Approved: 3-15-95
Date

MINUTES OF THE JOINT SENATE/HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 12:00 p.m. on February 15, 1995 in Room 519-S of the Capitol.

All members were present except: Representative David Adkins, Excused
Representative Galen Weiland, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Mike McCabe, Director, Midwestern Council of State Govt.
Professor Francis Heller, University of Kansas
Don Klaassen
Representative Darlene Cornfield
Walter Myers
Glen Burdue, Kansas 10th Amendment Society

Others attending:

Senator Oleen opened the hearing on **SCR 1606.**

SCR 1606: **Providing for the convening of a conference of the states appointment of delegates; development of an action plan to restore checks and balances between states and the national government; organization of the conference of the states.**

Mike McCabe, Director of the Midwestern Office of the Council of State Government, testified as a proponent for **SCR 1606**, stating the delicate balance of state and federal powers in the United States has fluctuated rather dramatically during the 200 years since our constitution was ratified. Notwithstanding the preeminence of the states during the early years of our history, and despite the constitutional safeguards that were designed to protect the states against federal encroachment, the balance of state and federal powers has, over the years, shifted dramatically in favor of the national government. The state and federal powers must be maintained if the states are to effectively play their own critical roles.

The purpose of the proposed Conference of the States is to initiate the long-overdue process of restoring the proper balance of power between the states and the federal government. By providing a forum for the states to come together for the first time since 1787, and by limiting the focus of that forum to the single issue of state-federal relations, the Conference of the States will help to stimulate the kind of long-term, structural changes that are needed to ensure the restoration of a balanced federal system. (See Attachment #1)

Francis Heller, Roberts Distinguished Professor Emeritus of Law and Political Science, University of Kansas, participant, neither a proponent or opponent, testified it is intriguing that the words "federal" and "federalism" do not appear in the text of the Constitution. The Framers referred to their creation of "the national government." Critics spoke of "this federal arrangement." (See Attachment #2)

Don Klaassen, Wichita, testified as a proponent for **SCR 1606**, stating that our Government cannot continue to function under its current practices and framework and approaches. The citizens cannot afford the current tax burden they carry. Passage would lead to a Conference of the States and a plan of operation to be developed which has a chance of halting the federal government's runaway stampede, and which can instill a degree of discipline and common sense into local, state and federal government. (See Attachment #3)

The Chairperson announced there would be equal time for proponents and opponents and the time had expired for the proponents, so would hear the opponents and if there is remaining time, would return to the

proponents.

Representative Darlene Cornfield testified opposing **SCR 1606**, stating she was in total agreement with parts of the Resolution regarding the expansion of power of the Federal Government over the States and mandates without funding. The Conference of the States presents a possible danger to the U.S. Constitution. It is unnecessary since the 10th amendment of the U.S. Constitution already establishes the sovereignty of the individual states. (See Attachment #4)

Walter Myers, Executive Director of the Constitutionists Networking Center, testified opposing **SCR 1606**, stating the CNC was established in September 1993 because of concern over the unchallenged, unconstitutional, undesired and abusive use of power being exercised by the federal government. CNC's goal is to return government to within the limits prescribed by the Constitution. (See Attachment #5)

Glen Burdue, Chairman, Kansas 10th Amendment Society, Wichita, opposed **SCR 1606**, as the Society voted against it and asked Mr. Burdue to speak against it. Concerned about what the legislation does say; on Page 1, line 20 it indicates it wants to reduce the power of the states and increase the power of the federal government to make it equal to the states. On line 7 of Page 2 it indicates this conference will be held under auspices of a private corporation and there is concern that a private corporation is handling this conference. At the end of the document, as normally in the 10th Amendment Resolution, **HCR 5008** which I support, it directs the Secretary of State to send copies of the Resolution to elected federal officials and state officials. On the other hand this particular document being considered today, **SCR 1606**, the Conference of States specifies the Secretary of State to notify what apparently three private corporations are the results to what we are doing with this legislation. (No Attachment)

There was committee questions and discussion.

The committee adjourned at 1:35 p.m. and the next meeting will be February 16, 1995.

Joint Hearing of the Kansas House and Senate
Federal and State Affairs Committees

State Capitol
Topeka, Kansas
February 15, 1995

Testimony of Michael H. McCabe
Director, Midwestern Office
The Council of State Governments

Regarding SCR 1606 and the Proposed Conference of the States

I. Introduction

Good afternoon. My name is Mike McCabe, and I am the director of the Midwestern Office of the Council of State Governments (CSG). I'm here today to testify in support of SCR 1606 and to urge the state of Kansas to participate in the proposed Conference of the States. I would like to begin with a few words about the need for the proposed conference before turning to a brief description of the COS process and my organization's role in its planning. I'll touch briefly on some of the things the Conference of the States is not and then highlight the importance of Kansas's participation. Finally, I'll try to bring you up to date on the status of the COS effort, and then I'll be happy to answer any questions you might have.

II. The Purpose of the Conference

As the other witnesses here today have testified, the delicate balance of state and federal powers in the United States has fluctuated rather dramatically during the 200 years since our constitution was ratified. Notwithstanding the preeminence of the states during the early years of our history, and despite the constitutional safeguards that were designed to protect the states against federal encroachment, the balance of state and federal powers has, over the years, shifted dramatically in favor of the national government. Some would say the balance has been lost.

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The reasons for this shift are numerous, and it cannot be denied that they include the periodic failure of the states themselves to exercise their authority wisely or in the best interests of the nation. Clearly, the national government has an important role to play within the American federal system, but the balance of state and federal powers must be maintained if the states are to effectively play their own critical roles. Without strong states, the laboratories of democracy that Justice Louis Brandeis once lauded will lose their vital ability to experiment, and the economies of small scale that often distinguish the states from the federal government will disappear.

The purpose of the proposed Conference of the States is to initiate the long-overdue process of restoring the proper balance of power between the states and the federal government. By providing a forum for the states to come together for the first time since 1787, and by limiting the focus of that forum to the single issue of state-federal relations, the Conference of the States will help to stimulate the kind of long-term, structural changes that are needed to ensure the restoration of a balanced federal system.

III. The COS Process

Before turning to some of the defining characteristics of the Conference of the States, let me say a few words about the COS process. The Conference of the States was originally the brainchild of Utah Governor Mike Leavitt, a Republican, and Nebraska Governor Ben Nelson, a Democrat. Motivated by their shared concern over the continuing erosion of state authority, and by their common belief that only a bipartisan, 50-state effort to reverse the decline will succeed, the governors envisioned a convention of state delegations empowered by their legislatures to debate potential reforms and to recommend appropriate measures to restore an effective state-federal partnership.

Late last year, the governors introduced their plan to the Governing Board of my organization, The Council of State Governments. They also took their idea to the National Conference of State Legislatures and the National Governors' Association. By the end of

December, all three groups had endorsed the concept, and a national steering committee consisting of representatives from CSG, NCSL and NGA was established to facilitate the effort.

Under guidelines approved by the steering committee, the Conference of the States will not be formally convened until at least 26 states have committed to participate. The vehicle designed to secure those commitments was a model resolution of participation, like the one before you today, which calls for each state to send a bipartisan delegation consisting of the governor and up to six legislators to the conference. Once the required number of states has approved the resolution, a preconference will be held to establish the necessary procedural rules and to define the agenda for the conference itself, which will be held in October.

The end result of the Conference of the States will be a new instrument in American democracy called a States' Petition, which will specify any statutory and constitutional measures deemed necessary by the delegates to restore a proper balance within the American federal system. However, before being presented to Congress, the petition will first be returned to the states, where it must be approved by three-fourths of the legislatures. Although the States' Petition will carry no legally binding authority, the degree of support required for ratification should help to ensure Congressional attention.

IV. What the COS is Not

That's most of what you need to know about the Conference of the States, but before moving on, let me emphasize what the Conference is not. First, it is not an attempt to promote any partisan agenda. The proponents of the Conference include a broad, bipartisan mix of governors and state legislators, and the COS Steering Committee includes Republican and Democratic representatives from the nation's three largest, bipartisan associations of state officials. Moreover, the model resolution of participation guarantees minority representation within each state's delegation, and the conference voting procedures, which will allow each state just one vote, should encourage bipartisan cooperation.

Secondly, the Conference of the States is not about special interest groups. Participation in the conference will be limited to the official delegations appointed by each state, and the states themselves will cover the costs of their delegations' expenses.

Third, and perhaps most importantly, the Conference of the States will not serve as a forum for the debate of individual policy issues, such as abortion or gun control. Instead, the conference will focus exclusively on the appropriate balance of state and federal powers, and the only recommendations that will be considered are those that address the need for long-term, structural reform. In that regard, it is important to note that while the Conference of the States might well produce one or more recommendations for constitutional reform, the conference is not -- and could not become -- a constitutional convention.

V. The Importance of Participation

Given the procedural safeguards that have been built into the Conference-of-the-States concept, there is little reason to fear participation, and every reason to go forward. For decades, the states have struggled unsuccessfully to retain their rightful status as equal partners within the American federal system. Now, faced with the growing burden of unfunded federal mandates and the declining relevance of the Tenth Amendment, the states too often find themselves reduced to the status of supplicants on Capitol Hill. Instead of partners in a balanced system of government, they are treated like any other special interest group, and often again, they are simply dismissed.

The Conference of the States offers you a chance to join your counterparts from across the country in reasserting the constitutional right of states not simply to be heard, but to participate as equals within our federal system. To do so, however, you must first approve the resolution before you. I hope you will take full advantage of this historic opportunity, and I encourage your delegates to actively pursue the COS objective of restoring balance to the federal system. Kansas's participation is essential to the effort.

VI. Progress to Date

Before closing, I'd like to briefly bring you up to date on the overall status of the Conference-of-the-States-effort. Since the first of this year, the model resolution of participation has been introduced in 41 of the 47 states in which legislative sessions are now underway. That figure includes Kansas, as well as all 10 of the other Midwestern states.

By the end of last week, the resolution had already been approved by both houses in each of nine states (AR, DE, ID, IA, KY, MO, OH, UT and VA), and earlier this week, Arizona became the tenth state to pass the measure. At least one legislative chamber in each of eight other states (CO, IN, MN, NY, ND, OR, SD, and WY) has also approved the resolution, and several others are expected to take action this week.

In short, legislative support for this concept is growing rapidly, and it remains broad based in both political and geographic terms. For a complete rundown on the status of the resolution, as well as additional information on the Conference-of-the-States concept, I would refer you to the map and other materials I have distributed along with my testimony.

VII. Conclusion

Once again, I urge you to approve SCR 1606. On behalf of the Council of State Governments, I want to thank you for this opportunity to discuss the Conference of the States. I would be happy to answer any questions.

f:mmc:costest

Conference of the States

Restoring Balance in the Federal System

FACT SHEET

I. OVERVIEW

- The Conference of the States (COS) will be the first formal gathering of the states since 1787. The Conference will be a historic effort by the states to restore their status as equal partners in the federal system.
- COS is a non-legal, yet formal process for states to develop a plan to restore balance to the federal system.
- COS will be convened when a majority of states pass resolutions of participation in COS.
- Each state will vote to send a bipartisan delegation not to exceed seven members to COS -- the governor and no more than six legislators (three from each house with at least one of those from each major political party). Two alternate legislators, one from each party, also will be appointed in each chamber.
- COS is expected to occur in the Fall of 1995 in a historically symbolic location such as Philadelphia.
- The end product of COS will be a States' Petition, specifying a set of statutory, legal and constitutional measures essential to an effective, balanced state-federal partnership.

II. DEFINING CHARACTERISTICS

- COS enjoys broad, bipartisan support from state leaders. It is guided by a national, bipartisan steering committee of state elected officials, under the auspices of The Council of State Governments, in cooperation with the National Governors' Association and the National Conferences of State Legislatures.
- COS is an initiative of, for, and by the states to advocate a balanced federal system -- with a strong, yet limited, federal government -- and with states (and local governments) handling a larger share of the domestic governance role.
- COS does not address or advocate any single or special issue interests. It does not speak to abortion or gun control, nor does it identify with any group or individual.
- COS is a forum for the states to formally, collectively, and responsibly define their rightful roles in the federal system, based upon past principles and the new governance challenges of the 21st century.

Convenor: The Council of State Governments in conjunction with the National Conference of State Legislatures and the National Governors' Association
P.O. Box 11910 • Lexington, KY 40578-1910 • 606/244-8000 • 606/244-8001 FAX

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III. STATES AS AGENTS OF REFORM

- States, along with local government, have become positive forces of governmental change and reform:
  - All states have adapted to changing times by modernizing their constitutions in the last 30 or so years.
  - Most states have met or surpassed public demands for open, honest government by revising their ethics codes and standards in the last five years.
  - Most states have saved tax dollars by restructuring, downsizing and privatizing key functions in the last few years.
  - Most states have more women and minorities in elected office than the federal government.
  - And, virtually all states are living within their budgetary limits. In contrast to the federal level, which has been overspending in recent years more than all 50 state general fund budgets combined.
- And, in domestic policy areas, states are the acknowledged leaders and innovators in:
  - Health care redesign; welfare reform; education restructuring; corrections policy; environmental innovation; and in many management areas - including TQM, customer service and benchmarking to improve accountability for outcomes and for efficiency.

IV. CONCLUSION

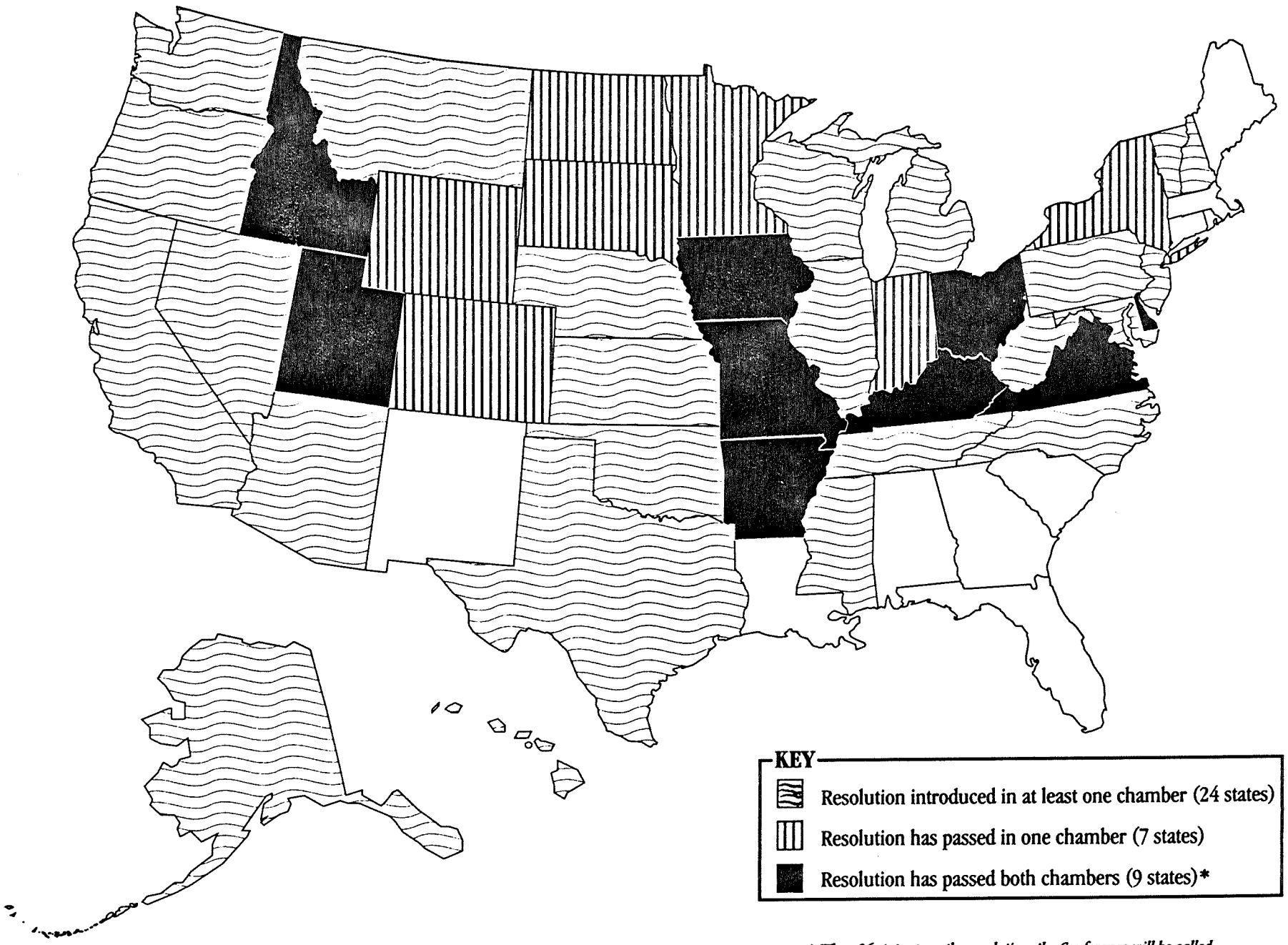
- Convening a Conference of the States provides an invaluable forum to address a profound structural distortion in the American political system.
- COS offers states and citizens an opportunity to revisit our founding governing principles and to determine the appropriate state-federal structural balance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

QUESTIONS?

Call The Conference of the States information line:
(606) 244-8158

Countdown to the Conference of the States

- as of February 9, 1995 -



Source: The Council of State Governments

** When 26 states pass the resolution, the Conference will be called.*

Status Report 2-9-95 5:55 p.m.

■ States that have passed a resolution in both chambers: (nine states)	Party control: Governor	Senate	House
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.
Utah	Rep.	Rep.	Rep.
Virginia	Rep.	Dem.	Dem.

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

Colorado Senate
Indiana Senate
Minnesota House
New York Senate
North Dakota House
Oregon Senate
South Dakota House
Wyoming House

■ States that have introduced the resolution in at least one chamber: (24 states)

Alaska
Arizona
California
Hawaii
Illinois
Kansas
Maryland
Mississippi
Michigan
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
Oklahoma
Pennsylvania
Tennessee
Texas
Vermont
Washington
West Virginia
Wisconsin

■ States where introduction is pending (nine states)

* Alabama
Connecticut
* Florida
Georgia
* Louisiana
Maine
Massachusetts
Rhode Island
South Carolina

** These legislatures have not convened as of 2-9-95.*

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

Convener: The Council of State Governments in conjunction with the National Conference of State Legislatures and the National Governors' Association
•P.O. Box 11910•Lexington, KY 40578-1910
•606/244-8000•606/244-8001 fax

The Conference of the States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Conference of the States
QUESTIONS AND ANSWERS

Who will organize The Conference of the States?

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

When will The Conference of the States be held?

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

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Who supports The Conference of the States?

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

Who will select the participants in the Conference?

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

What is a States' Petition?

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

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

Where will the Conference be held?

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

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

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

How will the Conference be financed?

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

What could hurt this effort?

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

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

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

Is the Conference anything like a Constitutional Convention?

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

Is this a Republican plan or a Democratic plan?

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

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

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

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

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

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

What is the role of Congress in this initiative?

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

Has a Conference of the States ever been held before?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Conference of the States
BACKGROUND INFORMATION

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

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

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

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

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

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

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

"Balanced competition" in the federal system

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

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

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

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

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

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

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

Timing is critical

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

How centralization at the federal level hurts states

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

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

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

How states can best compete for power

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

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

The proper federal/state balance

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

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

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

A new era in society with new governance needs

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

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

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

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

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

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

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

Conclusion

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

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

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E. Benjamin Nelson
Governor

Statement of
E. Benjamin Nelson
Governor of Nebraska

before the

Executive Board
Nebraska Unicameral Legislature

regarding

"The Conference of the States"

February 7, 1995

Good afternoon, Mr. Chairman and members of the Executive Board. I'm Ben Nelson, Governor of Nebraska. I am here today to provide testimony in support of Legislative Resolution 16 introduced by Senators Withem and Kristensen regarding adopting a "Resolution of Participation" for the "Conference of the States."

For nearly two years I have been a leader and advocate for relieving state and local governments from the excessive burdens of unfunded federal mandates. I have signed an Executive Order instructing state agencies to bring in local political subdivisions early in the rules making process. You passed and I signed LB 446,

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the "Negotiated Rule Making Act" last session. And currently, members of my cabinet and staff are developing and implementing strategies that will allow communities to comply with environmental mandates in more cost-effective ways.

We've accomplished a great deal already to stop the mandate madness. However, I have found through this process the issue goes far beyond the funding of mandated policies. The real issue is an imbalance of power that currently exists between the federal government and state governments. This intergovernmental relationship is <u>not</u> functioning as the founding fathers envisioned the process over 200 years ago. Their process of competitive federalism is one of the cogs that makes our government machine work....one of the things that makes our nation great. This imbalance of power is stripping the gears of government.

In an attempt to evolve the intergovernmental system, Utah Governor Mike Leavitt and I have developed a proposal to help restore balance to the federal-state relationship. This proposal is called the "Conference of the States." This process will stimulate long-term, fundamental changes in the way the federal government and state governments treat one another.

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Before we adopted the "Conference of the States" approach, our options for addressing this imbalance in government represented what I call a "dilemma of extremes." At one extreme, we can continue to complain, cajole, and lobby Congress just like any other special interest group. On the other extreme, a super-majority of states could call for a Constitutional Convention. Neither of these alternatives seem rational, reasonable, or prudent courses of action. To avoid these extremes, we developed the "Conference of the States" process to enable us to address fundamental issues, yet protect the Constitution which has served us so well throughout the history of our great nation.

The process will work something like this. All 50 legislatures are now being asked to adopt a "Resolution of Participation" in the Conference. This resolution, of which a copy has been distributed to each of you, will allow for each state to send the Governor and up to six legislators (on a bipartisan basis) as delegates to the Conference. After at least 26 legislatures have adopted and the Governor has signed the Resolution, the Conference of the States, Inc., will be incorporated as a non-profit 501C-3. Two actual meetings of state delegations will be held. The first, probably in July, 1995, will be to adopt rules, bylaws, etc. of the Conference and

to allow state delegations to propose recommendations of how balance should be restored to the intergovernmental system. At the second meeting, probably in October or November, Conference delegates will reconvene to adopt recommendations which will encompass a "States' Petition." The States' Petition will then be sent back to all 50 states for ratification. If at least 3/4 of the states ratify the States' Petition during their 1996 legislative sessions, delegates of the Conference will present the ratified version to both houses of Congress.

We believe this process has great potential for addressing questions of a fundamental, structural nature in a rational, comprehensive manner. This approach does not reflect any ideals advocated by the former states rights or patriots proposals to abolish the federal government. We believe there continues to be a need for a strong federal government. Our objection is to prescriptive, "one-size-fits-all" policies which do not reflect the varying needs of different places in our nation. This process allows all of us as public servants the opportunity to determine the appropriate roles different levels of government should play to accomplish the goals of the people in the most cost-effective manner possible.

I would encourage you to advance this Resolution to the floor as soon as possible and have the Unicameral take action quickly.

Thank you. I would be happy to answer any questions.

STATEMENT

Presented to the Joint Hearing
of the
Senate and House of Representatives
Committees on Federal and State Affairs

Francis H. Heller
Roberts Distinguished Professor Emeritus
of Law and Political Science
University of Kansas

February 16, 1995

I appear before you as a longtime teacher and researcher in the fields of constitutional and American Legal History. I taught constitutional law continuously during forty years of active service as a member of the KU faculty. I have written books and articles on constitutional questions and may be the only person to have written a book on the Kansas constitution. In the last twenty years I have increasingly turned to legal history, a subject which, even in my retirement, I continue to teach on a regular basis.

I

The topic on which I have been asked to speak is the Tenth Amendment to the Constitution of the United States[1], sometimes also referred to as "the Federalism Amendment."

It is intriguing that the words "federal" and "federalism" do not appear in the text of the Constitution.[2] The Framers referred to their creation as "the national government." Critics spoke of "this federal arrangement." But, by a stroke of political genius, Alexander Hamilton came to call his followers, the advocates of a strong central government, "Federalists."

Defining federalism is a problem not only for us in the United States.[3] Rufus Davis, an Australian student of the subject, found that there were more than two hundred different defini-

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1. "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."

2. Neither, for that matter, does the expression "separation of powers," a concept now taken for granted as fundamental to the American constitutional scheme.

3. For a good, brief summary, see Ivo D. Duchacek, Comparative Federalism: The Territorial Dimension of Politics (1970).

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tions in use -- far more than there are federal arrangements throughout the world.[4]

Justice Hugo Black, struggling with the problem of defining "our federalism," said that it was

> Aa system in which there is a sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the state.[5]

It is probably fair to say that most Americans who today use the word "federalism" assume that it is a short-hand way of saying "less power to the national government, more power to the States."[6] In the first half of our nation's history that definition described the term "States' Rights," a phrase that has fallen into disuse because of its initial association with slavery, segregation and racism. Thus, in one of these ironies of which history abounds, one who would have been an "anti-federalist" in the early days of the republic would be a "federalist" today (and presumably vice versa).

II

Like many of the phrases of the Constitution, the Amendment has passed through changes of interpretation, has had its ups and downs as a source of constitutional adjudication. And, like many of the words adopted in Philadelphia in 1787 and 1789, the records tell us little to enhance our understanding.

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4. The Federal Principle: A Journey Through Time in Quest of a Meaning (1978). See also my discussion of this book and related aspects in "Is There A Theory of Federalism?" 11 Poli. Sci. Reviewer 287 (1981).

5. Younger v. Harris, 401 U.S. 37, 44 (1971).

6. Note here also that "government," now, so the media tell us, widely suspected and despised, is never all government but strictly the government of the nation. State governments, although collectively their bureaucracies are twice the size of that of the nation and, because they are often poorly paid, every bit as difficult to deal with, are seemingly immune from this opprobrium. Local governments, regardless of corruption and cronyism that may exist, are seen as downright "user-friendly."

Partly at least this is due to the fact that in those early years the Senate met behind closed doors and, while it maintained minutes -- a record of motions and votes --, the debates themselves went unrecorded. William Maclay, the junior senator from Pennsylvania, kept rather copious, even if slanted, notes[7] but he is no help to us when it comes to the discussions over the Bill of Rights: He was home in bed with the flu.

In the House of Representatives where the proposed changes to the Constitution had been introduced by James Madison on June 8, 1789, the debate moved sluggishly, with frequent delays, most of them over questions of legislative procedure. When the House finally turned to the substance of the Amendments, the focus was mainly on freedom of religion and on preservation of trial by jury. As far as what today constitutes the Tenth Amendment is concerned, James Madison in his comments following his introduction of the proposed Amendments observed:

> I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the constitution, that the powers not therein delegated should be reserved to the several States. Perhaps words which may define this more precisely than the whole of the document now does, may be considered as superfluous. I admit they may be unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.[8]

In other words, he did not approve but was enough of a politician to know that it would bring a few votes in support.

Apparently only two attempts were made to change the text. One was proposed by Roger Sherman, a representative from Connecticut who had been one of the signers of the Declaration of Independence and, as a member of the Constitutional Convention, had been instrumental in crafting the compromise that ended the critical deadlock over the question of representa-

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7. Journal of William Maclay (Harris ed., 1881, reprint 1991).

8. 1 Annals of Congress 409 (1789); reprinted in 2 Bernard Schwartz, ed., The Bill of Rights: A Documentary History (1971) 1033 [hereafter Bill of Rights].

tion in Congress. Without debate, the House added the words "or to the people" at the end of the proposed Amendment.[9]

There was apparently more discussion when Senator Elbridge Gerry of Massachusetts, like Sherman a veteran of the Continental Congress and of the Constitutional Convention, moved the insertion of the adverb "expressly," so as to make the text read "the powers not expressly delegated." At the time, no record of votes cast was maintained in the Senate nor was there a count of hands unless at least one fifth of the members present requested that it be done. Gerry had enough support for the show of hands but his motion lost, 32 to 17.[10]

III

Historians with rare exceptions and lawyers quite often talk and write about events of the past as if they had occurred in an isolation chamber. But, as we all know, there is always something else going on at the same time -- and that makes it that much more difficult to discern who did what for which reason. Reading through the House debates in the First Congress, one quickly notes that there were at least two major topics pending which some members sought more urgent than adding a Bill of Rights to the Constitution. Time and again in the course of the debate there is the demand to put the proposed Amendments aside and finish the task of establishing a judiciary for the new nation. The subject of a Bank of the United States, so articulately advanced by Alexander Hamilton, was not yet formally before the Congress but the contemporary newspapers saw it as the most challenging (and most divisive) issue on the political horizon. When Gerry moved to add "expressly" to the opening words of what would become the Tenth Amendment, he justified it mainly as a move to clarify that Congress did not have the power to establish a bank.

One also has to view the subsequent history of the Amendment in broader societal terms. Whether it be Jeffersons' purchase of the Louisiana territory[11] or the seemingly small matter of

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9. 2 Bill of Rights 1128. Sherman also deserves credit for urging that, rather than interweaving changes into the text of the constitution, the Amendments should be appended. Ibid. 1066.

10. 2 Bill of Rights 1127.

11. On Jefferson's constitutional views, see David Meyer, The Constitutional Thought of Thomas Jefferson (1994); on the Louisiana Purchase, see Forrest McDonald, The Presidency of Thomas Jefferson (1976), 63 - 75 and works

2-4

who should have legal custody of the seal of Dartmouth College[12], the nation's surging economy was well served by the expansive interpretation given to the Constitution (and the Tenth Amendment) by the Virginia dynasty of President and by Chief Justice John Marshall and his brethren on the Supreme Court.

IV

Most of us learned in our schools that John Marshall was a towering figure in our nation's development, the man who had more to do with enabling the nation to grow and prosper than almost anyone else. His sonorous phrase in McCullough v. Maryland[13] that "we must never forget that it is a constitution we are expounding" has been the banner word not only for his era but for most of our history under the Constitution. Only in recent years have his decision been subjected to disapproval and his handling of the cases before him criticized.[14] This recent change in our assessment of the man until recently always known as "the great chief justice" coincided and probably was fueled by the Supreme Court's rediscovery of the Tenth Amendment in National League of Cities v. Usery in 1976.[15]

In fact, this was the Amendment's second resurrection. Under the Chief Justiceship of Roger B. Taney (1837 - 64) state claims for the protection of the Tenth Amendment received a receptive hearing by the Court.[16] Under Taney's successors the acceptance by the Court of what is usually called "the doctrine of dual federalism" made it unnecessary to invoke the Tenth Amendment. "Dual federalism" meant that the Court found

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cited in the same volume.

12. Dartmouth College v. Woodward, 4 Wheat. 518 (1819).

13. 4 Wheat. 316, 405 (1819).

14. See, e.g., Robert L. Clinton, Marbury v. Madison and Judicial Review (1989).

15. 246 U.S. 833. Opinion by Justice Rehnquist, with Justice Blackmun concurring. Brennan and Stevens each wrote dissenting opinions, with White and Marshall joining Brennan's opinion.

16. See, e.g., Bank of Augusta v. Earle, 13 Pet. (33 U. S.) 519 (1839), and Ableman v. Booth, 21 How. (62 U.S.) 506 (1859).

Congress barred from regulating matters because they were not within interstate commerce, and the states were barred from regulating the same matters because, substantively viewed, their regulations violated the fairness notion of due process of law. But the Court also, allowing itself some "wiggle room," declared that there were some businesses that, because they were "affected with a public interest," fell within the states' power to regulate.[17]

Thus the availability of substantive due process brought the Tenth Amendment into disuse. In 1931 the Supreme Court declared -- this was the "Old Court," Butler, Hughes, McReynolds, Roberts, Sanford, Sutherland -- that "The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the states or to the people. It added nothing to the instrument as originally ratified. . . "[18]

Ten years later, Justice Stone, the lone survivor of the Sprague Court, flatly announced that "the Tenth Amendment . . . states but a truism that all has been retained that has not been surrendered."[19] This decision came, of course, in the heyday of New Deal dominance. Congress had, at the Executive's behest, responded to the worst economic crisis the nation had ever seen -- and the Court, having first erected major constitutional obstacles to the reform laws, had subsided -- one might say, bowed to the inevitable.

In the process it appeared that substantive due process had been given the last rites -- or so Justice Black announced in 1963.[20] The Tenth Amendment had been labeled "a truism." But the Bill of Rights appeared to be full of life, as did the equal protection clause of the Fourteenth Amendment.

But the Court has never been without its critics -- and was not now. Richard M. Nixon announced it as a primary goal of his race for the Presidency to bring to the bench men and women who would the trend that had set in in 1938. His appointees to the Supreme Court -- and even more so those of

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17. Munn v. Illinois, 94 U.S. 113 (1876), and numerous decisions following in its wake, culminating with Nebbia v. New York, 291 U.S. 502 (1934).

18. United States v. Sprague, 282 U.S. 716, 733 (1931).

19. United States v. Darby Lumber Co., 312 U.S. 100, 124 (1941).

20. Ferguson v. Skrupa, 372 U.S. 726.

President Ronald Reagan -- did what others before them had done: Cast about for a constitutional phrase that would allow them to abandon (or transform) language used by their predecessors, with results of which the new members of the Court disapproved.[21] The Tenth Amendment, that "truism," so long unused, was readily at hand.

V

The same law, the Fair Labor Standards Act, was involved in both Darby and National League of Cities. But in 1941 that law did not extend to public employees; in 1976 it did. Justice Rehnquist, mentioning the Tenth Amendment only by a footnote reference to an earlier case,[22] held that a federal statute that impinged upon the States "qua States" was beyond the power of Congress to enact. Overruling an earlier decision that sanctioned wage and hour coverage of publicly-owned hospitals,[23] Rehnquist held that "integral governmental functions" of the States could not be made subject to Congressional control.

Justice Blackmun's concurrence turned on his belief that each case deserved to be examined and adjudged upon its facts. In each of several successive cases he was able to find distinctions between the fact situation in National League of

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[21]. This generalization fails to take cognizance of the role of the bar in such searches for new tools in the process of constitutional litigation. Of course, judges depend largely on what attorneys bring to them. For a good, historical example, see the discussion of the work of Archibald Campbell, a former justice of the U.S. Supreme Court, in the Slaughter House Cases, 16. Wall. 36 (1873), as described by Walton Hamilton, "The Path of Due Process of Law," in: The Constitution Reconsidered (Conyers Read ed. 1938).

[22]. Fry v. United States, 421 U.S. 542 (1975). Justice Marshall's footnote, clearly a dictum only, stated that "While the Tenth Amendment has been characterized as a 'truism,' stating merely that "all is retained that has not been surrendered," United States v. Darby, it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system.

[23]. Maryland v. Wirtz, 392 U.S. 183 (1968).

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Cities and the case at hand.[24] Eventually he wrote the majority opinion in the case that reversed National league of Cities.[25]

VI

Garcia, like the case it overruled, was a 5-to-4 decision. Rehnquist, now chief justice, in a brief but poignant dissent, asserted his conviction that the principle of National League of Cities would "in time again command the support of a majority of [the] Court."[26] A decade later that wish has not been fulfilled. Indeed, most observers of the Court, noting that it appears to have coalesced into three clusters of three justices each, would assume that it will take another wave of new (and different) appointments before the current judicial view of the Tenth Amendment is likely to change.

There are, of course, a considerable number of thorny questions that remain -- and some that are only now emerging. What does it mean, to revert to Marshall's footnote in Fry, that a state has the "ability to function effectively within a federal system"? When, to apply Rehnquist's test in Usery, does a State act "qua State"? What, to track Blackmun's thinking, are "integral functions" of State government? What of functions that have traditionally been exercised by State or local governments but have now been "privatized"? Does the corporation that now runs the former State prison stand in place of the State and is therefore entitled to the protection of the Tenth Amendment?

It would be tempting (and there are some who are indeed tempted) to seek to spell out answers to as many of these questions as a fertile brain (or combination of brains) can produce. Tradition counsels against such a detailed approach. We must, with John Marshall, never forget that it is a constitution we are approaching not a city code or a set of school board regulations. Every discussion aimed at improving our system of government deserves encouragement. But let us not forget the sensitive qualification the Court found

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[24]. Hodel v. Virginia Surface Mineral Reclamation Association, 452 U.S. 264 (1981); Federal Energy Regukatory Commission v. Mississippi, 456 U.S. 742 (1982); Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); EEOC v. Wyoming, 460 U.S. 226 (1983).

[25]. Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).

[26]. 469 U.S. 528, 580.

desirable in Brown v. Board of Education: Proceed with all deliberate speed![27]

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[27]. 349 U.S. 294, 300 (1955).

Senator Oleen, Rep. Boston, Committee Members 2-15-95

I am Don Klaassen. My wife Ruth & I have 3 children. We've been Wichita residents for 34 years. Educated at WSU as an accountant. Practiced as a CPA for 6 years, then a Businessman for last 25 years.

I'm here representing myself as a Concerned Citizen. Thank you for this opportunity to speak.

The Topic is: SCR 1606--Setting the Stage for a Conference of the States

I am in FULL SUPPORT of this Resolution & the direction of GOVERNING it suggests.

However, I have some friends & associates that have serious concerns about this Resolution---specifically the possibility of this Conference turning into a Constitutional Convention---and thus the possibility of opening the Constitution to Change.

I acknowledge their concerns have merit, but I DO NOT share the extent & degree of those concerns. In addition, I'm not certain a Conference of the States can legally be turned into a Constitutional Convention.

But even if that possibility exists, I believe this COURSE MUST BE PURSUED. Our GOVT (Fed., State, & Local) needs new perspective, new focus, clear priorities, a goal to lower over-all taxes on our citizens----and a careful search to drop those programs not essential to the scope of GOVT.

I BELIEVE,

That our Govt cannot continue to function under its current practices & framework & approaches;

That our Citizens cannot afford the current tax burden they carry, nor should they have to experience the SNUFFING OUT of MORALE that excess regulations & taxation causes.

While I stand here & say this to you, I acknowledge that I do not know what specific changes to recommend---to achieve these goals. I wish I did.

SO--I support 1606, & expect the passage of 1606 to lead to a Conference of the States, whereat I expect a PLAN OF OPERATION to be developed which has a CHANCE of halting the FED GOVT's run-a-way stampede, and which can instill a degree of discipline & common sense into GOVT (Fed, State & Local).

To Conclude, I believe KS <u>is forced</u> to take the type of action laid out in SCR 1606, to protect itself from an Unworkable Situation resulting, in great part, from PAST ACTIONS of the FED GOVT, & to be able to deal with future actions of the FED GOVT.

I SEE THIS AS AN ACT OF SELF-PRESERVATION.

Again, thank you for this opportunity to speak with you.

FvSA
2-15-95
Atch #3

STATE OF KANSAS

DARLENE CORNFIELD
REPRESENTATIVE, 90TH DISTRICT
SEDGWICK COUNTY
7 WEATHERLY COURT
(316) 755-0543
VALLEY CENTER, KANSAS 67147

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIR: JOINT COMMITTEE ON PENSIONS INVESTMENTS & BENEFITS
MEMBER: APPROPRIATIONS
SUBCOMMITTEES: BUDGET REFORM & GOVERNMENT IMPACT
CORRECTIONS & PUBLIC SAFETY
KPERS RETIREMENT ISSUES

STATE CAPITOL—115-S
TOPEKA, KS 66612-1504
(913) 296-7682

February 15, 1995

Madam Chair and members of the Senate and House Federal and State Affairs Committee. Thank you for the opportunity to testify on SCR1606.

I am in total agreement with parts of the Resolution regarding the expansion of power of the Federal Government over the States and mandates without funding. I have serious concerns with the rest of this Resolution. The Conference of the States presents a possible DANGER TO THE U.S. CONSTITUTION. It is unnecessary since the 10th amendment of the U.S. Constitution already establishes the sovereignty of the individual states.

There have been concerns expressed about the 10th Amendment Resolution, which recently passed the House, regarding a hidden agenda or ulterior motive. I submit to you that this Resolution holds the real threat to the citizens of Kansas and the United States.

Governor Leavitt, who is spearheading the Conference of States, stated in the COS position paper that "This paper outlines a simple, powerful process for states...to take control of their own destinies...it is powerful because it relies upon precedents established by the Founding Fathers." Then he explains the events leading up to the first Constitutional Convention. "It is vitally important to see how the Founders solved the problems of the weak Confederation." They requested all states "send delegates to another meeting in Philadelphia on the second Monday of the following May" (1787). "As we all know, the delegates to the great Constitutional Convention in 1787 in Philadelphia...threw out the Articles of Confederation and drafted a new constitution."

Further, Governor Leavitt stated, "Our government is outdated, old fashioned, not suited to the fast-paced, high-tech GLOBAL MARKETPLACE we are entering. There is a MUCH BETTER
WAY."

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These comments would lead a reasonable person to be alarmed that this Conference of States could turn into a Constitutional Convention and our great Constitution altered or completely replaced.

State Supreme Court decisions state "The members of a Constitutional convention are the direct representatives of the people (1) and as such, they may exercise all sovereign powers that are vested in the people of the state. (2) They derive their powers, not from the legislature, but from the people; (3) and, hence, their power may not in any respect be limited or restrained by the legislature. Under this view, it is a Legislative Body of the Highest Order (4) and may not only frame, but may also enact and promulgate a Constitution. (5)

From Corpus juris secundum (16C.J.S. 9)

(1) Mississippi (1892)Sproul v. Fredericks ll So. 472
(2) Iowa (1883) Koehler v. Hill 14 N.W. 738
(3) W. Virginia (1873) Loomis v. Jackson 6 W. Va., 613
(4) Oklahoma (1907) Frantz v. Autry 91 P. 183
(5) Texas (1912) Cox v. Robison 150 S.W. 1149

"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.' "According to Supreme Court Chief Justice Burger in a letter to Phyllis Schlafly date June 22, 1988.

Some of my specific concerns are on page 2, lines 11 and 12, where it speaks to the Steering Committee. This Committee is not elected by the State's delegates to this Conference, and therefore have no say in what is to be discussed. It will already be decided by those promoting this measure.

In line 22, this language could not be more vague and could encompass anything.

This "Concept Paper" leaves the agenda of the COS wide open, while specifically suggesting some "process amendments" or STRUCTURAL CHANGES TO THE U.S. CONSTITUTION, including making it easier to AMEND THE U.S. CONSTITUTION BY CHANGING ARTICLE V and changing the tenth Amendment. Under the proposal to change Article V three-fourths of state legislatures could propose an amendment to the Constitution that would become

valid unless within a two-year period the U.S. Congress rejected the amendment by two-thirds votes of both houses.

If this became part of the Constitution an amendment could quietly move through 34 states before the people in the States were even aware it was happening. Just like legislation authorizing the Conference of the States is now moving almost unnoticed through state legislatures..

The proponents of COS and the Article V change claim that Article V has proven unworkable because it has never resulted in the calling of a Constitutional Convention. (That's because we were successful in stopping the call for a Constitutional Convention. Article V works!) A resolution calling upon Congress to initiate this change to Article V is already being promoted and has been introduced at least in Nevada as SJR 5.

Senator Duke, the author of the Tenth Amendment Legislation, states, "Our present Constitution gives us all the rights we need for states to reclaim their sovereignty. There is no need for a new Constitution...call(ing) for 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 could mean the death of our present Constitution."

The Conference of the States should not be confused with Tenth Amendment movement, which has nothing to do with a Constitutional Convention. We support the Tenth Amendment Resolutions and implementation legislation as a good alternative to COS>

Of course, we know that the right to keep and bear arms would immediately be in jeopardy, as well as, other important Constitutional rights if a Constitutional Convention (Con/Con) were to be called.

It is my hope that we will slow down, look at this and not rush into something we may regret.. Thank you.

Darlene

Darlene Cornfield
State Representative
90th District

4-2

Testimony of Walter L Myers re SCR 1606

SENATOR OLEEN, REP. BOSTON, LADIES AND GENTLEMEN OF THE COMMITTEES:

I'M WALTER MYERS, EXECUTIVE DIRECTOR OF THE CONSTITUTIONISTS NETWORKING CENTER, A NON PARTISAN GROUP CHAIRED BY FORMER GOVERNOR EVAN MECHAM OF ARIZONA. CNC WAS ESTABLISHED IN SEPT. 1993 BECAUSE OF OUR CONCERN OVER THE UNCHALLENGED, UNCONSTITUTIONAL, UNDESIRED AND ABUSIVE USE OF POWER BEING EXERCISED BY THE FEDERAL GOVERNMENT.

CNC's GOAL IS TO *RETURN GOVERNMENT TO WITHIN THE LIMITS PRESCRIBED BY THE CONSTITUTION.* THE PREMISES UPON WHICH WE BASE OUR POLICIES AND POSITION ON ISSUES ARE IDENTIFIED IN CNC MEDIA RELEASE 93.2. A COPY IS AT ATTACHMENT 1.

THOUGH I URGE YOU TO STUDY ALL OF OUR PREMISES AS TIME PERMITS, THE IMPORTANCE OF #4 AS IT RELATES TO SCR 1606 JUSTIFIES COVERING IT NOW. IT READS: *THE CONSTITUTION FOR THE U.S. IS A COMPACT BETWEEN SOVEREIGN AND INDEPENDENT STATES. THROUGH THIS COMPACT THEY CREATED THE FEDERAL GOVERNMENT AS THEIR AGENT. AS THE PRINCIPALS TO THE CONSTITUTION AND UNDER THE LAW OF AGENCY, IT IS OUR STATES WHO POSSESS THE ULTIMATE AUTHORITY AND RESPONSIBILITY FOR ITS PROPER INTERPRETATION AND IMPLEMENTATION.*

SINCE ITS INCEPTION, CNC HAS ENCOURAGED THOSE WITH WHOM IT "NETWORKS" TO URGE THEIR GOVERNORS AND LEGISLATORS TO RECOGNZE AND EXERCISE THEIR AUTHORITY IN SUPPORT OF OUR GOAL. ALSO, TO BE RESPONSIBLE, CNC AND THOSE WITH WHOM WE NETWORK HAVE HELPED PROVIDE THE INFORMATION AND TOOLS NEEDED BY STATE OFFICIALS WHO SHARE OUR GOAL. EXAMPLES ARE:

1. SENATOR CHARLES DUKE OF COLORADO WAS THE FIRST LEGISLATOR TO SPONSOR AND GAIN PASSAGE OF THE 10TH AMENDMENT RESOLUTION.

2. REP. JOHN MONK (OK) AUTHORED HR 1047 RE OUR U.N. AFFILIATION. (SEE ATT. 2)

3. JUDGE BOESEL (RTD) HAS DRAFTED A LAWSUIT CHALLENGING THE UNCONSTITUTIONALITY OF THE UN CHARTER ON FIVE COUNTS.

4. THE COMMITTEE OF 50 STATES CHAIRED BY FORMER UTAH GOV. J. BRACKEN LEE DEVELOPED THE CONCEPT OF "ULTIMATUM RESOLUTIONS (UR's)." GOV. LEE IS REPRESENTED ON CNC's EXECUTIVE COMMITTEE BY MR. JOSEPH STUMPH. OUR LEGISLATIVE INITIATIVE TEAM HAS APPROVED SEVERAL UR's. ONE DESIGNED TO PROTECT THE CONSTITUTION IS AT ATT. 3. I'VE COPIES OF OTHERS WHICH ADDRESS OUR MATHEMATICALLY FLAWED MONETARY POLICY, "EMERGENCY POWERS" AND THE FOREIGN TROOPS STATIONED IN THE U.S. SHOULD ANY OF YOU HAVE AN INTEREST IN THEM.

5. DR. GENE SCHRODER, A MEMBER OF THE TEAM DEDICATED TO HELPING OUR STATES AND THEIR PEOPLE REGAIN CONTROL OF THEIR DESTINY , WAS ALSO A MEMBER OF THE RESEARCH TEAM THAT UNCOVERED THE FACT THAT "WE THE PEOPLE" WERE DECLARED THE ENEMIES OF THE FEDERAL GOVERNMENT IN 1933 AND HAVE, ACCORDING TO US SENATE REPORT # 93-549, LIVED SINCE THEN UNDER A *"VAST RANGE OF POWERS"* WHICH *"TAKEN TOGETHER, CONFER ENOUGH AUTHORITY TO RULE THE COUNTRY WITHOUT REFERENCE TO NORMAL CONSTITUTIONAL PROCESSES."*

WE IN CNC HAVE STUDIED THE HISTORY AND DESIRES OF THOSE WANTING TO FORMALLY TERMINATE OUR CONSTITUTION OR DESTROY ITS KEY PRINCIPLES. INCLUDED ARE: 1) THE COMMITTEE ON THE CONSTITUTIONAL SYSTEM AND 2) THE WORLD CONSTITUTION AND

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Atch #5

PARLIAMENT ASSOCIATION. EXCERPTS FROM **REFORMING AMERICAN GOVERNMENT**, A BOOK BY MEMBERS OF THE COMMITTEE ON THE CONSTITUTIONAL SYSTEM, FOLLOW:

PAGE 2 – *STRUCTURAL CHANGES* (TO THE CONSTITUTION) *SHOULD BE PART OF THE BICENTENNIAL OF THE CONSTITUTION.*

PAGE 62 – *WE CONTINUE TO FACE THE PROBLEM OF A TENTH AMENDMENT WHICH PROVIDES DIVISION OF POWERS AND RESPONSIBILITIES. A CONVOCATION COULD AND SHOULD SET DOWN GUIDELINES FOR THE BENEFIT OF THE JUDICIARY.*

PAGE 160 – *THE CONCLUSION IS INESCAPABLE: IT IS ALMOST IMPOSSIBLE TO CENTRALIZE AUTHORITY. LET US FACE REALITY. THE FRAMERS HAVE SIMPLY BEEN TOO SHREWD FOR US. THEY HAVE OUTWITTED US. THEY DESIGNED SEARATED INSTITUTIONS THAT CANNOT BE UNIFIED BY MECHANICAL LINKAGES, FRAIL BRIDGES, TINKERING. IF WE ARE TO "TURN THE FOUNDERS UPSIDE DOWN"--TO PUT TOGETHER WHAT THEY PUT ASUNDER--WE MUST DIRECTLY CONFRONT THE CONSTITUTIONAL STRUCTURE THEY ERECTED....*

FROM THESE STUDIES, I HAVE CONCLUDED THAT A CONSTITUTIONAL CONVENTION – REGARDLESS OF ITS DERIVATION OR THE PURPOSES FOR WHICH IT'S CALLED – WILL PUT OUR CONSTITUTION AT AN UNNECESSARY RISK. ON THE OTHER HAND, THERE IS NO FASTER NOR MORE POSITIVE WAY TO BRING ABOUT THE NEEDED CHANGES BETWEEN THE STATE AND FEDERAL GOVERNMENT THAN THROUGH A **CONFERENCE** INVOLVING STATE OFFICIALS. IT IS FOR THESE REASONS THAT I VIEW THE PROPOSED "CONFERENCE OF THE STATES" WITH MIXED EMOTION.

AT ATTACHMENT 4 YOU WILL FIND A LETTER ANALYZING THE ***WILLIAMSBURG RESOLVE;*** A RESOLUTION UNANIMOUSLY ADOPTED BY THE REPUBLICAN GOVERNORS IN NOV. 1994. I WISH TO BRIEFLY COVER A FEW OF ITS MOST IMPORTANT POINTS.

BECAUSE OF CNC's CONCURRENCE WITH THE GOVERNORS PERCEPTION OF THE PROBLEM, PLEDGE, AND RESOLVE, WE AGREE THAT THERE IS A NEED TO "RESTORE BALANCE IN THE FEDERAL SYSTEM." HOWEVER, OUR KNOWLEDGE OF THOSE WHO WOULD CAPITALIZE ON ANY OPPORTUNITY TO VOID OUR CONSTITUTION AND OUR BELIEF THAT THE CHANGES PROPOSED BY THE REPUBLICAN GOVERNORS ARE COUNTER-PRODUCTIVE GIVE CAUSE FOR CONCERN. AND THOUGH I RECOGNIZE THAT THE COUNCIL OF STATE GOVERNMENTS, WHICH APPEARS TO BE A PRIVATE CORPORATION HAVING **NO** AUTHORITY UNDER THE CONSTITUTION, DOESN'T WANT THE RESOLUTION CHANGED, I SUGGEST SCR 1606 BE TABLED AND KANSAS SEND AN INFORMAL DELEGATION TO THE CONFERENCE OF THE STATES OR IT BE AMENDED TO INCLUDE THE FOLLOWING LANGUAGE:

ADOPTION OF SCR 1606 DOES NOT CONSTITUTE, AND IS NOT TO BE CONSTRUED AS, AN APPLICATION BY THE LEGISLATURE OF KANSAS FOR THE CALLING OF A FEDERAL CONSTITUTIONAL CONVENTION WITHIN THE MEANING OF ARTICLE V OF THE CONSTITUTION FOR THE UNITED STATES OR ANY OTHER MEANING. THE KANSAS DELEGATION TO THE CONFERENCE OF THE STATES APPOINTED UNDER THIS RESOLUTION IS NOT AUTHORIZED TO PARTICIPATE IN A FEDERAL CONSTITUTIONAL CONVENTION NOR TO PURSUE ANY GOAL OTHER THAN THAT OF RESTORING *"TO THE STATES AND THE PEOPLE THE PREROGATIVES AND FREEDOMS GUARANTEED TO THEM UNDER THE CONSTITUTION;* THE PLEDGE MADE BY THE REPUBLICAN GOVERNORS IN THE **WILLIAMSBURG RESOLVE.**

ONE OF CNC TEAMS HAVE DRAFTED A SET OF CONSTITUTIONAL AMENDMENTS DESIGNED TO CLARIFY THE FRAMERS VISION AND STRENGTHEN THE ROLE OF THE STATES. THEY WILL BE AVAILABLE FOR CONSIDERATION BY INTERESTED PARTIES.

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

EVAN MECHAM (AZ) - CHAIR.
WALTER MYERS (KS) - EXEC. DIR.
JUDGE (RET) J. J. BOESEL (OH)

DR. GREG DIXON (IN)
JIM THOMAS (IN)
JOE STUMPH (UT)
JOHN VOSS (CO)

CNC MEDIA RELEASE 93.2

CNC LAYS ITS FOUNDATION

Evan Mecham, Chairman of the Constitutionists Networking Center, has approved the following premises as the basis for CNC's position on issues, goal and objectives.

1. The Declaration of Independence is our Nation's birth certificate and the cornerstone of our Constitution. Its policies are to be pursued in conducting our Nation's affairs.

2. There can only be one set of Supreme policies and laws for any Nation. For the U.S., the set includes our Declaration of Independence, Constitution for the U.S. (including our Bill of Rights), the Constitution's for the individual States and all lawfully ratified Amendments whose pros, cons, and full impact were understood by voters and their representatives prior to ratification and whose purpose was and is in pursuance of the principles, procedures and intent of our Declaration of Independence and Constitution's Preamble.

3. Any lawful change to the form, policies, principles and/or operational procedures of our duly constituted government must be approved by 75% of our state legislatures. No state has ratified major changes to them. Therefore, for any Treaty, Charter, Foreign Constitution, Covenant, Legislative Act, International Convention, etc. to be lawful, it must be in pursuance of the spirit and intent of the principles set forth in the Supreme policies and Laws of our nation.

4. The Constitution of the U.S. is a Compact between sovereign and independent states. Through this Compact, they created the federal government as their AGENT. As the principals to the Constitution and under the Law of Agency, it is our States who possess the ultimate authority and responsibility for its proper interpretation and implementation.

5. The U. S. Supreme Court was correct in saying:
   a. "This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty." (Reid vs. Covert)
   b. "All laws repugnant to the Constitution are null and void." (Marbury vs. Madison)
   c. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." (Miranda vs. Arizona)

6. The Constitution's 10th Amendment stating ***"the powers not delegated to the United States by the Constitution ... are reserved to the States respectively, or to the people"*** and the statement in Federalist Paper #41 saying ***"For what purpose could the enumeration of particular powers be inserted if these and all others were meant to be included in the preceeding general power"*** provide incontestable evidence that the only lawful powers of the Federal Government are those enumerated in the Constitution of the United States..

7. No Federal Agent has, nor has ever had, the lawful authority to dissolve the Constitutional Compact nor distort its purposes and intent as provided in its Preamble and clarified in the Federalist Papers.

Those wanting a copy of CNC's plan for *returning the government to within the limits prescribed by the Constitution* can obtain one by sending CNC a donation of $5.00 or more.

ENROLLED HOUSE
RESOLUTION NO. 104

A Resoluti[on] [r]elating to United State[s] [m]ilitary forces and the United Nations; memorializing Congress to cease certain activities concerning the United Nations; and directing distribution.

WHEREAS, President Clinton has affirmed that his foreign policy regarding the deployment of United States military forces under the authority of the United Nations will bear little change from that of his predecessor; and

WHEREAS, the constitutional role of the United States military is to protect the life, liberty and property of United States citizens and to defend our nation against insurrection or foreign invasion; and

WHEREAS, the United States is an independent sovereign nation and not a tributary of the United Nations; and

WHEREAS, there is no popular support for the establishment of a "new world order" or world sovereignty of any kind either under the United Nations or under any world body in any form of global government; and

WHEREAS, global government would mean the destruction of our Constitution and corruption of the spirit of the Declaration of Independence, our freedom, and our way of life.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 44TH OKLAHOMA LEGISLATURE:

THAT the United States Congress is hereby memorialized to:

1. Cease the appropriation of United States funds for any military activity not authorized by Congress;

2. Cease engagement in any military activity under the authority of the United Nations or any world body;

3. Cease the rendering of aid to any activity or engagement under the jurisdiction of the United Nations or any world body; and

4. Cease any support for the establishment of a "new world order" or to any form of global government.

THAT the United States Congress is hereby memorialized to refrain from taking any further steps toward the economic or political merger of the United States into a world body or any form of world government.

THAT copies of this resolution be distributed to the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and to each member of the Oklahoma Congressional Delegation.

Adopted by the House of Representatives the 28th day of March, 1994.

ENROLLED HOUSE
RESOLUTION NO. 1047

Speaker of the House of Representatives

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AN ULTIMATUM RESOLUTION

A formal instruction by States who, as principals to the Constitution, are directing their federal AGENT to refrain from trying to formally abolish or in any way permanently render the Constitution null and void.

****

Whereas, the 13 American Colonies seceded from Great Britian on July 4, 1776 via the Declaration of Independence which states that: "men....are endowed by their Creator with certain unalienable Rights.....That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed" and

Whereas, it is axiomatic that when those in government usurp their delegated powers and exercise them in a manner detrimental to and beyond the consent of the governed as provided for in the governing documents, it is the Right and the duty of the governed to effect the changes needed to return that government to within the limits prescribed by the governing documents, and

Whereas, the States comprising the United States of America created the federal government as their AGENT via the Constitution of the United States, and

Whereas, it is also axiomatic that a created can never be greater than the creator and that under the Law of Agency, the principal to a Compact or Contract holds the ultimate responsibility and authority for its proper interpretation and implementation, and

Whereas, the State of _____ finds that the mandates being imposed upon it, a principal to the Constitutional Compact, by its AGENT known as the federal government are illogical, absurd, and not according to Law, and

Whereas, many of these mandates, being beyond the powers delegated the federal government, are prerogatives of, and fall under powers reserved to, the states, and

Whereas, the U. S. Supreme Court ruled in New York v. United States 112 S Ct. 2408 (1992) that Congress cannot commandeer the legislative and regulatory process of the States, and

Whereas, the legislature of the state of _____ has concluded that the federal government, having "abridged" the "freedoms and governmental procedures guaranteed by the Constitution" since 1933 according to U.S. Senate Report No. 93-549 and having intentionally, frequently, and flagrantly exceeded its authority and having members who have openly shown their disdain for the Constitution, might attempt to formally abolish or in other ways render the Constitution of the United States permanently null and void,

BE IT RESOLVED that should any member(s) of the federal government attempt to formally abolish or in any way permanently render the Constitution of the United States null and void, their action will be an automatic declaration that the state of _____ finds the federal government, as an agent of this state, to have unacceptably violated its delegated authority and under the power reserved this state by the 10th Amendment to the Constitution of the United States, and when joined by 37 of our sister states, thereby immediately appoint and empower the Governors of the 38 adopting states as our AGENT to:

1. discharge all federal officials whom they determine by majority vote to have violated their oath of office.

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2. select from among themselves by 2/3 vote an interim Chief Federal Administrative Officer (CFAO) and Cabinet to manage our federal affairs pending the results of elections to be held within 90 days of the 38th states adoption of this resolution.

BE IT FURTHER RESOLVED that the CFAO shall serve as the Commander in Chief of the United States military forces and that should she/he or the administrator of any federal agency subsequently initiate any new action found repugnant to the Constitution by 50% or more of the State legislatures adopting this Resolution, said individual(s) will be subject to prosecution under the laws of Title 18, United States Criminal Code; and

BE IT FURTHER RESOLVED, that Wood and Associates, a trust and attorneys at law, 7050 South Union Park Center, Suite 284, Midvale, Utah 84047, is hereby appointed as agent to hold this Resolution, and when 37 other States adopt like resolutions said Wood and Associates will give notice to the Governors and legislative leaders of every state in the Union of states under the Constitutional Compact;

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Speaker of the House and President of the Senate of each legislature of our 49 sister States and the _____ congressional delegation.

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

11-28-94

To: Americans concerned over the loss of their Constitutional Republic and Rights:

The Nation's 30 Republican Governors recently and unanimously adopted **The Williamsburg Resolve.** CNC congratulates them for having the insight to recognize and the courage to say that "*the challenge to the liberties of the people....comes from our own Federal government.*" We're elated to find them pledging to restore "*to the States and the people the prerogatives and freedoms guaranteed to them under the Constitution*"; a goal shared by all who know and understand that great document.

We strongly concur with the Governors *"common resolve to restore balance to the federal-state relationship and renew the framers vision,"* and their stated "*need for an agreed agenda and concerted action by the States...*" CNC stands firm in its conviction that it is our States, as the principals to the Constitution, who are responsible for the actions of their AGENT and that it is they who hold the moral and legal authority to bring about needed changes. We pray the Governors agree. But while we are in accord with their goal, common resolve, and stated need, we find their proposed remedies to be inconsistent with them. Specifically, we don't agree:

1. "*recourse to the courts is the only available means of relief*" – The Supreme Court's record makes it clear such action would be self defeating. The Governors recognized this when they said: *"The Supreme Court ... has failed to enforce the constitutional boundary between the respective powers of the Federal and State governments.*"

2. *"structural change in our federal system"* and *"protection against unfunded mandates by barring enforcement of Federal legislation that imposes obligations on the States without funding"* are an answer. CNC believes our nations problems stem from our States failure to control their AGENT and to limit its actions to within the enumerated powers of the Constitution; not from the structure of our federal system. We also believe the need is for States to insist the federal government stop issuing **unconstitutional**, not unfunded mandates.

3. with seeking structural reform that *"would allow 3/4 of the States....to repeal Federal legislation...subject to congressional authority to override the State-sponsored measures by a 2/3 vote of both houses."* **The States already have the authority and responsibility to nullify unconstitutional and undesirable federal acts.** America's history is rich with applications of interposition, a doctrine whereby states have rejected federal legislation with which they disagree. Two examples are:

> *"We, therefore, the people of the State of South Carolina in Convention assembled, do declare and ordain.....that the several acts....of the Congress of the United States, purporting to be laws for the imposing of duties and imposts....are unauthorized by the Constitution.....and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers or citizens...."*
> (from South Carolina's 1832 Ordinance of Nullification)

> Thomas Jefferson blessed us with the Kentucky Resolution which reads: *"Resolved that the several States composing the United States of America, are not united on the principles of unlimited submission to their general government; but that by Compact under the style and title of a Constitution, for the United States and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving to each State to itself the residuary mass of right to their own self-government;*

and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this Compact each State acceded as a State and is an integral party, its co-states forming as to itself the other party; that the government created by this Compact was not made the exclusive or final judge of the extent of the power delegated to itself since that would have made ITS discretion, and not the Constitution, the measure of its power; but that as in all other cases of Compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Additionally, the U.S. Supreme Court recently ruled in New York vs. United States, 112 S. Ct. 2408 (1992) that Congress cannot commandeer the States Legislative and regulatory processes by stating: *"Whatever the outer limits of the Sovereignty may be, one thing is clear; the Federal Government may not compel the States to enact or administer a Federal regulatory program"* and *"Where Congress exceeds it authority relative to the States, departure from the constitutional plan cannot be ratified by 'consent' of State officials."*

Would it not be a huge mistake for states to relinquish their ability to nullify bad and un-constitutional law to an AGENT that has demonstrated its disdain for the Constitution?

4. with the adoption of *"an amendment that would make clear the Supreme Court's duty to entertain and resolve controversies between the States and the Federal government arising under the Tenth Amendment."* This is not, and should never be, a duty of the Supreme Court! Once again, the States are the principals to the Constitution! Under the Law of Agency, they have the authority for its proper interpretation and implementation. Such an amendment would weaken their rightful and lawful powers and place an unwarranted and undesirable power into the hands of a Court whom the Governors have found to be irres-ponsible, guilty of abandoning *"its constitutional role,"* and a threat to our liberties. Such an amendment could neutralize the adoption of the 10th Amendment Resolution now spreading across the Nation.

CNC believes the Constitution says what it means, means what it says, isn't difficult to understand, and that returning government to within its limits is the simplest and only logical and legal course of action. It will eliminate the opportunity for unneeded debate and minimize the potential for diverting us from the course we must follow. **There can be no compromise!** America was conceived in liberty and on the premise it would be a Nation of Laws; not of men. We must return to that premise and insure that everyone, regardless of their position in life, obey our laws.

After studying the **Williamsburg Resolves** in light of our perception of the changes required *"to restore to the States and the people the prerogatives and freedoms guaranteed to them under the Constitution"* (the Republican Governors goal), CNC has concluded that:

1. the changes needed to satisfy the Governor's goal must be very carefully developed and then compared with "The Means of Correction" proposed in the **Williamsburg Resolve.**

2. some of the changes proposed in the **Resolve** won't satisfy the need, would weaken the States existing power and shouldn't be pursued.

3. our Governors not only can help stop, but also eliminate existing, undesirable legislation by honoring their promise *"to bring these developments and consequences to the attention of the people of our States..."*, rewriting "The Means of Correction" section of **The Williamsburg Resolve**, and insuring the final version of their *"agreed agenda and concerted action"* address the root causes of our problems.

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CNC and those on its legislative and legal initiative teams stand ready to help our Governors design and implement a carefully constructed plan or "agreed agenda." We pray they will seek it as it's essential that those who believe in our Constitution do their utmost to insure any action resulting from the Williamsburg Resolve or the Conference of States (CoS) focus on the positive and Constitutional side of the Governors goal.

Though CNC recognizes the potential danger of the CoS should its participants permit it to be transformed into a Constitutional Convention, we also recognize it holds great potential for being the first step toward ***returning government to within the limits prescribed by the Constitution.*** We therefore urge responsible Americans to: 1) provide your Governor and state legislators have a copy of this letter, 2) be sure your states delegation is aware of the potential danger of the CoS and of the most important issues needing attention (information on CNC's perception of them will be provided upon request), and 3) provide a copy of this letter to your local media outlets, including radio talk show hosts in your area.

If the CoS becomes a reality, and it appears it will, let's do our best to make it beneficial to the Constitution. Pray for those who will participate. Pray that they will responsibly use their great reservoir of power and that through their efforts, God will again be able to bless America. Also, please urge your State Governor and legislators to continue to support passage of the 10th Amendment resolution and the statutes needed to reinstate Constitutional principles within your State.

For God and Country,

WALTER L MYERS
Exec. Dir.

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

Feb. 8, 1995

HONORABLE STATE LEGISLATORS, GOVERNORS AND MEMBERS OF CONGRESS:

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

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

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

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

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

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

Sincerely,

Walter L Myers

WALTER L MYERS
Exec. Dir.

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