ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
9072 SENATE STATE AFFAIRS

Resolution ____

(By _____)

Urging the Congress of the United States to pass S. 1629, the Tenth Amendment Enforcement Act of 1996.

Whereas Congress, by its authority to regulate commerce among the states, has repeatedly preempted state laws, including those relating to health, welfare, transportation, communications, banking, environment, and civil justice, reducing the ability of state legislatures to be responsive to their constituents;

Whereas more than half of all federal laws preempting states have been enacted by Congress since 1969, intensifying an erosion of state power that leaves an essential part of our constitutional structure--federalism--standing precariously;

Whereas the United States Constitution anticipates that our American federalism will allow differences among state laws, expecting people to seek change through their own legislatures without federal legislators representing other states preempting states to impose national laws;

Whereas constitutional tension necessary to protect liberty arises from the fact that federal law is "the supreme Law of the Land," while in contrast powers not delegated to the federal government are reserved to the states or to the people; and that tension can exist only when states are not preempted and thus remain credible powers in the federal system;

Whereas less federal preemption means states can act as laboratories of democracy, seeking novel social and economic policies without risk to the nation;

Whereas S.1629 is designed to create mechanisms for careful consideration proposals that would preempt states in areas historically within their purview through procedural mechanisms in the legislative, executive and judicial branches of government, namely

> In the Legislative branch, by requiring a statement of constitutional authority and an expression of the intent to preempt states,
>
> In the Executive branch, by curbing agencies that may preempt beyond their legislative authority,
>
> In the Judicial branch, by codifying judicial deference to state laws where the Congress is not clear in its intent to preempt.

Now, therefore, be it resolved that the Legislature of _____ urges:

That the congressional delegation of the state of ___ co-sponsor S.1629 in order to show its support for a decisive role for states within the federal system;

That the Congress enact S. 1629, the Tenth Amendment Enforcement Act of 1996 in order to strengthen the political safeguards of federalism as anticipated under the Constitution; and

That the President of the United States sign S. 1629 as a means of ensuring full consideration of federalism principles within the exercise of executive powers.

Don't Tread on Me: States Resist Federal Preemption

Congress, federal agencies and even the Supreme Court are constantly encroaching on state jurisdiction, but states can and do fight back.

William T. Waren

Rose Cipollone began smoking in 1942 and died of lung cancer in 1984. Her family sued three tobacco companies under New Jersey tort law. In their defense, the cigarette manufacturers claimed that federal statutes enacted in 1965 and 1969, which require a health warning on all packages of cigarettes, preempted the family's state law claim. The federal district court granted the Cipollones' motion to strike the preemption defense, but the court of appeals reversed, accepting the cigarette manufacturers' argument that preemption was implied.

William T. Waren is a federal affairs counsel in NCSL's Washington, D.C., office.

The *Cipollone* case eventually reached the U.S. Supreme Court, which in 1992 reversed the appeals court decision in part. The high court's decision was important not simply because of the hot political issue of cigarette company liability for lung cancer deaths, but more fundamentally because of what the Court had to say about the federalism issues raised by the cigarette manufacturers' defense.

The federalism concerns of states relate not to the outcome of the liability issues in the case, but rather to issues of process—to questions about who decides. In this circumstance, if it is unfair for cigarette manufacturers to be sued and held liable for lung cancer deaths when the victim was arguably warned and assumed the risk of her behavior, then the state legislature, not a federal court, is the appropriate body to make the decision to restrict such claims (especially when Congress has not directly addressed the question of liability in federal legislation).

The *Cipollone* case is more high profile than most such cases, but it is not unusual. Every year (and 1994 is no exception) the U.S. Supreme Court considers several important preemption cases. And every year, Congress considers bills, federal agencies consider rules, and international agencies consider decisions that would supplant state statutory or common law. Adverse decisions may result not only in nullifying state legislative acts or state court decisions, but also in narrowing the range of issues that legislatures may address. The threat is the steady, incremental, year-by-year erosion of the jurisdiction of

state legislatures.

Interest groups of every stripe that are unsuccessful in pursuing their agendas at the state level increasingly are tempted to "forum shop" and come to Washington, D.C., seeking reversal of state legislative or court action. Federal moves frequently result in undoing the work of sponsors of state legislation who may have labored for months or years to pass a bill. But perhaps the most insidious consequence of preemption from the state perspective is its impact in the future. Unless a federal statute can be amended or a court decision reversed in new federal legislation, state jurisdiction over large areas of public policy is ceded for the indefinite future to the federal government. This is particularly harmful when federal action results in "field" preemption, which may bar future state legislative action even when there is no direct conflict with federal law. This may happen when state standards are simply more stringent than or supplementary to federal standards or even when state law touches tangentially on the same subject as federal legislation.

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Preemption by Legislation

Before Congress this session are proposals related to intrastate telecommunications, interstate banking and branching, product liability, and credit reporting. All would undermine state law, and all have a chance of passing.

States are opposing congressional proposals to strip them of substantial authority to regulate intrastate telecommunications, and it's an uphill battle.

In January, the Clinton administration presented its "Communications Act Reforms," intended to encourage investment in the national information infrastructure (NII), the so-called "information superhighway." The administration's NII white paper, which contemplates a new and largely federal regulatory framework for advanced communications and information services, builds upon legislative proposals offered by Congressman Edward Markey of Massachusetts.

Senator Carol Fukunaga of Hawaii, chair of NCSL's Communications Committee, objects to proposals that would inappropriately override state laws. Although agreeing with the goals of promoting competition and encouraging investment in information infrastructure, Fukunaga has told Congress that the Markey bill "would jeopardize the federal-state partnership in developing telecommunications policy by preempting states and shifting authority to the Federal Communications Commission." California Assemblywoman Gwen Moore, in testimony before an administrative hearing, expressed similar concerns about the House and administration plans. "If enacted, these proposals effectively eviscerate state regulatory authority."

States are also battling proposals to usurp their authority over interstate and branch banking.

The federal government, says Kansas Senator Alicia Salisbury, "should not mandate the form of interstate banking and branching regulation." States are particularly concerned about retaining authority to regulate interstate branching, to tax banks and to coordinate banking and economic development policy. At the very least, she says, states should be able to "opt out" of the federal regulatory scheme.

State regulation of credit reporting agencies is also under challenge in the current Congress. Many states have passed legislation responding to constituent complaints that they lost money, were denied credit or lost a job because of erroneous credit reports. Now Congress is considering similar legislation. Lobbyists for the credit reporting and banking industries, however, have been demanding preemption of stricter state laws as their price for accepting additional federal regulation.

Congress has considered proposals for federal product liability legislation for the past 13 years. This session, the Senate Commerce Committee has updated a bill, S 687, that would selectively override state tort law on product injuries. Representative Mike Box of Alabama objects to the bill, saying that "my convictions on the need for tort reform in this country are held in check by my greater concern for protecting principles of constitutional federalism as well as by practical considerations." A federal law, he says, would create confusion in state courts.

Preemption by Regulation

States also need to be concerned about preemption by federal agency regulation. A classic example arises from the U.S. Supreme Court's 1993 decision in *CSX Transportation vs. Easterwood*. The case, which involved issues of liability at railway grade crossings, is significant. States have traditionally retained nearly exclusive authority over tort liability issues as well as overall responsibility for highway safety. The state need to retain legislative jurisdiction is clear, given an annual average of 5,885 accidents and 628 fatalities at rail crossings between 1985 and 1990.

A train operated by CSX collided with a truck and killed Thomas Easterwood on Feb. 24, 1988. His widow, Lizzie, sued CSX under Georgia law, alleging that the railroad failed to maintain an adequate warning device at the crossing and that the train was traveling at excessive speed. The railroad argued that the Federal Railway Safety Act supersedes Georgia law and therefore nullifies the claims of Lizzie Easterwood.

The U.S. Supreme Court, in an opinion by Justice Byron White, held that the federal rail safety statute preempted Easterwood's claim that the train was traveling at excessive speed. The Court, however, found no objection to Lizzie Easterwood's claim based on Georgia law related to safety and warning devices, given that no federal funds had been expended at the grade crossing where her husband was killed. Justice White concluded that under the Federal Railway Safety Act, the scope of state law preemption depends on the scope of agency regulation. The federal act permits states "to adopt or continue in force any law, rule, regulation, order or standard relating to railroad safety until such time as the secretary has adopted a regulation covering the subject matter of such state requirement." According to Justice White the issue was simply "whether the secretary of transportation

The Legal Center Defends the States

State statutes may be invalidated not only as a result of preemption, but also by being declared unconstitutional.

A good example is presented by *Wisconsin vs. Mitchell*, a case that posed the question of whether a state legislature may authorize tougher punishment for a criminal who targets a victim on the basis of the victim's race, religion or other protected characteristics. The Wisconsin Supreme Court struck down the statute on First Amendment grounds, regarding the increased penalty as separate punishment of the perpetrator's thoughts. The case then went to the U.S. Supreme Court.

That's when a unique institution, the State and Local Legal Center, stepped in. Established by NCSL and other state and local government associations, the D.C.-based Legal Center is the final line of defense for state statutes in the nation's high court.

As it does in many other state and local government cases, the Legal Center filed an *amicus* brief to defend the state statute in *Wisconsin vs. Mitchell*. The brief argued that an enhanced penalty for hate crimes is justified because "under the Constitution, state legislatures are given wide latitude to find solutions to the problems facing their communities, as long as those solutions do not offend constitutionally protected rights." And the high court traditionally has "recognized the need for deference to legislative judgments concerning the length of sentences."

An enhanced penalty is further justified, according to the brief, because hate crimes subject victims to a "profound and pervasive sense of vulnerability." Such crimes also are more damaging to communities and can trigger a wave of incidents as "illustrated by the racially motivated Howard Beach and Bensonhurst crimes in New York City."

Nor, argued the Legal Center, does the First Amendment bar an enhanced sentence for a hate crime, which after all, addresses not thought, speech or even expressive conduct but rather criminal conduct. In other words, "aggravated battery is not protected speech."

The Supreme Court agreed. An opinion written by Chief Justice William Rehnquist upheld the constitutionality of the Wisconsin hate crime statute. While mere abstract beliefs cannot be taken into account in sentencing, Rehnquist explained, beliefs that form the motive for a crime appropriately may be considered.

Since its founding in 1983, the Legal Center has become an important resource for state and local governments in Supreme Court litigation. It has filed over 168 briefs *amicus curiae* or approximately 15 to 20 briefs every year. In addition, the center conducts, every Supreme Court term, numerous moot courts. This sharpens the oral advocacy skills of state and local attorneys who argue before the Court. A review by former Supreme Court clerks concluded that Legal Center briefs were among the best submitted, comparable in scholarship to those filed by the solicitor general, a testament to the skill of Legal Center lawyers and the distinguished pro bono attorneys who are recruited by the center to write many of its briefs.

The Legal Center files in four major types of civil cases involving important questions of constitutional law. As in *Wisconsin vs. Mitchell*, the center frequently defends state and local legislation from First Amendment and similar challenges that a state has violated an individual's constitutional rights. Cases that contest state taxing or regulatory authority under the Commerce Clause are a second category. Hundreds of millions or even billions of dollars may be at stake when state tax cases are accepted by the Supreme Court. Cases related to the liability of state and local governments, which frequently arise under Sections 1983 and 1988 of the Federal Civil Rights Act, are a third category. Perhaps most important, the Legal Center argues for the restoration of constitutional protections of federalism in cases involving the 10th Amendment, the 11th Amendment and similar basic constitutional provisions protecting the rights of citizens to local self-government. The center also files briefs in preemption cases and in cases involving the interpretation of federal statutes that have a significant impact on states and local governments, such as environmental law and fair labor standards.

has issued regulations covering the same subject matter as Georgia negligence law pertaining to the maintenance of and the operation of trains at grade crossings."

The U.S. secretary of transportation in 1971 promulgated regulations for the rail safety act, setting maximum speeds for trains on different categories of track, thus preempting, in White's view, a claim based on a determination of excessive speed under state law. On the other hand, while the secretary had issued regulations applicable to projects where federal funds are employed in the installation of warning devices, no federal money had been spent at the site of the Easterwood accident. Therefore, White found that no federal regulations "covered the same subject matter" as Georgia negligence law regarding safety devices.

So *Easterwood* was a partial but still significant victory for the states. The Supreme Court, however, was only the first "preemption battlefield." In *Easterwood*, as in most such cases, states were concerned about issues of process and jurisdiction within the federal system. While the Court can be responsive to federalism issues, the Congress and federal agencies often are more concerned about results. The states' argument is that if it is alleged that current state law unfairly imposes tort liability, then state legislatures are the appropriate bodies to consider the issue and if necessary correct the injustice. Such arguments are not always persuasive with some members of Congress and federal administrators who are in effect being asked, as a matter of good government, not to exercise their full power and authority.

The U.S. Senate Commerce Committee marked up S 839, the high-speed rail bill, on Nov. 9, 1993, and amended it to include a provision that could reverse in part *CSX vs. Easterwood*. That provision

GATT Preemption of State Beer and Wine Laws

The question of preemption is increasingly likely to arise from international trade treaties. As an example, witness the General Agreement on Tariffs and Trade panel ruling that state laws and regulations in 14 categories in 40 states discriminate against Canadian beer and wine imports. Listed below are the laws and the states affected.

1. State beer and wine tax rates based on annual production.

New York, Oregon, Rhode Island, Puerto Rico

2. State tax credit for small breweries based on production.

Kentucky, Minnesota, Ohio, Wisconsin

3. State taxes on wine based on origin of product.

Alabama, Georgia, Nebraska, New Mexico

4. State excise tax at wholesale level for imported wine.

Iowa

5. Tax treatment of wine based on local ingredients.

Michigan, Ohio, Rhode Island

6. Tax on wine made from a specified variety of grape.

Mississippi

7. Excise tax credit on beer for equipment purchases.

Pennsylvania

8. Three-tier exemption system.

Alaska, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin

9. State requirements to use common carriers.

Arizona, California, Maine, Mississippi, South Carolina

10. State licensing fees for imported beer and wine.

Alaska (beer and wine), Vermont (beer only)

11. Exemption of in-state wine from prohibition of sales of alcoholic beverages in certain areas of the state.

Mississippi

12. Requirements of "price affirmation" (imported products may not be offered below the price of these products in neighboring states).

Massachusetts, Rhode Island

13. State laws that allow liquor control boards to require listing (posting the notice of state sale of state products) and delisting (removing other products from the list).

Idaho, Mississippi, New Hampshire, Pennsylvania, Vermont, Virginia

14. Wholesaler distribution requirements.

Connecticut, Florida, Maryland, Massachusetts, Missouri, Oregon, Texas, Utah.

simply required the U.S. Department of Transportation to issue regulations covering all rail grade crossings within a specified period of time. However, because the scope of preemption follows the scope of agency regulation under *Easterwood* and the federal Railway Safety Act, the superficially innocuous provision in S 639 could supersede the state laws preserved in *Easterwood*. Although the high speed bill stalled in late 1993, attempts to legislatively reverse *Easterwood* may be taken up again later this year.

Another current threat is that the U.S. Department of Transportation may issue regulations that "cover" the *Easterwood* situation and thereby preempt the states, even without the spur of congressional action. In this, as in so many cases, appointed federal administrators have enormous latent power, and states are asking them to voluntarily abstain from exercising that power.

Preemption by Court Decision

Easterwood was only one of many similar cases recently considered by the U.S. Supreme Court. A report by the appellate judges' conference observes that the number of preemption cases considered by the U.S. Supreme Court "has increased by a factor of four" over the last 20 years. According to the report, only 10 preemption cases, or 2 percent of the Court's docket, were heard during the 1962, '63 and '64 terms. Twenty-one years later, the numbers jumped to 39 cases—9 percent of the total docket for the 1985, '86 and '87 terms.

For more than 10 years, the states, acting through the D.C.-based State and Local Legal Center, have been seeking through friend of the court (*amicus*) briefs to persuade the Court to read federal statutes narrowly and to defer to the judgment of elected state legislators. The Legal Center has had considerable success in this effort, not only winning many preemption cases but also encouraging the Court to develop a so-called "clear statement" doctrine that requires Congress to be explicit about its intent to preempt state law before the courts will act to nullify state action.

One of the Legal Center's most significant Supreme Court victories in a preemption case was the 1991 decision in *Gregory vs. Ashcroft*. The issues were first whether a provision of the Missouri Constitution requiring judges to retire at age 70 violated the federal Age Discrimination in Employment Act (ADEA) and second whether the provision violated the Equal Protection Clause of the U.S. Constitution. In its brief, the Legal Center urged the Court to interpret the ADEA in a way that recognizes the states' "unique sovereignty and right of self governance."

In her opinion upholding Missouri law, Justice Sandra Day O'Connor, a former state legislator, articulated a "clear statement" rule that provides considerable protection for state statutes. "If Congress intends to alter the vital constitutional balance between the states and the federal government," she wrote, "it must make its intention to do so unmistakably clear in the language of the statute." Her opinion is one of the most broad-ranging and forceful recent defenses of federalism and the role of the states in the American constitutional system.

"This plain statement rule," O'Connor explains, "is nothing more than an acknowledgment that the states retain substantial sovereign powers under our constitutional scheme."

Among the preemption cases in which the Legal Center filed briefs in 1993 were the usual grab-bag of substantive issues: preserving a state law related to priority of claims in insurance company insolvencies, defending a state law related to foreclosure sales and protecting state tax laws as applied to rail-

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WILLIAM POUND
EXECUTIVE DIRECTOR

MEMORANDUM

To: NCSL Executive Committee

From: William Pound and Carl Tubbesing for Stevens

Date: April 25, 1996

Subject: Support for the Federalism Bill

We have enclosed a recent communication that Senator Lack and Representative Box have sent to legislative leaders in legislatures that are still in session. The letter asks them to consider introducing and approving the enclosed memorial resolution supporting S. 1629, The Tenth Amendment Enforcement Act of 1996. The bill, sponsored by Alaska Senator Ted Stevens, would curtail unnecessary preemption of state laws. It is a natural follow-on to the unfunded mandates bill passed by Congress 16 months ago. By passing these resolutions, we hope that legislatures will demonstrate that they are troubled by preemption and support S. 1629.

We hope that you will consider introducing this or a similar resolution on preemption and S. 1629. Please call either one of us if you have any questions.

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FEDERALISM

Our American federalism creatively unites states with unique cultural, political, and social diversity into a strong nation. The Tenth Amendment reserves broad powers to the states and to the people. As a carefully reasoned foundation of the Constitution, federalism protects liberty, enhances accountability and responsiveness, and fosters innovation.

Individual liberties can be protected by dividing power between levels of government. "The Constitution does not protect the sovereignty of states for the benefit of the States or state governments as abstract political entities, or even for the benefit of public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals." New York v. United States, (1992). When one level becomes deficient or engages in excesses, the other level of government serves as a channel for renewed expressions of self-government. This careful balance enhances the express protections of civil liberties within the Constitution.

By retaining power to govern, states can more confidently innovate in response to changing social needs. As Justice Brandeis wrote, "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." New State Ice Co. v. Liebmann, (1932). It is a suitable role for the federal government to encourage innovation by states. The federal government should recognize that failure is a risk associated with experimentation and permit states room to act and evaluate without judging prematurely the value of innovative programs. The Supreme Court should interpret the Dormant Commerce Clause in a restrained manner sensitive to the powers of the states in the federal system so that states are not unreasonably frustrated in their efforts to deal with pressing social and economic problems. State and local governments making difficult decisions to cope with mounting problems should be

allowed room to innovate without the risk of having their work stricken by insensitive overly-academic interpretations of the Dormant Commerce Clause.

In New York v. United States, the Court relied upon the Tenth Amendment to void a mandate upon the states. To the Court, a vital federalism was essential to accountable government. "Accountability is thus diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matters not pre-empted by federal regulation."

When national policy-makers ignore the fiscal impact of proposals that are to be implemented at the state level, citizens have difficulty discerning which level of government to hold accountable for making critical choices between increasing taxes or eliminating other state programs in order to implement a mandated national agenda. Such distortion can frustrate voters and decrease citizen participation. Reform is needed in order to hold the federal government accountable for making policy decisions that ultimately affect the level of services provided by the states or the level at which states are compelled to tax their citizens. States must retain the predominant role in shaping policies for which they will ultimately commit the predominant share of resources.

Responsiveness to constituencies within state boundaries is diminished as the power of the federal government grows disproportionately. Disturbingly, federal constraints upon state action grow even as states are increasingly acknowledged as innovators in public policy. To revitalize federalism, the three branches of the national government should carefully examine and refrain from enacting proposals that would limit the ability of state legislatures to exercise discretion over basic and traditional functions of state government.

In recent years, a number of Supreme Court decisions interpreted the Tenth Amendment as little more than a restatement of other principles of shared power inherent in the Constitution. In Garcia v. San Antonio Metropolitan Transit Authority, (1985), which limited the right of state and local governments to set labor standards for their own employees, the Supreme Court removed itself from balancing the commerce powers of Congress and the States and interpreting the Tenth Amendment's reservation of power to the states. Again, in South Carolina v. Baker,

(1988), the Court restated the Garcia view that the Tenth Amendment offered no discrete protection for the states. By these holdings, states are relegated to trusting Congress to protect their powers. And New York v. United States does not relieve states from the fiscal and policy dislocations caused by grant conditions. Therefore, specific action is needed to improve the political safeguards of federalism.

NCSL dedicates itself to restoring balance to federalism through significant activity in the political process and through thoughtful consideration and broad national debate of proposals to amend the Constitution that are specifically intended to redress the erosion of state powers under the Constitution. While actively protecting state interests within the political process, NCSL does not by this policy endorse any specific proposal for or against constitutional change or call for a constitutional convention.

Preemption as a Last Resort

NCSL calls for greater creativity and forcefulness in achieving a functional federalism that respects diversity without causing division and that fosters unity without enshrining uniformity. Creative solutions to public problems can be achieved more readily when state laws are accorded due respect and when state legislators can know that good ideas will not be preempted without justification. Congress must allow states flexibility to shape public policy.

Inordinate reliance upon the central government for problem-solving feeds the misconception that uniformity for uniformity's sake alone is a concept that justifies preemption. However, in a federal system strong reasons compel acceptance of diversity among states. Our federalism anticipates diversity, our unity does not anticipate uniformity. By definition, every preemptive law diminishes other expressions of self-government and should be approved only where compelling need and broad consensus exist. While proponents of preemption may claim expected benefits, these must be balanced against the potential loss of accountability, innovation and responsiveness.

Preemption may be warranted in specific instances when it is clearly based upon provisions of the U S Constitution authorizing such preemption and only when it is clearly shown (1) that the exercise of authority in a particular area by individual states has resulted in widespread and

serious conflicts imposing a severe burden on national economic activity or other national goals; (2) that solving the problem is not merely desirable, but necessary to achieve a compelling national objective; and (3) that preemption of state laws is the only reasonable means of correcting the problem.

Similarly, congressional expansion of criminal jurisdiction, while not specifically preempting state laws, diminishes the role of state legislatures by permitting federal and state prosecutors to exercise a greater role in determining maximum penalties based upon whether state or federal law should be the basis for charges. Federalizing state criminal offenses should be avoided because of the damage to federalism and the sweeping impact on the federal courts. Specific crimes that have complex international or interstate implications may be appropriate for federal action if a systemic failure makes state action impossible or ineffective. Inadequacy of state resources is not sufficient reason for federal takeover of criminal jurisdiction.

Strengthening Political Safeguards

The federalism principles of accountability, innovation, responsiveness and the preservation of individual liberty guide many NCSL policies. Within this policy there are many actions that Congress should take that specifically improve the political safeguards of federalism. Among the specific actions that NCSL calls upon the federal government to undertake are the following:

Strengthen Fiscal Impact Requirements

In order to reestablish the nexus between taxing and spending policy decisions, every member of Congress should be informed of the cost to their state of federal mandates before being asked to authorize them. This refinement of the State and Local Government Cost Estimate Act, (Pub.L. 97-108), would facilitate meaningful consideration of costs proposed for state action and make members of Congress more accountable. The analysis should serve as a caution by examining the reverberations of the decision in other areas of policy. Similarly, agencies of the federal government should comply faithfully with the Executive Order on Federalism, (E.O. 12612), to comprehend the impact of proposed regulations on state policy.

Avoid Unfunded and Underfunded Mandates

Among the distortions caused by the excessive power of the national government is the separation of decisions to tax from decisions to spend. The intractable federal deficit constricts federal spending and increases reliance on mandates or grant conditions to accomplish goals set by Congress. The federal temptation to mandate should be curtailed by requiring full federal appropriations before penalties to states contained in authorized programs take effect and to require clear regulatory guidance before states become subject to penalties. Also, federal resources should be adequate to offer meaningful encouragement to state efforts and at a minimum to provide technical assistance and sufficient oversight. Connecting federal fiscal consequences to grant programs is essential to fostering accountable federal policy. Congress should not abdicate responsibility for administrative oversight of grant conditions to the federal courts by relying on beneficiaries to enforce federal grant requirements through lawsuits. In the event the courts are to be relied upon for enforcement, then the federal government should waive its sovereign immunity and become subject to suit for failures in administration of programs. This policy does not relate to access to federal courts for enforcement of constitutional rights.

Limit Regulating by Grant Conditions

The power of the national government to spend for the general welfare is not an unlimited right to regulate state action; however, in South Dakota v. Dole, (1987) the Supreme Court left the limit on congressional authority undefined. Congress continues to regulate states through conditions on grants. In order to define the limits of congressional power under the Spending Clause, federal law should require that the Spending Clause be narrowly construed. The law should prohibit conditions on grants made to the states beyond such conditions that are necessary to specify the purpose of the expenditure, except where the conditions, such as those relating to civil and individual rights, may fulfill powers expressly delegated to Congress by the Constitution. Existing grants should not automatically become subject to new conditions.

Protect State Sovereign Immunity

Having heard state pleas to avoid curtailing funding for failure to comply with new federal policies, some in Congress have adopted the abrogation of state sovereign immunity as a means of forcing state action. In Atascadero State Hospital v. Scanlon, (1985), the Supreme Court held

that abrogations of state sovereign immunity by Congress can be accomplished only by language in the statute that is unmistakably clear in its intent. Congress has not hesitated to propose new areas in which to make states liable. Such means of forcing compliance with federal mandates should be rejected. In the event they are seen as the only means of assuring compliance, then the federal government must open itself to suit as well, in order to insure full consideration of the risks during the legislative process. Normally, equitable and injunctive remedies are sufficient safeguards for insuring compliance with the law.

Defer to State Separation of Powers

Federal grants to states can achieve national goals without disrupting state laws and procedures. Therefore, federal legislation should respect the role of the legislature and not create an unnecessary preference for state executive decision-making. Although the executive may be called upon to administer grant programs, state legislatures should retain authority to appropriate state funds, to designate implementing agencies, and to review state plans and applications for assistance. State court systems also should not be commandeered to implement federal policies; in the event federal actions will result in an increased burden on state courts, then the federal government should also provide funds to implement action by the courts.

Protect State Tax Systems

A major factor in maintaining a vital federalism is the ability of the states to shape their tax systems to meet growing demands and to respond to change. The loss of deductibility of state and local sales taxes and the loss of protections for tax exempt financing exemplify congressional erosion of state fiscal autonomy and should be redressed. The Supreme Court has similarly reduced protections for the states by holding that intergovernmental tax immunity is not protected by the Constitution. Because the power to tax is the power to govern, the President, Congress and the Supreme Court should defer to responsible state fiscal policy in order for states to be their full constitutional partners

Notify States of Intent to Preempt

To encourage the exchange of information and opinions among national and state legislators, Congress should provide reasonable notice to state legislative leaders and governors of

any congressional intent to preempt and provide them with opportunity for formal and informal comment prior to enactment. By requiring that Congress openly address attempts to preempt, constitutional protections for states are further safeguarded.

Examine Preemption Impact

To insure that the national legislature knows the effect of its decisions on other levels of government, members of Congress should be informed of which of their state's laws would be preempted by federal legislation before they are required to vote on the preemptive legislation. Congress should develop other means to explore more thoroughly the federalism implications of proposed bills. Congress should refer bills that affect state powers and administration to intergovernmental subcommittees.

Avoid Regulatory Preemption

States should not be undercut through the regulatory process, because by judicial decision states are limited to reliance upon the political safeguards of federalism to maintain power within the federal system. Any agency intending to preempt state laws and rules should have explicit and specific authorization from Congress. The Executive Order on Federalism (E.O. 12612) provides guidance for agency examination of intergovernmental impact and should be codified and enforced. Circumvention of rulemaking procedures through interim final rulemaking and the like, should be prohibited. A joint congressional committee should review regulations.

Appointment of Jurists

In the process of selecting nominees to the federal courts, the President and the Senate should -- among other considerations -- be mindful of the vital role federalism plays within our constitutional framework.

Improve Intergovernmental Communications

Members of Congress should expand formal and informal communications with their state legislatures in order to defend federal legislation that diminishes state powers and to explore less intrusive means of achieving national goals.

NCSL endorses periodic examination by Congress of the state of American federalism in light of Supreme Court decisions challenging the substantive effect of the Tenth Amendment. In

exploring the dimensions of the current intergovernmental crisis, Congress should consider the need for statutory and constitutional remedies. Together, we should revive appreciation for the principle that sharing power between levels of government enhances America's ability to develop responsive policy in a changing world.

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S 1629 IS

104th CONGRESS

2d Session

To protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 20, 1996

Mr. STEVENS (for himself, Mr. DOLE, Mr. ABRAHAM, Mr. BENNETT, Mr. BROWN, Mr. COATS, Mr. COCHRAN, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. FAIRCLOTH, Mr. GRAMS, Mr. GREGG, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. KEMPTHORNE, Mr. KYL, Mr. NICKLES, Mr. SIMPSON, Mr. SMITH, and Mr. THOMPSON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE.

This act may be referred to as the 'Tenth Amendment Enforcement Act of 1996'.

SEC. 2. FINDINGS.

The Congress finds that--

(a) in most areas of governmental concern, State governments possess both the Constitutional authority and the competence to discern the needs and the desires of the People and to govern accordingly;

(b) Federal laws and agency regulations, which have interfered with State powers in areas of State jurisdiction, should be restricted to powers delegated to the Federal Government by the Constitution;

(c) the framers of the Constitution intended to bestow upon the Federal Government only limited authority over the States and the

People;

(d) under the Tenth Amendment to the Constitution, 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

(e) the courts, which have in general construed the Tenth Amendment not to restrain the Federal Government's power to act in areas of state jurisdiction, should be directed to strictly construe Federal laws and regulations which interfere with State powers with a presumption in favor of State authority and against Federal preemption.

SEC. 3. CONGRESSIONAL DECLARATION.

(a) On or after January 1, 1997, any statute enacted by Congress shall include a declaration--

(1) that authority to govern in the area addressed by the statute is delegated to Congress by the Constitution, including a citation to the specific Constitutional authority relied upon;

(2) that Congress specifically finds that it has a greater degree of competence than the States to govern in the area addressed by the statute; and

(3) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically intends to interfere with State powers or preempt State or local government law, regulation, or ordinance, and that such preemption is necessary.

(b) Congress must make specific factual findings in support of the declarations described in this section.

SEC. 4. POINT OF ORDER.

(a) IN GENERAL-

(1) INFORMATION REQUIRED- It shall not be in order in either the Senate or House of Representatives to consider any bill, joint resolution, or amendment that does not include a declaration of Congressional intent as required under section 3.

(2) SUPERMAJORITY REQUIRED- The requirements of this subsection may be waived or suspended in the Senate or House of Representatives only by the affirmative vote of three-fifths of the Members of that House duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate or House of Representatives

duly chosen and sworn shall be required to sustain an appeal of the ruling of the chair on a point of order raised under this subsection.

(b) RULE MAKING- This section is enacted--

(1) as an exercise of the rule-making power of the Senate and House of Representatives, and as such, it is deemed a part of the rules of the Senate and House of Representatives, but is

applicable only with respect to the matters described in sections 3 and 4 and supersedes other rules of the Senate or House of Representatives only to the extent that such sections are inconsistent with such rules; and

(2) with full recognition of the Constitutional right of the Senate or House of Representatives to change such rules at any time, in the same manner as in the case of any rule of the Senate or House of Representatives.

SEC. 5. EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL- Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

'SEC. 560. PREEMPTION OF STATE LAW.

'(a) No executive department or agency or independent agency shall construe any statutory authorization to issue regulations as authorizing preemption of State law or local ordinance by rule-making or other agency action unless--

'(1) the statute expressly authorizes issuance of preemptive regulations; and

'(2) the executive department, agency or independent agency concludes that the exercise of State power directly conflicts with the exercise of Federal power under the Federal statute, such that the State statutes and the Federal rule promulgated under the Federal statute cannot be reconciled or consistently stand together.

'(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated and shall explicitly describe the scope of preemption.

'(c) When an executive branch department or agency or independent agency proposes to act through rule-making or other agency action to preempt State law, the department or agency shall provide all affected States notice and an opportunity for comment by duly elected or appointed State and local government officials or their designated representatives in the proceedings.

'(1) The notice of proposed rule-making must be forwarded to the Governor, the Attorney General and the presiding officer of each chamber of the Legislature of each State setting forth the extent and purpose of the preemption. In the table of contents of each Federal Register, there shall be a separate list of preemptive regulations contained within that Register.

'(d) Unless a final executive department or agency or independent agency rule or regulation contains an explicit provision declaring the Federal Government's intent to preempt State or local government powers and an explicit description of the extent and purpose of that preemption, the rule or regulation shall not be

construed to preempt any State or local government law, ordinance or regulation.

'(e) Each executive department or agency or independent agency shall publish in the Federal Register a plan for periodic review of the rules and regulations issued by the department or agency that preempt, in whole or in part, State or local government powers. This plan may be amended by the department or agency at any time by publishing a revision in the Federal Register.

'(1) The purpose of this review shall be to determine whether and to what extent such rules are to continue without change, consistent with the stated objectives of the applicable statutes, or are to be altered or repealed to minimize the effect of the rules on State or local government powers.'.

(b) Any Federal rule or regulation promulgated after January 1, 1997, that is promulgated in a manner inconsistent with this section shall not be binding on any State or local government, and shall not preempt any State or local government law, ordinance, or regulation.

(c) CONFORMING AMENDMENT- The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

'560. Preemption of State Law.'.

SEC. 6. CONSTRUCTION.

(a) No statute, or rule promulgated under such statute, enacted after the date of enactment of this Act, shall be construed by courts or other adjudicative entities to preempt, in whole or in part, any State or local government law, ordinance or regulation unless the statute, or rule promulgated under such statute, contains an explicit declaration of intent to preempt, or unless there is a direct conflict between such statute and a State or local government law, ordinance, or regulation, such that the two cannot be reconciled or consistently stand together.

(b) Notwithstanding any other provisions of law, any ambiguities in this Act, or in any other law of the United States, shall be construed in favor of preserving the authority of the States and the People.

(c) If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

Note: This is the original bill packet for HJR 20 —

It was subsequently stripped in the Senate State Affairs Committee on May 2, 1996 with a completely new title & contents inserted in its place.

Ann Ringstad
Senate State Affairs
Committee
5/13/96

FISCAL NOTE

No. 2

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: HJR 20
(H) Publish Date: 2/1/95

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. Nunes, Director
Division: Division of Administrative Services
Phone: 465-3876
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

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 1
Bill Version: HJR 20
(H) Publish Date: 2/1/95

Revision Date:
Department Affected: Legislative Affairs Agency
Title: Relating to unfunded federal mandates and the Conference of the States.
BRU: Legislative Council
Sponsor: Representative Barnes
Component: Council and Subcommittees
Requestor: Representative Barnes

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, CMB, Gov., & Impacted Agency(ies).

Status Report on 3-9-95 -- 9:00 a.m.

■ 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: (12 states)
Colorado Senate
Georgia House
Indiana Senate
Minnesota House
Montana Senate
New Jersey Senate
New York Senate
North Dakota House
Oregon Senate
Pennsylvania Senate
Tennessee House
Texas Senate

■ States that have introduced the resolution in at least one chamber: (20 states)
Alaska House
California Senate
Florida House
Hawaii House
Illinois House
Kansas Senate
Maryland House and Senate
Michigan Senate
Mississippi Senate
Nebraska Unicameral
Nevada Assembly
New Hampshire House
New Mexico Senate
North Carolina House
Rhode Island House
North Carolina House
Rhode Island House
South Carolina House
Vermont
Washington House
West Virginia House and Senate
Wisconsin Senate

■ States where introduction is pending (five states)
• Alabama
• Louisiana
Maine
Massachusetts
Connecticut -- previously reported as introduced in at least one chamber.

These legislatures have not convened as of 3-1-95.
• Alabama convenes 4/18/95
• Louisiana convenes 3/27/95

• States were the resolution has been defeated (1)
Oklahoma

TOTAL P.02

STATUS OF RESOLUTION
NATIONWIDE

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."

— RELATED ARTICLES AND NEWS RELEASES —
OPPOSED

General Assembly
State of Colorado
Denver

FOR IMMEDIATE RELEASE
MARCH 16, 1995

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DUKE RESPONDS TO CONSTITUTIONAL CHANGES

Denver---Recent attempts to amend the U.S. Constitution have sparked fierce opposition from State Senator Charles Duke, R-Monument.

A metro area newspaper yesterday printed a story regarding the zeal of many officials to amend the U.S. Constitution. According to the article, members of Congress would amend the Constitution to "alter economic policy, institute new social rules and transform American behavior."

Senator Duke, an avid defender of the Constitution, responded, "I'm deeply disturbed that members of Congress, particularly Republicans, are leading the charge to change a document that our nation has held sacred for more than 200 years. They are clearly out of touch with grassroots America and I will not stand idly by while the interests of my constituents and the people of this nation are thrown by the wayside."

"I wholeheartedly agree with Senator Hank Brown when he says that things have gone seriously awry in the country, but the answer is not changing the Constitution, rather we should uphold it. The ills that plague this country come, in many cases, from federal and state statutory laws that are in direct conflict with the U.S. Constitution. If we want to solve the problems of this nation, we must start repealing those destructive statutory laws and preserve the sanctity of our Constitution."

"Every member of Congress swore an oath to uphold the Constitution of the United States. They must adhere to their pledge and refrain from amending the Constitution. In yesterday's article, a Notre Dame professor and former Justice Department official said Congress cannot control their appetite to spend money so they will try to control their appetite by writing a balanced budget amendment to the Constitution. I submit to you that if Congress is addicted to spending, then Congress should seek treatment and rehabilitation as other addicts do, not write amendments to alter the Constitution."

-MORE-

2-2-2

"Congress is trying to cover themselves for past misdeeds by reforming the Constitution and that is wrong, " Duke continued.

Senator Duke has traveled across the country speaking to thousands of Americans about the value and significance of the Constitution. He has pledged to continue the fight to uphold the Constitution of the United States.

Attached please find a copy of SR 82 by the 104th Congress and a response by Senator Duke.

Information from Ruth Ewig

PHYLLIS SCHLAFLY
PRESIDENT

March 1995

EAGLE FORUM *Leading The Pro-Family Movement Since 1972*

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Beware of the Conference of the States

The Conference of the States (COS), which is called "an action plan to restore balance in the federal system," is moving rapidly through State Legislatures. On the surface, this proposal looks like just a plan to support states' rights within our federal system. However, statements made by its chief sponsor, Governor Mike Leavitt of Utah, indicate that COS may take us down an uncharted road to a Constitutional Convention and/or basic structural changes in our form of government.

Similar resolutions introduced in most State Legislatures call for holding a national Conference at which each state would be represented by a bipartisan delegation consisting of the Governor and four or more state legislators. The Conference of the States is expected to be convened in Independence Hall in Philadelphia in October 1995, after 26 states have passed the COS legislation.

According to the COS proposal, "The product of the Conference of States is a document, a new instrument in American democracy called a 'States' Petition' [which] constitutes the highest form of communication between the States and Congress." After the States' Petition is passed by COS, it will be carried by the delegates back to their respective state legislatures for approval, after which the States' Petition will be presented to Congress. The COS proposal proudly proclaims: "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."

The December 20, 1994 Concept Paper states that the agenda of the COS Conference will be "basic, structural change" and "fundamental reform." COS literature repeatedly uses such rhetoric as "broad, fundamental, structural, long-term reforms." What "structures" and "fundamentals" of our government would be targeted for change? COS literature does not answer this question, but calling a conference to consider such changes would be a prescription for plenty of mischief.

COS literature does call for what it describes as "process amendments," which would allow the states to make constitutional changes. For example, COS wants to make it easier to amend the U.S. Constitution by changing Article V so that three-fourths of state legislatures could propose an amendment to the Constitution that would become valid unless, within two years, the U.S. Congress rejected the amendment by a two-thirds vote in both Houses.

If Article V were so amended, a new amendment could then quietly move through 38 states

before the American people were even aware it was happening — just as legislation authorizing the Conference of the States is now rapidly moving through State Legislatures without any national publicity.

The proponents of COS and of changes in Article V assert that Article V has proven unworkable because it has never resulted in the calling of a Constitutional Convention. On the contrary, Article V works splendidly. The U.S. Constitution has been amended 27 times. Proposed constitutional amendments failed when they did not enjoy a national consensus. The reason why an Article V Constitutional Convention has never been called is that the American people don't want one called, and have demanded that their state legislators vote NO on resolutions to call a Con Con. The advocates of calling a Constitutional Convention have suffered defeats in state after state, from New Jersey to Montana, for the last 12 years.

The May 17, 1994 version of Governor Leavitt's COS position statement outlines the next step: a Constitutional Convention. "If Congress refused to consider or pass the [constitutional] amendments, the states would have the option themselves of calling a Constitutional Convention to consider the amendments. Supporters of this [COS] 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 United States Constitution, the most successful constitution ever written, has served us well for more than two centuries. We don't need a new one. The best constitutional experts in the country have warned that, if a Constitutional Convention were called, it would take on a life of its own and be media-dominated. It could adopt a wide-open agenda that would result in fundamental changes in our form of government. The right to keep and bear arms is only one of our American freedoms that would be in jeopardy.

The COS Concept Paper dated December 20, 1994 was adopted by the Council of State Governments, the National Governors' Association, and the National Conference of State Legislatures. COS is also endorsed by the American Legislative Exchange Council (ALEC), which is one of the principal promoters of calling a Constitutional Convention.

The Conference of the States should not be confused with the Tenth Amendment movement, which has nothing to do with a Constitutional Convention. The Tenth Amendment resolutions and implementing legislation are a good alternative for those who seek to reassert states' rights.

Colorado State Senator Charles R. Duke, the author of the Tenth Amendment legislation, says: "Our present Constitution gives us all the rights we need for states to reclaim their sovereignty. There is no need for a new Constitution. Calling a Conference of the States is a constitutionally dangerous act to take. A meeting of states, fully sanctioned by state legislatures, has the power to turn such a conference into a Constitutional Convention by resolution. It would mean the death of our present Constitution."

All who care about preserving our great United States Constitution should call their State Legislators and ask them to vote NO on any COS resolution.

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

Con-Con Call

Beware Mike Leavitt's "Conference of the States"

Kristen 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 Mel 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 present 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 *Conference of the States*.
>
> [2.] **In each state legislature, a Resolution** of Participation in

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.

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."

> ***"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."***

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 mod-

estly 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.

Documont 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).

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 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 ernors — think they can fill the sea Washington, Madison, or Hamilt Independence Hall in Philadelphia

Paragraph 6 is pure fluff. There need for a formal ceremony to pr ratified amendments to Congres long-established rule holds tha amendment goes into effect on the it is ratified by the legislature of the necessary state. Two-hundred and delegates need not appear in Wash ton and cower before Congress to o its acceptance of constitutional am ments that originate through the solidated force of the states.

Considerable ingenuity has into selling this affair to states. Those who want s tural change in our system have tioned themselves so that they appe be rallying around the banner of Tenth Amendment. A virtual explo of articles, editorials, and voice praise of the Tenth Amendment emanated from every clime and e persuasion. Establishment writers George Will to David Broder hav dressed the subject like tried and "conservatives." Even President Cli has joined in with the Tenth Am ment chorus.

Either by seizing the moment creating it, the Conference promo have obtained an all-American lau ing pad for their upcoming extr ganza. To many Western leaders Tenth Amendment means getting federal government out of their pa and off their backs, as well it sh But in the East and North, where fare-state programs abound, the T Amendment is often used as an argu for having the federal government for its unconstitutional mandates. I South it often means the restoratio states' rights. Such multi-purpose ings of the Tenth Amendment are t tated by repetitious reference patently false notion that "imbalan the state-federal relationship is a nal illness that afflicts our nation

Restoring "Balance"

At a recent meeting of the Coun State Governments, Governor Leavitt declared:

> Balance will only be restored the way intended by Madison. It

ferson, 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.

Comparing the Conventions

The following state-by-state comparison of state-originated initiatives 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 super-majority of the states.	• Amendment ratification by three-fourths of the states.

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 [illegible] state leaders, the Conference organizers really don't want to assume any of the *proper* functions of the federal system.

Born of Wisdom: The Crafti

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 [illegible]

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, the 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 his 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 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 question and doubt concerning its precise nature and limits, may require the correspondent legislation of other parts of the federal System." They therefore recommended a meeting of the states that would 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 cre

After hearing the Annapolis Convention, the Continental Congress proposed that a Convention of delegates who shall have been appointed by the several states be held in 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 19, 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, 3

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 state-

g of Our Beloved Constitution

d government of law, not of men.

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 it be 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.

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 by the people. 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 a 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 founding principles, the federal government has been able to assume vast power 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 continues brightly, America will have a safe port to return to — and return she will, just as soon as sufficient number 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

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 out children over to the fed? 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 . . . 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. ■

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February 6, 1995

OPINION LETTER RE: CONFERENCE OF THE STATES

To: HONORABLE MEMBERS OF THE COLORADO SENATE & HOUSE OF REPRESENTATIVES

I have been requested by certain Members of both the Senate and House to prepare an opinion letter regarding The Conference of the States and Senate Joint Resolution 95-9.

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 bicameral 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.

---

[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 consututional 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 Colorado's participation in any Conference of the States shall in no way be interpreted or construed to be consent by the State of Colorado 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 Colorado'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 Colorado legislator I would vote for the First Recommendation and not for SJR 95-9.

Dated: February 6, 1995.

Respectfully submitted,

LAW OFFICES OF PETER D. LEPISCOPO

By: 

Pete Lepiscopo

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March 17, 1995

Senator Bert Sharp
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Bert,

You will receive shortly a copy of the New American magazine article "Con-Con Call".

You should carefully consider any information relating to Con-Con Calls and Conference of the States. This information is crucial to Alaska, to America, and to HJR20 on which you are about to vote.

The momentum and force behind the Conference of the States has propelled this issue through ten states with hardly a ripple of opposition.

Who could possibly oppose a consolidation of the collective power of the states to "restore the political balance between the federal government and the states"? The way for passage has been so carefully prepared that presumably, no responsible official could refuse to vote for it; and most certainly, it would be an insult actually to challenge any of its resolves.

Have the Conference promoters been successful? Look at the score!

On January 16, Utah became the first, passing the bill in both chambers on the same day with no hearings and only one dissenting vote. Arkansas was second, passing the measure on January 18 without the benefit of hearings. The bill breezed through the Virginia Senate by voice vote and was passed by the House 97-0 on January 20. The Delaware bill was passed in both chambers without any hearings on January 26. The next day Kentucky passed the resolution without any hearings being held.

February 2 was a big triple header for somebody. For whom? Who is accomplishing this unbelievable political feat? Who provides the money and the leadership to bring this about?

In Idaho the Senate passed the bill 33-0 and the House passed it by voice vote; in Missouri both the House and Senate cleared the measure by voice votes without having held hearings; and in Iowa the measure was passed by voice vote -- you guessed it, without the benefit of any hearings.

In Ohio the bill was passed by the senate 30-0 and was cleared by the House 95-2 after a hasty hearing on February 7. Subsequently, Arkansas became the tenth state to steamroll the resolution through.

As I write, and you read, this legislation has been introduced in 41 states: ten states have already passed it through both houses and another ten states have gotten it through one house.

Looking at the preceding bare figures tells us that there are many elected Senators and Representatives not doing the job they promised to do and which they are responsible to do if they honestly represent the people who elected them.

Let us in Alaska not become a part of this sorry picture of irresponsibility. Let us instead hold meaningful hearings on this bill and determine with certainty whether or not it is an incipient Con-Con bill. If it is a potential Con-Con being deceptively represented as something else, it must be killed DEAD.

Very truly yours,

C. R. Lewis

P.S.

In the Colorado Senate, there was an attempt to assuage the opposition with an amendment asserting that this is not a call for a constitutional convention.

There is absolutely no security in any such amendment because the Conference of the States would function outside the bounds of constitutional limitations, and would have no enforceable boundaries holding it to the terms of Article V. Please do not be fooled by any words that may be added to the Resolution of Participation. It is the resolution itself that certifies the delegates, that represents the danger. It must be defeated!

THOMAS N. SCARBOROUGH
1676 TAROKA DRIVE
FAIRBANKS, ALASKA 99709
(907) 479-3412

March 14, 1995

Senator Bert Sharp
State Capitol - Room 514
Juneau, Alaska 99801-1182

Re: CSHJR 20, Conference of the States

Dear Bert:

ON 3/9/95 CSHJR 20 was referred to State Affairs which you Chair. Enclosed are copies of correspondence I have sent to Representatives Barns and Odan.

You will quickly note that I am opposed to a Conference of States. I do not believe it is in the best interests of Alaska to participate in such a Conference. The original purpose still exists although it is now being hidden.

Also enclosed is notice of a conference to be held in Denver by Citizens for the Constitution. Came in on FAX last night. We need to get copy of agenda. This may be a much better forum to discuss how to return us to Constitutional government.

Thank you for your efforts on SB 77.

Keep up the good work.

Sincerely,

Thomas N. Scarborough

cc: Conservative Action PAC File

J. Howard Benson
PO Box 60731
Fairbanks, AK 99706
(907) 479-7655
March 14, 1995

Sen. Bert Sharp
State Capitol
Juneau, AK

Dear Sen. Sharp,

I urge you to oppose HJR20 concerning federal mandates and the conference of states. While it is generally agreed that the federal government has usurped state's rights in violation of the spirit of the tenth amendment, I believe that a conference of states may be dangerous to our liberty. Regardless of any assurances made, the conference of states may meet the requirements for a Constitutional Convention. Remember that the delegates to the convention of 1787 were sent for the purpose of amending the Articles of Confederation. This proposed meeting may also decide to go beyond its original purpose!

I urge you to continue the fight for state's rights using the considerable power of the Senate through the legislative process.

Please protect the U. S. Constitution - oppose HJR20.

Sincerely,

J. Howard Benson

JACKSON CONSTRUCTION
241 Aspen
SOLDOTNA, ALASKA 99669
PHONE 262-4485

I respectfully ask you do all you can to defe[illegible] movement or bill calling for a "CONFERENCE of THE STATES"

I believe this to be a subversive effort to amend the constitution.

The constitution of the United States is not flawed or in need of any changes.

All that is needed for a balanced budget is for o[illegible] elected representatives to confine spending appropriation to those provided for in the constitution as it is written.

The enclosed clipping is but one of thousands of examples of government run amuck, clearly illustrating the absurd and obscene actions leading to national bankruptcy as well causing a gut wrenching distrust for all government in general.

As the article points out, the estimated 82 billion annual cost for this theft is not including the associated tax breaks that most likely are of the same magnitude if not more.

It would not take a brain surgeon to figure out that eliminating only three or four similar programs would suffice to ballance the budget.

Respectfully I am,

Harold A Jackson 3/14/95

Harold A Jackson

The UN is NOT your friend!

To: State Senator Bert Sharp
State Affairs Committee
State Capitol
Juneau, Ak.99801-1182

From: Gene S. Harding
PO Box 871454
Wasilla, Ak.99687

SENATOR SHARP

I would like you to **VOTE NO** to HJR 20 the authorization for forming and sending delegates to **The Conference of States** being sponsored by Governor Lovett's organization the **Council of States** and funded by the Carnegie and Rockfeller foundations. What I am saying the House Resolution may seem innocent and non-binding, but the potential could turn into a **CONSTITUTIONAL CONVENTION** with the idea of amending or a whole new Constitution. I would like to refer you to Peter Episcopal (619)299-8343 whom has conducted a constitutional study on this and to the organization SpeakOut America (810)887-4919. Representatives of SpeakOut America had spoken at a hearing before the Judicial Committee of the Michigan Senate and they were successful on having the resolution defeated. I understand Governor Lovett of Utah is coming to Juneau to give testimony for passage of HJR 20. I would like to recommend you only allow 3 minutes of testimony that is restricted to the Alaskan public on this issue. Or if it is some reason that Governor Lovett has some special accommodation, then I request that you balance the his testimony with another expert on this resolution. I would like you through teleconference contact State Senator **CHARLES R. DUKE** of the State of Colorado home #(719)481-9269 or the Capitol #(303)866-4866; the first and original author of the 10th amendment resolution like our **SJR 7**. In closing Senator if this could not be or become a CONSTITUTION CONVENTION, I have one question? How is it that Senator Hank Brown of R-Colorado and co-sponsored by Senator Jesse A. Helms of R-North Carolina has submitted **SR 82** authorizing the **CONFERENCE OF STATES** vote on the and to submit to CONGRESS **THE BALANCE OF BUD AMENDMENT** under Article V of the U.S. Constitution? To me this a direct link to a constitutional convention. Thank you for taking time reading this letter.

Gene S. Harding

Please Please Please do this:

STOP.... HJR-20 !!

PLEASE READ ~~ATTACHED~~ -

I have YPULGED Council of States Govenors History Packet.

Don't let ~~this~~ out of Committee w/o checking. All ASPECTS.

Thank You very much.

Lucille Clark

277-0413

FAX 277-2646

SHARP 465-2070

PAIH IP.S 465-4949

LEMAN 465-3810

DUNCAN 465-4746

DONLEY 465-6395

3-18-95

Dear Bert -

Please review the info on the COS that is mandating every state legislature I am opposed to passage of this Realistish and hope you will see fit to let it die in Committee.

Thanks -

Joy Cook

CHARLES DUKE
State Senator
1711 Woodmoor Drive
Monument, Colorado 80132-9002
Home: (719) 481-9289
Home FAX: (719) 488-3993
Capitol: (303) 866-4866

COMMITTEES:
Vice-Chairman of:
Education
Member of:
State, Veterans, and
Military Affairs
Transportation

Senate Chamber
State of Colorado
Denver

February 4, 1995

To Whom It May Concern:

The Tenth Amendment Resolution was sponsored by me in Colorado to enable our state to take a strong stand against the unconstitutional behavior of the Environmental Protection Agency. Since then, it has taken on a new proportion as other states adopt a similar resolution.

Our present Constitution gives us all the rights we need for states to reclaim their sovereignty. There is no need for a new Constitution. There are those, however, who wish to embrace the Tenth Amendment Movement in order to call for a Conference of States (COS). This is a constitutionally dangerous act to take. A meeting of states, fully sanctioned by state legislatures, has the power to turn such a conference into a Constitutional Convention by resolution. It would mean the death of our present Constitution.

For these reasons, I am opposed to the Conference of States proposal. Although there are many ways to prevent the COS from becoming a Constitutional Convention, I have not found the leadership of the COS to be willing to take even the smallest step in that direction. There will be amendments to the resolution for the COS in some states in an attempt to preclude the COS delegates from allowing the COS to become a Constitutional Convention. These amendments will not work, however, since the COS delegates, once assembled, are in fact considered to be representatives of the people, not the legislatures. There are many court rulings to support the contention that they may, therefore, disobey or ignore any prior instructions. Please do what you can to prevent your state's participation in the COS. It is but one more step that would ultimately mean the end of our present very precious Constitution.

Sincerely,

Charles R. Duke

Charles R. Duke

CHARLES DUKE
State Senator
1711 Woodmoor Drive
Monument, Colorado 80132-9002
Home: (719) 481-9239
Home FAX: (719) 488-2992
Capitol: (303) 866-4866

COMMITTEES:
Vice-Chairman of:
Education
Member of:
State, Veterans, and
Military Affairs
Transportation

Senate Chamber
State of Colorado
Denver

March 15, 1995

TO CITIZENS OF THE AMERICAN REPUBLIC

For some time now, we who oppose the Conference of the States (COS) have done so on the basis that this COS is no ordinary national conference. Rather, we believe it is a precursor to a Constitutional Convention (Con-Con). We further believe a Con-Con at this time of dramatic change in our country is ill-advised and would effectively destroy many constitutional principles we find virtually sacred.

The proponents of the COS have steadfastly insisted a Con-Con is not their intention. However, there are many warning signals that would indicate otherwise. Previous writings by Utah Governor Michael Leavitt describe our federal government as "out-dated and old-fashioned" and "not suited to the fast-paced, high-tech, global marketplace we are entering". The various state resolutions being requested of the states specify that the bylaws of the COS will be "confined" to "fundamental, structural, long-term reforms" in government. We do not believe it is possible to explore these ideas without coming dangerously close to a Con-Con.

In addition, Article 1, Section 10 of our United States Constitution states, "No State shall, without the consent of Congress, . . . enter into any Agreement or Compact with another State . . ." From this, it is clear the COS and the States' Petition, which is the stated goal of the COS, do represent an agreement or compact with other states, and as such are in direct violation of the Constitution barring consent of Congress.

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

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

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

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

THE TIME IS SHORT -- THE NEED IS GREAT!

Sincerely,

Charles R. Duke

Charles R. Duke

CD:hh

National State Sovereignty Coalition

State of Wisconsin

"Of, By and For the People"

Constitution — Laws & Justice

"The punishment of wise men who refuse to take part in the affairs of government is to live under the government of unwise men" — Plato

Leonard & Charlotte Rowe
1707 Morningside Drive, Apt. 106
Janesville, Wisconsin 53546-1216

Phone 608-755-1780
FAX 608-755-1789
Mobil 608-751-2135

April 5, 1995

Alaska Senate State Affairs Committee
Senator Bert Sharp, Chairman

Dear Senator,

Is this the Hidden Agenda of the Conference of States? A few years back there were two bills introduced before the Congress of the United States. The first was House Concurrent Resolution 28, the other was Senate Bill 22, calling for a Constitutional Convention to be held in Philadelphia to introduce the New States Constitution. For you who don't know, the New States Constitution does NOT have a Bill of Rights in it. I have a copy of it for all who are interested.

The States created a Federal Government by the first three articles of the Constitution. It is clear that those agencies in government, including the President and Congress and the Supreme Court, are all subject to corrections by the Principle, the States. We have the Constitutional power to do it with out a Conference of States. It is within the authority of the State legislature, to correct the wrong acts of Congress by first defining law and, second, to pass corrective State legislation.

Just remember, Tyranny never marches into a country with a placard on his breast bearing his name. He always approaches the people under the guise of "humanitarianism."

You must pass the 10th Amendment Resolution in your state and REJECT the COS Resolution HJR 10. Remember Murphy's law, "What can go wrong, *will* go wrong." Don't take a gamble on the idea that the COS will not turn into a CON-CON. There are too many documented facts stating this is going to happen.

You have been in politics long enough to know that when the opposition can not refute facts with facts, they resort to name calling and try to associate the opposition with weird, unpopular organizations. This is what the Council of States Government is doing now to get you to believe *their* views. They are calling us (people who believe in the Constitution), the "*Far-Right Movement.*" If being patriotic and believing in the Constitution is far right, so be it. I am proud to be this

American Patriots,

Leonard Rowe

Leonard & Charlotte Rowe

ETERNAL VIGILANCE IS THE PRICE OF OUR FREEDOM !!!

*****Be American, Buy American Before it's, ...Bye America*****

>>>*An informed populous is one the government can't easily fool* <<<

The Florida State University
Tallahassee, Florida 32306-1043

College of Law

March 10, 1995

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

Dear Mr. Thom:

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

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

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

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

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

Sincerely,

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

Nat Stern
Professor of Law

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.

O

R: HJR 20 - 21 ETC.

PLEASE OH PLEASE

KILL THE BILL!

LUCILLE CLARK 1420 W 5TH AVE ANCHORAGE AK

Senator Sharp
Chairman
Senate State Affairs Committee

Senator Sharp,

I am adamantly opposed to HJR 20 which concerns the Conference of States issue. This conference is nothing more than a back-door attempt to hold a Constitutional Convention without the general public's approval or input. The Constitution does not need any alterations. All we need are legislators with the courage to do what is necessary.

I ask you to oppose this nonsense with all your vigor. Alaska must not contribute to this campaign to revoke our God given rights.

Sincerely,

Lee Schooler

9599 Brayton Dr. #432
Anchorage, Alaska 99507
(907) 522-1081

ADDITIONAL LETTERS OF OPPOSITION - HJR 20

APR-06-95 THU 10:19 AM D.E.JOHNSON 907 260 4001 P.01

From:
Lenora Johnson
P.O. Box 2156
Soldotna, AK. 99669
(907) 262-5360 or fax (907) 260-4001

4/6/95
Time: 9:58 a.m.

To: Senate State Affairs Committee

Dear Senate State Affairs Committee,

Please consider this letter as testimony for the 3:30 pm teleconference in Kenai/Soldotna today.

I am very concerned about HJR 20. I would like you to oppose this bill and I would encourage you to really study it before you make your final vote. As I understand this bill, it would destroy our Constitution. I believe it is your duty to protect this wonderful document to the full extent. The only thing we need is to use our 10th Amendment not to have a Conference of States. Let's keep our Constitution intact and oppose anything that would ever dismantle it. Thank you for your time.

Sincerely,
Lenora Johnson

Note:
See Attached sheet from Eagle Forum.

465-2070 Bert Sharpe
465-4979 Randy Phillips
465-3810 Loren Leman
465-4748 Jim Duncan

April 5, 1995

To: Alaska State Senators

Re: HJR 20

As we understand it, if HJR 20 passes the Senate, it is probable/possible, without any guarantee to the contrary, that the proposed Conference of the States could turn into a Constitutional Convention.

In addition, we are advised that our present Constitution already gives us all the rights we need for the States to regain their sovereignty.

If the above scenarios are the case, we do not want the Senate to approve this legislation. It seems an excercise of waste and efforts should be made to regain sovereignty within the means already developed. The recent Balanced Budget Amendment also comes to mind, specifically, why was all that time wasted by legilatures debating, negotiating, voting on an issue that should have never become an issue in the first place. Everybody in the world is required to be financially responsible, our Congress should be too. It is the right thing to do.

There is alot of revamping necessary to get to a more efficient government, time appears to be of the essence, we submit then, don't waste time passing new legislation, use the tools at hand and make it happen.

We look forward to your comments and if we are not correct in our presumptions please advise.

Rich & Linda Johnson
1820 Otter St.
Anch AK 99504

333-5871 fax
338-7500 home phone

AMERICANS FOR AMERICA, INC.

P. O. BOX 59833
POTOMAC, MARYLAND 20859-9833
301-251-5840

"Working Together to Fix America"

April 5, 1995

The Honorable Bert Sharp
Senator, Alaska State Legislature
FAX # 907-465-2070

Dear Senator Sharp,

Enclosed, herein, is some information about the Conference of the States, Inc. (COS). My apologies, if it duplicates material you may already have received.

The decision that your committee makes on the Conference of the States is one that will have lasting effects on all of the States. It is the most significant decision Alaska will make, since joining the Union.

HJR 20 simply is not your run-of-the-mill resolution. There is overwhelming evidence that COS leaders intend it to lead to a Constitutional Convention.

But, why? There is no need to declare States' Rights through such a dangerous procedure. After all--if the Department of Justice had to inform the Clinton Health Care Task Force in March of 1993 of a 1992 Supreme Court ruling that

> "the Tenth Amendment does not permit the Federal Government to 'command...state governments to implement legislation enacted by Congress.'"(DOJ to W. Zelman, HCTF Documents, Nat. Archives, Box 1438.)

then we can rest assured that States are protected under the Tenth. They just need to assert themselves as some States are already doing with "Federal Tax Fund" and "Legal Tax Fund" legislation.

Consequently, we question the real motives behind the Conference of the States, Inc.

Please vote NO to the Conference of the States. Thank you.

Very truly yours,

Linda B. Liotta

Linda B. Liotta
President and Founder

Chairman Sharp,

Please use your powers to defeat the COS in your Committee. Since February only Gov. Ben Nelson's state of Nebraska has said Yes to Con. Only Gov. number opposed has grown to 12. Others are reconsidering. Thanks.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE RUTH BADER GINSBURG

June 24, 1994

4

Like you, I find nothing in the Constitution that would limit what a Convention called to propose Amendments might do.

June is the busiest month at Court, but so far, I am surviving the heavy load.

Enclosing a brochure about the Court and a copy of my graduation speech I gave last year.

All the best to you,

Kik.

Ruth Bader Ginsburg

Enclosures

Supreme Court of the United States
Washington, D.C. 20543

June 22, 1988

CHAMBERS OF
CHIEF JUSTICE BURGER

Dear Phyllis:

I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly replied that such a convention would be a grand waste of time.

I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Our 1787 constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,

Mrs. Phyllis Schlafly
68 Fairmount
Alton, IL 62002

AMERICA WORKS BEST WHEN WE SAY . . . UNION YES

PENNSYLVANIA AFL-CIO

WILLIAM M. GEORGE
President

RICHARD W. BLOOMINGDALE
Secretary-Treasurer

March 7, 1995

TO: ALL MEMBERS OF THE HOUSE INTERGOVERNMENTAL AFFAIRS COMMITTEE

Dear Representative:

RE: Senate Resolution No. 12
Convene a "Conference of the States"
PLEASE OPPOSE

We are writing to request your strong opposition to Senate Resolution No. 12. Senate Resolution No. 12 is a back-door route to re-writing the Constitution of the United States.

The Resolution is full of high sounding phrases, but boiled down to its essence, the Resolution would set in motion a dramatic upheaval of our Republic. The Resolution is aimed at a balanced budget amendment without any protections for Social Security, Military, or Veterans' rights. In addition, the convention would call for doing away with so-called mandates in an indiscriminate fashion.

Although our Republic has been through rough times, we are strong advocates of supporting democracy and the Republic.

Our democracy has numerous ways now to deal with the so-called problems of "mandate" and balancing the Federal and State budget.

This is not the time to set in motion the process of re-writing the Constitution of the United States.

Please vote in support of our Country and the greatest and oldest democracy in the world.

Sincerely,

WILLIAM M. GEORGE, President
RICHARD W. BLOOMINGDALE, Secretary-Treasurer

lss
UFCW-72

PJC

The Pennsylvania Jewish Coalition

204 STATE STREET ☐ HARRISBURG, PA 17101 ☐ tel:(717)233-1110 fax:(717)233-3182

March 7, 1995

Rep. Thomas E. Armstrong
Room 53B, East Wing
Main Capitol Building
Harrisburg, PA 17120

Dear Representative Armstrong:

The House Intergovernmental Affairs Committee, on which you serve, has scheduled consideration of S. Res. 12 for tomorrow, March 8. The Pennsylvania Jewish Coalition urges you to table consideration of this resolution until questions are answered concerning whether it is possible that the "Conference of the States" could turn into a Constitutional Convention, either this year or in future years.

While the PJC does not subscribe to any "conspiracy theory" that this conference is intended to subvert our current government, serious concerns have been raised by credible sources about the resolution and the Conference. Many of these concerns were expressed at the March 2 meeting of the committee by its members. The PJC implores you to resist passing S. Res. 12 until you have all of the facts concerning whether the Conference could make application to the Congress for designation as a Constitutional Convention, pursuant to *Article V* of the U.S. Constitution.

Several Constitutional scholars in Pennsylvania have been asked for their reactions to this resolution, and I think that it is reasonable to delay a vote on the resolution until there are answers to many of the questions raised last week. I would expect that a delay of one week would be sufficient. At a minimum, the PJC requests that any amendment to the resolution specifying restrictions on the Commonwealth's delegates be made a "resolved" clause rather than as a "whereas" clause.

Cordially,

Gary

Gary M. Grobman
Executive Director

COMMITTEES
VETERANS AFFAIRS
CHAIR

AGRICULTURE AND WATER RESOURCES

INSURANCE, CLAIMS AND CORPORATIONS

NATURAL RESOURCES AND WILDLIFE

PUBLIC EMPLOYMENT AND RETIREMENT

RURAL CAUCUS

California State Senate

SENATOR
DON ROGERS
Seventeenth Senatorial District

PLEASE RESPOND TO:

☐ SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CA 95814
916 445 [illegible]

☐ P.O. BOX [illegible]
BARSTOW, CA [illegible]
619 [illegible]

☐ P.O. BOX [illegible]
HESPERIA, CA [illegible]
[illegible]

☐ P.O. BOX [illegible]
PALMDALE, CA [illegible]
805 [illegible]
FAX [illegible]

☐ P.O. BOX [illegible]
RIDGECREST, CA [illegible]
619 [illegible]

March 8, 1995

Mr. Ron Weber
Mr. John Dowless
Roundtable Group
Christian Coalition

Dear Roundtable Members:

As you are aware, an increasing number of state legislatures have passed a "Conference of States" (COS) resolution or the resolution has been introduced and is moving through their state houses.

There is strong concern on my part and others that these COS resolutions have the potential to show that many states support what could lead to a weakening of our United States Constitution. Many of us have been working for several years to prevent the calling of a Constitutional Convention (Con-Con) which most likely would result in radical changes which could destroy our existing Constitution.

The process that would culminate in an event called a Conference of States is as follows:

1. A Resolution of Participation will be filed in each state legislature early in the 1995 session. The resolution authorizes the appointment of a bipartisan, five-person delegation made up of the Governor and four legislators from each state to attend.

2. When only a <u>majority</u> of states have passed the Resolution of Participation (Article V of the Constitution requires two-thirds of the states to call a Convention to amend the Constitution) a legal entity called the Conference of States, Inc. will be formed.

3. The actual Conference of the States is planned to be held in Philadelphia, Pennsylvania. Out of this Conference a "States Petition" could emerge which would then be taken back to the States for approval by each state legislature, after which this "States Petition" will be presented to Congress.

4. If Congress refuses to consider or pass the amendments to the Constitution contained in the "Petition", the states would have the option themselves of calling a Constitutional Convention.

It appears to me that since proponents of a Constitutional Convention have been unsuccessful in getting the required two-thirds (34) of the states to pass a resolution calling for a Constitutional Convention, they are cleverly planning to accomplish the same thing with a simple majority of states, and, thereby circumventing Article V of the U. S. Constitution.

The proponents of COS and a Constitutional Convention claim that Article V of the U. S. Constitution is unworkable. On the contrary, the Constitution has been amended 17 times under Article V. (The first 10 amendments were done in one action.)

The U. S. Constitution has served us well for over 200 years, so we do not need a new Constitution. Through the COS and a "States Petition", a Constitutional Convention could be created merely by a resolution passed by a simple majority of the COS delegates.

Once the Constitutional Convention is begun, there is no way to limit the actions taken and this could mean the death of our present constitution. Then all of our God-given rights as listed in the "Bill of Rights" would immediately be in jeopardy.

If your Roundtable reaches a position of agreement with the foregoing, I respectfully suggest that you have all members of The Christian Coalition contact their state legislators as quickly as possible to register their opposition to the resolution in their state houses calling for a "Resolution of Participation" in the Conference of States.

Sincerely,

Don Rogers

DON ROGERS

DR/abr

P. O. Box 1988
Evergreen, CO 80439
April 3, 1995
(303) 674-4075

TO: Senator Bert Sharp

Please vote "NO" on the Conference of the States! HJR20

There is no doubt that this resolution can be converted into a constitution convention as called for in U.S. Senator Jesse Helms & Hank Brown's Senate RS82.

Please see the cover page I have faxed for the new constitution that has already been prepared for the right time. If you want I will send you a copy of the "New" Constitution.

Please also call State Senator Charles Duke for all the information you need to explain how the COS will turn into a CON-CON. (303) 366-4864

Don't take part in a plan that could dismantle our wonderful Constitution.

Thank you.

Rosemary S. Anderson

Rosemary S. Anderson
member of
Citizens for the constitution

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 Suprome 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.

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 deral 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.

Official Business

COMMITTEES
Natural Resources
Legislative Council

Alaska State Legislature

Office of World trade
And
State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

Anchorage
P.O. Box 103382
Anchorage AK 99510
(907) 337-7737
(907) 258-6163

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 requirement 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.

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.

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.

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.

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.

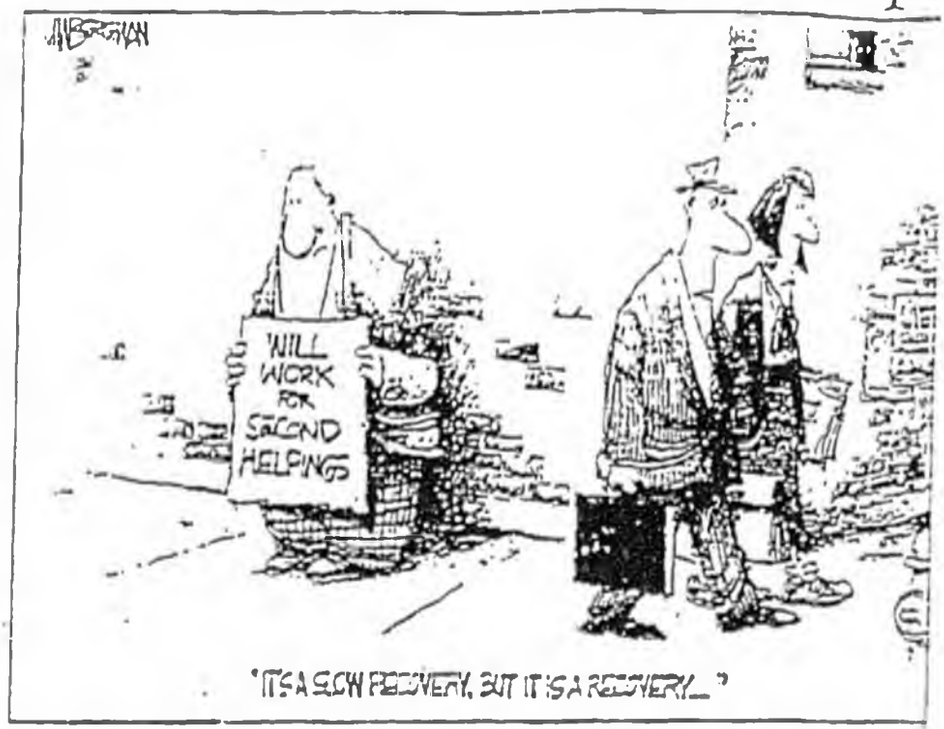
Anyone who has been in government knows that local government is most responsive to the wishes of its constituency. The state government is the next most responsive. The federal government is the least responsive.

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.



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

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

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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.

EXPLANATORY INFORMATION FROM
THE COUNCIL OF STATE GOVERNMENTS
SUPPORT

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

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. □

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