber: (23 states)**

Alaska
California
Connecticut
Hawaii
Illinois
Kansas
Maryland
Mississippi
Michigan
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
Oklahoma
Rhode Island
South Carolina
Texas
Vermont
Washington
West Virginia
Wisconsin

■ **States where introduction is pending (five states)**

* Alabama
* Florida
* Louisiana
Maine
Massachusetts

* *These legislatures have not convened as of 2-17-95.*

The Conference of the States

A state movement demands equal partnership with the federal government.

State legislatures across the country this year will consider convening a Conference of the States to fix an imbalance of power between the states and the federal government.

The Conference will take place when 26 states approve an identical resolution calling for it.

A bipartisan group of four governors and dozens of officials from almost every state approved the idea Dec. 4 at a meeting of the Governing Board of The Council of State Governments, a 61-year-old nonprofit, nonpartisan institution.

"We have moved from the talk stage to the action stage," said Gov. Ben Nelson, a Democrat from Nebraska and the outgoing president of CSG. "It is time for us to move even further here today. States, counties and cities need to have the authority to take care of the issues close to their people."

A Conference of the States would attempt to shore up the powers of the states in the federal system, a problem state leaders say has intensified in the last two decades. Examples of this problem include a growing number of underfunded and unfunded mandates from Congress, expansion of the federal bureaucracy and the restraints that federal laws place on state attempts to improve services, like health care and welfare.

Republican Gov. Mike Leavitt of Utah quoted passages from James Madison's Federalist Papers during the meeting as he urged state officials to pass the plan. "James Madison might well have known that a meeting like this might need to occur," he said. ". . . That there would be a need for states to band together."

The proposal to convene a Conference of the States was approved almost unanimously in a voice vote after state officials questioned Govs. Nelson and Leavitt about the idea: How would it work? Who would participate? What is the next step?

The Conference of the States would work like this: States will receive a proposed resolution supporting the idea for introduction in their legislative chambers. When a majority of legislatures passes the resolution, a steering group will convene the Conference, probably in the fall of 1995. Each state that passes the resolution will send a five-member delegation consisting of the governor and a bipartisan mix of legislators. If the governor from that state were unwilling or unable to attend, then a fifth delegate would be elected.

Delegates to the Conference will debate remedies that states could use to correct the imbalance of power and then adopt an action plan. Remedies could range from legislative to legal strategies to possible constitutional solutions. The plan then will be sent back to state legislatures for ratification.

At the very least, the Conference of the States will be a good opportunity for states to get the word out about what they have accomplished, officials said.

"States really have become the engines of innovation and change," said CSG Executive Director Dan Sprague. "Every state has revised its constitution, updated its ethics laws and lives within its means. People need to hear how states have become leaders in reinventing government."

Concerns about the Conference of the States were raised by Wisconsin Sen. Fred Risser, who said he was concerned the process might become an opportunity for special interest groups to further their goals. "Unless you can convince me," he said, "I am quite apprehensive."

In response, Leavitt said that any action proposed by the Conference of the States would have to be approved by three-quarters of the state legislatures before it could become an official statement of that body. "If 75 percent approve it," he said, "then I think it is wise."

Leavitt said there were three things that could kill the Conference of the States, which he termed deadly sins:

- If the Conference becomes a partisan issue, then it will fail. Of the four governors at the CSG meeting who spoke in favor of the plan, two were Democrats and two were Republicans.
- If the Conference became tied to an issue like gun control, abortion or school prayer, then it would fail. Supporters have been careful to say that this effort is not an attempt to turn back the clock. Rather, it is an attempt to correct the imbalance so that government is more efficient.
- And if the Conference becomes tied to any group or personality, then it would not succeed.

After reciting these deadly sins, Leavitt looked to the dozens of state officials gathered at the table. He said, "The time has arrived. This may be a historic moment."

CSG will continue to communicate with state leaders about the next steps for the Conference of the States. □

JANUARY 1995

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

NO.
BILL VERSION: HJR 20
PUBLISH DATE:

Revision Date:
Title: Relating to unfunded federal mandates and the Conference of the States.
Sponsor: Representative Barnes
Requestor: Representative Barnes

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council and Subcommittees

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	11.0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	11.0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	11.0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	11.0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

It is anticipated that 4 members of the Legislature would represent the State of Alaska at the Conference of the States.

Prepared By: Karla Schofield, Deputy Director Karla Schofield Phone: 465-3852
Division: Administrative Services Date: 1/26/95

Approved By: Pamela A. Varni, Executive Director Pamela A. Varni
Agency: Legislative Affairs Agency Date: 1/26/95

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 20

Revision Date:

Department Affected: Office of the Governor

Title: A Resolution "Relating to unfunded federal mandates and the Conference of the States."

BRU: Executive Operations

Component: Executive Office

Sponsor: Representatives Barnes, Grussendorf, Foster, Mulder

Requestor:

COMPONENT SERIAL NO. 0006

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES						
CHANGE IN						
FUND SOURCE						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0
POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost:

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact - costs for the Governor or designee to participate in a Conference of the States will be paid by existing operating funds.

Prepared by: Michael A. Nizich, Director
Phone: 465-3876
Division: Division of Administrative Services
Date: 1/26/95

Approved by Commissioner: Jim Ayers, Chief of Staff
Agency: Office of the Governor
Date: 1/26/95

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Rev 11/93

State Ties

KEY ISSUES IN THE STATE LEGISLATURES

Front and Center In '95

OFFICE OF STATE GOVERNMENT LIAISON
AFL-CIO

As a result of the GOP state legislative landslide of last November, organized labor and working families may be in for tough times in the months and years ahead in the 50 state legislatures.

This prediction is borne out in the results of a recently completed state legislative survey sent by the AFL-CIO Office of State Government Liaison (OSGL) to all state AFL-CIOs. Its purpose was to determine the labor and other key public policy issues that would arise in the 1995 session of the State Legislatures and to gauge possible GOP points of attack on state labor laws and programs.

Based on the survey results, what union members and workers can expect as the 1995 state legislative sessions get into high gear are:

1) Broad scale attacks on long standing state labor laws;

2) Major efforts to enact state right-to-work statutes;

3) Anti-public employees initiatives aimed at bargaining rights, pensions, collection of union dues and privatizing jobs;

4) New initiatives to cripple organized labor through one-sided, anti-labor campaign finance "reform" legislation.

Concerning the primary points of attack, the survey indicates that:

- **43 states** — 90 percent of those reporting — will face privatization efforts aimed at state (and perhaps local) services.
- **Over 38 states** expect to see continued efforts to weaken state workers' compensation and unemployment insurance laws.
- **37 states** — nearly 80 percent of those responding — foresee attempts by the GOP to legalize or liberalize the use of prison labor.
- **Over 30 states** anticipate efforts to weaken state collective bargaining protections or reduce benefits under public employee retirement systems.
- **30 states** responding to the survey may see some action — mostly anti-worker — on drug testing legislation.
- **Over 25 of those states** with prevailing wage laws expect efforts to repeal or weaken them.

Regarding other public policies, the major issues likely

Continued on page 4

In this issue:

2 ➤ **Son of Con Con** — The Proposed "Conference of the States."
3 ➤ **Breaking Out All Over** — "Right-to-Work" Battles.
5 ➤ **The Laws of '94** — State Labor Law Roundup.
7 ➤ **Doctors vs. Managed Care** — The "Any-Willing-Provider" fight.

MARCH/APRIL 1995

Right-To-Wreck Back Again

State Ties

STATE TIES is *published by the office of State Government Liaison, Department of Organization and Field Services, AFL-CIO. Reader comments, information and subscription requests should be forwarded to:*

STATE TIES
Office of State
Government Liaison
AFL-CIO
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Washington, D.C. 20006

(202) 637-5282

Lane Kirkland—
President

Thomas R. Donahue—
Secretary-Treasurer

From the opening gun of the 1995 State Legislatures, the National Right to Work Committee has stepped up their attacks on unions with the introduction of an avalanche of "right-to-work" (RTW) bills. But union members, led by their state AFL-CIOs, have mobilized fierce grassroots opposition. As a result, right-to-workers have met with little success while pro-labor forces have already scored significant victories.

For those unfamiliar with the issue, "right-to-work" legislation - which is in effect in 21 states - allows a state to exercise option 14b of the National Labor Relations Act to prohibit labor and management from negotiating a union security agreement even if workers want it. Union security requires employees, who gain the benefits collective bargaining, to share in the costs of union representation, contract administration and service from the union. Without union security, "freeloaders" refuse to pay their fair share, thereby financially crippling the union and rendering it unable to represent workers. A recent study by the AFL-CIO shows the obvious - unions are weakest in RTW states and workers' wages are over $4300 less than in free bargaining states. That's why its often called right-to-work for less.

Reprinted with permission from the *Oklahoma Gazette*

As of this writing, a variety of RTW bills have been introduced in nearly a dozen states.

In **Montana**, early in the session legislators appeared to be moving fast towards a floor vote on "right-to-work". However, on the morning of the scheduled House vote, nearly 500 workers and their families—some driving hundreds of miles over snow-covered roads—crammed the committee room to oppose the measure. Opposition by GOP Governor Marc Racicot also helped seal the bill's fate as the committee voted by a 13-5 margin to reject the bill. Six of seven committee Republican legislators opposed it. In **New Mexico**, "Right-to-work" bills met a similar fate as they were also voted down by House and Senate committees following an effective lobbying campaign by the state AFL-CIO. In **Colorado**, the GOP Senate killed a "right-to-work" bill by a 18-16 margin, while a bill introduced in the House has gone nowhere. Democratic Governor Roy Roemer had pledged to veto any RTW legislation. In **New Hampshire**, Republican state senators defeated a "right-to-work" bill by a 13-9 floor vote in a state where killing "right-to-work" far less legislation seems to have become an annual ritual.

In **Oklahoma**, where the issue has come and gone for the last 10 years, RTW looks to be a major battle. The Democratically-controlled House caved in and approved by a 73-23 vote an amendment to an unrelated bill allowing a "right-to-work" ballot question to go to the voters this fall. Prospects for passage of this bill in the Senate are less likely, but the Republican Governor has pledged to put the issue on the ballot if the Legislature does not support "right-to-work". In **Maryland**, for the first time in recent memory, a "right-to-work" bill was introduced and a House hearing was held, but the committee defeated it by more than two-to-one margin. In **Rhode Island**, where RTW is a rarity, a hearing is scheduled. In **Kansas**, a bill to require annual re-authorization of dues check-off for union

Continued on page 8

Conservative Agenda at the Forefront in 1995

Continued from page 1

to be considered by the state legislatures in 1995 are:

• **Tax Cuts** — The revenue picture for the states is the best in ten years with both sales and income tax revenue on the rise due to the economy. In fact, state spending overall grew by 5 percent in 1994, and is projected to continue at that rate through fiscal 1995. As a result, only ten states instituted midyear budget cuts in 1994, down from the 35 states that did so in 1992. Ironically, the "Clinton recovery" may give GOP governors the fiscal wherewithal to deliver on their campaign promises to cut taxes. GOP governors will be looking to cut business taxes, to supposedly improve the "business climate" and spur economic development. Across-the-board personal income tax reductions are also likely in some states.

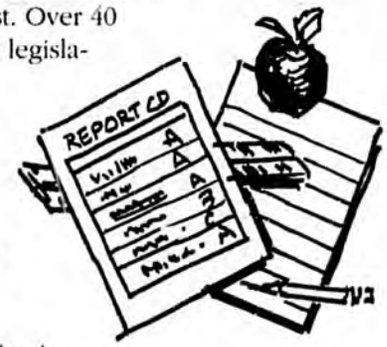
• **Government Reorganization** — Was another major GOP theme during the fall campaign. The Republican version of reinvention will include downsizing, deregulating and, as mentioned previously, privatizing. Nearly 40 state AFL-CIOs identified this issue in the AFL-CIO survey, as likely to be a major agenda item in their state legislature.

• **Crime and Punishment** — Will again get a heavy emphasis, as it did in 1994 but this time a major focus will be on juveniles, with both sentencing reform and school safety dominating the debate. Truth in sentencing, enhanced penalties for gun related crimes, and prison construction funding round out this debate.

• **Welfare Reform** — The states won't wait for the "feds" version of reform. Workfare, limits on child support, "two years and you're out" and others will continue to dominate this agenda.

• **Health Care** — Thirty-eight state federations indicated that this issue will remain active. State initiatives will continue, although they will likely focus on incremental "market based" reforms and not address comprehensive overhaul. Efforts to control Medicaid expenditures will also be a priority. On other issues, previously passed state employer mandates are under attack in Oregon and Massachusetts, while the "Docs" are pushing "any willing provider" legislation to open up closed panel medical plans. Tax subsidized medical savings accounts are also on the agenda.

• **Education** — School financing and so-called "school choice" (charter schools and vouchers) appear to be on the top of the list. Over 40 states responding to the AFL-CIO legislative survey also pinpointed state initiatives on school-to-work proposals as part of the educational agenda for 1995. Efforts to restore some of the funding for state higher education programs eroded during the recession will also get attention.



• **Job Retraining** — With federal initiatives underway, 35 state federations expect to see state legislative action to restructure state job training programs.

Other major issues likely to be in the forefront of the state legislatures include gaming and gambling, tort reform and anti- regulatory "Takings" legislation.

For a copy of the results of the OSGL survey, contact Mike Gildea at 202-637-5176.

New State Labor Laws in 1994

New state laws on prevailing wages, work-related family issues, em ployee leasing firms, whistleblower protections and employment discrimination topped the list of labor issues addressed by state legislatures in 1994 according to a new report by the U.S. Department of Labor (DOL). Among the major issues highlighted by the report:

Wage and Hour Laws

The annual report (which excluded worker's compensation and unemployment insurance issues), showed that state prevailing wage laws were one focus of legislative attention throughout 1994. In a major battle over prevailing wage, an **Oregon** ballot measure proposing to repeal that state's prevailing wage law was soundly defeated. On legislation, **Delaware** and **Ohio** both increased the contract dollar amount to which their state prevailing wage laws apply, as well as changing their debarment provisions prohibiting violators from bidding on contracts.

Prevailing wage rates in **Wyoming** will get an annual adjustment as these wages will now rise with inflation. A new **Rhode Island** law will allow second place bidders to bring civil suits against contractors that are awarded contracts but are later found not to be paying prevailing wages. **Connecticut** lawmakers provided for the creation of a database on construction contractors who bid on state funded projects. In court action, a U.S. Court of Appeals overturned portions of a 1993 U.S. District Court decision that held the **Pennsylvania** prevailing wage law to be invalid and unenforceable because it was preempted by federal law.

On minimum wage, **Vermont** was the only state to take action to raise it's minimum wage rate. Three other jurisdictions, **Arkansas, Puerto Rico, and Washington** all had rate increases due to actions taken in previous years.

Regarding hours of work, in **Idaho**, longer daily hours are now permitted for work in underground mines. In **Kentucky**, a flex-time bill permitting work of up to 10 hours a day if agreed to in advance or if allowed in a collective bargaining agreement. **West Virginia** workers with a workday of 6 or more hours are now receiving at least 20 minutes for a meal break, and meal period requirements were revised in **New York**

Family Issues

In the **District of Columbia**, a law was enacted requiring employers to provide workers with up to 24 hours of leave annually to attend or participate in their children's school-related events. **California** has a similar law in their state which was amended in 1994 to broaden the scope of activities for which the leave may be used. Two other states, **Alabama** and **New Mexico**, passed resolutions encouraging employers to provide this type of leave to their employees.

On other work-related family issues, **Maryland** state employees were authorized to use accrued sick leave for child care following the birth or adoption of a child. **Kansas** passed a law calling on state agencies to make payments to their employee benefit programs to ensure that adequate monies will be available to

employees exercising their rights under the Federal Family and Medical Leave Act.

Thanks to work by many state labor federations, child labor had been a major area of legislative activity over the last two years, but in 1994 the issue receded. One notable exception was a law in **California** that significantly strengthening prohibited hazardous occupations provisions. The legislation also raises civil penalties for violations, prohibits most door-to-door sales for children under age 16, raises the legal age for employment in street trades, and reduces permitted hours of agricultural employment for certain minors.

Employee Leasing

To stop abuse by employee leasing firms or "temp agencies", the states continued to pass laws regulating their activity. Following action by six states the previous year, 1994 saw **Idaho**, **New Hampshire**, and **Tennessee** pass laws providing for the licensing and regulation of temp agencies. In addition, these laws set forth the legal responsibilities that temp agencies have for their leased employees. Amendments to **Florida's** law strengthened licensing requirements, added grounds for disciplinary action, and clarified enforcement authority.

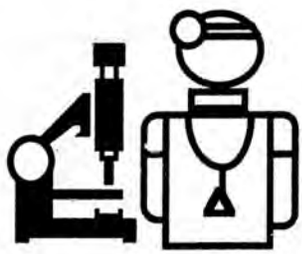
Whistleblowers and Discrimination

Several states passed laws to protect employees who report violations of the law by their employers. Whistleblower protections were extended to public employees in **Idaho** and **Massachusetts**, as well as certain public employees in **Alabama** and **Delaware**.

Employment discrimination issues were also on the minds of many state legislators last year as **Arizona** and **Kentucky** eliminated 70 as the upper limit for age discrimination cases. Meanwhile, **Florida** repealed a mandatory retirement age provision for Highway Patrol officers. In **Wisconsin**, the Legislature included workplace sexual harassment among the forms of employment discrimination covered under the state fair employment law. An expired law in **Mississippi** was enacted again, prohibiting discrimination for use of tobacco products during nonworking hours.

Drug and Alcohol Testing

Drug and alcohol testing of job applicants and employees continued to be a hotly-contested civil liberties issue. **Alaska**, **Delaware**, and **Georgia** continued the trend to allow school boards to require drug and alcohol testing of school bus drivers. **Virginia** lawmakers passed legislation requiring prospective law enforcement officers to pass drug tests. **Mississippi** reenacted their comprehensive law establishing procedures for testing by public and private sector employers. In **Arizona**, private sector employers, public utilities, and transit districts were authorized to require drug and alcohol testing of employees and job applicants within the terms of a written policy. In **Rhode Island**, private sector employers and employers of law enforcement or correctional officers and firefighters may require job applicants to submit to blood or urine testing if the applicant has been offered a job conditioned on receiving a negative test result. Municipalities and State colleges in **Utah** were authorized to enact drug-free workplace policies and test current and prospective employees and volunteers for drug use.



Copies of the DOL Report as well as summaries on 1994 state legislative development in Workers' Compensation and Unemployment Insurance are available from Mike Pomeroy, 202 637-5058 (fax).

Son of Con Con

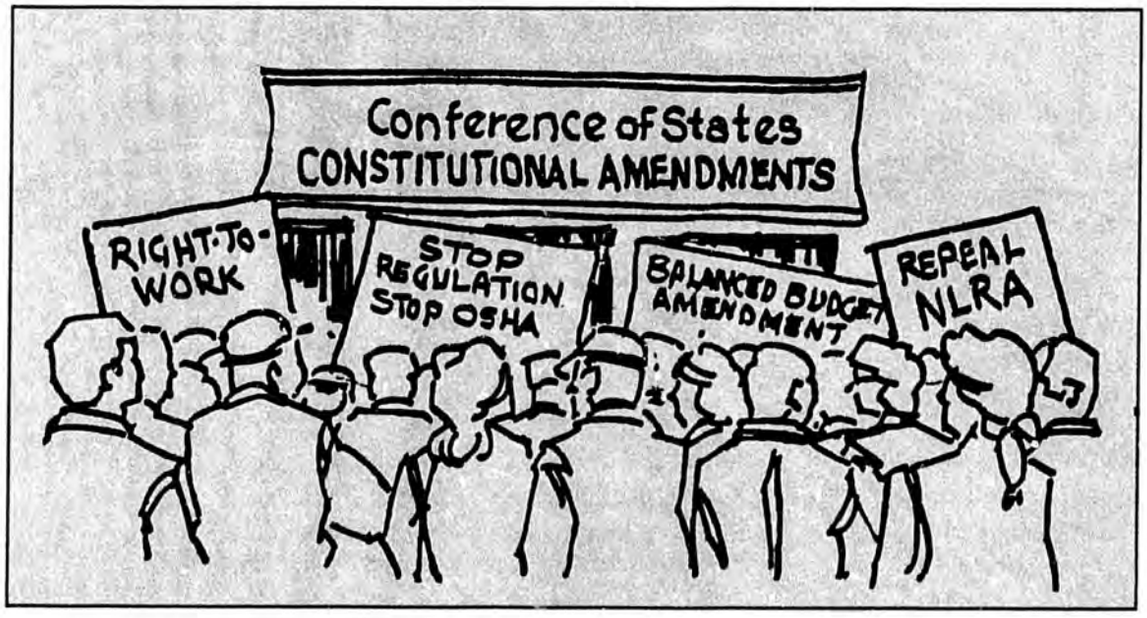
Just when you thought it had faded away ... it's baaack! "Con Con" — aka Constitutional Convention — has returned, but this time in a different costume.

This new "Son of Con Con" would convene a Conference of the States to give fifty state delegations a platform to blast away at perceived constitutional problems between the federal government and the states. Originally the brainchild of Utah's conservative Republican Governor Mike Leavitt, the Council of State Governments (CSG) has now positioned itself as the organizational guru for this event. Also on the bandwagon are the National Governors Association (NGA) and National Conference of State Legislatures (NCSL).

After a majority of state legislatures have approved enabling resolutions calling for the Conference, proponents will move to convene the assembly (now tentatively scheduled for late October in Philadelphia.) Its clear from the background materials being circulated by CSG that tinkering with the Constitution is exactly what proponents have in mind. Among the amendments likely to get a hearing are proposals to give the states expanded power to initiate constitutional amendments, restrict the power of the federal government, and give a super majority of states veto power over federal legislation. But once the door is opened, there's no telling how far this assembly will go. Keep in mind it was just this kind of States' conference that in 1786 led to the evolution of a U.S. Constitution just one year later in Philadelphia.

As soon as the Conference has finalized its recommendations, its package of proposals will be sent back to the states to be adopted by a super majority of them. If and when adopted, the proposals will then be presented to Congress in the form of a "States' Petition." Proponents infer publicly that if Congress ignores their petition, a Constitutional Convention could be the next step.

Son of "Con Con" has the potential to set in motion even more divisive constitutional confrontations that will dwarf those now underway in Congress over the balanced budget amendment, the line item veto, term limits and other GOP-led efforts to toy with the U.S. Constitution. While the proponents claim they will adhere to a spirit of bipartisanship, the configuration of the state delegations now designated to attend this legislative conference (the Governor and three from each chamber), will likely mean that the Conference will be Republican by majority. Add to that the Democratically-controlled Southern delegations and it's a certainty it will be overwhelmingly conservative in philosophy.



Without a doubt, if this "Conference of the

Continued next page

Any-Willing-Provider

As the highly publicized move to enact national health care reform slowed to a halt, state legislatures found themselves confronted with another kind of health care "reform" movement. The issue: "any-willing-provider" legislation which pits managed care plans against doctor associations over whether to give all doctors the right to be admitted to a managed care network. What is at stake is the existing structure of managed care plans.

Managed care plans, which now provide coverage to at least 90 million Americans, use economies of scale and purchasing clout as a means of controlling costs. In turn, these plans select providers who abide by negotiated rates or set salaries so that they may enjoy a guaranteed number of patients, reduced overhead and administrative costs. As more and more employers turn to managed care, doctors outside these networks are becoming frustrated by their inability to participate in the managed care plan of their choice.

In an attempt to pry open closed networks, doctors across the country, through their state medical associations, are pushing hard in the state legislatures for "any-willing-provider" legislation. These proposals would allow any provider who is willing to abide by the terms and conditions of a network contract, to be admitted to any closed network in which they have a desire to participate. At the state level, the doctors' lobbying efforts are paying off.

As of June, 1994, seven states — **Washington, Idaho, Utah, Wyoming, Kentucky, Indiana and Virginia** — have enacted "any-willing-provider" laws that apply to all licensed providers. Seventeen states — **Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Kansas, Louisiana, Minnesota, Mississippi, New Hampshire, New Jersey, North Carolina, North Dakota, South Carolina, South Dakota, and Wisconsin** — have enacted limited "any-willing-provider" laws and twelve more states have legislation pending.

Although promoted by supporters as a means of establishing consumer protections and enhancing choice of providers, opponents say that "any-willing-provider" laws have the capability of crippling managed care arrangements. The key to successful plans, they say, is their ability to establish networks suitably sized for their membership, with an appropriate mix of primary care and specialty providers. As spiraling health care costs continue to strain budgets, managed care plans will continue to grow and the "any-willing-provider" fight will likely rage on.

The AFL-CIO Office of State Government Liaison has issued a more detailed STATE ADVISORY on the "Any-Willing-Provider" issue. For a copy, contact Mike Pomeroy at (202) 637-5282.

Continued from page 6

States" convenes, anti-government Republicans will have a field day launching still more attacks on the federal government, federal law and federal regulatory authority.

As of this writing, half of the states needed — including four Democratically controlled legislatures — have passed pro-conference resolutions. But in recent weeks, aided by state AFL-CIO lobbying against the proposal, the rush to judgement on this issue has been slowed. A handful of states like Georgia, Maryland, New Hampshire Oklahoma and West Virginia have refused to go along. However, the issue is pending in over twenty other state legislatures and the organizations supporting the Conference are working hard to make "Son of Con Con" a reality.

For more information on "Conference of the States", contact Mike Gildea at (202) 637-5176.

Right-To-Work Resurfaces

Continued from page 2

members was withdrawn by the sponsor after it was pointed out that it was preempted by a federal labor law.

Public employees, meanwhile, have become a prime RTW target in 1995. In **Idaho** - the last state to pass a private sector "right-to-work" law in 1986 - a bill to apply it to public employees was easily approved by GOP majorities in both Houses and signed into law by the Republican governor. In **Pennsylvania**, state Senate has pa[illegible] repeal agency shop for state public [illegible] at hearings have not yet been scheduled [illegible] House side where it is likely to face stiffer opposition from legislators. In **Indiana**, a RTW bill for school employees was passed by the Senate and is now before the House. A similar bill is pending in **Michigan** but action on it appears to be unlikely at this time. In **Oregon**, efforts are also underway to put the issue of "right-to-work" for public employees on the 1996 ballot where similar efforts had failed to qualify for the 1994 election. A petition is now being circulated for signatures. In addition, a Senate bill has been introduced that would eliminate agency shop or any form of union security from the 1973 Public Employee Collective Bargaining Act.

For updates on "right-to-work" and for further information, contact Ed Collins at (202) 637-5133.

99801.BRNSR. R#: 107
REP R BARNES
STATE CAPITOL
JUNEAU AK 99801

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AFL-CIO
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Washington, D.C. 20006
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(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

SPONSOR STATEMENT

FROM: Representative Ramona Barnes

DATE: January 26, 1995

RE: HJR 20
"Relating to unfunded federal mandates and the Conference of the States"

HJR 20 authorizes the State of Alaska to send a delegation to represent the people of Alaska at a Conference of the States. The delegates would debate and vote on an action plan to restore the checks and balances between the states and the national government.

The resolution notes that the conference will convene no later than 270 days after at least 26 legislatures adopt similar resolutions and that Alaska will be represented by five voting members consisting of the governor or a constitutional officer selected by him, and four legislators, two from each house selected by the presiding officer of that house. No more than two of the legislators selected may be from the same political party. Two alternate legislator delegates, one from each party, would also be selected.

The action plan to be voted on at the conference will be called a States' Petition. It will be presented to each state in the form of a resolution for ratification, then presented to Congress as the will of the states of the Union.

Since 1990 alone, the federal government has enacted at least 42 major statutes imposing expensive regulations and requirements on state and local governments. HJR 20 is an important first step toward reversing that trend and restoring the balanced system of government envisioned by the Tenth Amendment.

WESLEY E. NEWCOMB
P.O. Box 1001
Sterling, Alaska 99672
January 29, 1996

"THE CONFERENCE ORGANIZERS REALLY DON'T WANT TO ASSUME ANY OF THE PROPER FUNCTIONS OF THE FEDERAL SYSTEM. LOGICALLY, THEN THEY MUST WANT TO FORMALIZE THE UNAUTHORIZED POWERS."
Con-Con Call page 8

The following people are adamatley apposed to Alaska participating in a Conference of the States or calling for a Con-Con.

We would appreciate your position on those Two (2) Issues.

WES & MARGE WARE
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KENAI, AK 99611

BILL YOUNG
P.O. BOX 1101
STERLING, AK 99672

GARY SUPERMAN
P.O. BOX 8425
NIKISKI, AK 99635

SUSAN ROSS (KIETH)
P.O. BOX 198
KASILOF, AK 99610

EDGAR W. SIPPLE JR.
176 FRANSWORTH
SOLDOTNA, AK 99669

SEYMORE MILLS
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LEONARD M.EFTA
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KENAI, AK 99611

ROBERT EDLER
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CHARLES DICKSON
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SOLDOTNA, AK 99669

BETTY CLOUD
HC01 BOX 875
KENAI, AK 99611

MODEL FOR WITHDRAWAL OF RESOLUTION OF PARTICIPATION IN A CONFERENCE OF THE STATES

SUMMARY - Rescinds prior action by withdrawal of call for conference of the states.

WHEREAS, the original support by (state) for calling a conference of the states was based upon the representation that it would be of no legal force; and

WHEREAS, The appointment of delegates by legislation to meet for federal purposes constitutes the consolidation of the highest legal force available in a society of free and sovereign people; and

WHEREAS, Such a convocation of a majority of the states, when authorized by state resolution would possess powers superior to Article V of the United States Constitution; and

WHEREAS, (resolution number) adopted in good faith by (state) does in fact constitute, by virtue of the very process, the mechanism for the consolidation of powers equivalent to a constitutional convention; and

WHEREAS, The intent of the (number) session of the Legislature, by the adoption of (resolution number), was to promote a meeting with legislators of the several states for an unofficial discussion of the state-federal relationship and to reassert the spirit of the Tenth Amendment; and

WHEREAS, The Council of State Governments and other intergovernmental organizations are free to meet for said purposes without state appointed delegations; and

WHEREAS, Every state is free to enforce its Tenth Amendment powers without any revision of the United States Constitution; and

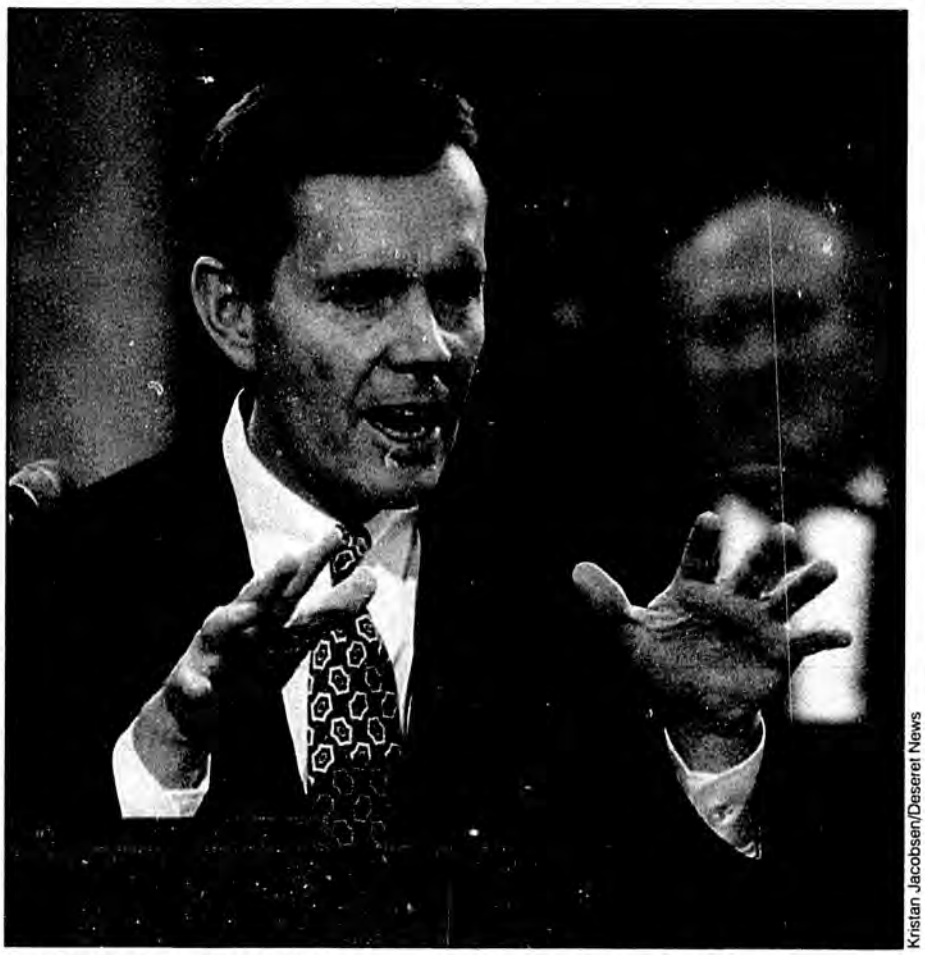
WHEREAS, The powers and purposes of the conference of the states were either misrepresented or misunderstood; now, therefore be it

RESOLVED BY THE LEGISLATURE OF THE STATE OF (STATE), That (resolution number) of the (number) session adopted (date) be and is hereby rescinded, the heretofore appointed delegation is withdrawn, and the Resolution rendered null and void and of no effect on this (day) of (month, year) ; and be it further

RESOLVED, That a certified copy of this resolution be forward to the Governor.

Con-Con Call

Beware Mike Leavitt's "Conference of the States"



Kristan Jacobsen/Deseret News

Leavitt has avoided calling his "Conference" a constitutional convention.

Utah Governor Mike Leavitt seems to think the United States Constitution is obsolete. He has teamed up with Governor Ben Nelson of Nebraska to set in motion the mechanism for making fundamental changes to our constitutional structure. A good deal of groundwork has already been laid for what the two governors have labeled a "Conference of the States," clearly one of the most startling and revolutionary developments of our time.

Governors Leavitt and Nelson are supported (if not led) by the Council of State Governments and the National Governors' Association, in cooperation with two other organizations, the National Conference of State Legislatures and the U.S. Advisory Commission on Intergovernmental Relations. Through these organizations elaborate plans have been devised in which these quasi-official groups have designated themselves "convenors" of a major conference to be held later this year, most likely in Philadelphia. This extraordinary affair is intended to emulate the historic convention of 1787 that drafted the U.S. Constitution. But lest there be any real opposition to the smooth-running movement, the governors and their "convenors" carefully avoid referring to the Conference as a constitutional convention (con-con).

Decisive Opposition

For the past 200 years, efforts to call a federal convention have been firmly opposed by legal scholars and citizens alike. Although a con-con is a legal mechanism established by the Constitution, it is an amendatory process that cannot be limited or controlled.

In spite of assurances by Governor Leavitt that the Conference of the States will not be a con-con, he openly advocated one in his first position paper and in public statements. The *Salt Lake Tribune* for April 25, 1994 reported:

> On Thursday, the governor unveiled a proposal to gather support for an amendment to the U.S. Constitution giving states authority equal to the federal government's. He took his plan for an informal states' conference and a possible constitutional convention to the Western States Summit in Phoenix. The proposal is a manifesto that urges states to organize against their "subordinate status" under the current federal system.

Leavitt's speech was not well received by the audience. Here is the reaction of one state representative, Utah's Met Johnson, as quoted by the *Salt Lake Tribune*: "Mike got all wild and weird on us with this constitutional

DON FOTHERINGHAM

convention speech in Phoenix. The Constitution isn't broken; we don't want to open it up.... This is about the federal government regulating us into oblivion, and when he talked about that constitutional convention stuff, he made a lot of Westerners really angry."

While a lot of Westerners were indeed angry and concerned, apparently no one at the intergovernmental level objected to the governor's con-con plan, which is to be presented to an unsuspecting public, not as a con-con, but as a Conference of the States. After the Western States Summit meeting, the *Salt Lake Tribune* reported that "Leavitt also said he has rewritten his position paper, deleting any reference to a constitutional convention, which he said had been misconstrued."

Although Mike Leavitt has toned down his speeches, his carefully written plan still comprises every ingredient needed to harness the powers of a federal convention. The choice of language makes the Conference seem harmless to many state legislators who have been quick to pass "Resolutions of Participation" that are being introduced in one state after another.

A constitutional convention is a meeting authorized by the several states and comprised of delegates appointed by their legislatures for the purpose of considering and adopting amendments to the federal Constitution. To avoid being presumptive concerning the role of this new convocation, we hereby quote from the "Action Plan" of the governors:

> A Conference of the States would enable State representatives to consider, refine and adopt proposals for structural change in our federal system.

So isn't that the essence of a federal convention? Essence or not, the organizers are quick to deny they are hosting a constitutional convention, or even laying the groundwork for one. We agree that their conference is certainly not being called pursuant to Article V of the Constitution, which, in addition to defining the procedure that authorizes Congress to initiate amendments, establishes an alternate route (circumventing Congress) for state-initiated amendments. Yet, neither was the Convention of 1787 called according to the established rules of the day. The original 13 states ignored the amendment process established in the Articles of Confederation. The delegates who attended the 1787 convention were vested with power by their state legislatures, power that extended far beyond their constitutional mandate.

Power of a Free People

Records of the 1787 Convention are clear about the consolidated authority of the states and the power the states vested in their delegates. New Jersey's William Patterson objected to the course the Convention was taking and said:

> We are met here as the deputies of 13 independent, sovereign states, for federal purposes. Can we consolidate their sovereignty and form one nation, and annihilate the sovereignties of our states who have sent us here for other purposes?

Annihilation of state sovereignty, of course, did not occur; but other purposes most certainly did. The main point is that the 1787 Convention possessed that power, and the delegates exercised it. Is the consolidation of that power being attempted again in 1995 by Governor Leavitt and his Conference of the States? A realistic assessment indicates that a convention-empowered conference is exactly what is envisioned. But while the product of the Convention of 1787 turned out to be the most nearly perfect form of government yet devised, the result this time could be disastrous.

But what about the fact that Article V of the Constitution requires that two-thirds of the states apply for a convention in order for one to be called? The Conference of the States seeks only a majority of 51 percent. Again, the organizers of the planned Conference have obviously done their homework. History shows that a quorum of 51 percent was the minimum needed some 200 years ago to consider, propose, and adopt amendments to the federal system. Thus, our Founders met in Philadelphia and opened the Convention on May 25, 1787 with only seven (a simple majority) of the 13 states represented. That is precisely the minimum percentage wanted by the governors and convenors in the process that is now under way.

The name of the summit to be held this year in Philadelphia — whether it is called a conference, convention, convocation, assembly, discussion, deliberation, or whatever — is of no consequence. But the *process* by which it is being set in motion, the formal appointment of its delegates, and the legal instruments that authorize it, amount to far more than a friendly meeting of state leaders. The organizers have latched onto a principle that is not well known by our citizenry: the consolidation and mobilization of the power inherent in a free people. Congress reaffirmed this principle in an extensive joint resolution in 1935: "The government of the United States is not a concession to the people from some one higher up. It is the creation and the creature of the people themselves, as absolute sovereigns." This concentration of collective right, formally assembled, portends the most serious of consequences.

Those inherent powers of the people when consolidated are superior in every respect to government. In 1911 Senator Weldon Heyburn of Idaho sounded a warning while debating the matter on the floor of the Senate: "When the people of the United States meet in a constitutional convention there is no power to limit their action. They are greater than the Constitution, and they can repeal the provision that limits the right of amendment. They can repeal every section of it because they are the peers of the people who made it."

"It is not a constitutional convention," Governor Leavitt now insists. But his assurance inspires little confidence after one reads the position papers of the intergovernmental groups he belongs to. In order to demonstrate the audacious nature of their "Action Plan for Balanced Competition in the Federal System," we print here their own summary of the grand scheme, with bracketed numbers and bold type added for emphasis:

> [1.] **We propose a process that would consolidate** and focus **state power.** This process would culminate in an historic event called a *Conference of the States.*
>
> [2.] **In each state legislature, a Resolution** of Participation in a

Conference of the States **will be filed** during the 1995 legislative session. **The resolution authorizes the appointment of a** bi-partisan, five-person **delegation** of legislators and the governor from each state to attend.

[3.] **When a** significant **majority of the states have passed Resolutions** of Participation, **a legal entity** called the Conference of the States, Inc., **will be formed by the delegates from each state**, acting as incorporators. The incorporators will also organize and establish rules, assuring that **each state** delegation **receives one vote.**

[4.] The actual Conference of the States would then be held, perhaps in a city with historic significance such as Philadelphia or Annapolis. **At the Conference, delegations would consider, refine and vote on** ways of **correcting** the imbalance in **the federal system. Any item receiving the support of the state delegations would become** part of a new instrument of American democracy called a *States' Petition*. The States' Petition would be, in effect, **the** action **plan emerging from the Conference of the States. It would constitute the highest form of formal communication between the states and Congress.** A States' Petition **gains its authority from the sheer power of the process** the states follow to initiate it. **It is a procedure outside the** traditional **constitutional process**, and it would have no force of law or binding authority. But it must not be ignored or taken lightly because it symbolizes to the states a test of their relevance. Ignoring the petitions would signal to the states an intolerable arrogance on the part of Congress.

[5.] The States' Petition **would then be taken back to the states for approval by each state legislature.** If the Petition included **constitutional amendments**, those amendments would **require approval by a super-majority of state legislatures** to continue as a part of the States' Petition.

[6.] Armed with the final States' Petition, the representatives of each state would then gather in Washington to present the Petition and formally request that Congress respond.

Convention Call

A reading of the bold type tells it all: This whole effort, labeled a "conference," is in reality a call for a constitutional convention. The "Action Plan" does indeed circumvent the constitutional process of Article V, but it very cleverly incorporates every ingredient necessary for a free people to change their form of government. Although in defiance of existing constitutional procedures, the organizers apply a process based on the principle embodied in Paragraph 1: A free people are sovereign, and when acting through their state they can consolidate that power and reform their government. This principle was inherent in the founding of our nation and is obviously well understood by the designers of this dangerous plan.

"The government of the United States is not a concession to the people from some one higher up. It is the creation and the creature of the people themselves, as absolute sovereigns."

Disclaimers woven carefully into the Action Plan, such as the assurance in Paragraph 4 that "it would have no force of law," are unwoven by the fact that a majority of the states are required to pass formal legislation, as in Paragraph 2, authorizing the meeting and appointing official delegates to attend the affair. There would be no need for legal instruments from the states if a delegation of legislators wanted to attend a conference that "would have no force of law."

We could sympathize with enthusiastic public servants who seek only to build the attendance of their meetings. But in this program there will be no meeting at all until (or unless) a majority attends, as required in Paragraph 3. But if there were no pervasive reason for a majority to be there, the conference date could be set now, immediately. There would be no need to wait until 26 states are locked in. If only 49 percent attended, who would really care?

But the organizers do care, and it is of crucial importance to them because that majority will certify the power they seek in their convention, just as stated by South Carolina delegate Charles Pinckney at the Constitutional Convention of 1787: "The assent of a given number of the States shall be sufficient to invest them and to bind the Union as fully as if they had been confirmed by the Legislatures of all the States."

Paragraph 3 embodies another important precedent set by the first Convention: The establishment of a one-state, one-vote rule.

In Paragraph 4 we find the convening of a deliberative body, the core element of a convention, authorized to consider, refine, and vote on ways of "correcting" the federal system. System corrections are made only at the convention level. Here the organizers are referring to the process of making fundamental, structural, constitutional changes in the federal system. As Paragraph 4 states, virtually all of the position papers of this movement refer to "correcting the imbalance in the federal system."

Violations by the federal government require nothing more than enforcement. States can assist in this enforcement by refusing to accept federal funding of unconstitutional programs and by refusing to implement unconstitutional unfunded mandates. But structural problems in the federal system, if they exist, can be corrected only by amendment, and, of course, that is what the Conference of the States is all about. In essence, the organizers' plan adheres to the Article V convention role of "proposing amendments." But their creation of a "new instrument," which they call a "States' Petition," is nothing more than the final document produced by the convention (that is, the "conference"). They modestly grant that their petition is "the highest form of formal communication

between the states and Congress." Yet if the scheme is actually carried out and amendments are adopted, it would be far more than a mere "communication." It would be the highest form of sovereign power that could be exercised by the states over Congress and over the entire federal government.

Document of Amendments

What the organizers call a States' Petition will in reality be the instrument that contains the amendments to be added to the Constitution. It is difficult to find any reason for contriving a new term for this document except to imply that "there ain't nobody here but just us petitioners." Paragraph 5, in essence, defines the ratification process. The certified document of amendments (or their States' Petition) is to be sent to the states for approval by a super-majority. If acting under Article V they would need the approval of three-fourths of the states. But then, inasmuch as this whole promotion relies on brass and audacity, the organizers would likely settle for whatever number of states seem inclined to ratify. In the previous constitution (the Articles of Confederation) a ratification of amendments was required by all 13 of the states. A precedent was set, however, when the Convention lowered the necessary ratification from 13 to nine states (three-fourths of the states).

Born of Wisdom: The Craftin

Signed on July 4, 1776, the Declaration of Independence proclaimed: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute a new Government, laying its foundation on such Principles...."

The foundation for that new government was originally the Articles of Confederation, which created a "perpetual Union between the states" known as the "United States of America." Under this confederacy, each state retained "its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States...." Also, "the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state."

Although the basic principles embodied in the Declaration of Independence have endured, that original constitution, the Articles of Confederation, did not. It was short-lived because it failed to create sufficient order for the new union of states. The Articles were not inviolably observed by the states, nor was the union under their confederation perpetual.

When the states under this confederation began deliberations to remedy the defects in the Articles, they were at first primarily concerned with problems in the areas of trade and commerce. One such problem was a dispute between Maryland and Virginia over navigation rights on the Potomac River. In March 1785, George Washington hosted a meeting of delegates from Maryland and Virginia at his home. Gathering at this Mount Vernon Conference, the delegates recommended that the two states meet annually "for keeping up harmony in the commercial relations" between them. Maryland's delegates in approving this also decided to invite to the annual meetings delegates from two other neighboring states, Delaware and Pennsylvania. Virginia, however, recommended a meeting of all the states "to take into consideration the trade of the United States...." This led to the Annapolis Convention, which in turn set the stage for the Philadelphia Convention that drafted the U.S. Constitution.

Held in September 1786, the Annapolis Convention was attended by delegates representing only five of the states. Because of the poor representation, the delegates decided not to proceed on what they called "the business of their mission." Instead, they suggested that "the power of regulating trade is of such comprehensive extent, and will enter so far into the general System of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Federal System." They therefore recommended a meeting of the states that could consider not only trade, but "such further provisions as shall appear to them necessary to render the constitution adequate to the exigencies of the Union...."

Our Founding Fathers created

After evaluating the Annapolis Convention, the Continental Congress proposed that "a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation...." Although the scope of this meeting was to be broader than that of Annapolis, it was still limited to proposing amendments to the Articles of Confederation.

The Philadelphia Convention opened on May 25, 1787, when a quorum of delegates representing a majority of the states had arrived. Eventually, a total of 55 delegates representing all of the states except Rhode Island participated.

On June 19th, after debating various proposals, the delegates decided not to amend the Articles of Confederation, but to devise a new national government. From that point on, the assembly worked in violation of its own mandate. On September 17th, 39

Madison's notes on the 1787 Convention express the consternation of at least one delegate who opposed reducing the number of states needed for ratification:

> Mr. [Elbridge] Gerry urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the articles of confederation. If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter.

Perhaps the organizers hope that those state legislators who, for the past 20 years, have steadfastly refused to call a convention, may not recognize the serious implications of this new effort. One way to obfuscate its convention-like process would be for the con-con advocates to use a lot of newly contrived terms — terms which appear harmless to starry-eyed state legislators, but which are clear to the intergovernmental cabal pushing through the process.

Right now it is critically important to the Conference task force to get the Resolutions of Participation passed in at least 26 states as quickly as possible. It looks very much like a high-pressure power game because the resolutions are being thrown through statehouses like hardballs. Most

# of Our Beloved Constitution

of the 42 delegates who were present signed the new Constitution. After the Continental Congress received the proposed Constitution, some representatives sought to censure the constitutional convention for failing to abide by its mandate that allowed merely for revisions of the Articles of Confederation. Those favoring censure, however, were not in the majority. On September 28th, Congress resolved to submit the Constitution to special state conventions for ratification. All 13 of the original states ratified it, the last to do so being Rhode Island on May 29, 1790. But the Continental Congress, on September 13, 1788, had already proclaimed the Constitution ratified by the required nine states and ordered the new government to convene on March 4, 1789.

vernment of law, not of men.

The Constitution provided for a stronger federal government than had existed under the Articles of Confederation. But under the Constitution, as under the Articles, the federal government was still strictly limited to specified powers that were delegated to it. To assure that the federal government would not overstep carefully crafted boundaries, the Founders methodically interwove into the Constitution a system of checks and balances that included:

- Dividing governmental powers between the national government and the autonomous state governments. This arrangement was unique in history and became known as Federalism.
- Granting only certain powers to the national government, while protecting the individual rights from infringement by any force, whether it be by government — foreign or domestic — or by the people themselves using the dictates of a collective majority. This system of government is known as a Constitutional Republic. It is not a democracy, a system in which majority rule is unrestrained.
- Separating the limited powers of the national government into three branches — Executive, Legislative, and Judicial — and further dividing the legislature into two chambers, the Senate and the House of Representatives.

The Constitution that the Founders so carefully crafted gave us something extraordinary: a government of law and not of men. Under such law, the God-given rights of the individual are sovereign and immutable. They may not be violated by government, no matter how compelling the reasons to do so may seem. Neither may the majority do so, acting through government for some supposed "greater good."

Such principles were not embodied in the Declaration of Independence and Constitution by accident. But the outcome could have been very different. The War for Independence could have ended in repudiation of rights, as was the case with the French Revolution. America's experience was different, however, because it was blessed with the rarest of leaders who had faith, wisdom, and character: the faith to recognize that rights come from God; the wisdom to understand that the proper role of government is simply to protect God-given rights; and the character to fashion a government based upon such principles.

Because the American people have gradually lost sight of our nation's founding principles, the federal government has been able to assume vast powers beyond those specifically delegated to it by the Constitution. Gradually, America is becoming like the despotic Old World from which the Founders declared our independence. However, even during this decades-long backward slide toward despotism, the Constitution has remained intact, providing a powerful beacon of hope for those who still recall the faith, wisdom, and character of the Founders.

So long as that beacon shines brightly, America will have a safe port to return to — and return she will, just as soon as sufficient numbers of her citizens become reacquainted with our founding principles. But dim or extinguish that beacon, and America — unable to find safe passage in the darkness — will most likely wreck herself on the collectivist shoals. This is why the Constitution must be preserved, and this is why today's unconstitutional abuses of power must never be granted the legitimacy of constitutionality. This is why — in this age of little understanding — a new constitutional convention must be avoided at all costs. ■

— Gary Benoit

are being passed on voice votes, are given little or no committee hearing, and are being steamrolled through the voting chambers.

The bodies of all the Resolutions of Participation are the same for all states; they typically begin with the following statement of purpose:

> Calling for a Conference of the States to be promoted and convened by the Council of State Governments for the purpose of restoring balance in the federal system and supporting [name of state]'s participation in such a Conference.

Shallow Understanding

Do the American people understand that their sovereign powers are set to be consolidated in an instrument that authorizes a private intergovernmental group to tinker with our federal system? And are the governors and state legislators so flattered by the national attention beckoned by this summit that they will vote for a Resolution of Participation without challenging it? Has no American official asked why he should vote for a measure that empowers a private group to serve as convenors of *any* kind of official meeting? Has no one questioned the provision that the Conference must be legally incorporated? Will 7,400 state legislators (or even half of that number) vote in favor of a measure that includes a clause stipulating that "at least twenty-six legislatures adopt this resolution without amendment"?

A vested interest in this measure runs rather conspicuously in the legislative leaders who have appointed themselves a seat at the Conference before the bills have even been introduced. Little do they comprehend the price our nation will pay if those short-sighted state legislators — and their pride-smitten governors — think they can fill the seats of Washington, Madison, or Hamilton at Independence Hall in Philadelphia.

Paragraph 6 is pure fluff. There is no need for a formal ceremony to present ratified amendments to Congress. A long-established rule holds that an amendment goes into effect on the day it is ratified by the legislature of the last necessary state. Two-hundred and fifty delegates need not appear in Washington and cower before Congress to obtain its acceptance of constitutional amendments that originate through the consolidated force of the states.

Considerable ingenuity has gone into selling this affair to the states. Those who want structural change in our system have positioned themselves so that they appear to be rallying around the banner of the Tenth Amendment. A virtual explosion of articles, editorials, and voices in praise of the Tenth Amendment have emanated from every clime and every persuasion. Establishment writers from George Will to David Broder have addressed the subject like tried and true "conservatives." Even President Clinton has joined in with the Tenth Amendment chorus.

Either by seizing the moment or by creating it, the Conference promoters have obtained an all-American launching pad for their upcoming extrava-

Comparing the Conventions

The following side-by-side comparison of state-originated alterations in the federal government shows the purposes and procedures of the proposed 1995 Conference of the States and the historic Constitutional Convention of 1787.

— 1995 — Conference of the States	— 1787 — Constitutional Convention
• **The problem:** Discord in the state/federal relationship and excessive federal power.	• **The problem:** Disunity between the states and insufficient federal enforcement power.
• **Purpose:** To consider and to propose changes in the state-federal relationship.	• **Purpose:** To consider and to propose changes in the state-federal relationship.
• **Considerations:** Structural and statutory changes.	• **Considerations:** Structural changes only.
• **Type of Convocation:** A deliberative body comprised of appointed delegates.	• **Type of Convocation:** A deliberative body comprised of appointed deputies.
• Conference authorized by formal resolutions of a majority of the states.	• Convention authorized by formal resolutions of a majority of the states.
• The states exceed their mandate under Article V and convene and adopt amendments without the consent of Congress.	• The states exceed their mandate in the Articles of Confederation and adopt a new form of government without the consent of the Continental Congress.
• Delegates appointed by the state legislatures.	• Deputies appointed by the state legislatures.
• A quorum to be comprised of 26 states (a simple majority).	• A quorum to be comprised of seven states (a simple majority).
• The Conference elects its own officers, organizes its committees, and makes its own rules and agenda.	• The convention elects its own officers, organizes its committees, and makes its own rules and agenda.
• Conference proposals are sent directly to the states.	• Convention proposals are presented to the Continental Congress.
• Amendment approval by a supermajority of the states.	• Amendment ratification by three-fourths of the states.

ganza. To many Western leaders the Tenth Amendment means getting the federal government out of their pockets and off their backs, as well it should. But in the East and North, where welfare-state programs abound, the Tenth Amendment is often used as an argument for having the federal government pay for its unconstitutional mandates. In the South it often means the restoration of states' rights. Such multi-purpose meanings of the Tenth Amendment are facilitated by repetitious reference to a patently false notion that "imbalance" in the state-federal relationship is a terminal illness that afflicts our nation.

Restoring "Balance"

At a recent meeting of the Council of State Governments, Governor Mike Leavitt declared:

> Balance will only be restored in the way intended by Madison, Jefferson, and Hamilton when states take the initiative. As state leaders, with our allies in local governments, we must step up to our constitutional obligation and compete for power in the federal system. States have a place at the constitutional table. It is a proper role — in fact the obligation and stewardship — of states to be jealous and protective of their role and to fight for balance.

Surely Mr. Leavitt realizes that state and federal powers are purposely out of balance — and that the balance is tilted heavily in favor of the states — because our Founding Fathers planned it that way. The profound work of the Convention of 1787 gave only a few specified powers to the federal government, meaning that infinitely innumerable rights, powers, and privileges of the people remained at the state level. The United States Constitution, in its purest form, exemplifies the greatest *imbalance* in the history of human governance. Before the Constitution was ratified, Madison affirmed this planned imbalance in the state-federal relationship in *The Federalist Papers*, #45:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

The Conference of the States meets every requirement for a constitutional convention even though it has not been called pursuant to Article V of the Constitution. It would have the legal force of a free people if its proposals were adopted. It would make no difference whether Congress approved or not, since the whole people are superior to all institutions of government and have authority over them.

But should the Conference of the States actually get under way and take on the Constitution, it is hard to know what this constitutional powerhouse would actually do. After initially coming out for a strong state role, Leavitt backed off from that position, as noted in the April 25,1994 *Salt Lake Tribune*: "Explaining that he had 'migrated ideologically' from a position of state primacy, Leavitt said he now can 'more fully appreciate the need for a federal government role' in areas such as environment, air quality, public lands and rivers."

Now that the wheels are set in motion for hundreds of state legislators to convene for the stated purpose of correcting the federal "imbalance," which cause will Leavitt embrace? Will he champion an increase or a decrease in federal powers? Please bear in mind that all federal powers are enumerated in the Constitution: Congress has 26 powers, the President has six, and the Supreme Court has only three.

So if the Conference takes powers from Washington, which of the enumerated (constitutional) powers will it take? Will the states take power over interstate commerce, the postal service, or the roads that connect the postal system? Will they take from Congress the power to coin money and regulate its value? Will the states deprive the federal government of the power to borrow money or to collect taxes? Is it likely that the states will take over the power to declare war and to raise and support armies? Will the states conduct foreign affairs, take command of the military forces, or assume the veto powers of the President?

These are vital questions, because — beyond these areas — the federal government has precious few powers. If the Conference is intent on making long-term structural change in the state-federal relationship, then it must either *reduce* or *increase* federal powers.

Although Governor Leavitt offers only vague ideas on "restoring balance" and the kind of changes he envisions for the Constitution, it is not difficult to understand the kind of structural changes advocated by the Council of State Governments. In 1989, for example, it endorsed amending the Tenth Amendment as follows: "Whether a power is one reserved to the states or to the people shall be decided by the Courts."

This incredible proposal, the transfer of state power to the federal court system, should sound an alarm to any legislator contemplating a Conference of the States hosted by the Council of State Governments or by anyone else at this perilous time in our history.

Judging by the motivation of various state leaders, the Conference organizers really don't want to assume any of the *proper* functions of the federal system. Logically then, they must want to formalize the unauthorized powers — that is, they must want to *certify the unconstitutional powers of government, both state and federal*. They need a convention to do that. They need Resolutions of Participation and state-certified delegates to do that. They need the powers (pretended or otherwise) of a sovereign people to do that.

On the other hand, if the true goal of the organizers is to strip the federal government of its unauthorized powers, then a convention-empowered Conference of the States is not necessary. Accordingly, the resolutions being passed in the states have one main purpose and one only: to amend the Constitution to legalize that which is now unconstitutional; to usurp the undelegated powers of the people and delegate them to government.

The real motivation behind the Conference of the States is the very opposite of the avowed purpose, otherwise no high powered convocation would be needed. The states could announce their assertion of the Tenth Amendment in a telephone conference call, and divest themselves of federal usurpations by engaging only in those state-federal activities for which there is constitutional authority. The states, whether they meet or not, already possess the power to cast aside the unconstitutional shackles of the federal government. All the states need do

to escape federal oppression is to send the federal checks back to Washington with the following explanation:

> We respectfully return checks paid out of the federal treasury for activities that the federal government has no constitutional authority to engage in or to impose upon the states as set forth in the Tenth Amendment of the Constitution of the United States.

Delegates from many states are signing on with the Conference because the federal government has mandated programs without providing the funding. Their intentions are quite clear: They want amendments that will force Uncle Sam to pay for their programs relating to welfare, the environment, health care, highways, land management, public school subsidies, poverty programs, housing, senior citizens, downtown parking, etc. Other than that, of course, they want the federal government to leave the states alone. Never mind that the mandates themselves should be eliminated.

If held, the Conference would likely adopt amendments that would make legal that which is now unconstitutional. Many states would probably agree to *increase* the power of the federal government by insisting that the federal government fund the programs it mandates.

Governor Mike Leavitt obviously realizes he made a tactical error in openly calling for a constitutional convention last year. But his ostensible retreat from that unpopular proposal, his mollification of those governors who want federal money for their own welfare-state programs, and his "ideological migration" in support of a greater role for the federal government, exemplify the consummate politician.

Insider Con

But these are not the Governor's first "migrations." In 1993 and 1994 he was one of eight state executives who participated in the National Education Goals Panel which helped compose the infamous *Goals 2000*. This is the program which has radically accelerated the unconstitutional federalization of American education. Was the governor ignorant of his role in violation of the Tenth Amendment when he handed our children over to the feds? Is he really the anguished tribune of the Tenth Amendment, or is he instead a political opportunist, duly flattered and urged on by the intergovernmental crowd that has long sought radical changes in our form of government? The Utah governor has found a warm and willing reception among those who, since the 1960s, have worked to abolish the states and to establish in their place a federally managed regional government.

Leavitt exults that public sentiment is growing for the big summit at Philadelphia, but we disagree. On the contrary, *media* sentiment is growing. Or perhaps better stated, the managers of mass media see a perfect forum of pigeons preparing the way for *their* agenda. Editors and writers who have spent their lives scoffing at the Constitution are playing this game with all they can muster. The pages of our liberal papers are brim with flag-waving commentary on the "rebirth of America," and the "new role" of the states as masters of the federal monster. Cartoonists are outdoing themselves with the big foot of Uncle Sam shown as being thwarted by a sword-swinging little state. But the question persists: Why have the champions of big government suddenly discovered the Tenth Amendment?

We offer this answer: Because the call for the convention-empowered Conference conveniently sidesteps Article V, and the only final judge of the Conference's actions will be the people themselves. If the American people can be carried away in a false euphoria over this enormous fraud, they will ratify amendments that will tear apart the very fabric of republican government.

The Conference organizers really don't want to assume any of the proper functions of the federal system. Logically, then, they must want to formalize the unauthorized powers.

For the most part, Americans do not comprehend the constitutional role of their government or their responsibilities regarding it. Polls taken in recent years indicate an appalling ignorance of our system among the great majority of Americans. According to a national survey sponsored by the Hearst Corporation in 1987 (the bicentennial year of the U.S. Constitution), 45 percent of the respondents mistakenly believed that the Marxist principle, "From each according to his ability, to each according to his need," is found in the U.S. Constitution, 49 percent mistakenly believed that the President can "suspend the Constitution in time of war or national emergency," and 75 percent mistakenly believed that the Constitution guarantees "a free public education through high school."

The Conference of the States is most emphatically not a proposal of the people; it is a highly sophisticated, well-financed production that is being sold to state officials on a false premise and a deceitful promise.

Our immediate concern centers on the Resolutions of Participation being rushed through the statehouses of America. Every effort must be made to block them. Our nation's best informed citizens need to voice their opposition loudly and clearly. Governors and legislators who understand the Constitution and know it is not flawed must be willing to speak out in opposition to this elaborate plan to alter it. We must not permit the calling of a state-authorized Conference imbued with federal convention powers at this point in our history. ■

Reprints Available

Con-Con Call — Beware Mike Leavitt's "Conference of the States" first appeared in **The New American** for March 6, 1995. Additional copies of this copyrighted article are available at three copies for $1.00, 100 for $25.00, or 1,000 for $200.00. Add 15 percent ($2.00 minimum) of the order total for postage and handling. Order from: **The New American**, Reprints Dept., Appleton, WI 54913-8040.

Rep. Barnes

APR 18 1995

SECRETARY OF STATE

JANE DEE HULL
Secretary of State

State Capitol Executive Tower
Phoenix, Arizona 85007-2888
(602) 542-4285
Fax: (602) 542-1575

ANNE L. LYNCH
Assistant Secretary of State

April 4, 1995

The Speaker of the House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

The Forty-second Legislature of the State of Arizona has passed House Concurrent Resolution 2015 and filed it in our Office March 31, 1995. The language in this resolution stipulates that we send a copy of the Resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Speaker of the House of Representatives and the President of the Senate of each state's legislature of the United States of America, and the Arizona Congressional Delegation.

Please find enclosed a copy of House Concurrent Resolution 2015.

Sincerely,

Jane Dee Hull

JANE DEE HULL
Secretary of State

House Engrossed

FILED

Jane Dee Hull
Secretary of State

State of Arizona
House of Representatives
Forty-second Legislature
First Regular Session
1995

HOUSE CONCURRENT RESOLUTION 2015

A CONCURRENT RESOLUTION

REGARDING THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ASSERTING THE SOVEREIGNTY OF THE STATE OF ARIZONA.

Whereas, the Tenth Amendment to the Constitution of the United States reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."; and

Whereas, the Tenth Amendment defines the total scope of federal power as being that specifically granted by the United States Constitution and no more; and

Whereas, today the states are demonstrably treated as agents of the federal government; and

Whereas, many federal mandates are directly in violation of the Tenth Amendment to the Constitution of the United States; and

Whereas, the United States Supreme Court has ruled in New York v. United States, 112 S.Ct. 2409 (1992) that Congress may not simply commandeer the legislative and regulatory processes of the states; and

Whereas, a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the United States Constitution;

Therefore

Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. That the State of Arizona hereby claims sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution.

2. That this serve as notice and demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of its constitutionally delegated powers.

3. That the Secretary of State of the State of Arizona transmit copies of this Concurrent Resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Speaker of the House of Representatives and the President of the Senate of each state's legislature of the United States of America, and the Arizona Congressional delegation.

PASSED BY THE HOUSE FEBRUARY 9, 1995 BY THE FOLLOWING VOTE: 42 AYES, 17 NAYS, 1 NOT VOTING.
PASSED BY THE SENATE MARCH 27, 1995 BY THE FOLLOWING VOTE: 25 AYES, 4 NAYS, 1 NOT VOTING.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 1995.

The Council of State Governments
3560 Iron Works Pike
P.O. Box 11910
Lexington, KY 40578-1910

Name of Individual Denny DeWitt
Name of Firm/Person Rep. Eldon Mulder's office
Fax # (907) 465-3518 Office # (907) 465-2647
From Carla Blanton
Telephone (606) 244-8166
Number of Pages 6 Date Transmitted 1-23
Messages Here is the information you requested on The Conference of the States.
I mailed additional information today. Please let me know if you need anything else, and continue to keep us posted on what Alaska is doing regarding the Conference.

Carla Blanton

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Vol. 1 Issue 5

The Conference of the States alert

States are forging ahead; new language for the resolution approved

Jan. 18, 1995

Utah became the first state to pass a resolution of participation in The Conference of the States on Monday when Gov. Mike Leavitt signed the document authorizing the state to send a delegation to the historic Conference. The Iowa Senate passed the resolution Wednesday, according to state officials.

Other states across the nation also are acting quickly. As of Monday, more than a dozen states had introduced resolutions in at least one chamber, including: Arizona, Arkansas, Indiana, Minnesota, Montana, Nebraska, New Hampshire, Oregon, Texas, Vermont and Washington. These states represent a wide spectrum of different-sized states from every region. In addition to states that already have introduced the resolution, more than 10 states indicated the resolution will be introduced in one chamber this week. These include: Colorado, Delaware, Illinois, Kansas, Maryland, New York, Ohio, Pennsylvania, South Dakota and Wyoming.

Wording of the resolution

Because each legislature is run differently, many states have had legitimate questions about the wording of the resolution. Some states have asked if the wording of their resolutions of participation in The Conference of the States must be identical. Other states have asked if the size of the delegation the states will send to The Conference of the States is flexible.

The Steering Committee of The Conference of the States recognizes that each state has a different set of circumstances it must meet in order to participate, be they technical or political. For this reason the Steering Committee has endorsed minor changes in the language of the resolution of participation. This is what the changes will accomplish:

- States will be allowed to increase the size of their delegations to The Conference of the States to as many as seven members. A bipartisan flavor will be maintained by stipulating that at least one member of the delegation be from the minority party in each chamber.
- The resolutions will not have to be identical to convene The Conference of the States. Some states have had to make minor changes in the wording because of the rules of their chamber. This change in the resolution's language will allow for those minor changes while keeping the substance of the resolution intact.

A copy of the resolution with the new wording inserted is attached to this document. Should you have any questions about The Conference of the States or the wording of the resolution, please call The Conference of the States' Information Line (606) 244-8158.

RESOLUTION OF PARTICIPATION IN A CONFERENCE OF THE STATES

[Whereas clauses to be provided by individual states]
The following language needs to be incorporated into each state's resolution:

Now, Therefore, Be It Resolved:

That the following be adopted:

(1) A delegation ~~of five~~ NOT TO EXCEED SEVEN voting persons from the State of , shall be appointed to represent the State of at a Conference of the States for the purposes described in Section (2) to be convened as provided in Section (3). The delegation shall ~~consist of five~~ NOT EXCEED SEVEN voting persons as follows: (a) the governor or, if the governor does not wish to be a member of the delegation then a constitutional officer selected by the governor; and (b) ~~four legislators, two~~ A NUMBER OF LEGISLATORS NOT TO EXCEED SIX; THREE from each house, OF WHICH AT LEAST ONE SHALL BE FROM EACH MAJOR POLITICAL PARTY, selected by the presiding officer of that house. ~~No more than two of the four legislators may be from the same political party.~~ Each presiding officer may designate two alternate legislator delegates, one from each party, who have voting privileges in the absence of the primary delegates.

(2) The delegates of The Conference of the States will propose, debate and vote on elements of an action plan to restore checks and balances between states and the national government. Measures agreed upon will be formalized in an instrument called a States' Petition and returned to the delegation's state for consideration by the entire legislature.

(3) The Conference of the States shall be convened under the § 501(c)3 auspices of The Council of State Governments in cooperation with the National Governors' Association and the National Conference of State Legislatures no later than 270 days after at least 26 legislatures adopt this A resolution ~~without amendment~~ OF PARTICIPATION.

(4) Prior to the official convening of The Conference of the States the steering committee will draft:

(a) the governance structure and procedural rules for the Conference;
(b) the process for receiving rebalancing proposals; and
(c) the financial and administrative functions of the Conference, including The Council of State Governments as fiscal agent.

(5) The bylaws shall:

(a) conform to the provisions of this resolution;
(b) specify that each state delegation shall have one vote at the Conference; and
(c) specify that the Conference agenda be limited to fundamental, structural, long-term reforms.

(6) Upon the official convening of The Conference of the States, the State delegations will vote upon and approve the Conference governing structure, operating rules and bylaws.

--end of the resolution --

A note on media coverage

A total of 259 stories have been printed about The Conference of the States through Dec. 29. Overall, known media coverage has spanned 45 states and has included stories in *Newsweek*, *The Wall Street Journal* and the *Washington Post*.

Influential columnists David Broder, Neal Peirce and Walter Mears all have written at least one weekly column about The Conference of the States.

The Leaders' Edge
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Conference of the States

Restoring Balance in the Federal System
FACT SHEET

I. OVERVIEW

- The call for a Conference of the States (COS) is attracting broad support from state officials as a way to drive home an important federalism message to the Congress and the American people.
- COS is a non-legal, yet formal process to convene a Conference of the States to develop an action plan to restore balance to the federal system.
- COS will be convened when a majority of states pass identical resolutions of participation in COS.
- It is anticipated that each state will vote to send a five-member delegation to COS -- the governor and four legislators -- two from each chamber and each party. Two alternate legislators, one from each party, also will be appointed in each chamber.
- It is expected COS will occur in the Fall of 1995 in a historically symbolic location such as Philadelphia. It will be the first formal meeting of the states since 1786.
- The end product of COS will be an agreed-to action plan, written in the form of a states' petition, specifying a set of statutory, legal and constitutional measures essential to an effective, balanced state-federal partnership.

II. DEFINING CHARACTERISTICS

- COS enjoys broad, bipartisan support from state leaders in both parties. It is guided by a national, bipartisan steering committee of state elected officials, under the auspices of The Council of State Governments, in cooperation with the National Governors' Association and the National Conferences of State Legislatures.
- COS is not a Republican or Democrat vehicle -- it is an initiative of, for, and by the states to advocate a balanced federal system -- with a strong, yet limited, federal government -- and with states (and local governments) handling a larger share of the domestic governance role.
- COS does not address or advocate any single or special issue interests. It does not speak to abortion or gun control, nor does it identify with any group or individual.
- COS is a forum for the states to formally, collectively, and responsibly define their rightful roles in the federal system, based upon past principles and the new governance challenges of the 21st century.

Convenor: The Council of State Governments in conjunction with the National Conference of State Legislatures and the National Governors' Association
•P.O. Box 11910 •Lexington, KY 40578-1910
•606/244-8000 •606/244-8001 fax

III. STATES AS AGENTS OF REFORM

- One of the most compelling aspects of COS is that it provides a clear opportunity for states to inform the American public that the states, along with local government, have become positive forces of governmental change and reform. There has been little or no public recognition of these facts:
  - All states have updated and modernized their constitutions in the last 30 or so years.
  - Most states have completely revised their ethics codes and standards in the last five years.
  - Most states have restructured, downsized and privatized key functions in the last few years.
  - Most states elect more women and minorities to office, as do local governments, than does the federal level. They are more representative of, and responsive to, citizens.
  - And, virtually all states are living within their budgetary limits. In contrast to the federal level, which has been overspending in recent years more than all 50 state general fund budgets combined.
- And, in domestic policy areas, states are the acknowledged leaders and innovators in:
  - Health care redesign; welfare reform; education restructuring; corrections policy; environmental innovation; and in many management areas - including TQM, customer service and benchmarking to improve accountability for outcomes and for efficiency.

IV. CONCLUSION

- Convening a Conference of the States provides an invaluable forum to develop an accurate picture of the states in action and to address a profound, structural distortion in the American political system.
- COS offers states and citizens an opportunity to revisit our founding governing principles and the appropriate state-federal structural balance best suited to American society in the 21st century.
- COS is a non-constitutional, non-binding vehicle for American states to reclaim their rightful, co-equal status in the federal system and to work closely with citizens on the public challenges ahead.

QUESTIONS?

Call The Conference of the States Information line:
(606) 244-8158

Ramona

I'm thinking

of not offering

the amendment

so as not to

get into the

battle over

adding a bunch

of groups. What

do you think?

Sean

Rep. Barnes

The Council of State Governments
3560 Iron Works Pike
P.O. Box 11910
Lexington, KY 40578-1910

Name of Individual Rep. Bavacs

Name of Firm/Person

Fax # (___) 907 465-4565 Office # (___)

From Bill Voit

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Number of Pages 3 + cover Date Transmitted 5/4

Messages COS update
press release

If you do not receive all pages, please call as soon as possible.

Telephone (606) 244-8000

Fax (606) 244-8001

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Conference of the States Resolution,
Reported by The Council of State Governments, Lexington, KY
Status, May 3, 1995 4:00 p.m. EST
Current Legislative Session

■ States that have passed a resolution in both chambers: (14 states)	Governor	Party control Senate	House
Arizona	Rep.	Rep.	Rep.
Arkansas	Dem.	Dem.	Dem.
Delaware	Dem.	Dem.	Rep.
Idaho	Rep.	Rep.	Rep.
Iowa	Rep.	Dem.	Rep.
Kentucky	Dem.	Dem.	Dem.
Missouri	Dem.	Dem.	Dem.
Nebraska (unicameral)	Dem.	nonpartisan	
Ohio	Rep.	Rep.	Rep.
South Dakota	Rep.	Rep.	Rep.
Tennessee	Rep.	Dem.	Dem.
Utah	Rep.	Rep.	Rep.
Virginia	Rep.	Dem.	Dem.
Wyoming	Rep.	Rep.	Rep.

■ States that have passed the resolution in at least one chamber: (7 states); tracking organization ( )

Alaska House (CSG)
New York Senate (CSG/NCSL)
Florida House (CSG/NCSL)
Texas Senate (NCSL)
Michigan Senate (CSG/NCSL)
New Jersey Senate (CSG)
Pennsylvania Senate (CSG)

■ States that have introduced the resolution in at least one chamber: (8 states)

Alabama Senate (4/18, NCSL)
North Carolina House (CSG/NCSL)
Rhode Island House (NCSL)
Illinois House (CSG/NCSL)
South Carolina House (NCSL)
Washington House ———
Nevada Assembly (CSG)
Wisconsin Senate (NCSL/CSG)

■ States where introduction is pending: (3 states)

Connecticut
Maine
Massachusetts (CSG)

■ States which have defeated, carried over, or not considered the COS resolution beyond committee or by another chamber: (18 states)

New Hampshire	West Virginia	Mississippi	Minnesota
North Dakota	Georgia	Montana	Louisiana
Oklahoma	New Mexico	Kansas	California
Vermont	Oregon	Colorado	Indiana
Hawaii	Maryland		

FOR IMMEDIATE RELEASE
April 26, 1995

FALL MEETING SET TO PLAN CONFERENCE OF THE STATES

Supporters of a national conference to debate the balance of powers between the federal and state governments will meet this fall to plan for a Conference of the States (COS), organizers announced today.

The Steering Committee had planned to hold an organizational meeting this summer, and had hoped to schedule the Conference this fall, but organizers agreed to wait until at least 26 states approve resolutions of participation. Since January, 14 states have adopted the resolutions, and 10 more states have adopted resolutions in either the House or Senate. Resolutions have been introduced in nine other states.

Organizers said the fall meeting will be open to all states and will provide an opportunity to review the impact of ongoing congressional and judicial decisions. The meeting also will be used to plan for the actual Conference, which could be scheduled in 1996.

Today's announcement resulted from an April 21 meeting of governors and state legislators serving on the COS Steering Committee, a bipartisan group charged with planning the Conference to encourage a state discussion about federalism.

"We are already seeing evidence that the initiative for the Conference is positively influencing the climate for a more balanced federal system," said Nebraska Gov. E. Benjamin Nelson, who co-chairs the Steering Committee with Utah Gov. Mike Leavitt.

"The purpose is to convene states in a historic way and send forth their collective action," said Gov. Leavitt. "Our long-term goal is to show the political potency of the states."

At the April 21 meeting, the Steering Committee voted to broaden its membership to more groups representing state legislators, including the American Legislative Exchange Council (ALEC) and the State Legislative Leaders Foundation. Sponsoring organizations for the effort currently include The Council of State Governments, which would convene the Conference, the National Conference of State Legislatures, and the National Governors' Association.

Supporters also said they planned to use the additional time now built into their plans to educate the public about how the Conference would work, who would be involved, and what solutions might be proposed.

"The fall meeting will allow states to take stock of how they would be affected by changes in the federal budget," said Ohio State Senate President Stanley Aronoff, CSG chairman-elect.

"We must maintain the long-term perspective," said Alabama Rep. Mike Box. "There is no quick and easy solution. States need to hold the Conference so that they can discuss ways to restore the balance of power between the state and federal governments."

For more information contact:

Elaine Stuart, The Council of State Governments, 606-244-8153, or e-mail, info@csg.org
Susan Seledones, National Conference of State Legislatures, 202-624-8678
Page Boinest, National Governors' Association, 202-624-5331

8016 S. Grandview Ave.
Tempe, AZ 85284

March 28, 1995

Speaker of the House
Ramona Barnes
Alaska State Legislature
State Capitol
Juneau, AK 99811-1182

Dear Ms. Barnes:

Reference the proposed Conference of the States. Enclosed are 2 essays that are pertinent thereto.

The two essays are taken from a number of RESPONSIBILITY papers which address the problems of our nation. They would be very useful for the organizational meeting in July and toward the agenda for the Conference in October.

I would be pleased to provide a disk containing the essays for your State's use. Please advise.

Sincerely,

Guy G. Wooten

Enclosure

Guy G. Wooten

Phone (602)820-0855
FAX (602)941-8065

Domestic Security. The lapses in our national security in the categories of structural, moral, and economic, spill over into domestic security. Here it is particularly apparent that the Republican "Contract with America", and the Democratic "New Covenant", fail to adequately or rightly or timely address: (1) the factors that have and threaten to further "degrade the quality of life of the People"; and, (2) the actions required to stem the tide of narrowing and begin the recoupment of "policy choices" needed to assure the domestic security of our nation.

The Bill of Rights (the first 10 Amendments to the Constitution) has been a preponderant impediment to maintaining domestic (and moral) security. Yes! this holiest grouping in our Constitution, this set of rules that is so frequently set high upon a pedestal, too often has proved to be a "Bill of Wrongs". This has come about through usurpation, conflicts among Rights and between the disparate beneficiaries of each, and looseness of interpretations.

Amendment Article [I]. The "establishment of religion" or "the free exercise thereof" have been in conflict for most of our history. It has led to the government essentially favoring a "godless state". It has precluded promising solutions to the inadequacy of our education systems, that need not be. It has foreclosed policy options that would likely reverse the immoral depths to which our society has been moving.

It has entailed the violation of the "property rights" clause of Amendment Article [V], through restriction of tax revenues to public schools only. In 1995, a number of State legislatures continue to try to get past this unjust hurdle, to a degree, through enactment of school vouchers, and other means of encouraging open competition, and the freedom to exercise the right and responsibility of parents to provide the best moral and overall education of their children.

The "freedom of speech, or of the press", instead of contributing to "domestic tranquility" and promoting "the general welfare", has been used to tear the fabric of our families and otherwise to "degrade the quality of life of the people". The interpretations and applications of this right in 1995 are totally unrecognizable to how they were 50 to 60 years ago.

The "increase the penalties for child pornography" item in the Republican Contract with America is but a gnat to be swatted. We need to stop the immoral use of communication and entertainment media. We need to recoup the policy options that were deemed in accordance with this right only 2 generations ago.

Amendment Article [II]. The domestic security of the USA is subverted by the National Rifle Association, and others, who

blatantly misinterpret this "right of the people to keep and bear arms". Any junior high school student (now, or certainly 2 generations ago) could parse the single sentence of this Amendment, and identify this right as predicated upon the passe need for a militia.

The excessive availability of firearms; and the lack of thorough controls of their purchases and exchanges, registration, training, storage and safeguards, bearing and employment; cause exorbitant numbers of people to "be deprived of life, liberty, or property". Hence Amendment Article [II] is in direct conflict with Amendment Article [V]. Its consequences are contrary to the objectives cited in the Preamble to the Constitution.

The "stiffen punishment provisions in anti-crime bill" item in the Contract with America; and the Democratic resistance to Republican efforts, to pull supporters of the NRA into their coalition by compromising the Brady law; are mites. Only an all-out attack on Godzilla, the uncontrollability of guns, will bring a reduction in crime and violence, and cure this failure of our governments to provide domestic security.

Amendment Articles [IV], [V], [VI], and [VIII]. The clauses in these Amendments, for the most part, have to do with setting limits on how our governments can seek to obtain justice in criminal investigations, prosecutions, and punishments. With 206 years experience under our belt, since the Bill of Rights was defined for ratification by the States, it is time to update these provisions. The proper balance must be sought between the rights of individuals (innocent or guilty) versus the right of the people to have domestic security.

The "stiffen punishment provisions in anti-crime bill" item in the Contract with America is a step in the right direction, but exceedingly small. With millions of people world-wide longing to enjoy American citizenship, it is time that the responsibilities of present citizens be enforced. Those guilty of lesser crimes should be required to serve their full sentences. Those, who commit capital or other very serious crimes, and repeat offenders of serious crimes, should lose their citizenship and be banished forever from the USA after their incarcerations.

Amendment Article [VII]. This provision, having to do with civil suits, is way out-dated and conflicts with justice. In particular, juries, under the present court system (which presumably has been constrained by the wording of VII), has proven to be injudicious in harm and punitive damage awards.

With our current market and insurance systems, it is the public (rather than the guilty party) that suffers the lion's share of personal injury, professional and product liability

awards. This occurs through higher service and product prices, higher insurance costs, and higher taxes.

The "make loser pay costs of lawsuits; limit punitive damages; reform product liability laws" items in the Contract with America can be greatly improved. First; for injury, pain, and suffering, a "quantitative" (rather than an "emotional") means of setting compensation must be prescribed. The duty of a lay jury should be limited to deciding responsibility; a competent panel of professionals, or other means, must assess the just settlement.

If punitive damages are warranted, the sin is against the public, not just the plaintive. The awards should be treated as fines imposed for pseudo-criminal conduct; they should be applied to appropriate public purposes. It may be that the punitive question should be tried and damages assessed as a tandem pseudo-criminal case. As for attorney compensations, percentage fees should be taboo. The legal profession should not be permitted "excess profits", any more than defense contractors or utilities. There will be weeping and gnashing of teeth. For much of the legal profession, this is their bread and butter (or, rather, caviar and champagne).

Amendment Article [IX]. This clause was intended to overcome the concern that unenumerated rights would be denied the people. Instead it has proven to be a wedge, particularly by the Supreme Court, to bypass the will of the people as prescribed for the Amendment process.

At the Constitutional Convention, inclusion of a Bill of Rights was thought unwise and was resisted. To assure ratification of the Constitution, a compromise was made by a commitment, to satisfy the concerns of some States, to tack on the Bill through Amendments. The concerned States had included Bills of Rights in their State constitutions, to preclude government actions that had occurred under British kings and Parliaments. It is understandable, that with a novel Constitution for an untried federal government, to which they were reluctantly ceding a great deal of power, they would insist on these Rights being an integral part.

Instead of being solely a guard against oppressive governments, the Bill has also been a bar to good and timely governance. It has been the source of disunity, moral and criminal permissiveness, and the collisions of the rights of some citizens against the rights of all others. This has been particularly true of the malgovernance applied through this vague, "unenumerated rights", Article [IX].

Amendment Article [X]. This reservation of powers (not delegated) to the States or to the people has been nearly

completely emasculated by encroachments of the federal government. Much of this has, perhaps, been a necessary consequence of a ever changing and challenging world. The vagueness of this clause must be eliminated.

It is quite clear that it is time to rewrite the Constitution, curing its shortcomings and the sources of non-compliance and non-enforcement. The reformed Constitution should be limited to structure, as had been preferred at the Constitutional Convention.

The Bill of Rights (et al) should be referenced in the Constitution, but specified as a non-vague law, which is amendable by the peopl_ through their Congress and President. The law should specify the RESPONSIBILITIES that match the RIGHTS. The special nature of the Bill of Rights could be retained by having the reference clause in the Constitution specify that amendments to the Bill would require a super-majority (2/3s or 3/4s) in the Congress as well as the normal signature of the President (with, obviously, no veto power). It could also specify that the initial version of the Bill would necessitate ratification by 3/4s of the States. There have been precedents.

Listen-up delegates to the proposed Conference of the States!

There are many other topics that could be addressed under the domestic security category.

Structural Security. In creating the structure (the Constitution) of the United States of America, our founding fathers discarded the teetering one strut limitations of the Articles of Confederation government. They did not rely on a wobbly two legged, nor an easily displaced three limbed building. These extraordinary architects chose a never seen before, novel design concept. The United States of America would be a solid edifice consisting of four sturdy columns. The big bad wolf, any big bad wolf, could huff and puff, but it could not blow the house down.

However there was a foreseen danger. The four columns had separate functions to perform, and each column was of a quite different configuration, each tailored to its particular raison d'etre. If one or more of the columns were to expand or contract or flex, the structure would be conditionally unstable. The proposed replacement government could prove to be as ineffective. and as dangerous to the security of the nation, as had been the loose confederation of independent States under the Articles.

So these far-sighted, master artificers conceived of trusses between and among the four columns. The trusses would assure that the columns remained separate, free to perform their individual functions, and prevented from overlapping and disruptive movement. The four columns are identified as the legislative Congress, the executive Presidency, the Judiciary, and the most intimate functionaries for the people -- the States. The trusses are, of course, the checks and balances.

Alas! The best laid plans of these eighteenth century patriots can be, have been, and are today, neglected, circumvented, abused, and usurped. As a result the Constitution of the United States of America is sadly in need of reform and/or enforcement. Let us look at a few examples evident with the 104th Congress and during the recent months of the waning term of the 42nd President.

The Republicans in the 104th Congress (as in a number of past Congresses) are pushing the Line Item Veto power for the President. Indeed, with the internal malpractices (and the against-the-intent-of-the-Constitution, power-wielding, committee system) of the Congress, it would likely be an improvement. But it is neither necessary nor a solution to the source of the problem. The Constitution provides the President with an adequate power to veto for cause a "pure" bill, every element of which has been constructed and adequately subjected to the one member/one effective vote in each House of the Congress -- the intent and essence of the Constitution.

The pity is that a third column of the Constitutional structure has had the checks and balances power to challenge these long existent malpractices and malorganization in the

Congress. As the foundational unit closest to the people, the States individually and in concert, could have stopped the "pork" and any other sneak provisions in any Congressional bill, before or after its enactment. It was anticipated that they would by Publius in 1787-88. James Madison wrote in Federalist No. 55: "I am unable to conceive that the State legislatures, which must feel so many motives to watch, and which possess so many means of counteracting, the federal legislature, would fail either to detect or to defeat a conspiracy of the latter against the liberties of their common constituents."

But until recently, the States had been beaten down so much by the other three columns, particularly by actions of the Supreme Court, that they had ceded much of their powers. This had been foreseen by an anonymous anti-federalist Brutus in a 1788 essay opposing ratification of the Constitution. He wrote: "The judicial power will operate to effect, in the most certain but yet silent and imperceptible manner, what is evidently the tendency of the Constitution: I mean, an entire subversion of the legislative, executive, and judicial powers of the individual states."

Had the States the gumption, and would devote the resources, they could have long since limited the malgovernance of the federal government. Two of the powers that they have not ceded are: (1) the force of State legislature resolutions on their Senators and Representatives in the Congress, and (2) the right of original jurisdiction (direct access to the federal Supreme Court).

Before the fact, each State legislature can ferret out pending Congressional bills (or elements thereof) which cheir constituents would oppose; then pass resolutions to that effect; and advise (direct?) their Washington representatives to vote accordingly in the Congress. After the fact, upon discovery of undesirable features of laws passed by Congress, by State legislature resolutions they can direct their Senators and Representatives to introduce and vote repeal bills. They can put full force and effect into the States' column, by taking a leaf from the thirteen Colonies of 1775-6. Establish versions of "Committees of Correspondence" to coordinate inter-States deliberation and simultaneous passage of resolutions sufficient for majority effect in Congress.

Use original jurisdiction to test the justice of the federal Supreme Court. A number of States can sue other States that have received "pork" by means of surreptitious acts permissible by the malpractices and malorganizations of the Congress.

With grit, We the People, through States' actions, can break the backs of these shortcomings of the federal government. At the same time the spines will be broken of the Political Action

Committees, lobbyists, and other special interest groups, who buy their influence through campaign contributions or marches on Washington.

There is hope. The States have now begun to show their mettle. A number of border States have sued the federal government for not carrying the burdens caused by the presence of illegal aliens -- unquestionably a federal responsibility. The States are rebelling against federal mandates that are imposed by federal legislation (or executive agencies' directives), without accompanying federal funding. More importantly, the States are beginning to act in concert.

A "Conference of the States" has been proposed, tentatively scheduled for October 1995. Organizers are asking State legislatures to pass resolutions to attend the Conference. On Valentine's Day, Arizona became the 10th State to authorize a delegation. Approval of 26 States is required to kick off the Conference. The purpose of the Conference is to "create a mechanism for states to battle the federal government on issues involving states' rights".

A number of State legislators were reluctant to authorize participation in the Conference. They "warned that the conference would fail if it became partisan, if it became linked with any single group or personality, or it was tied to a divisive issue such as abortion, gun control or prayer in schools". Others feared that such a conference might go too far, even ending up as a Constitutional Convention.

HALLELUJAH! Isn't that where we are? The Governors and State legislators are responsible for the security of the States. The State issues that have triggered the proposed Conference are merely manifestations of the fact that the security of each State is inseparable from solutions to the structural, moral, economic, domestic, and international insecurities of the nation as a whole.

The danger is that the politicians at the State levels, also being Republicans and Democrats, may put party above State. The proposed Convention is a means to by-pass the "pork", "patronage", and "power" life-bloods of the failed two-party system. We the People can hope, aye require, that the Conference of the States be the counterpart to the Annapolis Convention of 1786. That "failed", last previous meeting of the States, led to the Constitutional Convention of 1787. What a brilliant success!

Urgent! From the Desk of Ralph

To: Representative Ramona Barnes,

Thursday, April 6, 1995
Fax: 907 465-4565
Total pages: 9

Attn: RAMONA BARNES
I would suggest that you read this and we have much more info on this. I will assume that your are uninformed and hopefully you will change your mind. This vote is a litmus test on your stand on the Constitution of the United States. Thanks.
Ralph - if you would like more info, my direct number is 269-7001

"We can sit here all day until the person who has hidden the agenda speaks up."

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We Americans are standing on the shoulders of intellectual statesmen that drafted the greatest document ever written to govern a free people. Only a few Americans appreciate and know what we now have and enjoy. And sadly even fewer Americans know what could be lost in a few days or weeks at the proposed COS.

Outline of Conference of States
Objective

1. Objective of "Conference of States Pictorial Summary" is at "States' Petition".
2. "A States' Petition gains its authority from the sheer power of the process of the states follow to initiate it. It is a procedure outside the traditional constitutional process, and has no force of law or binding authority." *Emphasis added*

Source - Pg 3 of "The Conference of the States An Action Plan For Balanced Competition in the Federal System" - in your state packet provided by Rep. Ramona Barnes.

Dangers of Conference of States

1. Why do they want our Legislative representatives to have force of law by a Joint Resolution if there objective is as stated above to have no force of law?

They are disingenuous and frankly are lying by their own documentation!

Once the COS is Convened

1. The wording of HJR20 is immaterial as when the conference of states is convened, the rules can be suspended, hence HJR 20 verbiage has no protective function against a Constitutional Convention (CON-CON).
2. The COS participants empowered by joint resolutions from their perspective States can ask for a CON-CON if they have 34 states (2/3) in agreement. There are two ways to get a CON-CON and this is one. The other is when 2/3 of the Houses of Congress to shall deem it necessary.
3. Ratification of the CON-CON amendments changes, removal, or complete dismantling of the United States Constitution is by one of two means and Congress shall determine which will be used. They are the following:
   a. By the Legislatures of 3/4 of the several States
   or b. Ratifying Conventions in 3/4 of the States

This COS once started is a Ratifying Convention if Congress says that it is, as it still has the power of the Joint Resolutions of each of the States.

4. This can not be stopped or changed once the COS changes into a CON-CON. The courts cannot and will not be able to change or stop this as it is deemed very correctly as political. Many court cases support this position.

United States 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 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 its equal suffrage in the Senate. *Emphasis added*

10th Amendment Solution

1. Passage of Resolution restating that Alaska is sovereignty, that the States are the principle, and the Federal Government is our Agent. This happened on February 15 with the passage of SJR7.
2. Passage of a Law defining all unfunded mandates are illegal. Attached is HB1874 from Oklahoma that has passed the House and should soon pass the Senate. Please use this as a example of what Alaska should immediately do!!!!!!

Attachments
a. HB1874 from Oklahoma
b. Senators Duke 10th Amendment Implementation Letter

Ralph Winterrowd II
Chairman

TO: ALL
FROM: Dan Druck, Council on Domestic Relations I'm sorry I'm two days late getting this out.....

The following bill passed the Oklahoma House "Revenue and Taxation Committee" unanimously on Tuesday, February 7th. Since then, the bill unanimously passed the House and is expected to pass the Senate with little problems. The bill's sponsor is Representative Charles Key. HB1874 is a spin-off of SB-52 from Senator Charles Duke's State Sovereignty Bill in Colorado. HB 1874 is stronger as it addresses all federal taxes withheld from the states. Our hats are off to Representative Keys and all members of the committee who voted for HB 1874! We deeply appreciate and acknowledge all grassroots networkers and state legislators in Oklahoma who are standing with Americans who work and pray for the preservation of our Constitution and American sovereignty.

This is a far cry from those states whose legislators sit and wait for "someone else to do it"; or especially the state legislators who are passing the Resolution for Participation in the Conference of States (bypassing committees, passing the resolution by 'voice vote' so their constituents won't know who betrayed them) because the "state leaders" want it. If other legislators follow the lead of Oklahoma we still have a chance to return Constitutional Government to Am ica and restore states rights. Give a copy of HB1874 to your state legislator(s) and support its passage in your state. If not you..... then who?
\Rep. Key's address is House of Representatives, State of Oklahoma, Room 508, Oklahoma City, Oklahoma 73105 if you'd like to write and thank him.

Council on Domestic Relations.

HOUSE OF REPRESENTATIVES
1ST SESSION OF THE 45TH LEGISLATURE (1995)

REVENUE AND TAXATION COMMITTEE

STAFF REPORT

Representative Howard Cotner, Chairman
Representative Ron Langmacher, Vice Chairman

Committee Substitute for House Bill 1874

SUBJECT: State Sovereignty Act
AUTHOR: Representative Key

PROVISIONS:

1. Creates the State Sovereignty Act.

2. Declares legislative intent that the U.S. Congress does not have the right under the federal Constitution to withhold from the States the benefits of federal taxes through unconstitutional mandates. States that the State of Oklahoma reasserts its claim of sovereignty.

3. Defines terms used in this act. Creates the "Federal Tax Fund" in the state treasury which shall be an escrow account. Specifies that any interest carried on the deposit of monies in the Fund along with any civil penalties associated with this act shall remain in the fund and shall not revert to the General Revenue Fund of the state at the end of any fiscal year. Provides that such interest shall be used to pay any necessary administrative costs incurred pursuant to this act and any excess interest and penalties shall be transferred to the State Transportation Fund.

4. Requires any person liable for any federal excise, income or liquor alcohol tax to remit the Lax to the Oklahoma Tax Commission for deposit Into the Fund.

5. Requires the State Treasurer to transfer at the end of each month the monies held in the fund less any interest earned to the Internal Revenue Service in payment of the tax obligation of those persons who remitted the tax to the Oklahoma Tax Commission.

6. Provides that if the federal government imposes any sanctions on the state for failing to enact legislation required by federal law which the Oklahoma Legislature deems to be unconstitutional. the State Treasurer shall not transfer any taxes held in the Federal Tax Fund. Provides procedures for the transferring of the monies if the sanctions are lifted within 90 days. Provides that if the sanctions are not lifted within 90 days, the state shall impose a surcharge on the monies in the fund to be used for payment to continue highway project funding.

7. Specifies that any person who fails to comply with this Act shall be subject to a civil penalty in an amount equal to 150% of the tax owed for each day the person fails to comply.

4. Provides that this act shall apply to federal taxes to be collected after June 30, 1995.

EFFECTIVE DATE July 1. 1993 Emergency Clause

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1874 By: Key

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; creating the State Sovereignty Act; Providing short title; providing definitions; declaring legislative intent; creating the Federal Tax Fund; providing for interest earned on certain monies; providing for remittance of certain taxes by certain persons; providing for transmission of certain monies to State Treasurer; providing certain duties of State Treasurer regarding transferring of withholding certain funds; providing for certain surcharge; providing for civil penalties; providing for deposit of Certain Penalties; providing for act to apply to certain taxes collected after certain date; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE 0F THE STATE OF 0KLAH0MA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50200 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "State Sovereignty Act".

SECTION 2, NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50201 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Legislature finds that the Tenth Amendment of the United States Constitution defines the total scope of federal power as being that Specifically granted by the federal constitution and no more. The Legislature recognizes that the United States Congress has the right to lay and collect taxes under the federal constitution. The Legislature finds, however, that the Congress does not have the right under the federal constitution to withhold from the States the benefits of those taxes through unconstitutional mandates.

B. The legislature further finds that the most unconstitutional mandates prohibit Oklahoma from implementing programs of excellence that would exceed federal expectations. Oklahoma has significant technical expertise in resource management in the areas of air, earth and water, but the persistent threat of sanctions renders that expertise ineffective.

C. In light of the continuing unconstitutional withholding of the benefits of the taxes, the State of Oklahoma hereby reasserts its claim of Sovereignty.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50202 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Person" means natural persons, corporations, Partnerships, limited liability companies, associations and other legal entities;

2. "Excise tax" means any tax that forms a component of the highway users tax fund;

3. "Income tax" means any tax imposed by the federal government on any income earned by a taxpayer; and

4. "Liquor or alcohol tax", means any tax imposed by the federal government on any beer, liquor, wine or similar alcoholic beverage.

5. There shall be created in the State Treasury the "Federal Tax Fund", which shall be an escrow account. Any interest earned on the deposit of monies in the fund along with. any civil penalties assessed pursuant to subsection F of this section shall remain in the fund and shall not revert to the General Revenue Fund of the state at the end of any fiscal year. The interest earned on the deposit of monies and any civil penalties shall be used to pay any necessary administrative costs incurred pursuant to this act and any excess interest and penalties shall be transferred to the State Transportation Fund.

C. Any person liable for any federal excise, income or liquor or alcohol tax shall remit the tax when due along with the federal taxpayer number of such person to the Oklahoma Tax Commission for deposit into the fund.

D. All monies collected pursuant to Subsection C of this section shall be transmitted to the State Treasurer who, as a fiduciary agent, shall credit the same to the Federal Tax Fund On behalf of the person that remitted the tax.

E. 1. Except as provided in Paragraph 2 of this subsection, the State Treasurer shall transfer at the end of each month the monies held in the Federal Tax Fund less any interest earned on the deposit to the Internal Revenue Service in Payment of the tax obligation of those persons who remitted the tax to the Oklahoma Tax Commission. As part of the transfer, the State Treasurer shall identify the federal taxpayer number and amount received from each person who remitted any tax to the Oklahoma Tax Commission.

2. If the federal government imposes any sanctions on the State of Oklahoma for failing to enact legislation required by federal law, which the Legislature deems to be unconstitutional, by withholding or reprogramming any federal-aid monies from, among other things, highway construction to highway safety or other programs, the State Treasurer shall not transfer any taxes held in the Federal Tax fund but shall retain the monies in the fund until such time as the sanctions are lifted. If the lifting of the sanctions occurs within ninety (90) days, the State Treasurer shall transfer the amounts held in the fund to the Internal Revenue Service within ten (10) days of the lifting of the sanctions. If the sanctions are not lifted within ninety (90) days, the state shall impose a surcharge on the monies in the fund to be used for payment to continue highway project funding.

F. Any person who fails to comply with this section shall be subject to a civil penalty in an amount equal to one hundred fifty percent (150%) of the tax owed for each day the person fails to comply with this section. Any civil penalties assessed under this section shall be deposited into the Federal Tax Fund established in this section,

G. The act shall apply to federal taxes to be collected after June 30, 1995.

SECTION 4. This act shall become effective July 1, 1995.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-6461 Jar 1/31/95

IMPLEMENTING THE "TENTH AMENDMENT - STATE SOVEREIGNTY RESOLUTION"

by: Colorado State Representative Charles Duke

In the many discussions across several states, questions have arisen concerning exactly how the "Tenth Amendment Resolution" will help. A few have also wondered, "What's Next?". Some insight might be gained if we look at the reasons the Resolution came to life. This discussion is primarily intended for legislators, but can be useful for those of you who are working to have it introduced in your state. It may help in your discussions with legislators who you are asking to sponsor or support the resolution.

The principal motivation came from the myriad of federal mandates which have been placed and are planned to be placed on the states. State legislatures feel they have little choice but to implement these mostly-unfunded mandates and pass the cost for implementation to the state taxpayers. For most state legislators, this is a very frustrating dilemma.

The Tenth Amendment assures that we, the people of the United States of America and each sovereign state in the Union of States, now have, and have always had, rights the federal government may not usurp. Article IV, Section 4 says, "The United States shall guarantee to every state in this Union a republican form of government.....", and the Ninth Amendment states that..."The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people". We have, through apathy and lack of will, allowed federal legislators and bureaucrats to assert their will over us and commandeer our funds for their own use....most of it today outside the authority granted to them by the Constitution.

When a state passes this resolution proclaiming its sovereignty, that state may then claim exemption to most federal mandates under the Tenth Amendment of the U.S. Constitution. This was what happened with New York v. United States, 112 S. Ct. 2408 (1992). The federal government was attempting to mandate that the State of New York accept radioactive waste for disposal. New York pleaded they were exempt from the mandate under the Tenth Amendment and the court affirmed the Tenth Amendment protection.

Thus, by having proclaimed sovereignty, a state is in the position to select those mandates they will follow, now by choice, not by edict. A sovereignty resolution does not preclude any state from participating in any program they choose, but the proponent may no longer claim, "It's a federal mandate. We have to do it". Each state legislator, in compliance with his/her oath of office, must then examine closely before passage, the Constitutionality of any law being considered.

Needless to say, the feds may be unimpressed with a statement of sovereignty and attempt to impose economic sanctions against the state, as has become their pattern over the years. In anticipation of this, each state should also create escrow funds for each federally-funded major program. That is, the states will collect the major sources of federal funds, such as gas tax and income tax, in behalf of the federal government and make monthly disbursements to the feds from these escrow funds, but only if the funds are to be used for purposes which are allowed in the Constitution. The cost for maintaining this flow-through operation can be borne through the short term interest gained from the escrow accounts. It is easy to see the savings that are possible when the bureaucracies established on the federal level to dole out funds to the states are no longer needed. Additionally, the tremendous tax burden on all Americans can be eased because of the decreased spending. Should the feds then decide to place economic sanctions, generally meaning the withholding of certain funds, the state could then simply stop making the monthly

disbursement to the feds and retain the funds in the escrow accounts. When the matter is resolved, and it certainly will be, the disbursements could continue. This approach also allows the placing of surcharges on those federal payments in order to pay for the cost of implementing federal programs.

The exact mechanism for creating these funds will vary from state to state, but the idea is fairly universal. In most cases, the funds in question properly belong to the state in question to begin with. There are those who believe there is no such quantity as "federal funds" in the first place. Every dollar disbursed by the feds originated somewhere through the sweat of someone's labor. The sovereignty proclaimed by the state simply inserts the authority of the state, guaranteed by the U.S. Constitution, at a point to re-assert control which should never have been given over. This measure will then relieve the pressure of frustration from a federal government wildly out of control and move the decision process much closer to the people.

Should the feds decide to utilize their hired guns, the judicial system, in order to coerce obedience, sovereignty again allows the state to ignore orders of the court. The feds will not, in my opinion, go to more forceful coercions beyond the court system for fear of triggering their ultimate demise. They do not want this and neither do we. We are perfectly within our rights to proclaim protection from federal oppression by our United States Constitution. It was created with exactly these protections in mind.

Representative Charles Duke, Colorado

A note from the CDR...

Late in 1994, the Pennsylvania State Legislature passed the resolution unanimously through both the Senate and House. Representative Tom Armstrong has been the primary sponsor and lobbyist in this effort. We salute his commitment and intelligence in recognizing the importance of this action.

The state legislators in Pennsylvania have already begun to 'flex their muscles' in reasserting Constitutional rights and state sovereignty. The cities of Philadelphia and Pittsburgh had passed city ordinances banning weapons. The legislators realizing this was not only a violation of the U.S. Constitution but also the Constitution of the Commonwealth of Pennsylvania, passed legislation lifting the ban. The Governor vetoed the bill and the legislature over-rode his veto by a greater than 2/3rds vote.

The same happened with the federally mandated emission testing sites. The Governor had implemented the procedure to begin January, '95. The legislature passed a bill suspending the effectiveness for 90 days to reassess the Constitutionality of this mandate. Again, the Governor vetoed the bill, and again they over-rode the veto. If the majority of the state legislators have the courage to do so, this legislation will be repealed and the state will control, via privately owned and operated, testing sites. Americans have been inspired by the actions of the Pennsylvania legislature and are working with their respective state legislators to hopefully follow suit.

104TH CONGRESS
1ST SESSION

S. RES. 82

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, FEBRUARY 22), 1995

Mr. BROWN (for himself and Mr. HELMS) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

To petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution.

Whereas Article I of the Constitution of the United States of America provides that the Congress is vested with the authority to lay and collect taxes, to pay the debts of the United States, to borrow money on the credit of the United States, and to appropriate money from the Treasury;

Whereas for the past quarter century Congress has been unable to balance the Nation's budget in any year;

Whereas the President of the United States has submitted a budget which increases the deficit in future years;

Whereas Members of Congress have been unable to agree on language for an Amendment to the Constitution which would require a balanced budget; and

Whereas Congress has therefore attempted to deny the several States of the United States the opportunity to vote on a Constitutional Amendment requiring a balanced budget: Now, therefore, be it

Resolved, That Congress hereby petitions the several States of the United States of America to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution of the United States requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States, and that such States then consider whether it is necessary for the States to convene a Constitutional Convention pursuant to Article V of the Constitution of the United States in order to adopt such Amendment.

We were duped - HAVE BEEN BACK-U TO PRO BUT THIS SAYS IT ALL

277 0413 FAX 277 2646 0142 W 5th Ave 9850 LUCILLE CLARK

Rally -

13 Legs.
10 -
- Each Rally -

Fitts
{ Ladd McBride -
Terry Lethcoe - 3rd Ave. - Can Language Tactics
No Difference - -
- R.V.C. Kevin Thomas - HJR 20 Dangerous - civil war. -
Bob Griffin - Totally against HJR 20
Jason Sumner +

C.O.S. Dyke Holmes.

{ 50 Governors & Legislative Leaders Will Run Amok. .

Jane Wynegar -/- NRA Grass Roots Coord. - NRA Opposes Conf of States -

Predicated on the Theory -
{ 50 govs. Leg. Leadership
Leon Caswell - Kevin.

Susan Ross -
- Mark Sames - Barrow -/-
Julian Paul Wier - Glennallen - opposed -
Ed Nobel - Glennallen - opposed -
Morris Stout - DOE. 1) Steering Committee
COST

Donovan Gone
Donley - what to do -
Shoop ?
Phillips no
fenton - ?

David Bentley — Homer —
~~Delter~~ — HJR. 20 New world order - Gov. call out N.G. / Special Leg. Session TO Succeed
Jim Rodericks - Homer -
Jack Pollster
Kathleen Wiedemeier - FBKs.
~~Wes~~ Gregory Garrots -
Michael Wiedemier -
{Sam Griswold
~~Ron~~ CR. Lewis -- HJR 20 passage will consolidate powers to DisBand Govt.
You'll Release Sovereign Powers in Philadelphia You know Nothing About - you could create new ENTirely Different country.
Rocky Frank: No one favors This - I'll hold you Accountable
Why Have Conf. of States
Why Const. Convention.
Robert Coutry. This will lead to a CON-convention - You will Trash Our constitution -
Connie Gilbert -
Don Gilbert - HJR 20 Dangerous -
Anthony McNABB. - Dangerous - We're watching You - If you Liberals vote for This, you'll Bear The Responsibility
Leonard Naffie - Why have This?
Gary Superneau - Nikolski - Horses got away w/ it But I've met w/ my Lawmaker & if This goes Through I'll introduce a Countervailing Resolution to Prohibit You from Attending This

Soldotna { Gary Superman -
Seymour Mills - HJR 20 is Rotten -
Once The Con. States is called They
are a Sovereign Body - Sponsors of This
Should Be Removed from Office immediately.

Keith Elkins: HJR. 20 is an Act
of War against The People's at Large to form
A New World Order.
John Glanville - Opposed -
Terry Slone - opposed - This Conference
will Turn into a Convention -
Kathleen Moore - Homer - This Resolution is
A Reaction to 10th Amend. Movement -
New world order -

FBKS Art Griswold - N. Pole - Ak. Ind. Pty -
We oppose HJR. 20 - Veterans we fought
for this country - Press This will Destroy us -
Really Surprised Ramona Didn't Look into This
further
Pat Cook - Press This Other States
W/o Public Hearings -
David Donner - Gold Stream Valley -
Throw The BATF in Jail To make
A Statement -

Rec. Sandra Masnyokis - Leavitt is Dangerous -
Susan Masnyokis - P.3. Line 15 -

Dennis Cressep. Chrysler.
Oppose HJR 20 - It'll create a
Const. convention -
Must Support Clarke Mott Sr.
Barbara Swallow -
Why. Correct Fed. impairment?
Why Org. want fed Govt to pay
for fed Mandates.
Why Carry These Two Legislatures -
Gretchen Osborn - NO
Mike Nelson - Who is funding CSG?
What is your intent.
- {P. 1. Line 4-} - Wording - -
- Art 10. -

~~Walt Klein~~

K. Sold Brad Turkington - Kenai - Soldotna - DONT
Consider This -

FBKs - - Tom Scarborough - HJR 20 -
Opponent - This is not in Best interest of
Alt. Sen. Duke - Colorado is having a
Conference in Denver -
Joy Cook - C.S.G. - This is a National
Movement - -
Ron Selmis - FBKs. Kill This - 37 yr
Resident

IF You Pass This W/o Consent You will Be
Even More Corrupt Than you are Now —
This Could Bring on Bloodshed.
Charles McKee - Anc.
Samuel Haywood - Repub. Pty. Dist 24 —
Kenneth Smith - We Need People who will follow
US ; Alaska Constitution
. Dave Rutz - Matsu - Con. Convention —
~~Richard~~ Donald Gruber - Throw This Bill in
The Trash Kill This Bill for My Children -
Dr John Thomas - Chiropractor & Veteran — Dont
Destroy my Constitutional Freedoms — Kill
This - Lets Keep our Constitution -
David Crawford — God Made our Constitution
Dont Mess with it —
Lillian Villwock - "United we Stand etc"
This gives States more Power than necessary -
Barbara Fix C of States will lead to
Con Con To Destroy The Court of US —

April 16th
Next Hearing

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 28, 1995

SUBJECT: Conference of the States (HJR 20)

TO: Representative Barnes, Chair House Special Committee on World Trade and State/Federal Relations

FROM: Tamara Brandt Cook TBC
Director of Legal Services

HJR 20 calls for the convening of a Conference of the States under the auspices of the Council of State Governments and for the appointment of a delegation to represent Alaska at that conference. You have provided me with a copy of an "Alert" and asked me to respond. As I understand the contents of the "Alert," it is asserted that the Conference of the States will amount to Constitutional Convention.

Under Article V of the United State Constitution, a constitutional convention is called by Congress ". . . on the application of the legislatures of two thirds of the several states. . . ." HJR 20 itself does not call for a constitutional convention. It is not even addressed to Congress. While it is possible that the question of trying to persuade state legislatures to call for a constitutional convention could be considered during the Conference of the States, the conference itself does not amount to a constitutional convention because it was not called by Congress and the required number of states have not applied to Congress for a convention.

TBC:klb
95-105.klb

Rep. Barnes

RECEIVED
FEB 27 1995

K.

States organize convention to warn federal government they want power

By Steve Langdon
CONGRESSIONAL QUARTERLY

It won't be a constitutional convention, but it is meant to look like one. State leaders across the country are organizing a Conference of the States, at which they plan to map out a strategy for taking back power from the federal government.

The conference, planned for later this year, won't have the constitutional authority of a real convention. But it is designed to remind Congress that the states could easily organize one.

"I think that is implicit in it. It is a warning shot to them," says Bill Pound, executive director of the National Conference of State Legislatures.

Congress is currently trying to appease the states with an unfunded-mandates bill that would make it more difficult to impose regulatory or program burdens on state governments without providing funds to implement them. But the states see that measure as just the first step in an overdue realignment of power.

"The 10th Amendment needs to be invigorated," says Mr. Pound. (For those who need a refresher course, that amendment says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.")

Mr. Pound says the federal government is overstepping its boundaries in a number of areas, including welfare and the environment.

"There is a sense that a number of these things are not best solved by federal solutions," Mr. Pound says. For example, "I think there is universal support for clean air ... but not for a single set of national procedures for obtaining it."

On welfare reform, Mr. Pound says, "There are differing conditions and population mixes. States should have some flexibility."

Delegates to the planned conference will be the governors of all 50 states and the four top Republican and Democratic leaders of each state's legislature.

Utah's GOP governor, Michael Leavitt, whom Mr. Pound calls the "Founding Father" of the conference, says spcific issues such as gun control and abortion will not be topics at the conference. Instead, delegates likely will debate possible amendments to the Constitution to strengthen the role of the states.

The National Governors' Association, the National Conference of State Legislatures and the Council of State Governments are organizing the conference. Four representatives from each group will meet in Washington on Friday to plan the procedures and rules of the convention.

Although many state legislatures have barely begun their sessions, resolutions calling for the conference already have been introduced in 26 of them.

• *Distributed by Scripps Howard.*

TONY KNOWLES, GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

FAX

DATE: 1.30.95

TO: WAYNE MALONEY, REP. BARR'S OFFICE 225 4565

FROM: MARTHA STEWART 202 624 5989

Fax: 202-624-5857 PH: 202-624-5858

SUBJECT:

COMMENTS:

WAYNE → LET ME KNOW IF YOU WANT OR NEED THE VERSION OF S1 THAT PASSED THE SENATE.

ALSO ANYTHING ELSE YOU WANT INFO ON.

THX

NUMBER OF PAGES (including this cover) : 3

MONDAY JANUARY 30, 1995 VOLUME 31, NUMBER 18

Congressional MONITOR

Senate to Open Balanced-Budget Debate

Byrd's strong opposition may determine duration of the struggle; House to tackle mandates bill and president's rescission powers

Hoping that work on the next major bill of the year will not be as time-consuming as the previous one, Senate Majority Leader Bob Dole, Kan., has scheduled opening debate this afternoon on legislation proposing a balanced-budget amendment to the Constitution.

THIS WEEK

It took the Senate 11 days to complete action on the unfunded mandates bill. Now, it's possible that it will take Dole even longer to reach a final vote on the balanced-budget measure in the face of determined Democratic opposition led by Robert C. Byrd, W.Va. No other legislation is scheduled for the Senate floor this week.

In the House, GOP leaders have scheduled floor action on two planks of their "Contract With America" — bills to enhance presidential authority to cut spending and to make it more difficult for the federal government to impose "unfunded mandates" on state and local governments.

The administration and key lawmakers will continue working on legislation to provide loan guarantees to bail Mexico out of its current economic and fiscal crisis, but no markup or floor action had been scheduled. Action could come on short notice if agreement can be reached to assure wavering lawmakers that U.S. interests are protected.

Here's what's on tap on Capitol Hill this week:

ECONOMICS AND FINANCE

• BALANCED-BUDGET AMENDMENT

The Senate will begin work on the balanced-budget legislation (S J Res 1) this afternoon.

Forty-seven senators are co-sponsors of the measure, and a solid majority is expected to support it. But backers have two hurdles to overcome: The legislation, because it proposes a constitutional amendment, must be passed by a two-thirds vote. And, Byrd, the Senate's master parliamentary tactician who led the successful Senate fight against similar legislation last year, has vowed to mount a vigorous fight again this year.

The issue will also be a delicate test for new Senate Minority Leader Tom Daschle, D-S.D. He voted for the amendment last year, but says he is undecided this time around.

Late last week Senate Democratic leaders had rounded up the signatures of 42

continued on page 5

House Cast Historic Balanced-Budget Vote

GOP claimed a triumph in approval of constitutional amendment; Senate passed bill to curb 'unfunded mandates' on the states

The House's historic vote to pass a balanced-budget amendment to the Constitution eclipsed most of the other legislative action in Congress last week.

If approved by the Senate and then ratified by at least 38 states, the new 28th Amendment would require Congress to operate an balanced budget by 2002.

LAST WEEK

The amendment is a central tenet of the House Republican "Contract With America," as is a bill passed by the Senate last week: It promises to curb so-called unfunded mandates, the requirements which the federal government imposes on state and local governments without picking up the costs.

President Clinton delivered his third State of the Union address, his first appearance before the Republican-controlled Congress. His 81-minute talk Tuesday night was a mostly conciliatory laundry list of centrist proposals, such as an overhaul of the welfare system and a package of tax cuts for the middle-class. He also proposed raising the minimum wage but did not offer specifics.

Elsewhere, the House Government Reform Committee approved legislation that would give the president more latitude to rescind all or part of appropriations bills.

A House Judiciary panel on Friday began marking up an anti-crime package that aims to change the content of the Democratic-backed crime law enacted last year.

ECONOMICS AND FINANCE

• BALANCED-BUDGET AMENDMENT

The perennial battle to get a constitutional amendment requiring a balanced federal budget out of the House ended this

continued on page 5

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AIRPORT ARREST. Republicans call it a potential budget cut, but airport officials say changing the Airport Trust Fund would amount to a tax hike.

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G300-1071 ALAK20001448I
ALASKA GOVERNOR'S OFFICE
J KATZ DIR STATE/FED RELATIONS
444 N CAPITOL ST NW #334
WASHINGTON DC 20001

House GOP 'Contract with America'

Status Chart

(as of Jan. 27, 1995)

Bill and Background	House	Senate	Final
CONGRESSIONAL ACCOUNTABILITY (HR 1, S 2): Apply civil rights, health and safety, and labor laws to Congress.	HR 1 passed 1/4/95	S 2 passed 1/11/95	House cleared S 2, 1/17/95 PL 104-1
LINE-ITEM VETO (HR 2, S 4, S 14): Give the president the authority to veto specific portions of appropriations acts, unless overridden by Congress. S 14 requires affirmative approval by Congress.	Gov't Reform Committee approved 1/26/95 Rules Committee approved 1/26/95 Floor action scheduled 1/31/95 or 2/1/95	Budget Committee markup scheduled 1/31/95	
CRIME CONTROL (HR 3, S 3): Shift federal spending from crime-prevention programs to prison construction and hiring more police officers; make it more difficult for death-row inmates to appeal their sentences; and set mandatory minimum sentences for certain crimes involving guns. The House Judiciary panel broke HR 3 into several smaller bills, including HR 665, HR 666, HR 667 and HR 668.	Judiciary Committee markup began 1/27/95		
WELFARE REFORM (HR 4): Cap welfare spending and encourage a reduction in illegitimacy by prohibiting welfare benefits to mothers under 18.	Hearings began 1/5/95		
UNFUNDED MANDATES (HR 5, S 1): Make it more difficult for Congress to impose mandates on states without providing funding to carry them out.	Government Reform Committee approved 1/10/95; Floor debate began 1/18/95	S 1 passed 1/27/95	
FAMILY TAX RELIEF (HR 6): Provide a $500-per-child tax credit; ease the "marriage penalty" in tax code; authorize new, more flexible IRA accounts.	Hearings began 1/5/95		
NATIONAL SECURITY RESTORATION (HR 7): Prohibit further cuts in defense spending to finance social programs; instruct the Pentagon to develop an anti-ballistic missile defense system; prohibit the use of U.S. troops in U.N. missions under foreign command.	Select Intelligence approved 1/27/95 Int'l Relations Committee continues markup 1/30/95 National Security Committee markup scheduled 1/31/95	Armed Services Committee hearing scheduled 1/31/95	
SOCIAL SECURITY (HR 8, S 30): Permit senior citizens to earn up to $30,000 per year without losing Social Security benefits; repeal the 1995 law making 85 percent of Social Security benefits subject to income tax for affluent elderly; and grant tax incentives to encourage people to buy long-term care insurance.	Hearings began 1/5/95		
CAPITAL GAINS, SMALL BUSINESS INCENTIVES (HR 9): Reduce capital gains tax; encourage job creation through a variety of tax-law changes; strengthen the property rights of individuals.	Hearings began 1/5/95		
PRODUCT LIABILITY (HR 10): Limit punitive damages and institute "loser pays" rule to discourage litigation; make product manufacturers liable only for harms caused by their own negligence.	Hearings began 1/19/95		
FAMILY REINFORCEMENT (HR 11): Strengthen child support enforcement; toughen child pornography laws; grant tax credit for care of a dependent elderly relative.	Hearings began 1/5/95		
BALANCED-BUDGET AMENDMENT (H J Res 1, S J Res 1): Amend the Constitution to require that the federal budget be balanced by the year 2002 or two years after enactment of a constitutional amendment, whichever is later. House version would require three-fifths vote for any income tax increase.	HJ Res 1 passed 1/26/95	Floor debate scheduled 1/30/95	
TERM LIMITS. (H J Res 2, H J Res 3, S J Res 19): H J Res 2 and S J Res 19 would limit terms of office for both House and Senate members to 12 years; H J Res 3 would limit terms of office to 6 years for House members and 12 years for senators.	Judiciary Committee hearings scheduled to begin 2/3/95	Judiciary subcommittee markup scheduled week of 1/30/95	

TONY KNOWLES, GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

FAX

DATE: FEB 27 95

TO: WAYNE MAHONEY, REP. GAIL PHILLIPS OFFICE ~~ANCHORAGE~~ 907 465-3472
PAT POURCHOT, AK GOV.'S OFFICE 907-465-3532

FROM: Martha Brown 202 624-5989

Fax: 202-624-5857 PH: 202-624-5858

SUBJECT: _____

COMMENTS:
F/U ON BUDGET BILL

NUMBER OF PAGES (including this cover) : _____

Congress May Ask Historic Gamb

Balanced Budget Amendment Variously Characterized as Offering

By Eric Pianin
Washington Post Staff Writer

If the Senate approves the proposed balanced budget amendment Tuesday, Congress will ask the states to take a historic gamble that some say will free future generations from onerous debt and others warn could ruin the economy, disrupt vital government services and devastate the social safety net.

For nearly 60 years, the fight over a constitutional amendment to force the government to live within its means except in times of war has largely been an academic exercise. But in the wake of the Republican takeover of Congress, the House has overwhelmingly approved the measure, 300 to 132, and supporters in the Senate are within a couple of votes of the two-thirds majority needed to adopt the amendment and send it on to the states for ratification.

Republican leaders—including House Budget Committee Chairman John R. Kasich (Ohio) and Senate Judiciary Committee Chairman Orrin G. Hatch (Utah)—say passage of a balanced budget amendment is essential to GOP plans to impose fiscal discipline on an unruly and often cowardly Congress and put the government on a seven-year "glide path" to eliminating the deficit.

With a balanced budget amendment in place, they insist, the Republicans can cut taxes, protect Social Security from reductions, beef up defense and still eliminate the deficit by the year 2002—all without much upheaval or suffering.

"It isn't like we're trying to haul a Mack truck—attach ourselves to a Mack truck—and then pull it 100 yards with the power of our own bodies," Kasich said recently. "There's an impression out there this is somehow impossible or terribly difficult. It's not that at all."

But critics—such as Sens. Robert C. Byrd (D-W.Va.), Paul S. Sarbanes (D-Md.) and Paul D. Wellstone (D-Minn.)—warn the opposite: If the amendment is approved, it would make the government powerless to respond quickly to recessions and other economic crises and force dismantling of agencies and programs crucial to the poor and the middle class.

Others, including Sen. Sam Nunn (D-Ga.), also argue the amendment would disrupt the balance of power among the three branches of government, strengthening the hand of the president to impound funds any time Congress violated the constitutional strictures and opening the door to judicial intervention on congressional fiscal policy.

Critics also complain Republicans have refused to detail how they intend to achieve a balanced budget within seven or eight years. And they say the Social Security trust fund would become an irresistible target for budget-cutters early next century, despite assurances from House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Robert J. Dole (R-Kan.) that Social Security would be exempted.

"No one is going to escape the wrath of the balanced budget mandate," Byrd said in a recent Senate speech.

The new Republican leadership has premised much of its economic and budgetary strategy on passage of the budget amendment, centerpiece of the House GOP's "Contract With America." Many proponents favor the amendment on moral grounds, saying its adoption would help spare their children and grandchildren from the economic burdens of a national debt approaching $5 trillion.

Passage of the balanced budget amendment is also a vital pretext for the larger goal of dramatically shrinking size of government—dismantling or repackaging large chunks of it. Sen. Connie Mack (R-Fla.) said last week, "This is a fundamental debate about those who believe more government will solve our problems and those who believe less government, less taxing and less spending will give us more freedom."

As a foretaste, Republican House appropriators last week voted to cut $17 billion from current spending for housing, health care, nutrition, clean water, job training and other programs. Moreover, the House Economic and Educational Opportunity

Text of Proposed Amendment

Following is text of proposed balanced budget amendment:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven years after the date of its submission to the states for ratification:

ARTICLE

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll call vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a roll call vote.

SECTION 3. Prior to each fiscal year, the president shall transmit to the Congress a proposed budget for the United States government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a roll call vote.

SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except for those for repayment of the debt principal.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

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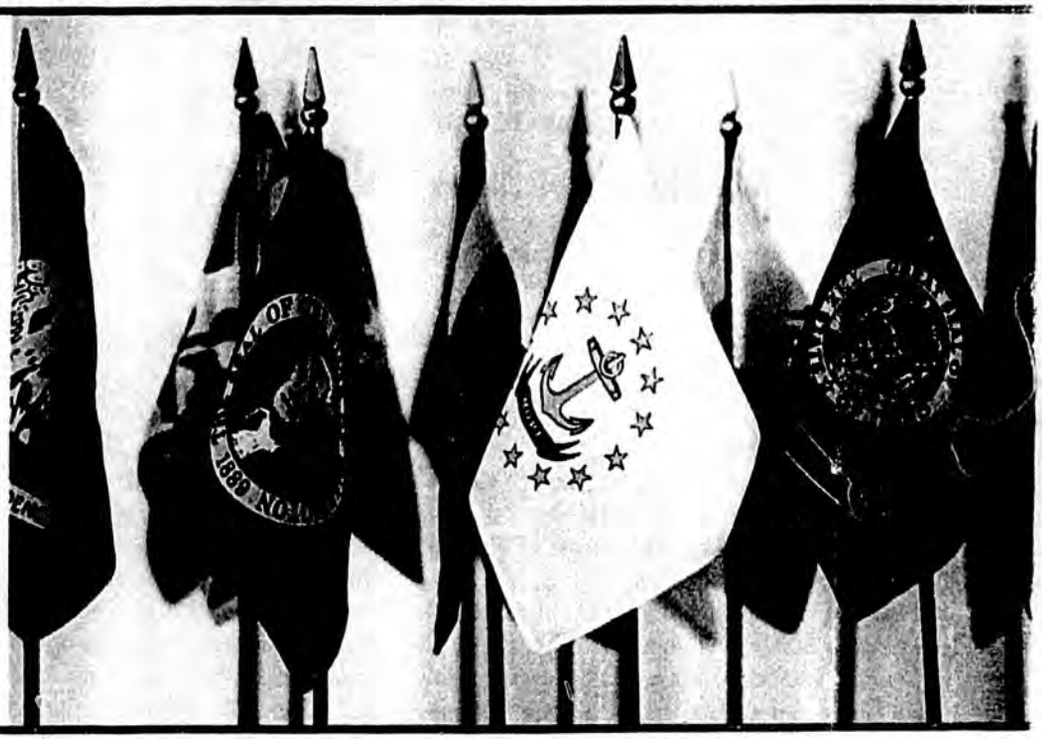
The Conference of the States:

The movement to restore the balance of power between states and Washington, D.C., is catching fire.

by Elaine Stuart



Launching lasting change

For the first time in two centuries, states are uniting to take charge of their own agendas, reversing decades of federal dictates.

Legislators across the country are considering whether to formally convene a Conference of the States this year to discuss the imbalance of power between the states and federal government that has grown in recent years.

The linchpin to this process is passing a resolution, a model of which is now circulating to leaders in every state. When 26 states pass a resolution, the first formal meeting of states will be held since the Constitutional Convention of 1787, which George Washington presided over in Philadelphia. Each state that passes a resolution will send its governor and a bipartisan delegation of legislators to the Conference.

These delegates will debate what type of long-term, structural changes are needed in the federal-state relationship short of a Constitutional Convention. State delegations will vote on a States' Petition, which will then be taken back for approval by each state's legislature.

The Petition could include legislative and legal strategies and even draft amendments to the Constitution. Once the Petition is approved by state legislatures, the Conference would formally petition Congress to vote on its proposals. Proponents say the Congress can't afford to ignore the united weight of the states behind the Petition. If Congress does, then its refusal would become an issue in the 1996 elections.

The location of The Conference of the States has yet to be determined at this writing. Philadelphia has been suggested because that's where the Constitutional Convention opened in May of 1787. Annapolis, Md., is another possibility because that's where a conference of states was held in 1786 to discuss rewriting the Constitution.

No matter where the Conference is held, expect Utah Gov. Mike Leavitt and Nebraska Gov. Ben Nelson to be there. Leavitt, a Republican, promoted the idea throughout 1994 and found the right forum when he teamed with Nelson, a Democrat and then-president of The Council of State Governments. Leavitt and Nelson gained the

bipartisan support of state officials from across the nation at the Council's annual meeting held in December at Pinehurst, N.C. (See *State Government News* January).

Frustration with federal mandates and pre-emption of state authority played a large role in the states' action.

"We are clearly out of balance," Leavitt said. "It was supposed to be a partnership of equals. But it has now denigrated into a master-servant relationship."

The endless onslaught of burdensome and expensive federal regulations in recent years has strained state budgets and stymied states' ability to meet the needs of their own constituencies.

"You can't control your state budget by keeping your foot on the spending brake, when the federal government has its foot on the accelerator," Nelson said.

States clearly are impatient with the Supreme Court's reluctance to uphold state powers under the 10th Amendment and with Congress' recalcitrance in recognizing state authority.

"We've talked and talked about all kinds of problems we've had with the federal government. We talk; they smile, and that's it," said Illinois Gov. Jim Edgar, a Republican.

The bipartisan nature of the debate also was clear when North Carolina Gov. Jim Hunt, a Democrat, called for quick action during the Pinehurst meeting.

"This is the time to seize the moment," he said. "This is the time to be bold. This is the time to do things we have never dared to do before in redoing this whole system . . . North Carolina will be ready to pass it (resolution calling for The Conference of the States)."

With approval at the CSG meeting, The Conference of the States had moved from a topic of conversation toward reality. The Council of State Governments agreed to promote the Conference, convene it and serve as fiscal agent. The Council will work

Nebraska Gov. Ben Nelson rallied support for The Conference of the States as president of The Council of State Governments.

with the National Governors' Association and the National Conference of State Legislatures, both of which have put their weight behind it. The effort is being guided by a national bipartisan steering committee of state elected officials under the auspices of the three organizations.

At Pinehurst, Leavitt at last had gained the collective states' endorsement he had pursued all last year. In meetings with state officials and the media, the Utah governor had repeatedly raised the idea of states uniting to restore their constitutional powers. "In order to challenge (Congress) and compete for their rightful role, states require a rallying event, a means of consolidating their power," Leavitt said in a *Washington Post* interview published Aug. 29.

Ideas for change

Even though it will not have force of law, the States' Petition will represent the highest form of formal communication between the states and Congress. Proponents say it would be arrogant of Congress to refuse to heed the States' Petition.

State task forces and scholars have suggested possible constitutional remedies to clarify state powers under the Constitution. One idea is to add a clause to Article V that would put states on equal footing with the Congress in proposing constitutional amendments. States now only have the option of calling a Constitutional Convention to propose amendments. The thought is that the uncertainty of a convention could be avoided by allowing three-fourths of state legislatures to propose an amendment to the Constitution that would become valid unless rejected by a two-thirds vote of Congress.

Another idea was proposed in 1980 by former Arizona Gov. Bruce Babbitt, now Interior secretary. It would permit two-thirds of the states to petition to sunset federal laws, except in the areas of defense and foreign affairs.

In several cases, the U.S. Supreme Court has said states must lobby Congress to fend off federal encroachments, rather than turning to the Court to protect their rights. In so ruling, the Court placed states on the same level as any private special interest group, ignoring their sovereign status. To correct this, some have suggested clarifying the Court's duties to rule on cases involving the 10th Amendment, which reserves power not delegated to the federal government to the states or the people.

Conference proponents say any number of nonconstitutional remedies might be considered, and that

"We are clearly out of balance. It was supposed to be a partnership of equals. But it has now denigrated into a master-servant relationship." **— Utah Gov. Mike Leavitt**

any constitutional amendments proposed in the Petition must gain the approval of a super majority of state legislatures.

States in the lead

States need to get the word out about how they are leading the way in many areas, said CSG Executive Director Daniel M. Sprague. States are better prepared than ever to meet the needs of their constituents. And they, not Congress, have come up with innovative solutions to provide health care to the uninsured, help those on welfare become independent, bring up the quality of education and deliver public services effectively.

Just as the Equal Rights Amendment brought women's concerns to the national debate, The Conference of the States will focus attention on states, proponents say.

Conference proponents are adamant that the historic effort not be derailed by fears it will be a vehicle for special interests to amend the Constitution. The CSG resolution approving the Conference specifically directs the Conference Steering Committee to avoid identification with special interests. Moreover, the authorizing resolution now circulating limits the Conference to considering fundamental, long-term structural change.

Issues like gun control or abortion won't be on the agenda. The bipartisan state delegations are another safeguard against right- or left-wing groups seizing control of the Conference.

"The Conference is not a forum for such discussions," Leavitt said to the *Washington Post*. "It must remain focused on the fundamental issue of balancing the federal-state relationship."

With the strong bipartisan support already shown by state officials from every corner of the country for the Conference, it appears that states are well on their way to regaining their role as equals with the federal government. □

Sample Resolution of Participation in a Conference of the States

[*Whereas* clauses to be provided by individual states]

The following language should be incorporated into each state's resolution:

Now, Therefore, Be It Resolved:

That the following be adopted:

(1) A delegation not to exceed seven voting persons from the State of shall be appointed to represent the State of at a Conference of the States for the purposes described in Section (2) to be convened as provided in Section (3). The delegation shall not exceed seven voting persons as follows: (a) the governor or, if the governor does not wish to be a member of the delegation then a constitutional officer selected by the governor; and (b) a number of legislators not to exceed six, three from each house, of which at least one shall be from each major political party, selected by the presiding officer of that house. Each presiding officer may designate two alternate legislator delegates, one from each party, who have voting privileges in the absence of the primary delegates.

(2) The delegates of The Conference of the States will propose, debate and vote on elements of an action plan to restore checks and balances between states and the national government. Measures agreed upon will be formalized in an instrument called a States' Petition and returned to the delegation's state for consideration by the entire legislature.

(3) The Conference of the States shall be convened under the §501(c)3 auspices of The Council of State Governments in cooperation with the National Governors' Association and the National Conference of State Legislatures no later than 270 days after at least 26 legislatures adopt a resolution of participation.

(4) Prior to the official convening of The Conference of the States the steering committee will draft:

- *(a) the governance structure and procedural rules for the Conference;*
- *(b) the process for receiving rebalancing proposals; and*
- *(c) the financial and administrative functions of the Conference, including The Council of State Governments as fiscal agent.*

(5) The bylaws shall:

- *(a) conform to the provisions of this resolution;*
- *(b) specify that each state delegation shall have one vote at the Conference; and*
- *(c) specify that the Conference agenda be limited to fundamental, structural, long-term reforms.*

(6) Upon the official convening of The Conference of the States, the State delegations will vote upon and approve the Conference governing structure, operating rules and bylaws.

This resolution was drafted for circulation to state leaders.

BRENDA BURNS
DISTRICT 17

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COMMERCE AND ECONOMIC DEVELOPMENT, VICE-CHAIRMAN
FINANCE
JUDICIARY

SENATE ETHICS COMMITTEE, CHAIRMAN

Arizona State Senate

Phoenix, Arizona

May 1, 1995

Dear ALEC Member:

Re: Conference of the States (COS)

The ALEC Executive Board and the ALEC Committee on State Sovereignty decided to accept a recent invitation to join the Conference of the States Steering Committee. Senator Ray Powers appointed me as one of two ALEC representatives on the Steering Committee, and he will soon appoint the other representative.

ALEC will be joining the Council of State Governments, the National Conference of State Legislatures and the National Governors' Association on the Steering Committee. We will work to produce a unified approach by the 50 states to communicate to Congress the broad opposition to federal usurpation of state sovereignty. The COS will be an opportunity to provide a forum for states to meet together to determine the direction of reclaiming state sovereignty. The COS will not be a constitutional convention, nor will it have any binding authority or force of law.

We urge you to support your state's participation in the COS, and I invite you to call me if you have any questions about ALEC's role in this effort.

If you need further information on the Conference of the States, please contact the Council of State Governments in Kentucky at 606-244-8000.

Sincerely,

Brenda Burns

Senator Brenda Burns
Chairman, ALEC State Sovereignty Committee

ALEC

FYI

Washington State Repeals Government-run Health Care!

May 5, 1995

U.S. Supreme Court Rules for State Sovereignty

Landmark Decision Marks Historic Shift on Commerce Clause Interpretation

Virginia to Provide Historic Backdrop for National Leadership Summit on State Sovereignty

RICHMOND

■ THE CONSTITUTION

U.S. Supreme Court Draws a New Line Between the States and the Feds

Close Ruling on *Gun-Free Schools Act* Signifies High Court Taking New Approach to Commerce Clause

By Michael Hotra,
Assistant Editor

In an historic decision announced April 26, the Supreme Court sharply limited the scope of Congressional lawmaking authority as it is constitutionally defined under the interstate commerce clause. For the first time since 1936, the justices placed a limit on Congressional authority to impose legislation upon the states.

The decision represents a victory for proponents of state sovereignty, who see this ruling as a strong first step toward repealing burdensome and unconstitutional federal mandates. "This decision is long overdue," said ALEC National Chairman Senator Ray Powers (Colo.) "In delivering this decision, the Court has finally recognized that the federal government has overstepped its constitutional authority."

In *United States vs. Lopez*, the Supreme Court ruled by a 5-4 margin to affirm the decision of the Fifth Circuit Court of Appeals and strike down the federal *Gun-Free Schools Act of 1990*. In 1992 Alfonso Lopez, then a high school senior in San Antonio, Texas, was arrested and indicted under the *Gun-Free Schools Act* which forbids, "any individual knowingly to possess a firearm in a place [he] knows is a school zone." At the time of his arrest, Lopez was carrying a .38 revolver. He was initially sentenced to six months in jail, and two years probation.

In overturning Lopez's conviction, the Court ruled that Congress exceeded its constitutional authority when it passed the *Gun-Free Schools Act*. Writing for the majority, Chief Justice William Rehnquist said of this inappropriate law, "neither the statute nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone. Indeed [the law] plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation."

In his opinion, Rehnquist narrowly defined the scope of federal legislation that is appropriate under the commerce clause. "We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce." The court's determination -- that federal legislation must "substantially affect" interstate commerce -- calls into question the legitimacy of federal regulations on issues like crop regulation, and social policy legislation such, as the *Americans with Disabilities Act*.

Justice Clarence Thomas alluded to these implications in his concurring opinion. "Our [present] construction of the scope of congressional authority has the additional problem of coming close to turning the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly *prohibited* by the Constitution."

The Conclusion of Chief Justice William Rehnquist's Majority Opinion:

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action.

The broad language of these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, and that there never will be a distinction between what is truly national and what is truly local.

This we are unwilling to do.

Perhaps more importantly, the decision draws a line in the proverbial sand. It limits the expansion of federal lawmaking authority in the states, which has grown virtually unchecked since the New Deal. For advocates of states' sovereignty, that's good news. "We are extremely pleased with the Supreme Court's decision to reaffirm state sovereignty," said Samuel A. Brunelli, ALEC's Executive Director. "With its decision, the Court has sent a clear message to Congress and the executive branch that the commerce clause cannot serve as a convenient excuse for Congress to impose their will upon the states."

Justice Stephen Breyer authored the dissenting opinion, with which Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg concurred. In his brief, Breyer asserted that the *Gun-Free Schools Act* was a proper exercise of congressional authority. He argued that guns in the classroom create an environment in which teachers cannot teach, and students cannot learn. Poorly educated students, the workforce of the future, undermine the ability of businesses to compete -- to engage in interstate commerce. Breyer says that by controlling guns in our nation's schools, our nation's business climate improves. "Upholding this legislation would do no more than simply recognize that Congress had a 'rational basis' for finding a significant connection between guns in or near schools and (through their effect on education) the interstate and foreign commerce they threaten."

Breyer

From Justice Thomas' Concurring Opinion:

...it seems to me that the power to regulate "commerce" can by no means encompass authority over mere gun possession, any more than it empowers the Federal Government to regulate marriage, littering, or cruelty to animals, throughout the 50 states. Our Constitution quite properly leaves such matters to the individual States, notwithstanding these activities' effects on interstate commerce. Any interpretation that even suggests that Congress could regulate such matters is in need of reexamination.

As Rehnquist duly notes, the implications of Breyer's argument, which supports the government's contentions, are expansive. "Under the theories that the government presents in support of [this law] it is difficult to perceive any limitation on federal power; even in areas such as criminal law enforcement or education where States historically have been sovereign. Congress could regulate any activity that it found was related to the productivity of individual citizens: family law (including marriage, divorce, and child custody) for example."

Constitutional scholars are in agreement that this is a key decision. "This is good constitutional law. To stretch [the commerce clause] to cover this law is, in my opinion, stretching it way too far," said Syracuse University Professor of Political Science Ralph Ketcham. "In a way, I was proud of the court for keeping the commerce clause in line." Harvard law professor Laurence Tribe said, "If ever there was an act that exceeded Congress' commerce power, this was it."

U.S. Senator Herb Kohl (D-Wis.), the author of the *Gun-Free Schools Act*, expressed his dismay on the Senate floor. "In my judgment, this is a classic example of judicial activism, and it ignores the safety of America's children." However, Kohl fails to recognize that 40 states *already* have some form of legislation outlawing firearms in school-zones. Therefore, Kohl's legislation, in 80 percent of the states, is not only intrusive, it is also redundant. Kohl remarked that he plans to add a technical amendment to the more recent version of the *Gun-Free Schools Act* included within the *1994 Crime Bill*. He says he wants to ensure that this newer version of the bill remains constitutional.

At this early juncture, the future of the *Lopez* decision is unclear. Liberals, such as *New York Times* columnist Anthony Lewis, discount this decision, saying that the court has substituted its judgment for the judgment of legislators. He paints the ruling as the defeat of well-intentioned, beneficial legislation. Maybe so, but the court has chosen to act strongly because, for decades, the Congress has acted *wrongly*.

This case could be the benchmark upon which onerous federal mandates are repealed, and further intrusive laws are struck down. At the very least, this decision serves notice to Congress that it can no longer enact with impunity legislation using the commerce clause as the basis. The rights of the states must be respected. The Constitution requires nothing less. ■

■ STATE SOVEREIGNTY

Arizona Leads As States Push For Devolution

By Karen O'Brien, Task Force Director

From Alaska to Wyoming, states are reasserting their rights under the Tenth Amendment in an effort to balance the shared powers of the states and the federal government. This focus on state sovereignty is being driven by the dissatisfaction with federal government programs that are unfunded, inefficient and ineffective.

The states are calling for the federal government to put an end to the oppressive mandates that are pouring out of the federal bureaucracies, and to devolve certain powers and responsibilities back to the states. The movement is picking up momentum and has even attracted the attention of the new Congress, as well as Senate Majority Leader and Republican presidential hopeful Bob Dole, who launched his campaign for the Republican presidential nomination by reciting the Tenth Amendment. He said his mandate would be to "rein in" government and devolve power back to the states and the people.

One of the first fulfillments of the House Republican's "Contract with America" was passage of legislation to control unfunded mandates. President Clinton signed this bill which limits the practice of requiring states and localities to comply with federal programs without providing federal funds. The president, Congress and the Republican presidential candidates are responding to the overwhelming movement in the state legislatures to curb the federal government's encroachment on state sovereignty.

A forerunner in the pursuit to restore the proper balance of power between the states and the federal government is Arizona, which has enacted more legislation relating to mandate relief and state sovereignty than any other state. Senator Brenda Burns, an ALEC National Director, State Chair, and Chair of the State Sovereignty committee of the Board of Directors, and ALEC member Senator Tom Patterson, have been instrumental in bringing this issue into the mainstream of political debate. Arizona has also created a joint House and Senate Committee with jurisdiction over federal mandates and states' rights issues.

Legislators in several states, including Ariz., Colo., Calif., Hawaii, Mo., Mont. and Utah have adopted ALEC's *Restatement of State Sovereignty Resolution* that declares sovereignty under the Tenth Amendment and instructs the federal government to "cease and desist mandates that are beyond the scope of its constitutionally delegated powers."

In order to make the federal government more responsive to the states, a proposal has been made for a "Conference of the States," (COS) or a meeting of officials and legislators from each state to discuss returning certain powers back to the states. The COS is being organized by a national steering committee comprised of state elected leaders appointed by the Council of State Governments, the National Conference of State Legislators, and the National Governors' Association. Recently, ALEC accepted an invitation to be on the steering committee and further lend its support. In order for the COS to convene, 26 states must pass a *Resolution for Participation*. Currently, 14 states have passed a COS resolution. Opponents fear that the gathering could turn into a runaway constitutional convention, but the COS is not, nor is it intended to turn into, a constitutional convention. It will be a forum for states to express their frustration with federal mandates and discuss proposals that would restore the appropriate balance of power. The COS is the best way for states to express their wishes to Congress through a unified voice. The participants will draft a petition that will be presented to the Congress and the White House, but it will have no binding authority or force of law.■

Types of State Sovereignty Legislation

■ **Declaration of State Sovereignty**: A resolution reaffirming state sovereignty.
■ **Government of the People**: A resolution petitioning Congress to propose a Constitutional amendment that would allow states to nullify federal laws that exceed Constitutional authority.
■ **Restatement of State Sovereignty Resolution**: A resolution restating the powers reserved to the states under the Tenth Amendment.
■ **Constitutional Defense Council**: A resolution designed to restore, maintain and advance state sovereignty. A key component is the establishment of a defense council to examine federal mandates and court rulings.
■ **Federal Mandate/Encroachment Act**: Legislation intended to serve as an alternative to the Joint Committee Act, which is written to demonstrate the effects federal mandates have at the state legislative level.
■ **Joint Committee Act**: Legislation written to demonstrate the effects federal mandates have at the state legislative level.
■ **Congressional Delegation**: Requires all members of a state's Congressional delegation to annually appear before a joint legislative session to discuss problems related to unfunded mandates.
■ **Conference of the States**: A resolution to attend the Conference of the States.

STATE SOVEREIGNTY ACTIVITY UPDATE

State	Declaration of State Sovereignty Resolution	Government of the People Resolution	Restatement of State Sovereignty Resolution	Constitutional Defense Council	Federal Mandate/ Encroachment on State Sovereignty Audit Act	Joint Committee Act	Congressional Delegation	Conference of the States
Ala.							E	I
Alaska								I-P1
Ariz.	E	I	E	E		E	E	E
Ark.			I					E
Calif.			E				E	I
Colo.			E			I		I-P1
Conn			I					Pending
Del.							E	E
Fla.			I					I-P1
Ga.			I			I	I	I
Hawaii			E					I
Idaho			I	I				E
Ill.	I	E	I	I	I			I
Ind.			I					I
Iowa			I				I	E
Kan.			I					I
Ky.								E
La.			I	I				I
Maine								Pending
Md.								I
Mass.								Pending
Mich.								I
Minn.			I				I	I
Miss.			I		I			I
Mo.			E					E
Mont.			E					I
Neb.			I				E	E
Nev.			I					I
N.H.			I-P1					I
N.J.			I					I
N.M.			I				I	I
N.Y.								I
N.C.								I
N.D.								I
Ohio	I-P1			I				E
Okla.			I-P1					I
Ore.			E					I
Pa.			I-P1			I	E	I-P1
R.I.	I							I
S.C.			I			I	I	I
S.D.			I				E	E
Tenn.			I					E
Texas			I				I	I-P1
Utah			E					E
Vt.							I	I-P1
Va.			I		E		E	E
Wash.			I					I
W.V.			I-P1					I
Wisc.			I					I
Wyo.			I-P1					E
TOTAL	**4**	**2**	**33**	**8**	**3**	**5**	**15**	**-**

Key: E: Enacted I: Introduced I-P1: Passed in one chamber

As of April 25, 1995

■ ALEC EVENTS

National Leadership Summit on State Sovereignty

Four Governors and Nearly 200 State Legislators to Attend Summit in Richmond

by Noel R. Card, Managing Editor

More than 300 state and national leaders will be meeting at the Marriott Hotel in Richmond on May 18-20, to discuss the relationship between the states and the federal government.

Governor George Allen is scheduled to address the leaders during lunch on Friday, May 19. On the same day Summit attendees will hear from ALEC alum U.S. Senator Paul Coverdell (Ga.), John Goodman from the National Center for Policy Analysis, and former Reagan OMB Director Jim Miller. On Saturday,

Utah Governor Michael Leavitt and Nebraska Governor Ben Nelson, who are the leaders of the movement for a "Conference of the States," will discuss their efforts. Also on Saturday, Arizona Governor Fife Symington, who has been at the forefront of the state sovereignty movement, will speak, as will Alabama Governor Fob James and former U.S. Attorney General Griffin Bell.

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Other invited speakers include: U.S. Senate Majority Leader Bob Dole (Kan.), U.S. House Majority Leader Dick Armey (Texas), and Illinois Governor Jim Edgar.

"We will be bringing to Richmond some of the nation's foremost leaders on the issue of the state-federal relationship," said ALEC Executive Director Samuel A. Brunelli. Brunelli cited the Tenth Amendment as the cornerstone of the state-federal relationship. "There is no more important issue than re-establishing the proper balance between the states and the federal government. Today, we have a federal government that often acts as if the states are mere administrative units to a huge bureaucracy on the Potomac. The new leaders in the Congress and in the states are interested in forging a relationship between the states and the federal government. And we are particularly heartened that on the eve of the Summit, the Supreme Court has begun the important process of limiting federal intrusion under the commerce clause of the Constitution, which has long been abused by Congress." (*See page 8*)

Issue sessions are planned on the fundamentals of state sovereignty and devolution; environmental deregulation; health care reform in the states; tort reform at the state and federal levels; and returning the responsibility for education and welfare back to the states.

More than 40 state House Speakers and Senate Presidents, and more than 100 state legislators in leadership positions, will attend the Summit. As of this date, 40 states will be represented in Richmond.

"This meeting will set the philosophical underpinnings of future discussions on state sovereignty," said Virginia State Senator Steve Martin, ALEC's State Chair and Chairman of the Host Committee. The Virginia Host Committee has arranged an excellent series of special events and spouse tours for the Summit (see box). "This is a great opportunity for us to showcase Richmond to leaders from around the country, and we've pulled out all the stops to make this an outstanding meeting," Martin added.

For more information, contact Jennifer Whittier at (202) 466-3800.■

Special Events and Spouse Tours

Thursday, May 18th
- *Golf at the Highlands Golfers' Club*
- *The Summit Opening Reception*
- *Spouse Tour: Mansions of Richmond*

Friday, May 19th
- *Virginia Slims Legends Reception*
- *Virginia Slims Legends Concert*
- *Spouse Tour: Arts and Garden Tour*

Saturday, May 20th
- *"Living American History," St. John's Church*
- *Spouse Tour: Steeplechase Races*

States Must Be Resolved to Reverse Federal Expansion

New ALEC Publication To be Released at 1995 Nat'l Leadership Summit

By Kerry Jackson, Editor

Every four years, at both major parties' presidential conventions, all 50 states announce their nominations by beginning with these famous but never seriously regarded words:

"The *sovereign* state of ..."

Even in those charged and giddy surroundings, the statements always seem to be curious contradictions of reality. Because the obscured truth is: the states are *not* sovereign entities.

"Through the years, the sovereignty of the states and of the people has been eroded by illegitimate federal expansion," write ALEC Director of Legislation and State Policy Wendell Cox and co-author Samuel A. Brunelli, ALEC's Executive Director, in a new publication, *Sovereignty of the People and Devolution*. "The federal government has treated the states as subordinate units of government, which they are not."

In what is essentially a handbook on state sovereignty and devolution, which will be released as part of ALEC's National Leadership Summit, Cox and Brunelli explore the concept of state sovereignty from an historical perspective and a constitutional viewpoint. Using a wide variety of works, speeches and studies from which they draw their conclusion, the authors show that the state-federal relationship that many recognize today as the traditional alliance has strayed far from its intended purpose. Runaway federal debt, burdensome mandates, centralized power and a Supreme Court that has too often sided with Congress and the executive branch have all contributed to the dilution of state sovereignty. The authors argue that "federal usurpation of popular sovereignty has generated a serious crisis in American governance."

Cox and Brunelli contend that the three branches of the federal government could reverse their wrongful expansion of power by:

- Congressional repeal of the laws under which it has illegitimately expanded federal power;
- Executive orders to rescind directives and regulations that have wrongly intruded into areas of state responsibility;
- Supreme Court rulings that invalidate laws, regulations, and executive orders that have usurped the sovereignty of the states and of the people.

"There are encouraging indications that federal initiatives will begin to devolve power to states. But it would be overly optimistic to rely upon the federal government to willingly devolve all of the powers that it has wrested from the states," they write. "Restoration of the sovereignty of the states and the people will primarily depend upon the resolve of the states and the people." To that end, Cox and Brunelli advocate two mechanisms for rendering constitutional decisions" since the amendment process is "difficult and cumbersome." One is the *Government of the People Amendment*. It allows two-thirds of the states to nullify sections of federal law or regulation where they find such federal action to have violated the sovereignty of the states.

The other is the *States Initiative Amendment*. In this method, the Constitution would be amended if three-fourths of the states proposed an amendment and Congress failed to block the proposal by a two-thirds vote in both chambers within two years.

"The people, through the states, retain the right to reclaim their sovereignty through constitutional amendments," Cox and Brunelli explain.

In their work, the authors include models for the constitutional amendments, as well as ALEC model resolutions, model proposals and model legislation.

"The cornerstone of the ALEC sovereignty and devolution agenda is the 'Declaration of Sovereignty,' " they write, "which recalls the institution of the federal government under the Constitution, outlines the extent to which the federal government has illegitimately assumed sovereignty, affirms the importance of fundamental law, proposes principles by which popular sovereignty should be restored, and outlines strategies by which such restoration might occur."

This in-depth and cogent analysis is prescribed reading for all proponents of state sovereignty and devolution.■