

Who say that:

A CONSTITUTIONAL CONVENTION

- CANNOT BE LIMITED TO A SINGLE ISSUE

* CAN BECOME A RUNAWAY —

PROPOSING CHANGES TO THE MOST
BASIC STRUCTURE OF GOVERNMENT
AND THE BILL OF RIGHTS???

See their own words in the following pages

Two former U. S. Supreme Justices:

Chief Justice Warren Burger

Associate Justice Arthur Goldberg

Retired U. S. District Judge Bruce Van Sickle

Eight Nationally Reputed Professors of Law

Lawrence Tribe, Harvard University Law School
Gerald Gunther, William Cromwell Professor of Law, Stanford University
Professor Neil Cogan, School of Law, Southern Methodist University
Jefferson Fordham, College of Law, Utah State University
Charles Rice, Professor of Law, Notre Dame Law School
Rex Lee, Professor of Law and President of Brigham Young University
Professor Christopher Brown, University of Maryland School of Law
Charles Wright, School of Law, The University of Texas at Austin

*presented by George Detweiler
in support of HJR 38*

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

CHAMBERS OF
CHIEF JUSTICE BURGER
RETIRED

June 22, 1988

Dear Phyllis:

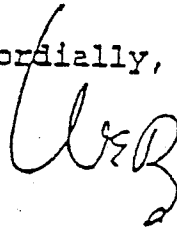
I am glad to respond to your inquiry about a proposed Article V Constitutional Convention. I have been asked questions about this topic many times during my news conferences and at college meetings since I became Chairman of the Commission on the Bicentennial of the U.S. Constitution, and I have repeatedly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

Steer clear of constitutional convention

→ BY ARTHUR J. GOLDBERG

As we look forward to celebrating the bicentennial of the Constitution, a few people have asked, "Why not another constitutional convention?"

I would respond by saying that one of the most serious problems Article V poses is a runaway convention. There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights. Moreover, the absence of any mechanism to ensure representative selection of delegates could put a runaway convention in the hands of single-issue groups whose self-interest may be contrary to our national well-being.

A constitutional convention could lead to sharp confrontations between Congress and the states. For example, Congress may frustrate the states by treating some state convention applications as invalid, or by insisting on particular parliamentary rules for a convention, or by mandating a restricted convention agenda. If a convention did run away, Congress might decline to forward to the states for ratification

In Response

those proposed amendments not within the convention's original mandate.

Ultimately, the courts would be called upon to decide these matters. This raises unprecedented problems. If every disgruntled convention delegate, member of Congress, state legislator or concerned citizen could sue at any time, a convention could mire the federal and state governments in a debilitating web of lawsuits. Could government thus preoccupied with a convention meet the needs of their citizens and the country as a whole?

If the issues are not reviewable by the courts, then the convention would take place outside our system of checks and balances and the dangers of a runaway convention increase. If the convention issues are reviewable, then serious enforcement problems arise.

Proponents for a convention offer assurances that it can be limited to a single issue by saying the state legislatures have called for a convention for the "sole and express purpose" of drafting a specific amendment, particularly the balanced budget amendment.

In response, they should be reminded that the convention of 1787 was called "for the sole and express purpose of revising the Articles of Confederation." As we know, that convention, in these special and unique circumstances, discarded the Articles and drafted the U.S. Constitution,

despite its limited mandate.

History has established that the Philadelphia Convention was a success, but it cannot be denied that it broke every restraint intended to limit its power and agenda. Logic therefore compels one conclusion: Any claim that the Congress could, by statute, limit a convention's agenda is pure speculation, and any attempt at limiting the agenda would almost certainly be unenforceable. It would create a sense of security where none exists, and it would project a false image of unity.

Opposition to a constitutional convention at this point in our history does not indicate a distrust of the American public, but in fact recognizes the potential for mischief. We have all read about the various plans being considered for constitutional change. Could this nation tolerate the simultaneous consideration of a parliamentary system, returning to the gold standard, gun control, ERA, school prayer, abortion vs. right to life and anti-public interest laws?

As individuals, we may well disagree on the merits of particular issues that would likely be proposed as amendments to the Constitution; however, it is my firm belief that no single issue or combination of issues is so important as to warrant jeopardizing our entire constitutional system of governance at this point of our history, particularly since Congress and the Supreme Court are empowered to deal with these matters.

James Madison, the father of our Constitution, recognized the perils inherent in a second constitutional

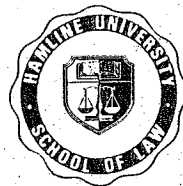
convention when he said an Article V national convention would "give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already heated too much men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first convention which assembled under every propitious circumstance, I would tremble for the result of the second."

Let's turn away from this risky business of a convention, and focus on the enduring inspiration of our Constitution.

The bicentennial should be an occasion of celebrating that magnificent document. It is our basic law; our inspiration and hope, the opinion of our minds and spirit; it is our defense and protection, our teacher and our continuous example in the quest for equality, dignity and opportunity for all people in this nation. It is an instrument of practical and viable government and a declaration of faith — faith in the spirit of liberty and freedom.

Former U.S. Supreme Court Justice Arthur J. Goldberg, a member of the advisory board of Citizens to Protect the Constitution, wrote this article for The Herald in response to an article by Arthur S. Miller, "Why not another constitutional convention?" (Viewpoint, July 6).

HAMLIN LAW REVIEW



LAWFUL AND PEACEFUL REVOLUTION:
ARTICLE V AND CONGRESS' PRESENT DUTY
TO CALL A CONVENTION FOR
PROPOSING AMENDMENTS

The Honorable Bruce M. Van Sickle
Lynn M. Boughey

George C. Detweiler
P. O. Box 771
Twin Falls, ID 83303

convention. Congress cannot thwart amendments proposed by a convention by refusing to designate whether ratification will be by the state legislature or by state conventions. Such an attempt would be such a naked assertion of unconstitutional power that it scarcely deserves serious discussion. Nonetheless, the proposed legislation described above²⁴¹ amazingly provides for this thinly veiled veto power. The enactment and use of this proposal would completely defeat the purpose of Article V, and would constitute nothing less than the nullification of a constitutional provision by legislative fiat. If the convention proposes one or more amendments, Congress then is obliged under Article V to designate the mode of ratification. Article V cannot be read as granting Congress the authority to prevent, by any means, the forwarding of proposed amendments to the states for their review.

IV. THE INABILITY OF STATES TO LIMIT AN ARTICLE V CONVENTION

Article V provides to the states the power to apply for a convention for proposing amendments, and the power to ratify amendments proposed either by Congress or by the convention process. As shown in this article, the plain language of Article V and the history of its drafting demonstrate that a convention for proposing amendments cannot be limited to a single issue. The states, like Congress, have no authority to limit the scope of the convention to a single topic. As such, a state does not have the power to limit a constitutional convention to particular topics by limiting the efficacy of its application for a convention called to consider only one topic.²⁴² A state does not have the ability to defeat its application by claiming viability of the application only if the convention accedes to that state's improper demand that only one topic be addressed at the convention. The states have no authority to place such an unconstitutional demand in the application. When a state applies under Article V for the calling of a convention for proposing amendments it knows from the language of Article V that it cannot inhibit the scope of the convention. It is a convention for proposing *amendments*. The clear language of the Article, combined with the historic fact that the selection of the plural form of the word "amendments" was a deliberate act, leads steadfastly to the inescapable conclusion that a state cannot limit the convention, or its application, to one

241. See *supra* text accompanying notes 212-23.

242. See *supra* text accompanying notes 172-78.

topic.²⁴³

On the other hand, prior to reaching the necessary applications from two-thirds of the states, a state presumably has the ability to rescind its application or to include a time limit on the effectiveness of its application. Moreover, a withdrawal of an application after reaching the necessary two-thirds mark cannot be effective because once that mark is reached the terms of Article V trigger the requirement of Congress to call a convention. Once the final legislative vote applying for a convention for proposing amendments has been taken, the Constitution obliges Congress to call a convention, and no subsequent act can vitiate that obligation. Thus, permitting a state to rescind its application after the two-thirds has been met would be contrary to Article V because it would have the disastrous consequence of giving each applying state a veto power over the convention after it was already required to be called.

V. COUNTING THE PENDING APPLICATIONS

In determining the number of states that have pending applications for a convention for proposing amendments to the Constitution, several points must be recognized. First, the mere passage of time does not defeat the efficacy of an application. The time lapse between the first application and the thirty-fourth application is not material. Second, there is nothing in Article V that supports a construction of contemporaneousness. According to the text of Article V, Congress must call a convention upon the application of two-thirds of the state legislatures. There is nothing in the language of Article V that provides a time limit on the applications. An application, once made, continues unless it is rescinded or reaches its own termination date.

It is true that a contemporaneousness requirement has some intuitive appeal, based on the sense that the framers inserted the two-thirds requirement so that a convention would be called only when there was a substantial nationwide consensus that a convention was needed. If

243. Although Congress may fix reasonable time limits relating to the ratification of its own proposed amendments, *Dillion v. Glass*, 256 U.S. 368, 325-76 (1921); *Coleman v. Miller*, 307 U.S. 433, 452 (1939), there is nothing in the text of Article V or the intent of the framers that would support a limitation being placed upon the states relating to time limits for applying for an Article V convention for proposing amendments. This point can also be shown by the analogous Supreme Court decision in *Leser v. Garnett*, 258 U.S. 130 (1922), in which the Leser Court points out that the governing law relating to the amendment process is Article V of the Constitution, and that Article V necessarily "transcends any limitation sought to be imposed by the people of a state." *Id.* at 137.

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LAURENCE H. TRIBE
Tyler Professor of Constitutional Law



GRISWOLD HALL 307
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-4621

The primary threat posed by an Article V Convention is that of a confrontation between Congress and such a Convention. Upon Congress devolves the duty of calling a Convention on application of the legislatures of two-thirds of the states, and approving and transmitting to the states for ratification the text of any amendment or amendments agreed upon by the convention. The discretion with which Congress may discharge this duty is pregnant with danger even under the most salutary conditions.

In the event of a dispute between Congress and the Convention over the congressional role in permitting the Convention to proceed, the Supreme Court would almost certainly be asked to serve as referee. Because the Court might feel obliged to protect the interests of the states in the amendment process, it cannot be assumed that the Court would automatically decline to become involved on the ground that the dispute raised a nonjusticiable political question, even if Congress sought to delegate resolution of such a dispute to itself. Depending upon the political strength of the parties to the dispute, a decision to abstain would amount to a judgment for one side or the other. Like an official judgment on the merits, such a practical resolution of the controversy would leave the Court an enemy either of Congress or of the Convention and the states that brought it into being.

A decision upholding against challenge by one or more states an action taken by Congress under Article V would be poorly received by the states involved. Truly disastrous, however, would be any result of a confrontation between the Supreme Court and the states over the validity of an amendment proposed by their Convention. Yet the convention process could, quite imaginably, give rise to judicial challenges that would cast the states into just such a conflict with the Supreme Court -- despite congressional attempts to exclude such disputes from the Court's purview.

At a minimum, therefore, the federal judiciary, including the Supreme Court, will have to resolve the inevitable disputes over which branch and level of government may be entrusted to decide each of the many questions left open by Article V.

The only possible way to circumvent the problematic prospect of such judicial resolution is to avoid use of the Convention device altogether until its reach has been authoritatively clarified in the only manner that could yield definitive answers without embroiling the federal judiciary in the quest: through an amendment to Article V itself.

STANFORD LAW SCHOOL

November 16, 1991

Personal Statement, Professor Gerald Gunther

My major concern is with constitutional processes. The convention method of amending the Constitution is a legitimate one under Article V: it is an appropriate method for proposing amendments when two-thirds of the state legislatures, with appropriate awareness of and deliberation about the uncertainties and risks of the convention route, choose to apply to Congress to call a convention. But the ongoing balanced budget convention campaign has not been a responsible invocation of that method. Instead, between 1976 and 1979, about half of the state legislatures adopted applications without any serious attention to the method they were using, in an atmosphere permeated with wholly unfounded assurances by those who lobbied for the convention route that a constitutional convention could easily and effectively be limited to consideration of a single issue, the budget issue. In my view, a convention cannot be effectively limited. But whether or not I am right, it is entirely clear that we have never tried the convention route, that scholars are divided about what, if any, limitations can be imposed on a convention, and that the assurances about the ease with which a single issue convention can be had are unsupportable assurances.

I find it impossible to believe that it is deliberate, conscientious constitution-making to engage in a process that began in the 1970s with a mix of inattention, ignorance and narrow, single-issue focus; that might well expand to a broader focus during the campaigns for electing convention delegates; and that would not blossom fully into a potentially broad constitutional revision process until the convention delegates are elected and meet. There is no denying the fact that, if the present balanced budget convention campaign succeeds in eliciting the necessary applications from 34 state legislatures, the convention call will be triggered by inadequately considered state applications, for the vast preponderance of the legislative applications rest on an entire absence of consideration of the risks of a convention route. In my view, that constitutes a palpable misuse of the Article V convention process. The convention route, as I have said, is legitimate when deliberately and knowingly invoked. The ongoing campaign, by contrast, has produced a situation where inattentive, ignorant, at times cynically manipulated state legislative action threatens to trigger a congressional convention call. I cannot support so irresponsible an invocation of constitutional processes.

Gerald Gunther

Gerald Gunther,
William Nelson Cromwell Professor of Law

Crown Quadrangle
Stanford, California
94305



Statement of Professor Neil H. Coan

I agree almost entirely with the foregoing memorandum.

My understanding of the Federal Convention is that it is a general convention; that neither the Congress nor the States may limit the amendments to be considered and proposed by the Convention; that the Convention may be controlled in subject matter only by itself and by the people, the latter through the ratification process. My understanding is further that the States and Congress may suggest amendments and the people give instructions, but that such suggestions and instructions are not binding. Thus, I believe that should the Congress receive thirty-four applications that clearly and convincingly are read as applications for a general convention (whether or not accompanied by suggested amendments), then Congress must call a Federal Convention.

While it is plainly appropriate to examine the traditional historical sources -- text, debates, papers and pamphlets, correspondence and diaries -- it is plain too that these sources must be examined, and other sources chosen, within the context of our evolving theory of government. As I understand that theory, the Federal Convention is the people by delegates assembled, convened to consider and possibly propose changes in our fundamental structures and relationships -- indeed, in our theory of government itself --, and controlled only by the people and certainly not by other bodies the tasks and views of which may disqualify them from fundamental change and which themselves may be the subjects and objects of fundamental change.



THE
UNIVERSITY
OF UTAH

COLLEGE OF LAW
SALT LAKE CITY, UTAH 84112

November 29, 1983

I here offer brief comments of my own. The proponents are trying to blend the two methods of constitutional change made available by Article Five. They are saying that they do not trust a convention, so they propose to resort to such a body. That is incongruous. They may not have it both ways.

It is to be noted that in the American tradition a constitutional convention is not a constituent assembly -- a body competent both to draft and to adopt a constitution. In such an assembly is reposed sovereignty. The state antecedents of the Federal Constitution of 1787 all contemplated voter ratification. In this context it is not unreasonable to conclude that the members of the 1787 federal convention perceived such a convention to be competent to have the widest range of action in proposing amendments. Of course the very text confirms this by use of the plural "amendments." A convention might propose a single amendment but it would clearly have a wider range.

If what proponents desire is a particular change, the state legislative initiation method is adapted to the purpose. If more general review and possible changes are contemplated the convention method is plainly indicated.

Jefferson B. Fordham

Notre Dame High School
Notre Dame, Indiana 46556

Direct Dial Number
219-239-5667

December 7, 1987

Mr. Don Fotheringham
Save the Constitution Committee
Box 4582
Boise, ID 83704


Dear Mr. Fotheringham:

You have asked my opinion the effort to rescind the Idaho legislature's approval of the proposed constitutional amendment to require a balanced federal budget. It would be within the power of the legislature, in my opinion, to rescind its approval. The courts could possibly regard the efficacy of that rescission as a political question committed by the Constitution to the discretion of Congress. Nevertheless, even if it were not judicially enforceable, such a rescission would be within the power of the Idaho legislature and it ought to be regarded by Congress as binding.

On the merits of the rescission, I support it for the reasons stated in the enclosed article from the April 22, 1987, issue of The New American.

I hope this will be helpful. If there is any further information I can provide, please let me know.

Sincerely,


Charles E. Rice
Professor of Law

Enclosure

8

BRIGHAM YOUNG
UNIVERSITY

REX E LEE
PRESIDENT

THE GLORY OF GOD
IS INTELLIGENCE

December 18, 1989

Representative Reese Hunter
4577 Wellington Street
Salt Lake City, UT 84117

Dear Mr. Hunter:

This is in response to your letter of December 12 in which you asked for my opinion concerning whether under Article V of the United States Constitution, a constitutional convention called to consider a particular issue could be limited either by congressional directive or otherwise to that single issue.

The only safe statement that could be made on this subject is that no one knows, but the only relevant precedent would indicate that the convention could not be so limited. Anyone who purports to express a definitive view on this subject is either deluded or deluding. As a result, in determining the steps you should take as a responsible representative of the people of Utah, you and other members of the legislature should realize that the risks are very real that (1) just as happened in 1787, the convention might not in fact limit itself as instructed by Congress and (2) the convention's forays into areas forbidden them by Congress might eventually be upheld.

In short, if the question is whether a runaway convention is assured, the answer is no, but if the question is whether it is a real and serious possibility, the answer is yes. In our history we have had only one experience with a constitutional convention, and while the end result was good, the convention itself was definitely a runaway.

I hope this is helpful to you.

Sincerely,



Rex E. Lee

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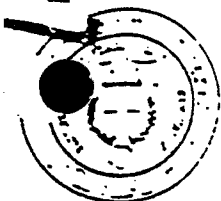
November 25, 1991

STATEMENT OF PROFESSOR CHRISTOPHER BROWN

The most alarming aspect of the fact that 32 of the necessary 34 states have called for a constitutional convention is the threat this development poses to a system that has worked so well for nearly 200 years. In spite of the fact that 3 states have rescinded their calls for a constitutional convention in recent years, convention supporters have clearly stated their intent to lull the final 2 states into passing convention requests, thereby forcing the U.S. Supreme Court into either upholding the state rescissions or mandating the first federal constitutional convention since 1787. We are on the brink of encountering the risks of radical surgery at a time when the patient is showing no unusual signs of difficulty. If this country were faced with an uncontrollable constitutional crisis, such risks might be necessary; but surely they have no place in the relatively placid state of present day constitutional affairs. Now is not the time for the intrusion of a fourth unknown power into our tripartite system of government.

After 34 states have issued their call, Congress must call "a convention for proposing amendments." In my view the plurality of "amendments" opens the door to constitutional change far beyond merely requiring a balanced federal budget. The appropriate scope of a convention's agenda is but one of numerous uncertainties now looming on the horizon: Need petitions be uniform, limited or general? By whom and in what proportion are the delegates to be chosen? Who will finance the convention? What role could the judiciary play in resolving these problems? The resolution of these issues would inevitably embroil the government in prolonged discord.

Assembling a convention and thereby encountering and attempting to resolve these questions would surely have a major effect upon the ongoing operations of our government. Unlike the threats posed by Richard Nixon's near impeachment, the convening of a convention could not necessarily be compromised to avoid disaster. It would surely create a major distraction to ordinary concerns, imposing a disabling effect on this country's domestic and foreign policies. Only the existence of an actual breakdown in our existing governing structure warrants such a risk-prone tinkering with out constitutional underpinnings. Now is not the time to take such chances.



SCHOOL OF LAW
THE UNIVERSITY OF TEXAS AT AUSTIN

RECEIVED APR 21 1987

727 East 26th Street • Austin, Texas 78705 • (512) 471-5151

April 16, 1987

The Honorable Clint Hackney
House of Representatives
Box 2910
Austin, Texas 78769

Dear Representative Hackney:

The law library has provided me with a copy of H.C.R. 69, which you introduced in the Legislature in order to have the Legislature rescind the petition by the 65th Legislature asking Congress either to adopt a balanced budget amendment or to call a constitutional convention for the purpose of proposing such an amendment. I enthusiastically support your resolution.

A balanced budget is something devoutly to be wished. I doubt very much, however, whether amending the Constitution is the way to get it. I feel quite certain that even opening the door to the possibility of a constitutional convention would be a tragedy for the country.

We celebrate this year the Bicentennial of the Constitution of the United States. For 200 years it has served us well. I start with a strong presumption against any amendment to it and with an absolutely conclusive belief that we should not have a constitutional convention. Your resolution correctly says that scholarly legal opinion is divided on the potential scope of a constitutional convention's deliberations. I think that is an accurate statement. My own belief, however, is that a constitutional convention cannot be confined to a particular subject, and that anything it adopts and that the states ratify will be valid and will take effect. We have only one precedent, the Convention in Philadelphia in 1787. It was summoned "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several Legislatures such alterations and provisions therein." From the very beginning it did not feel confined by the call and gave us a totally new Constitution that completely replaced the Articles of Confederation. I see no reason to believe that a constitutional convention 200 years later could be more narrowly circumscribed.

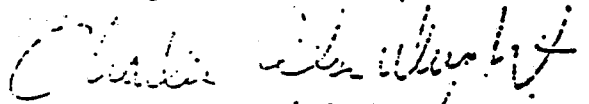
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The Honorable Clint Hackney
April 16, 1987
Page 2

We will have a balanced budget when we have a President and Congress with the determination to adopt such a budget. I hope that day comes soon, but I hope even more that the day never comes when the country is exposed to the divisiveness and the possible untoward results of a constitutional convention.

I hope you are successful in persuading your colleagues in the House and Senate to adopt H.C.R. 69.

Sincerely,


Charles Alan Wright

Laws, Resolutions and Memorials

OF THE

STATE OF MONTANA

PASSED AT THE

SEVENTH REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY

HELD AT HELENA, THE SEAT OF GOVERNMENT OF SAID STATE, COMMENCING JANUARY 7th, 1901, AND ENDING MARCH 7th, 1901.

PUBLISHED BY AUTHORITY

Helena, Montana:
STATE PUBLISHING COMPANY,



STATE LAW LIBRARY
Justice Building
215 N. Sanders
Helena, Montana 59602

Con Con
application
#1

JOINT CONCURRENT RESOLUTION NO. 2.

Resolution requesting Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States, which amendment shall provide for the election of United States Senators by direct vote of the people.

Whereas, a large number of State Legislatures have at various times adopted memorials and resolutions in favor of election of United States Senators by popular vote;

And, Whereas; the National House of Representatives has, on four separate occasions, within recent years, adopted resolutions in favor of this proposed change in the method of electing United States Senators, which were not adopted by the Senate;

And, Whereas, Article V of the Constitution of the United States provides that Congress, on the application of legislatures of two-thirds of the several States, shall call a convention for proposed amendments;

And believing there is a general desire upon the part of the citizens of the State of Montana that the United States Senators should be elected by a direct vote of the people,

Therefore be it Resolved (if the Senate concur), that the legislature of the State of Montana favors the adoption of an amendment to the Constitution which shall provide for the election of United States Senators by popular vote, and joins with other States of the Union in respectfully requesting that a convention be called for the purpose of proposing an amendment to the Constitution of the United States as provided for in Article V of the said Constitution, which amendment shall provide for a change in the present method of electing United States Senators, so that they can be chosen in each State by direct vote of the people.

Resolved, That a copy of this joint resolution and application to Congress for the calling of a convention be sent to the secretary of state of each of the United States, and that a similar copy be sent to the President of the United States Senate and the Speaker of the House of Representatives.

Approved Feb'y 21st. 1901.

Laws, Resolutions and Memorials

OF THE
STATE OF MONTANA

PASSED AT THE

Ninth Regular Session

OF THE
Legislative Assembly

*Held at Helena, the Seat of Government of said State, Commencing
January 2nd, 1905, and Ending March 2nd, 1905.*

PUBLISHED BY AUTHORITY

STATE PUBLISHING COMPANY
Stationers, Printers, Publishers and Binders
Helena, Montana, 1905



*can con application
#2*

SENATE JOINT MEMORIAL NO. 2.

To the Honorable Senate and House of Representatives of the United States in Congress Assembled:

WHEREAS; there are now in a portion of the State of Montana, known as the Fort Peck Indian Reservation, many thousand acres of desirable agricultural land in every way adaptable to farming and stock raising far in excess of the needs of the Indians of said reservation, and

WHEREAS; this land embodies some of the choicest agricultural area in Eastern Montana, which is now of no material benefit to said Indians, or a source of revenue to either Federal or State Government, and

WHEREAS; the proposed Milk River Irrigation project, as located by present surveys, will connect with the west boundary of said Reservation, and

WHEREAS; the continuation of the Government Canal onto this Reservation will make one of the most fertile and productive valleys in the State of Montana, and make homes for hundreds of families.

THEREFORE BE IT RESOLVED; that we, your memorialists, the Ninth Legislative Assembly of the State of Montana, earnestly pray and petition the Congress of the United States to enact such legislation as will result in the opening of the Fort Peck Indian Reservation, under conditions similar to the opening of the Crow and Flathead Indian Reservations in this State; and

BE IT FURTHER RESOLVED; that the Secretary of State be, and he is hereby instructed to forthwith transmit copies of this memorial, properly authenticated, to the Honorable Secretary of the Interior and to our Senators and Representatives in Congress from the State of Montana.

Approved February 27, 1905.

SENATE JOINT MEMORIAL NO. 3.

WHEREAS, an association of citizens of this state known as the Thomas Francis Meagher Memorial Association propose to erect a fitting monument commemorative of General Thomas Francis Meagher, and,

WHEREAS, General Meagher rendered to our nation brilliant and valuable service in the war for its preservation and lost his life in

the discharge of his duties as an officer of the Territory of Montana,

THEREFORE, Be it Resolved, the House concurring, that the said Thomas Francis Meagher Memorial Association be, and it hereby is authorized to erect such monument within the grounds of the State Capitol at Helena, Montana, at such place as has been or may be selected by such association with the approval of the Governor of the State of Montana.

Approved March 3, 1905.

HOUSE JOINT RESOLUTION NO. 1.

Resolution requesting Congress to call a Convention for the purpose of proposing an amendment to the Constitution of the United States, which amendment shall provide for the election of United States Senators by direct vote of the people:

WHEREAS, a large number of the State Legislatures have at various times adopted memorials and resolutions in favor of the election of United States Senators by popular vote;

AND, WHEREAS, the National House of Representatives has, on several occasions, within recent years, adopted resolutions in favor of this proposed change in the method of electing United States Senators, which were not adopted by the Senate;

AND, WHEREAS, Article V of the Constitution of the United States provides that Congress, on the application of the Legislatures of two-thirds of the several states, shall call a convention for proposed amendments;

AND BELIEVING there is a general desire upon the part of the citizens of the State of Montana that the United States Senators should be elected by a direct vote of the people;

THEREFORE BE IT RESOLVED (if the Senate Concur), That the Legislature of the State of Montana favors the adoption of an amendment to the Constitution which shall provide for the election of United States Senators by popular vote, and joins with other states of the Union in respectfully requesting that a convention be called for the purpose of proposing an amendment to the Constitution of the United States, as provided for in Article V of the said Constitution, which amendment shall provide for a change in the present method of electing United States Senators, so that they can be chosen in each state by direct vote of the people.

COM CON application #2
contd

RESOLVED, That a copy of this Joint Resolution and application to Congress for the calling of the convention be sent to the Secretary of State of each of the United States, and that a similar copy be sent to the President of the United States, the Speaker of the House of Representatives, and also to each of the United States Senators from Montana and our Representative in Congress.

Approved January 31, 1905.

HOUSE JOINT RESOLUTION NO. 2.

Be it resolved, by the House of the Ninth Legislative Assembly, the Senate concurring, that the State Board of Examiners be, and they are hereby empowered and directed to appoint a Commission of three suitable and competent persons, within thirty days from the passage and approval of this Resolution, and that said Commission so appointed shall have power to examine into and report upon the advisability and feasibility of acquiring a permanent water supply for the use of the State Capitol and Grounds, as recommended in the Governor's message. And be it further,

RESOLVED, That said Commission shall have power to investigate any plans that may be submitted, to secure estimates upon the cost of construction and maintenance of an adequate water system, to gather all requisite information, and present their findings and recommendations to the next Legislative Assembly on or before the first day of the session thereof, and that the State Engineer be, and is hereby directed to co-operate with said Commission, and to perform all the professional services required for the furtherance of the plan outlined by this Resolution.

Approved February 2, 1905.

HOUSE JOINT RESOLUTION NO. 4.

Resolved by the Legislative Assembly of the State of Montana that the action of the government of the United States in extending aid and co-operation in the reclamation of the arid lands of the state is cordially approved, and all officers and agents of the state are instructed to facilitate the operation of the government in reclaiming arid lands of the state in all respects not inconsistent with law.

Approved February 15, 1905.

HOUSE JOINT RESOLUTION NO. 7.

RESOLVED, by the Senate and House of Representatives of the State of Montana, That the President of the United States is entitled to our zealous support, and merits our earnest endorsement in his heroic struggle and untiring efforts to suppress trusts and monopolies to prevent unlawful combinations of great corporate interests detrimental to public good, to enlarge the scope of the Inter-state Commerce Law for the welfare of the people, and to maintain the power and control by the general government of the gigantic corporation of the country.

RESOLVED, That the Secretary of State be hereby directed to transmit a copy of these Resolutions to the President of the United States, Theodore Roosevelt, to the President of the Senate of the United States, and to the Speaker of the House of Representatives of the United States.

Approved March 2, 1905.

HOUSE JOINT RESOLUTION NO. 10.

Be It Resolved by the House of Representatives of the Ninth Legislative Assembly, the Senate concurring, that the Attorney General of the State of Montana be, and he is hereby authorized and directed to forthwith institute and diligently prosecute an official inquiry, and investigation into the business, affairs and operations of any and all person or persons, companies, corporations, combinations or trusts doing business in the State of Montana in violation or contravention of the Constitution and laws thereof. In the event that the said investigation shall disclose the violation of the Constitution or any law of this State, the said Attorney General is hereby required and directed to take such appropriate action, either civil or criminally, or both, as may be deemed necessary or expedient to compel the observance by any and all such person or persons, companies, corporations, combinations or trusts of the provisions of the said Constitution and laws, and to punish the violation thereof.

Approved February 28, 1905.

CON CON application

LAWS, RESOLUTIONS AND MEMORIALS

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FEB 13 2004

STATE OF MONTANA

Passed at the

TENTH REGULAR SESSION

of the

LEGISLATIVE ASSEMBLY

Held at Helena, the Seat of Government of said State, Commencing
January 7th, 1907, and Ending March 7th, 1907.

PUBLISHED BY AUTHORITY

STATE PUBLISHING COMPANY
Stationers, Printers and Binders
Helena, Montana



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HOUSE BILL NO. 91.

“An Act Appropriating Money for the Payment of Deficiency Claim of John J. Quinn for expenses incurred.”

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

That the sum of Two Hundred Twelve Dollars and Twenty-Five Cents (\$212.25) or so much thereof as may be necessary be, and the same is, hereby appropriated out of any moneys in the State Treasury not otherwise appropriated to pay the following claim:

John J. Quinn.....\$212.25

Section 2.

The State Auditor is hereby authorized to draw his warrant in favor of the person named, for the amount set down opposite his name, as shown in Section 1. of this Act, and the State Treasurer is directed to pay the same.

Section 3.

This Act shall be in full force and effect from and after its passage and approval by the Governor.
Approved Feby. 12, 1907.

HOUSE BILL NO. 173.

“An Act Appropriating money for the payment of deficiency claims in connection with the State Veterinarian’s office for clerical hire.”

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

That the sum of One Thousand Three Hundred and Forty-eight (1,348.00) Dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated to pay the following named persons for services rendered:

| | |
|---------------------------|--------|
| Andrew J. Mc Connell..... | 24.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 50.00 |
| Charles L. Wilson..... | 24.00 |
| C. J. Tucker | 50.00 |
| ” | 100.00 |

| | |
|---|--------|
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |
| ” | 100.00 |

Section 2.

The State Auditor is hereby authorized to draw his warrants in favor of the persons named, for the amounts set opposite their [their?] names, as shown in Section 1, of this Act, and the State Treasurer is directed [directed?] to pay the same.

Section 3.

This Act shall be in full force and effect from and after its passage and approval.
Approved February 18, 1907.

SENATE JOINT RESOLUTION NO. 1.

A Resolution requesting Congress to call a convention for the purpose of proposing an amendment to the Constitution of The United States, which amendment shall provide for the election of United States Senators by direct vote of the people.

Whereas, a large number of the State Legislatures have, at various times, adopted memorials and resolutions in favor of the election of United States Senators by popular vote;

And, Whereas, the National House of Representatives has, on several occasions within recent years, adopted resolutions in favor of this proposed change in the method of electing United States Senators, which were not adopted by the Senate;

And, Whereas, Article V of the Constitution of the United States provides that Congress, on the application of the Legislatures of two-thirds of the several states, shall call a convention for proposed amendments;

And, Believing there is a general desire upon the part of the citizens of the State of Montana that the United States Senators should be elected by a direct vote of the people; therefore,

Be it Resolved (if the House concur) that the Legislature of the

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State of Montana favors the adoption of an amendment to the Constitution, which shall provide for the election of United States Senators by popular vote, and joins with other states of the Union in respectfully requesting that a convention be called for the purpose of proposing an amendment to the Constitution of the United States, as provided for in Article V of the said Constitution, which amendment shall provide for a change in the present method of electing United States Senators, so that they can be chosen in each state by direct vote of the people.

Resolved, that a copy of this joint resolution and application to Congress for the calling of the convention be sent to the secretary of state of each of the United States, and that a similar copy be sent to the President of the United States, the Speaker of the House of Representatives, and, also, to each of the United States Senators from Montana and our Representative in Congress.

Approved Feby. 21, 1907.

SENATE JOINT MEMORIAL NO. 1.

To the Honorable Senate and House of Representatives of the United States in Congress assembled:

Whereas, There are now in a portion of the State of Montana, known as the "Blackfoot Indian Reservation," many thousand acres of desirable agricultural land, in every way adaptable to farming and stockraising, far in excess of the needs of the Indians of said reservation, and,

Whereas, this land embodies some of the choicest agricultural area in northern Montana, which is now of no material benefit to said Indians, or a source of revenue to either the Federal or State Government, and,

Whereas, in a suit of the United States versus Winters, the Circuit Court of Appeals, affirming the Circuit Court of the United States for the district of Montana, granted a permanent injunction in behalf of the Indians on the Fort Belknap Reservation as to five thousand (5000) inches of the waters of Milk River, basing the opinion upon an implied reservation of such waters in the treaty with the Indians, ratified May 1, 1888, That the volume of five thousand (5000) inches exceeds the normal low water flow of Milk River, and such volume is not being used by the Indians on said Belknap Reservation in any considerable quantities, nor is it being diverted for any useful

purpose to such an extent, and a suit is now pending, enjoining a diversion of the waters from Birch Creek by white settlers. The fact is that the Indians will be in no manner benefitted by the issuance of the injunction; but, on the contrary, the water will pass down the stream, unchecked, if the settlers are restrained from using it. That, by virtue of the water rights being impliedly reserved for the Indians by the agreement aforesaid, without limit, or as to time or place of use, every water right in the entire country from the Missouri and Merias [Marias?] Rivers, north to the Canadian boundary line, and from the summit of the Rocky Mountains to the boundary of Dakota, is either rendered invalid or so vague, unreliable and indefinite as to be of no substantial value to the settlers and others dependent upon such streams for a water supply. Not only has settlement been retarded by such indefinite and unreliable condition of the right to the use of the waters in this great territory, but many of our good citizens, who have established homes therein are passing over the line and making their homes in Canada, moved thereto by the fear that the clouded and precarious water rights in Northern Montana will seriously and permanently stifle prosperity there.

Now, Therefore, Be It Resolved, that we, your memorialists, the Tenth Legislative Assembly of the State of Montana, earnestly pray and petition the Congress of the United States to enact such legislation as will provide that the right of Indians to appropriate and divert water from any of the streams referred to be limited to the quantity of water necessary for actual use for irrigation and for domestic purposes upon the lands allotted to them, and that, when the water is not being actually and necessarily so used by the Indians, it shall be subject to diversion and use according to the laws of Montana, and

Be It Further Resolved that we, your memorialists, the Tenth Legislative Assembly of the State of Montana, earnestly pray and petition the Congress of the United States for the passage of Senate Bill No. 7674, introduced in the Senate of the United States, January 9, 1907, entitled: "A Bill to survey and Allot Lands Embraced within the Limits of the Blackfoot Indian Reservation in the State of Montana, and to open the Surplus Lands to Settlement."

Be It Further Resolved that the Secretary of State be, and is, hereby instructed to forthwith transmit copies of this memorial, properly authenticated, to the Honorable Secretary of the Interior and to our Senators and Representatives in Congress from the State of Montana.

Approved February 26, 1907.

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LAWS, RESOLUTIONS AND MEMORIALS

OF THE

STATE OF MONTANA

PASSED AT THE

TWELFTH REGULAR
SESSION

OF THE

LEGISLATIVE ASSEMBLY

Held at Helena, the Seat of Government of said State, commencing
January 2nd, 1911, and ending
March 2nd, 1911.

PUBLISHED BY AUTHORITY

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Helena, Montana



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HOUSE JOINT MEMORIAL NO. 6.

Requesting the Congress of the United States to take steps to prohibit the changing of the old names of Montana's mountains and streams.

To the Honorable Senate and House of Representatives in Congress Assembled:

WHEREAS, the government officials in charge of the work of making Geological, Topographical, and other Government Surveys, of Montana, both in and out of forest reserves, have seen fit to change the old names of many of our mountains and streams, and,

WHEREAS, the old names index Montana's early history, and should be preserved as part of the old West.

NOW, THEREFORE, BE IT RESOLVED, the Senate concurring, we the Twelfth Legislature of the State of Montana, do hereby petition the Congress of the United States for the passage of necessary legislation forbidding the changing of names of Montana's mountains, rivers and streams, and to make it obligatory upon those in authority to use the old names in making maps of this state.

BE IT FURTHER RESOLVED, that the Secretary of State be and is hereby instructed to transmit properly authenticated copies of this Resolution to the Secretary of the Interior, our Senators and Representatives in Congress, the director of the United States Geological Survey; and to the President of the United States Senate and Speaker of the House of Representatives.

Approved March 3, 1911.

HOUSE JOINT MEMORIAL NO. 7.

WHEREAS, it appears from investigation recently made by the Senate of the United States, and otherwise, that polygamy still exists in certain places in the United States notwithstanding prohibitory statutes enacted by the several states thereof, and

WHEREAS, the practice of polygamy is generally condemned by the people of the United States, and there is a demand for the more effectual prohibition thereof by placing the subject under Federal jurisdiction and control, at the same time reserving to each state the right to make and enforce its own laws relating to marriage and divorce; now, therefore,

RESOLVED, (if the Senate concur), That the application be made and hereby is made to Congress under the provisions of Article V of the Constitution of the United States for the calling of a Convention to propose an amendment to the Constitution of the United States whereby polygamy and polygamous cohabitation shall be prohibited, and Congress shall be given power to enforce such prohibition by appropriate legislation.

RESOLVED, That the Legislature of all other States of the United States, now in session or when next convened, be and they are hereby respectfully requested to join in this application by the adoption of this or an equivalent resolution.

RESOLVED FURTHER, That the Secretary of State be and he hereby is directed to transmit copies of this application to the Senate and House of Representatives of the United States, and to the several members of said bodies representing this state therein; also to transmit copies hereof to the Legislatures of all other States of the United States."

Approved March 1, 1911.

HOUSE JOINT MEMORIAL NO. 8.

Memorial to Congress praying for the enactment of Legislation that will relieve the settlers on the Public Domain, wherein their improvements were destroyed by Forest Fires.

Be It Resolved by the House of Representatives of the State of Montana, the Senate Concurring:

THAT WHEREAS, during the year A. D., 1910, extensive and devastating forest fires have destroyed the homes of large numbers of homestead-settlers on the public domain, and destroyed their improvements, live stock, and the fruits of their labor of many years; and

WHEREAS, they are practically bankrupt and unable to comply with the rigorous demands of the Federal Homestead laws, and as it is necessary for them to seek other labor and employment to support themselves and families, and of necessity must absent themselves from their homesteads; and

WHEREAS, they, cannot, within the time allowed by the United States Homestead laws, accumulate enough money to restore their homes, dwellings, improvements, and make their homesteads self-sustaining, and comply with the requirements of said homestead laws.

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