

Approved 3-26-90
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

The meeting was called to order by Senator Don Sallee at
Chairperson

1:30 ~~xxx~~ p.m. on March 19, 1990 in room 529-S of the Capitol.

All members were present except:

Senator Johnston
Senator Rock

Committee staff present:

Pat Mah, Legislative Research Department
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Kelly Kutala, Intern, Senator Wint Winter, Jr.

Others attending: see attached list

Chairman Don Sallee called the meeting to order at 1:40 p.m.

Kelly Kutala, Intern for Senator Wint Winter, Jr. appeared in support of SCR-1638 calling attention to (Attachment 1), written testimony by Gregory D. Watson, which set forth a number of possible cosmetic corrections. Mr. Watson noted that SCR-1638 was part of the original Bill of Rights. This resolution states that no law, varying the compensation for the services of the Senators and Representatives, shall take effect until an election of Representatives shall have intervened. Up to the present time this resolution has been ratified by 32 states with ratification by 38 states needed to become effective. The resolution would not allow legislators to vote themselves a raise during the term. It was further noted the federal government has not adhered to this provision.

Discussion followed with the question being raised concerning the ratification which took place between 1789 and 1978. It was noted that there was usually a time limit concerning ratification of a resolution but in this situation there was none. The Supreme Court ruled that since no time limit was present earlier ratifications were still valid. Further discussion noted the testimony noted Congress has voted themselves rather generous pay raises in the past three years and attached the measures to other less visible legislation.

Michael Woolf, Common Cause, noted his organization had no position on this resolution.

Senator Yost, chairman of the subcommittee on HB-2725 noted a meeting was held last Tuesday and another was scheduled tomorrow, Tuesday, March 20, 1990 at 1:30 p.m. in room 529-S. The subcommittee will finish a briefing of the bill and testimony on the bill will be accepted at this meeting.

Chairman Sallee announced that the committee will have a briefing of HB-3065 on Monday, March 26 with testimony being accepted following the briefing and continuing Tuesday. Hearings will also be held on HB-2819 on Tuesday.

The minutes of March 5 were presented for approval with Senator Bond moving acceptance of the minutes. Senator Reilly seconded the motion and the motion carried.

The meeting adjourned at 2:05 p.m.

Mr. Gregory C. Watson
 P.O. Box 13458
 Capitol Station
 Austin, TX 78711-3458

March 2, 1990

The Honorable Wint A. Winter, Jr.

State Senator
 STATE OF KANSAS
 The Senate
 Room #120-S, Capitol Building
 Topeka, KS 66612-1594

IN RE: SENATE CONCURRENT RESOLUTION No. 1638 by Winter, et al.

Dear Senator Winter:

I want to thank you very much for introducing S.C.R. No. 1638 in the 1990 session of the Kansas Legislature.

Having carefully examined S.C.R. No. 1638, I would like to suggest a few cosmetic corrections thereto. Can these cosmetic corrections be made in the Elections Committee or on the Senate floor?

Here are the changes:

- (1) On page 1, line 28, remove the unnecessary semi-colon and comma after "1983";
- (2) On page 2, line 5, strike "8" and substitute in lieu thereof "9";
- (3) On page 2, line 15, strike "84784" and substitute in lieu thereof "84784-85";
- (4) On page 2, line 21, strike "811123" and substitute in lieu thereof "811123-24";
- (5) On page 2, line 24, strike "87655" and substitute in lieu thereof "87655-56";
- (6) On page 3, line 5, add a second closing parenthesis at the end of line 5 so as to match the opening parenthesis of line 4 and to conform to the same style used on page 2, line 28;
- (7) On page 3, line 7, insert between "a" and "copy", the following: "duly authenticated"; and
- (8) On page 3, line 9, insert between "send" and "copies", the following: "duly authenticated".

Senate Elections
 March 19, 1990

The Honorable Wint A. Winter, Jr.
March 2, 1990
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Once again, thank you for introducing S.C.R. No. 1639. I am glad to see that this resolution went to a committee whose Chairman was a past co-sponsor of this legislation three (3) years ago in 1987 when he was a member of the Kansas House of Representatives.

Because the postal service is so undependable these days, please let me know that you did in fact receive this letter. Thank you so kindly.

With highest regards, I do remain very

Respectfully,



GREGORY D. WATSON
Nationwide Coordinator

TESTIMONY OF GREGORY D. WATSON IN ABSENTIA ON S.C.R. No. 1638 BY WINTER, ET AL.
BEFORE THE COMMITTEE ON ELECTIONS OF THE KANSAS SENATE ON MARCH 19 & 20, 1990

Honorable Chairman Sallee and members of the Elections Committee;

I want to thank you for conducting this hearing in the Elections Committee on Senate Concurrent Resolution No. 1638 introduced by your colleague Senator Wint Winter, Jr.

I regret that I cannot attend the hearing personally as my duties here in the Texas Legislature on those two (2) days require that I be in Austin. However, through the modern technology of the FAX machine, I am transmitting to you what I would probably say had I been able to visit with all of you personally.

If my testimony does not address a concern that any of you might have, please call me at (512) 463-0738 and I am sure we can handle the matter over the phone. I am requesting that Chairman Sallee make copies of this testimony for each member of the Committee.

Over 200 years ago, on September 25, 1789, Congress transmitted to the state legislatures for ratification a proposed Amendment to the United States Constitution which reads directly and succinctly as follows:

"Article the second...No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

This amendment was part of the original Bill of Rights. As you can see from the very text of S.C.R. No. 1638, this Amendment was ratified by the legislatures of six (6) states in the 2-year period from 1789 to 1791. It was then ratified by a 7th state, Ohio, in 1873; then by an 8th state, Wyoming, in 1973; and then, by the 9th state, Maine, in 1983. And from 1983 to present, it has been ratified by twenty-four (24) states to bring the overall total to thirty-two (32) ratifications as of right now. Thirty-eight (38) ratifications are required.

In five (5) other states, ratifying resolutions have already passed one (1) house of the legislature during this current 1989-90 legislative biennium:

CALIFORNIA (passed Senate on June 30, 1989);
ILLINOIS (passed House of Representatives on May 24, 1989);
MICHIGAN (passed Senate on March 15, 1989);
MISSOURI (passed House of Representatives on March 14, 1990); and
NORTH DAKOTA (passed House of Representatives on February 3, 1989)

As you can see, your next-door-neighbor, Missouri, has already passed this Amendment through one (1) house of the Missouri General Assembly just last week on March 14, 1990. Passage in the Missouri Senate is expected quite soon.

There are many sound reasons for the state legislatures to ratify this 200-year-old Amendment. In recent years, Congress has badly abused its unique privilege to set its own salary. In most of the state legislatures, if members want a pay

TESTIMONY OF GREGORY D. WATSON ON S.C.R. No. 1638

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raise, they must wait until after the next election and when the new Legislature convenes. They cannot give themselves a pay raise right then and there. Well, shouldn't this same common-sense principle apply to the U.S. Congress too?

Nobody is suggesting that members of the U.S. Congress should be denied a pay raise when a pay raise is earned and deserved. That is not the issue here. If Congress has worked hard, enacted needed legislation for the country and addressed the National debt, then -- certainly -- a pay raise is in order. But for Congress to cavalierly sneak through pay raises on other legislation having nothing to do with compensation for Congress constitutes an abuse of their unique and unrestricted privilege to establish their own wage. They keep hoping that nobody will find the Congressional pay raise hidden away in some Social Security bill or neatly tucked into Defense Department appropriation, but somebody always does find out and the media always reports it. Then the members of Congress whine and moan that the public thinks it was done in a sneaky manner.

Ratification of this 200-year-old Amendment would put a stop to the trickery and deception.

In 1939, the United States Supreme Court ruled in the case of Coleman v. Miller, by coincidence a case arising out of the Kansas Senate, that when Congress submits a proposed Amendment to the U.S. Constitution to the state legislatures for ratification and fails to specify a deadline by which that Amendment must be ratified, then the state legislatures may continue to ratify the Amendment and then Congress -- when confronted by ratifications from thirty-eight (38) state legislatures -- must then decide if the Amendment is validly ratified. You may be asking yourself: "Well, what if thirty-eight (38) states ratify this Amendment and then Congress rejects the ratifications?"

I doubt very seriously that Congress would reject the ratifications of thirty-eight (38) state legislatures. First, the issue of Congressional pay raises is a very emotional and troublesome issue for members of Congress. The news media will pick up on this Amendment. I just don't see Congress rejecting this Amendment under the hot spotlight of public attention and media scrutiny. Second, ratification of this Amendment would at long last show Congress a better way to go about pay raises. As you know, the sneaky tricks they have tried in the past have always been discovered and have always evoked anger among constituents. This 200-year-old Amendment, by contrast, is orderly and straightforward. They will welcome it as a refreshing change, having been so battered and bruised on this sensitive issue several times in the recent past.

I want to clarify something else. This resolution, S.C.R. No. 1638, has absolutely nothing to do with calling a Constitutional Convention. I know that in some of the state legislatures there has been bitter and divisive controversy about obtaining a Balanced Budget Amendment to the U.S. Constitution via a Constitutional Convention. This 200-year-old Amendment has nothing to do with a Convention -- it ratifies an Amendment that Congress has already transmitted to the state legislatures. Additionally, there has never been any attempt within Congress to try to remove this 200-year-old Amendment from the purview of the state legislatures, so I can only assume that Congress today is of the same sentiment that Congress was in back in 1789 and they still want the state legislatures to ratify this Amendment even after 200 years.

TESTIMONY OF GREGORY D. WATSON ON S.C.R. No. 1638

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Now, I get to the most important part of my testimony. I want to present to you a brief history of recent pay raise shenanigans in Congress.

Back in 1967, Congress passed a law creating the Quadrennial Commission on Executive, Judicial and Legislative salaries. The Commission is to convene after every Presidential election, make recommendations on pay raises for people in all three (3) branches of the Federal government, and then transmit those recommendations to the newly-elected Congress in early January of the odd-numbered year.

Then, Congress, has not more than thirty (30) calendar days in which to:

- (1) accept the Commission's recommendations on all three (3) branches as-is;
- (2) totally reject them outright in whole or in part; or
- (3) Increase/decrease them as it, the Congress, deems fit.

But the key thing to remember is, the 30-day deadline. If action is not taken by BOTH houses of Congress by the 30-day deadline, the Commission's recommendations then become law by default automatically on the 31st calendar day.

To explain what happened three (3) years ago in 1987, it is necessary that I point out that in the 99th Congress (1985-86), a special supplementary law was enacted ordering the Quadrennial Commission to make an interim pay raise recommendation right smack in the middle of the quadrennium after the 1986 election which was NOT a Presidential election year. The Commission, as ordered, did make a biennial recommendation which was duly transmitted to the 100th Congress (1987-88) in January of 1987. Acting quickly, the U.S. Senate voted to reject the pay raise for members of Congress, leaving the pay raise for the Executive and Judicial branches alone -- and that's fine. The U.S. House of Representatives, however, decided to play a cute little game. Knowing full well that February 3, 1987 was the last day to "reject" the pay raise, the House waited until February 4, 1987 and then voted overwhelmingly to "reject" the increase in their salary. This clever ruse, orchestrated by former House Speaker Jim Wright of Texas (who was forced to resign from Congress in May of 1989 on an unrelated matter), allowed House members to go on public record as "rejecting" the pay raise but, because they waited one (1) day too late to take the roll-call vote, still receive the pay raise anyway. (See Humphrey v. Baker, later re-named Humphrey v. Brady, 109 Supreme Court Reporter 491 and 665 Federal Supplement 23). As a consequence of this, the salary for members of Congress rose from \$77,400 to \$89,500 as of 12:00 Midnight February 4, 1987.

Then, after the November 1988 Presidential election, the Quadrennial Commission convened again and submitted its recommendations for a whopping 5% pay raise for members of Congress. Due to lingering resentment over the trick just two (2) years earlier in 1987, numerous civic organizations and private citizens loudly and clearly expressed to the 101st Congress (1989-90) in January and February of 1989 that the recommended 5% pay raise was not to their liking and in response to that huge public outcry over a year ago, BOTH houses of Congress did vote to "reject" the 5% proposal within the allotted thirty (30) days and, consequently, their salary remained at the \$89,500 level.

But by November of 1989, the 101st Congress seemed to have forgotten that bitter public opposition to a Congressional pay raise and in a quickly-executed maneuver,

TESTIMONY OF GREGORY D. WATSON ON S.C.R. No. 1638
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voted itself a large pay raise to take effect -- Guess when? January 1, 1990, that's when! On November 16, 1989, the bill H.R. 3660 was approved by the U.S. House of Representatives by a vote of 252 yeas and 174 nays (Congressional Record, p. H8775-76) and by the U.S. Senate the following day by an unrecorded vote (Congressional Record, p. S15996). This bill, H.R. 3660, provides for a \$7,100 pay raise which, as stated above, took effect January 1st of this year (not 1991). It brought their salary up to \$96,600 now. Let us bear in mind that there was no general election of the U.S. House of Representatives in the brief period of time from November 17, 1989 and January 1, 1990. Under the language of the 200-year-old Amendment, this kind of pay raise would have been utterly unconstitutional.

According to the terms of H.R. 3660, on January 1st of 1991, their salary will again rise an additional \$28,400 so that on that date they will be receiving just shy of \$125,000 per year. As if that was not bad enough, H.R. 3660 further provides for automatic "cost-of-living" increase every January 1st henceforth without necessity of further action by Congress. And all of this was neatly tucked into a bill under the guise of "ethics reform" legislation. Well, as we can see, H.R. 3660 was much more than an "ethics reform" package.

In fact, a very liberal U.S. Representative Joseph D. Early from Massachusetts voted AGAINST this November pay raise -- even though he was among the only forty-eight (48) members of the 435-member House who voted FOR the earlier pay raise proposal back in January or February of 1989 -- because the hypocrisy of H.R. 3660 just too much for even him to stomach. (Early's remarks enclosed).

I want to thank the Elections Committee for its thoughtful consideration of S.C.R. No. 1638 by Winter and I hope that the full Senate will look favorably upon it. Can the cosmetic corrections to the resolution be made in the Committee?

Again, thank you.

END

These are the remarks of U.S. Representative Joseph D. Early (Democrat of Massachusetts). Representative Early succinctly points out the immediate effectiveness of the \$7,100.00 increase to begin January 1, 1990 -- not 1991. There is no general election between 11/15/89 and 01/01/90.

H 9750

CONGRESSIONAL RECORD -- HOUSE

November 16, 1989

I proposed to the Rules Committee yesterday that we have an amendment that would allow us to strike the pay raise for the membership for 1990. The Rules Committee opted not to put that in order. I think it is really too bad that the House did not get a chance to vote on that.

I first would like to pay tribute to the Speaker of the House, Tom Foley, and to the minority leader, Bob D'Amico, to the chairman of the committee, Mr. Vito Marcilo, and to the vice chairman, Mrs. Lynn Martin, and to all of the members of the committee and the staff who have worked so hard for the last many months to effect what I believe to be a very important, very effective, very thorough compromise.

have been in Congress. Every year that I have been here, some Member has gotten up and said that it is not a good time to address pay. There is too much deficit spending, there is too much inflation, interest rates are too high, and this is not a good time to address this issue.

The one soundly rejected in Feb. 1989

As one of the 46 Members who supported the original pay raise, I feel that to come back to revisit this issue, and to suggest that we should get a pay raise now is wrong. I commend the committee for the other parts of the bill. The reform measures should have flown on their own, but we associate it with this particular bill.

Preceding me, Members have heard a number of speakers who have opposed this package, and they can find all sorts of reasons to pick the package apart. That is because it is a compromise. There are Members in this House who feel that it is too strict. There are Members of this House who feel that it is not strict enough. There are people of all walks of life throughout this country who find fault with this package or any other that might even reflect any indication of compensation for Members of Congress or ethics rules, for that matter.

But I tell you that there is no better time, because if we do not address it now, we are not going to address it for a very long time. Next year is a congressional election year, and 2 years hence the Presidential election. We are looking at 4 years from now before we address this vital issue.

H 1140

I suggest, I do not believe it is popular, but I suggest the committee erred in not making the pay raises for the judges and for the top executive officials effective right now, January 1, 1990. I think that is a mistake.

Now I worked with Congressman Lou Esposito of Ohio on the process of the Ethics Committee. There has been a lot of criticism about the way the Ethics Committee is handled, that it investigates and then it turns around and charges Members of Congress that you have a grand jury process and a petit jury process all wrapped into one; that once the Members have contacted themselves down to one line of thought, they could hardly release themselves and find a person not guilty of the charges that they themselves brought about.

I have no criticism for how anyone votes in this Chamber on this issue. I think the Members are well intended. I just know from my perspective, I have been in government 27 years, and I do not think it is too politically expedient, but I think it is true that in the 27 years I have never voted against a pay raise. This is the first time, 72 years in the State Legislature, 15 years in the U.S. Congress.

But the people perceive that the Members of Congress cannot deal with themselves, and I am here to say that this committee is recommending to this body a package which does properly deal with the ethics of this body, and also with the compensation of government in general. It is a terribly important package. If it fails, frankly, the quality of government at all levels, and in all branches, is at risk.

We have dealt with that. We have provided for a bifurcated process in future Ethics Committees.

I just think it is too bad that where the committee took the high road with regard to reform, where they took the high road with making the big increase prospective, they should have taken the high road and not inserted any money in this bill for us. This session, and then each one of us would have been able to go back to the electorate and say we did not vote ourselves one dime, because if we did not get re-elected in November we would not receive any of the increase.

I have talked to three department chiefs in the last week, and they all told me that given the first year of the Bush administration they have only filled 50 percent of the slots available to them in the higher executive service. They cannot attract good people to government. At NIA, which is so important to the interests of the gentleman who spoke before me, they cannot attract top scientists to government. It is not enticing to be in government when you can make twice, three times, four times as much in the private sector.

In the Ethics Committee to be convened beginning January 1 of this next year and in all future cases, not past years, not current or past cases, we are going to provide for an expanded committee of 11 members. Within the full committee, investigative sessions will be formed for every single case, consisting of 6 to 8 Members who will investigate the facts of the case after the chairman and the vice chairman of the Ethics Committee have determined that the charges are not frivolous.

Mr. PAZIO. Mr. Speaker, will the gentleman yield?

Mr. EARLY. Certainly I yield to the gentleman from California.

Mr. PAZIO. Mr. Speaker, I just wanted to clarify that the gentleman is referring to the cost-of-living adjustment that has already been made available to other Federal workers, both this calendar year and prospectively in January. We are simply conforming to existing COLAs for other Federal workers in all three branches.

Folks, I would suggest that we have to come together sometime to address this issue. We cannot yield to those who say it is too strict or to those who say it is too liberal. We cannot allow ourselves to be intimidated by the Ralph Naders of the world, who in their own megalomaniac thinking think that everything that government does is absolutely corrupt and, therefore, there should be no government. If we listen to the Ralph Naders, we would never pay ourselves a nickel, we would not be here, we would not have jobs, we would not feed our families, we would not live in homes, we would not be normal people, and we would not give the people of this great democracy of ours the government which they truly desire.

Once they investigate it, they report to the other members of the committee, the remaining members of those 11 members, and they separately decide whether or not the initial charges brought from the investigation session were warranted. If they find that there is clear and convincing evidence that the charges should be brought further than the initial committee meet and recommend sanctions which they then bring to the House.

Mr. EARLY. If I can just conclude by saying that we can call it a COLA, or we can call it anything we want, but our pay today is \$56,500, and under the proposal next year it will be \$7,100 higher.

Now the two main things that I would like to provide for are provided for the Members who are being investigated. Second, it provides credibility for the entire committee to come before the House of Representatives and make their recommendations. Some one year has intervened and a little sense has been exercised.

Mrs. MARTIN of Illinois. Mr. Speaker, I yield 7 minutes to the gentleman from Louisiana (Mr. Livingston), an outstanding member of the ethics reform task force.

Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.

We will provide for a major outpour for the investigative and adjudicatory phases of the investigation. That means that we should have to

Meaning the current list Congress

How, if the other two branches cannot set their own salary--the legislative branch, however, can