Approved: 3-7-95
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The joint meeting of the Senate and House Federal and State Affairs Committees was called to order by Senator Lana Oleen at 12:05 p.m. on February 15, 1995 in Room 519-S of the Capitol.

All members were present except: Sen. Walker
Sen. Gooch
Sen. Parkinson

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Kim Perkins, Committee Secretary

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

Others attending: See attached list

Sen. Oleen announced that the joint committee of the Senate and House Federal and State Affairs would begin hearings on **SCR 1606** and stated that the committee would hold questions until all conferees had testified. Sen. Oleen introduced Mike McCabe to speak as a proponent to the resolution (Attachment 1).

Sen. Oleen introduced Professor Francis Heller from the University of Kansas School of Law to give background information regarding the bill and the Tenth Amendment to the Constitution of the United States (Attachment 2) and introduced Don Klaassen to testify in support of **SCR 1606** (Attachment 3).

Sen. Oleen then introduced Rep. Darlene Cornfield, followed by Walter Meyers, and Glen Burdue to speak as opponents to **SCR 1606** (Attachments 4, 5, & 6).

Sen. Oleen called for question from the committee and Rep. Aldritt questioned Professor Heller on whether there was any merit to the concern, expressed by the opponents, that the Conference of the States could lead to a Constitutional Convention. Professor Heller answered that he had specifically studied that question and that this type of conference is not a parallel to the convention of 1787. Rep. Aldritt followed by asking whether all of the components of a constitutional convention were present in **SCR 1606**. Professor Heller responded the resolution did not have the components necessary for a constitutional convention.

Rep. Boston clarified that the legal reason for the constitutional convention of 1787 was to amend the Articles of Confederation and Professor Heller agreed.

Rep. Graeber stated that he is supportive of returning power to the state government and he questioned the "co-equal" language in the resolution and asked Mike McCabe to comment. Mike McCabe stated that at the time the constitution was drafted and ratified, the big fear was that the federal government was going to be swallowed up and dominated by the states and the founding fathers believed they needed to elevate the power of the central government. Today, Mr. McCabe continued, state power has declined evolutionary and so elevating states to a co-equal status would be still a step toward the original intent in 1787. Mr. McCabe stated that he believed that the notion of a runaway constitutional convention coming out of the conference of the states is erroneous because the clear intent of the organizers of a conference of the states is to structure it with enough procedures, processes, and formalities that any petitions which might be brought forward from it and

taken back to state legislatures for approval or disapproval will be taken seriously by Congress. Mr. McCabe stated that the petition is not a legal binding document but is a formal exercise; and Congress can be made to do nothing by law in regard tot he conference petition(s).

Rep. Packer referred to the steering committee and asked Mike McCabe to explain the steering committee and the authority they have. Mike McCabe stated that the steering committee drafts model rules and procedures but that those drafts are not binding until they have been adopted at the will of the delegation. The steering committee, according to Mike McCabe acts simply to get the process rolling.

As members of the Senate Federal and State Affairs committee had other committee meetings to attend, the Senate hearing on **SCR 1606** was adjourned at 1:15 p.m.

The next meeting is scheduled for February 16, 1995.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: 2-15-95

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Darrel King	Topeka	CWSA of KS
Walter Myers	4426 E 125th St Belton, MO 64012	CAC
Dorothy Hubbart	554 SW 90th St Augusta KS 67010	10th Amendment-Wichita
Butch Hubbart	" " "	" " "
Tim S. Peters	11472 S.W. 46th Terr. Towanda KS 67144	" " "
Dixie von Feldt	609 E. St. Paul Wichita, KS 67213	" " "
Jim von Feldt	" " "	" " "
Evelyn Milligan	Topeka	For the People
Alan F Alderson	Spring Hill	KSAM/CAREE
Dennis Cooper	"	K.S. 2ND Amend Militia
Meg Hanson		Banker
MIKE McCABE	641 E. BUTTERFIELD RD. - SUITE 401 LOMBARD, IL. 60148	CSG
Paul Cohan	Lombard, IL	CSG
Stan Clark		Senate
Douglas Johnston	Wichita	Planned Parenthood

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.

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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

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).

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.

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.

Sen. Fed & State
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Attachment 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

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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.

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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

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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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.

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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.

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ENROLLED HOUSE
RESOLUTION NO. 1047

A Resolution relating to United States military 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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desirable in Brown v. Board of Education: Proceed with all deliberate speed![27]

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

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.

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.

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JOE STUMPH (UT)
JOHN VOSS (CO)

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 <u>unconstitutional</u>, 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.

5-9

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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JOE STUMPH (UT)
JOHN VOSS (CO)

Feb. 8, 1995

HONORABLE STATE LEGISLATORS, GOVERNORS AND MEMBERS OF CONGRESS:

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

5-11

Chairwoman Oleen, Chairman Boston, and esteemed members of the committees.

I come before you today to speak against SCR1606 which proposes a conference of states.

My name is Glen Burdue. I am the Chairman of the Kansas Tenth Amendment Society based in Wichita. Our group voted last Thursday to oppose SCR1606 and asked me to speak against it at this hearing.

This resolution really sounds wonderful. Its stated intent is to "restore checks and balances between the states and the national government." That is also the intent of our Kansas Tenth Amendment Society, but it is obvious to anyone who reads the U.S. Constitution that it already provides for the division of powers between the federal government and the States. The Tenth Amendment states:

"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."

This is very clear to me... All powers are reserved to the States or to the people, except those few powers that were specifically enumerated in the Constitution.

The Constitution speaks of providing for the general welfare, but it is a stretch of the imagination to believe our founding fathers meant this to include 55 mile an hour speed limits, health care, crime on the streets (which we already have State laws for), voter registration, control of schools, and control of churches as they are incorporated under tax laws.

This State and the other 49 States are not following their responsibility to resist unconstitutional acts by the federal government. If this State is unwilling or unable to follow the Constitution, then surely it would not follow a document produced by a conference of states. To regain control of the federal monster, we only need to begin enforcing the Constitution as it is written.

The Kansas House of Representatives passed HCR5008, the Tenth Amendment Resolution, last week. When the State of Kansas begins following and enforcing the Tenth Amendment, the proper balance of power between the State and the federal government will surely be restored.

Sen. Fed & State
2-15-95
Attachment 6

SCR1606 is a very suspicious piece of legislation to me because of what it says and how it says it. If you will look at page 1 line 20 of SCR1606, you will see it indicates the federal government should be given even greater power than it now has. This line indicates that the federal government should be elevated to "co-equal" status with the states. I prefer that the United States remain the agent of the States that created it and gave it power.

On page 2 of SCR1606 on line 7 it indicates that the conference of states will be convened under the auspices of a private corporation called the council of State governments. It is my understanding that our government was created to maintain the rule of common law: I am very concerned if we are now to place our destiny in a conference ruled by a private corporation no matter how good the name of that corporation sounds.

And finally, I noticed that on HCR5008, the Tenth Amendment Resolution, which I support, it directs the Secretary of State to send copies of the resolution to the federal officials listed and the State officials listed.

On the other hand, the Secretary of State is to deliver copies of SCR1606, the conference of states, to what are apparently private corporations while excluding the notification to the federal government and the other 49 States. Why must our legislation be cleared through private corporations but not our sister States?

Governor Leavitt of Utah, who supports this legislation, explains in a document he wrote, that the last conference of states we convened in 1787, resulted in the removal of the Constitution of that time and its replacement with a radically different document, which became our current Constitution.

I like the U.S. Constitution and Bill of Rights we have now and I don't trust the politicians of today to rewrite them. We should not convene a conference of states.

Please vote against SCR1606.

Thank you for your time and consideration on this important issue.

Glen Burdue
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February 15, 1995