Approved:_____
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 13, 1997 in Room 519-S of the Capitol.

All members were present except: Representative Steve Lloyd, Excused
Representative Doug Mays, Excused

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

Conferees appearing before the committee: Roger Mundy
Daniel S. Clark
Greg Dye

Others attending: See attached list

The Chairperson introduced Representative Ralph Tanner, as Vice Chairperson replacing Representative Ray Cox and announced that Representative Cox would continue on the committee as a member.

Representative Vickrey moved and Representative Long seconded to introduce a bill - Kansas state high school association, supervision during summer months prohibited which was originally introduced by Representative Peterson.

A Division was called for: Yeas 10 and Nays - 6. The motion carried.

Representative Boston moved and Representative Long seconded to gut **HB 2151** and requested a new bill dealing with the employment security law. The motion carried.

**HCR 5017 - Enabling 3/4 of the States to Amend the Constitution.**

The Chairperson opened the hearings on **HCR 5017**.

The Chairperson stated that Representative Susan Wagle was unable to attend but distributed testimony as a proponent to **HCR 5017**. (Attachment 1).

Greg Dye, testified opposing **HCR 5017,** stating state sovereignty is plainly stated and given to us by our Constitution. The Constitution gives the state legislature vastly more power than any other branch of government. Some people believe a contract with America is needed, but there is already a contract and that is the United States Constitution. (Attachment 2)

Roger Mundy, Chairman of the Kansas Tenth Amendment Society, the only advocacy group in the State dedicated to the restoration of property State Constitutional powers, especially in its role in the "federal" system in American, or Federalism, testified as an opponent to **HCR 5017**, stating the resolution's intent is "proper balance of national and state power." The resolution also implies that the states want a constitutional convention. (Attachment 3)

Daniel S. Clark, an opponent to **HCR 5017**, stated the Constitution as our highest law protects our rights and guarantees our freedoms. Individuals and/or groups want to amend the Federal or State Constitutions by convening a convention, but are unaware that such a convention handled improperly can degenerate into intended or unintended chaos, producing an intended or unintended result. Article V was designed to protect the Constitution, provide a barrier and prevent the former from occurring well in advance, giving everyone plenty of time to get their thoughts together, and thus prevent the latter (the ultimate evil) from also occurring. (Attachment 4).

The Chairperson closed the hearing on **HCR 5017**.

Representative Gilbert moved and Representative Long seconded to approve the minutes of March 10 and 11.

The motion carried

The meeting adjourned at 2:10 p.m.

# FEDERAL & STATE AFFAIRS COMMITTEE

DATE: 3/13/97

| NAME | REPRESENTING |
|---|---|
| Greg Dye | Committee to Restore the Constitution |
| Daniel S. Clark | Concerned Citizen |
| Bruce Dimmitt | Independent |
| Frankie Lee | Pratt |
| James Johnson | PRATT |
| Amanda Clough | Pratt |
| Melissa Dunworth | PRATT |
| Heather Sanderson | Pratt |
| Shane Melcher | Pratt |
| Tom Jones | LBC |
| David Darling | SHAWNEE |
| Dallas Wood | Shawnee |
| Ryan Cox | Wallace |
| Jonas Mai | " " |
| Ashley Swanson | Wallace |
| Alicia Lock | Wallace |
| Jessica Watts | Osage |
| Aaron Hedrick | Osage |
| Renee McDaniel | Wallace |
| Heather Hill | Wallace |
| Brian Thacker | Stafford |
| Max Fisher | Stafford |
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AMERICAN LEGISLATIVE EXCHANGE COUNCIL

The State Factor

Volume 22, Number 7 October 1996

Rep Susan Wagle

# THE TENTH AMENDMENT: *The Promise of Liberty*

*Strategies to Restore the Balance of Power Between the Federal and State Governments*

Board of Directors' Committee on Federalism

FedState 3-13-97 Atch #1

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## ABOUT THE AUTHORS. . .

**Charles J. Cooper** concentrates his practice in the areas of civil litigation and administrative law. From 1985-1988, he served as Assistant Attorney General in the Department of Justice's Office of Legal Counsel. As Assistant Attorney General, he provided the President and the departments of the executive branch with formal legal opinions and informal legal advice. Prior to that appointment, he served as Deputy Assistant Attorney General in the Civil Rights Division, supervising all appellate litigation from 1981-1985. Since leaving the Department of Justice in 1988, Mr. Cooper has been in private practice, litigating cases in the banking, civil rights, First Amendment, and other federal administrative areas. Last year, he served on the Scholars Advisory Committee on Federalism which was created by the States' Federalism Summit Steering Committee. The Scholars Advisory Committee presented proposals to restore balance to the federal system at the States' Federalism Summit held in Cincinnati, Ohio in October 1995.

During his tenure with the Department of Justice, Mr. Cooper also served as Chairman of the Domestic Policy Council's Working Group on Federalism, as well as a member of the National Security Council's Policy Review and Planning and Coordinating Groups.

From 1978-1979, Mr. Cooper clerked for Justice (now Chief Justice) William H. Rehnquist of the United States Supreme Court. The previous year, he clerked for Judge Paul H. Roney of the United States Court of Appeals for the Fifth (now Eleventh) Circuit.

Mr. Cooper, who graduated first in his law school class in 1977, earned his B.S. and J.D. degrees from University of Alabama. Among his many law school honors, he was inducted into the Order of the Coif. He served as Editor-in-Chief of the *Alabama Law Review* from 1976-1977 and, since then, has been a frequent contributor to policy and legal journals.

**David H. Thompson** is a constitutional lawyer in Washington, D.C. He has participated in cases challenging federal encroachment of state sovereignty in contravention of the Eleventh Amendment and has been an advocate for the restoration of federalism. He received both his undergraduate degree and his law degree from Harvard University.

*The State Factor: The Tenth Amendment: The Promise of Liberty*
Volume 22, Number 7


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# THE TENTH AMENDMENT: THE PROMISE OF LIBERTY

*Strategies to Restore the Balance of Power Between the Federal and State Governments*

## Executive Summary

Last October, the American Legislative Exchange Council ("ALEC") and other organizations[1] sponsored a national federalism summit to consider specific proposals that would restore the balance of power between the States and the federal government. At that time, ALEC and the other sponsoring organizations agreed that the following four such proposals merit further consideration:

- *A mechanism to provide the people of the states, through their legislatures, the power to require Congress to reconsider laws or regulations that interfere with state authority.*
- *A mechanism that would allow the states to propose specific amendments to the U.S. Constitution subject to ratification by the United States Congress.*
- *Statutory remedies and/or constitutional reforms to address the problems of conditions attached to federal spending grants, regulations and mandates.*
- *A federalism act to enhance the political safeguards and give states a more effective voice in congressional deliberations.*

This report presents ALEC's analysis of the way in which each proposal should be enacted.

### 1. The National Government of the People Amendment

- Under this constitutional amendment, the People acting through their state legislatures would be able to repeal intrusive federal legislation and regulations.
- Targeted statutes and regulations would be rescinded upon the adoption of resolutions of disapproval by two-thirds of the States within a seven-year period.
- The States could repeal either an entire statute or regulation or a specific provision of federal law.

### 2. The States' Initiative

- Under this constitutional amendment, three-fourths of the States would be able to propose constitutional amendments that would become part of the Constitution unless two-thirds of each house of Congress voted against the measure within two years of submission.
- This amendment would fulfill the Founders' vision of a process of amending the Constitution that the States control.
- The States' Initiative would empower the People through their state legislatures to ratify constitutional amendments that enjoy broad support but that Congress has failed to propose.

### 3. The Accountability in Government Amendment

- This constitutional amendment is specifically aimed at ending three intrusive federal practices: regulatory mandates, unfunded mandates, and the imposition of impermissible conditions on federal spending grants. All of these federal encroachments obscure the lines between state and federal policy and thereby decrease the political accountability of elected officials.

- Section 1 of the amendment would prohibit the federal government from imposing regulatory mandates on the States or their political subdivisions. To the extent that there may be some efficiency gains in allowing States to participate in the implementation of federal programs, the amendment would in no way preclude the States from voluntarily participating in such programs.

- Section 2 of the amendment would prohibit congressional imposition of unfunded mandates on state and local governments, or mandates that are not enacted pursuant to the enumerated powers of the federal government. The amendment contains a flat prohibition unfunded mandates and would not allow the federal government to impose even "de minimis" unfunded mandates. The amendment would also retroactively repeal any unfunded mandates that have already been imposed upon state and local governments by the federal government.

- Section 3 of the amendment would also prohibit the imposition of conditions that are unrelated to the actual expenditures of funds allocated by Congress. The amendment would thus put an end to the congressional practice of requiring States to implement or conform their laws to federal policies in order to receive funds that may have nothing to do with the required policy. At the same time, the amendment would permit Congress to continue to specify how the funds that it appropriates are actually spent.

### 4. The Federalism Act

- The Federalism Act addresses several discrete aspects of the current imbalance between the federal and state governments.

- First, the statute would circumscribe the scope of the preemption doctrine pursuant to which the federal government can invalidate state laws. The statute would eliminate the practice of federal agencies' preempting state law without express congressional authorization. Furthermore, under the Act, a federal court could only invalidate a state law where there was an explicit congressional statement of intent to preempt such a state law or a direct conflict between federal and state law.

- Secondly, the statute would require Congress to specify the constitutional authority for each of its legislative initiatives.

- Finally, the statute would include an endorsement of the principles inherent in the Tenth Amendment.

[1] The other sponsoring organizations were the National Governors' Association, the National Conference of State Legislatures, the Council of State Government, and the State Legislative Leaders' Foundation.



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## Introduction

The Constitution established federalism as a vital political principle that would ensure a proper division of power between the state and federal governments. Over the last 60 years, the federal government has increasingly encroached upon the legitimate prerogatives of the States and has effectively eviscerated the principles of federalism. As a consequence, the People are left with a centralized, unresponsive, and monolithic government that encroaches upon both traditional notions of state sovereignty and popular sovereignty.

Last October, the American Legislative Exchange Council (ALEC) and other organizations sponsored a national federalism summit to consider specific proposals that would restore the balance of power between the States and the federal government. At that time, ALEC and the other four organizations agreed that the following four such proposals merit further consideration: (1) A mechanism to provide the people of the states, through their legislatures, the power to require Congress to reconsider laws or regulations that interfere with state authority; (2) A mechanism that would allow the states to propose specific amendments to the U.S. Constitution subject to ratification by the United States Congress; (3) Statutory remedies and/or constitutional reforms to address the problems of conditions attached to federal spending grants, regulations and mandates; (4) A federalism act to enhance the political safeguards and give states a more effective voice in congressional deliberations.[1] This report presents ALEC's analysis of the way in which each proposal should be enacted.

## I. Federalism and Popular Sovereignty

The Founding Fathers recognized that governmental legitimacy depends entirely on the People's delegation of their sovereign powers. Although the concept of popular sovereignty is now widely accepted, at the time of the ratification of the Constitution, this was a unique and revolutionary conception of political power. In order to ensure that the People remained the ultimate sovereigns, the Framers established a system of dual sovereigns in which both the States and the national government would have clearly defined roles and carefully limited authority. As the Supreme Court has observed, "a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front .... In the tension between Federal and State power lies the promise of liberty."[2] Thus, the drive to restore state sovereignty and the principles of federalism are motivated by the desire to empower the People through their state representatives to take a measure of control over their lives back from the national government which has consistently exceeded the bounds of its authority.

Federalism promotes the principle of popular sovereignty in several important ways. A federalist system of government recognizes that although there are certain areas in which a centralized government is necessary or beneficial, in most instances, local governments will be more responsive to the needs of the People than a remote national one. Thus, James Madison observed that the federal government's delegated powers were "few and defined," extending principally to "external objects, [such] as war, peace, negotiation, and foreign commerce...." The powers reserved by the States, in contrast, were "numerous and indefinite," extending "to all objects which, in the ordinary course of affairs, concerned the lives, liberties, and properties of the People, and the internal order, improvement, and prosperity of the States."[3] Thus, the Founders intended the States to have a "residuary and inviolable sovereignty" for all areas not specifically delegated to the federal government.[4]

A federalist system of government also encourages the States to act as laboratories for experimentation in formulating the most effective solutions to important problems. States could then look to their neighbors to learn from others' successes and failures. This experimentation is also a recognition of the important fact that the needs of different States differ dramatically and that a "one size fits all" approach to government is inherently at odds with the notion of popular sovereignty.

The clearest expression of the Constitution's endorsement of federalism is the Tenth Amendment, which provides: "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." The Tenth Amendment underscores the principle that the national government is one of limited, enumerated powers and does not have the authority to exceed those powers. Thus, the Constitution makes clear that the States and the People are the ultimate residuaries of all the powers not specifically delegated to the federal government.

## II. The Federal Government's Usurpation of the Sovereignty of the States

Over the last several decades, the federal government has undermined the principles of federalism by expanding its powers beyond those delegated in the Constitution. Currently, there is virtually no category of human endeavor that the federal government does not regulate. Furthermore, the national government has infringed upon the legitimate prerogatives of state and local governments by regulating purely internal concerns, such as public schools, the criminal justice system, and the provision of welfare.

Congress has relied on a variety of mechanisms to expand its powers. In some instances, Congress has directly regulated local activities. Congress has also relied on indirect means of regulation that coerce the state governments to carry out congressional policies. One such mechanism is the modern congressional practice of conditioning eligibility for federal funds on compliance with a host of regulations, many having little or no relationship to the program being funded. Although the States "voluntarily" accept such grants, the dimension of the financial incentives involved in many federal spending programs, coupled with the size of the federal government's "bite" out of the taxing base available to the States, has effectively made the States' participation in such programs voluntary in name only.

Congress has also increasingly imposed on the States federal mandates that exceed Congress' constitutional authority. Given the breadth of powers that Congress has conferred upon itself, the use of such mandates has the potential to allow the federal government to dictate substantive policy to the States on a variety of different matters. From a theoretical perspective, mandates are objectionable insofar as they have the pernicious effect of obscuring the distinction between state and federal policy. The result is a decline in political accountability as it becomes more difficult to assign responsibility for governmental action that Congress requires the States to implement.[5] On a practical level, Congress has exacerbated the evils inherent in such mandates by often not providing funding to implement the required policies. These unfunded mandates impose a staggering financial burden on States and localities, consuming nearly 12% of all locally raised revenues.[6] Cities alone paid $6.4 billion in 1993 to meet the costs of these federal mandates,[7] and the total annual cost to state and local governments has been conservatively estimated at over $100 billion.[8] Indeed, States' financial obligations for Medicaid alone totaled $58.66 billion in 1995.[9] Likewise, the EPA estimates that compliance with federal environmental mandates costs State and local governments $30 to $40 billion each year.[10] As a result, the States are forced to raise their taxes to meet these increased burdens. The ultimate victims, of course, are the People who are confronted with a Byzantine system of regulation in which governmental actors purport to have no responsibility.

In addition, Congress has in recent years preempted state and local laws far more frequently than ever before. Of 439 explicit preemptions of state and local laws enacted by Congress in the 202 years from 1789 to 1991, 233 (53%) were enacted between 1970 and 1991. Federal preemption comes directly at the expense of the People's will as expressed in the action of their state representatives.

## III. The Failure of the Judiciary to Uphold Federalism

The Founders were well aware of the possibility that the national government might exceed the powers delegated to it. In the Founders' view, the Supreme Court would act as a check against any encroachment upon state sovereignty. As James Madison made clear in Federalist Paper No. 39: "Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact . . . ."[11] Nevertheless, Anti-Federalists such as Robert Yates, writing as "Brutus," believed that the federal judiciary would not adequately protect the interests of the States and would in due time "melt down the states into one entire government, for every purpose."[12]

Unfortunately, the Anti-Federalist prediction eventually came to pass. The Supreme Court has not fulfilled its role as an impartial tribunal and has abdicated its responsibility for maintaining the constitutionally mandated balance of power between the States and the national government. The demise of federalism as a governing principle is due in large part to the Supreme Court's interpretation of the Commerce Clause. The Founders merely intended the clause to authorize the national legislature to eliminate state-created trade barriers. James Madison dismissed the Commerce Clause as "an addition which few oppose, and from which no apprehensions are entertained."[13] Yet,



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beginning with the New Deal, the Supreme Court began to adopt a more expansive view of the Commerce Clause. In National Labor Relations Board v. Jones & Laughlin Steel Corp.,[14] the Court upheld Congress' authority to enact the National Labor Relations Act on the ground that the local activities it regulated bore a "close and substantial relation to interstate commerce." Id. at 37.

In 1942 the Supreme Court abandoned all serious attempts to limit the scope of Congress' power under the Commerce Clause. In Wickard v. Filburn,[15] the Court authorized congressional regulation of purely local activities that when taken as a whole might substantially affect interstate commerce. Because virtually every conceivable human activity bears at least some theoretical relationship to commerce, the "cumulative effect" principle effectively licensed the national government to regulate areas traditionally within the province of the state governments. And although the Supreme Court last year acknowledged that the Commerce Clause does impose some restraints on Congress' ability to legislate local matters, such as the possession of guns in areas close to schools,[16] the States can derive little comfort from this limited precedent in light of the Supreme Court's consistent failure to defend state sovereignty over the last five decades.

## IV. Constitutional Proposals to Restore State and Popular Sovereignty

In response to the federal government's sustained pattern of encroachment on the sovereign powers of the States, the federalism summit was convened last year in Cincinnati. Several proposals were considered that would collectively restore the principles of federalism embodied in the Constitution. At the summit, ALEC endorsed each of the four proposals that were discussed.

ALEC has adopted three model resolutions that urge the ratification of three of the proposals as constitutional amendments that would effect systemic change and effectively limit the federal government's ability to interfere in matters of local concern. Constitutional reform is particularly appropriate in this context since it is the Constitution that enshrined States' rights as a central part of our system of government. Although the federal government has expanded its powers without such an amendment, the fundamental structure of our democratic government makes clear that the Constitution is the most effective vehicle for restoring the balance of power between States and the national government.

Each of the constitutional amendments endorsed by ALEC is aimed at eliminating a different aspect of the current imbalance between the States and the federal government. The need for and the important features of each of these amendments will be considered in turn.

### *A. The National Government of the People Amendment*

**Section 1. Any act of Congress, or provision thereof shall be null and void upon the adoption of a resolution of disapproval by the legislatures of two-thirds of the States, provided that two-thirds of the states have adopted without subsequently rescinding resolutions of disapproval within any seven-year period.**

**Section 2. Any regulation, administrative directive or provision thereof shall be null and void upon the adoption of a resolution of disapproval by the legislatures of two-thirds of the States, provided that two-thirds of the states have adopted without subsequently rescinding resolutions of disapproval within any seven-year period.**

**Section 3. The States may not repeal any federal law or regulation that directly addresses the national security of the United States or the conduct of its foreign policy.**

As the federal government has extended its legislative reach into the affairs of the States, it has become apparent that many federal laws and regulations have become counterproductive. Although these legislative initiatives may have been well-intentioned, in many instances it is clear that they have lasted beyond their useful life. Nevertheless, the inertia and gridlock in Washington, D.C. has stifled efforts to reform these programs. The National Government of the People Amendment would empower the People, acting through their state legislatures, to rescind statutes and regulations that they find repugnant.

Under this amendment, targeted statutes and regulations would be rescinded upon the adoption of resolutions of disapproval by two-thirds of the States within a seven-year period. Such resolutions could disapprove of entire statutes or of specific provisions. If 34 States adopted resolutions of disapproval within a seven-year period, the law in question would be rendered null and void. The amendment is equally



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applicable to federal regulations which have also imposed substantial burdens on the states and the People.

There are several important features of the Government of the People Amendment that warrant explanation. One of the most basic requirements of the amendment is that a federal law is only repealed after two-thirds of the States have disapproved it. This supermajority requirement is a recognition that the repeal of a federal law is a serious matter. At the same time, only in the extreme case of the ratification of a constitutional amendment is a three-fourths majority appropriate.

Under the Government of the People Amendment, the state legislatures are responsible for exercising the repeal authority. Enabling state legislatures to protect themselves reflects that it is their authority that is being diminished and that by reclaiming this authority, the States can better serve their constituents. The exercise of a repeal is more than an expression of the People's popular will; it is also an expression by their locally elected representatives that the States themselves should address matters of local concern. Such a repeal is an assertion by the States to the federal government that they are the proper policymakers for an issue.

Under the amendment, States will be able to repeal specific portions of regulations and legislation. This feature will allow the States to exercise their power under the amendment in a responsible and flexible manner, and parallels the item veto that a majority of the States have entrusted to their governors. Without this feature, Congress could incorporate intrusive or otherwise objectionable provisions into useful and popular (and even unrelated) laws that the States would not want to veto.

The amendment also empowers the States to repeal intrusive and otherwise objectionable federal regulations. This provision recognizes that federal agencies have violated the principles of the Tenth Amendment in the same manner that Congress has. The power of independent agencies, which are not held accountable for their acts by any of the traditional constraints of the Founders' system of checks and balances, further necessitates giving the States a mechanism with which to protect their sovereignty.

Another important feature of the amendment is its flexibility. The amendment contains no limitation on the time from enactment of a federal law within which the States would have to exercise their authority to veto the law. Sometimes laws that initially appear quite reasonable upon enactment and initial implementation manifest an intrusive or objectionable nature only after a period of some time, especially when the federal judiciary interprets those laws in a controversial manner. The States should have the ability to veto such laws and regulations at such time as they become objectionable. Furthermore, if the States had to exercise their powers within a certain time from enactment of a law, the amendment would, in effect, only have prospective application. Given the massive usurpation of the States' sovereignty by Congress over the last 50 years, there is no reason that the amendment should be so narrowly drawn. Only if the States have the ability to redress the current imbalance, rather than merely guarding against future encroachment, will the amendment have the potential to restore the principles of federalism that are so central to our form of government.

Indeed, the only temporal limitation included in the amendment is a requirement that the 34th disapproving resolution to be passed without subsequently being rescinded must be passed within a prescribed period. The purpose of this limitation is to ensure that the repeal of a federal law under the amendment actually represents the will of the People at the time the repeal becomes effective.

In keeping with the Founders' understanding that there are certain specific and well-defined areas which are beyond the competence of the States, the Government of the People Amendment exempts certain issues from its scope. As James Madison observed in Federalist No. 45, the national government's powers are to be "exercised on external objects, [such] as war, peace, negotiation, and foreign commerce."[17] Accordingly, the amendment provides that the States may not repeal any federal law that directly addresses the national security of the United States and its foreign policy. This exception to the scope of the amendment demonstrates that the goal of the Government of the People Amendment is not to give the States more influence over the federal government's legitimate exercise of power, but is instead to restore the States' rightful authority in domestic policy matters.

### *B. The States' Initiative Amendment*

**Whenever three-fourths of the legislatures of the States deem it necessary, they shall propose amendments to this Constitution. These proposed amendments are valid for all intents and purposes two years after they are submitted to**



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**Congress. The said amendments will be invalid if both houses of Congress, by two-thirds vote, disapprove them within two years after their submission.**

Under the States' Initiative Amendment, three-fourths of the States would be able to propose constitutional amendments that would become part of the Constitution unless two-thirds of each house of Congress voted against the measure within two years of submission. This amendment would fulfill the Founders' vision of a process of amending the Constitution that the States control.

Given that the Constitution represents the People's delegation of their sovereign rights, it is a "fundamental principle of republican government which admits the right of the People to alter or abolish the established Constitution."[18] Article V of the Constitution establishes two means for proposing amendments. Under one alternative, Congress can propose amendments which when passed by a two-thirds majority of each house, are then sent to the States for ratification. Under the other alternative, Congress must call a constitutional convention upon the application of two-thirds of the state legislatures. Amendments proposed under either method must then be ratified by three-fourths of the States.

The second alternative under Article V establishes the collective power of the States to amend the Constitution in a two step process with virtually no interference from the Congress. As James Madison observed in Federalist No. 43, "it [Article V], moreover, equally enables the general and the State government to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."[19] The necessity of establishing a process for amending the Constitution free from congressional interference was noted by George Mason at the Constitutional Convention when he stated: "It would be improper to require the consent of the Natl. Legislature because they may abuse their power, and refuse their consent on that very account."

Nevertheless, in spite of the States' power under Article V to propose amendments to the Constitution with minimal interference by the Congress, a second constitutional convention has never been convened. The unfounded prospect of a "runaway" convention has deterred the States from asserting their right to propose amendments to the Constitution. As a result, the States have been unable to effect the structural changes necessary to restore the Constitution's promise of a federalist system of government. And, not surprisingly, Congress has rejected every effort to undertake such reform.

Consequently, the States' Initiative Amendment is a critically needed reform in the effort to restore a proper balance between the state and federal governments. The States' Initiative will empower the People through their state legislatures to ratify constitutional amendments that are broadly supported everywhere except in the Congress of the United States. For example, the States could propose a balanced budget amendment or a flag burning amendment on their own initiative.

Nevertheless, consistent with the procedures for amending the Constitution established in Article V, the States should be able to ratify such amendments only upon the approval of three-fourths of the States. This supermajority requirement will ensure that any amendments to the Constitution genuinely reflect the will of the People.

The States' Initiative also confers upon Congress the power to disapprove of any amendment proposed pursuant to this new procedure, but only if the proposed amendment is disproved by a two-thirds vote of both houses. This involvement ensures that Congress will be able to prevent the ratification of any amendment that would, in the view of two-thirds of the Members of Congress, prejudice the national interest. Thus, the States' Initiative strikes a balance between prohibiting any congressional involvement and allowing a simple majority, or even a minority, of Congress to thwart the States' ability to amend the Constitution.

### *C. The Accountability in Government Amendment*

**Section 1. No State shall be obligated, without its consent to enact or enforce any State law or regulation, or to administer any federal regulatory program imposed by or pursuant to a law enacted by Congress acting pursuant to its enumerated powers.**

**Section 2. Any obligation imposed upon a State by or pursuant to a law enacted by Congress shall not be enforceable against such State unless the federal government has acted pursuant to its enumerated powers and has provided the State with the funds needed to pay the States' cost of compliance with the obligation.**

**Section 3. No condition on the receipt of federal funds by a State, imposed by or pursuant**



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**to a law enacted by Congress, is valid unless such condition is clearly stated, directly related to and does no more than specify the purposes for which, or manner in which, the funds are to be spent.**

As outlined above, the federal government has impermissibly expanded its power beyond its constitutional bounds at the expense of state and local governments by imposing federal mandates and conditioning spending grants on unrelated federal policies. Although these federal encroachments take a variety of forms, they are linked by the manner in which they obscure the lines between state and federal policy and thereby decrease the political accountability of elected officials of both governments. This common evil warrants a single constitutional response, the Accountability in Government Amendment. This amendment is aimed specifically at ending three intrusive federal practices: regulatory mandates, unfunded federal mandates, and the imposition of impermissible conditions on federal spending grants.

### *1. Regulatory Mandates*

Section 1 of the amendment would prohibit the federal government from imposing regulatory mandates on the States or their political subdivisions. The purpose of this provision is to ensure political accountability by allowing the People to discern which governmental actors are imposing obligations and expenses upon them. Thus, if the Congress wishes to promote a program pursuant to its enumerated powers, it should do so in a straightforward manner by establishing a federal implementation program rather than by commandeering the state governments to enact federal policies. Any other approach is an impermissible encroachment upon state sovereignty and has the consequence of blurring the lines of political accountability. It should also be noted that the amendment in no way relaxes the requirement that Congress may act only pursuant to one of its enumerated powers.

The amendment would place a flat prohibition on such regulatory mandates. In that regard, it would codify and indeed strengthen the standards articulated under the Tenth Amendment by the Supreme Court in New York v. United States. To the extent that there may be some efficiency gains in allowing States to participate in the implementation of federal programs, the amendment would in no way preclude States from voluntarily participating in such programs.Such voluntary action by the States is not problematic since it would neither violate a State's sovereignty nor blur the lines of political accountability since the States would have expressed their support for the program by voluntarily assisting in its implementation.

### *2. Unfunded Mandates*

Section 2 of the amendment prohibits congressional imposition of unfunded mandates on state and local governments. By definition, unfunded mandates impose substantial financial obligations on States and their political subdivision. In a time of scarce resources, it is indefensible for the federal government to force state and local governments to raise their taxes to implement federal policy preferences. Of course, the ultimate victim is the taxpayer who is left with the bill and with little understanding of which political entity is responsible.

Although Congress has passed legislation directed at curbing the problem of unfunded mandates, a stronger response is needed. The congressional legislation does not go far enough in vindicating the important interests of state and popular sovereignty that are violated by the imposition of unfunded mandates. Section 2 of the amendment contains a flat prohibition on the imposition of such unfunded mandates. The fact that the amendment does not include an exception for de minimis unfunded mandates reflects that the imposition of any mandate violates state sovereignty. Furthermore, local and state governments will inevitably not view the imposition of millions of dollars of unfunded federal obligations as "de minimis." Thus, no such exception should be included in the amendment. Furthermore, the amendment also makes clear that it in no way expands the federal government's powers and that any mandate that exceeds Congress' enumerated powers is unconstitutional.

In addition to prohibiting the future imposition of any unfunded mandates, the amendment also strikes down unfunded mandates that have already been imposed upon state and local governments. In light of the substantial obligations that States already must bear as a result of such mandates, the retroactivity of the amendment is an important component of restoring state sovereignty. In essence, retroactivity is justified on the same principle that underlies the amendment as a whole: if Congress thinks a program or policy is sufficiently important to justify the costs engendered by it, Congress should have to allocate funds to pay for it.



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Finally, the amendment should have no exceptions for special areas of legislation. The principles of state sovereignty and popular sovereignty that compel the adoption of this amendment admit of no exception and should not be violated in any circumstance.

### 3. Conditional Spending Grants

Congress has frequently imposed conditions on its spending grants that have little or nothing to do with the manner in which the appropriate funds are spent. Through this mechanism, Congress has forced the States to conform their conduct to federal policies that could otherwise not have been imposed upon them. Section 3 of the amendment is aimed at ending this intrusion into the legitimate prerogatives of the States.

In essence, the amendment prohibits the imposition of conditions that are unrelated to the actual expenditure of funds allocated by Congress. Thus, the amendment will put an end to the congressional practice of requiring States to implement or conform their laws to federal policies in order to receive funds that may have nothing to do with the required policy. At the same time, the amendment permits Congress to continue to specify how the funds that it appropriates are actually spent. This is a legitimate congressional function and should not be impeded. Thus, the amendment strikes a balance between protecting state sovereignty and preserving Congress' authority over its appropriations.

## V. The Federalism Act: A Statutory Approach to Restoring State Sovereignty

In addition to the constitutional amendments discussed above, ALEC endorsed at the federalism summit a statute designed to curb Congress' appetite for usurping state sovereignty. Although a statutory solution to this problem lacks the permanence of the proposed constitutional reforms, it is, of course, considerably more expedient to enact a statute than to ratify a constitutional amendment. Furthermore, a federalism statute can address issues that, while important, may not merit independent constitutional redress.

The Federalism Act seeks to enhance federalism as a governing principle by addressing several discrete aspects of the current imbalance. First, the statute would circumscribe the scope of the preemption doctrine pursuant to which the federal government can invalidate state laws. Secondly, the statute would require Congress to specify its constitutional authority for each of its legislative initiatives. Finally, the statute would include an endorsement of the principles inherent in the Tenth Amendment. Each of these facets of the federalism statute will be considered in turn.

Under the Supremacy Clause of the Constitution, Congress has the authority to preempt and thereby invalidate state law.[20] Over time, the federal judiciary has gradually expanded the doctrine of preemption to invalidate state laws even where there is no explicit directive from Congress that it intended to invalidate state law. The Federalism Act would seek to limit the doctrine of implied preemption by requiring that there be either an explicit congressional statement of intent to preempt state law or a direct conflict between federal and state law before a federal court could invalidate a state law. Furthermore, the statute would eliminate the practice of federal agencies' exercising implied preemption. Under the statute, a federal agency would be able to preempt a state law only if it had an explicit congressional authorization to preempt such laws or there was a direct conflict between state law and federal law. Furthermore, whenever an agency promulgated a rule that had a preemptive effect upon state law, the states whose laws would be invalidated would have to be given an opportunity to be heard during the rule-making process. Finally, the statute would also require Congress to notify the governor of each State and the presiding officer of each chamber of the legislature of each State that one of their State's laws will be invalidated through preemption.

The combined effect of these provisions will be to restore the doctrine of preemption to its proper scope. Preemption of state law by its very nature poses an infringement upon state sovereignty. And although the Constitution makes clear that federal law is the supreme law of the land, the federal government should exercise its power to override state laws only where essential national interests require it. The federalism statute effectively limits the power of unelected judges and agency officials from invalidating laws passed by the duly elected state representatives of the People.

The proposed statute also promotes the principles of federalism by requiring Congress to identify its constitutional authority for enacting any future legislation. This requirement stands as an important reminder to Congress that the federal government is one of limited and enumerated powers and does not have authority to regulate every human endeavor throughout the country. Nevertheless, it should be noted



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that this provision will largely be symbolic given that the Congress will be able to justify much of its legislative action under the Supreme Court's unduly expansive interpretation of the Commerce Clause.

Finally, the Federalism Act should also endorse the principle of a limited federal government articulated in the Tenth Amendment. Although congressional recognition of the principles embodied in the Tenth Amendment will have little legal effect, such a statement would serve as an important reminder to the federal government that under the republican form of government ordained by the People, the States are just as much sovereigns as the federal government.

## Conclusion

ALEC fully endorses the initiatives proposed at the federalism summit. Certainly, none of these proposals standing alone would restore the Founders' vision of a republic in which both the States and the federal government were truly sovereign. In fact, even the combined effect of all these proposals may fall short of this goal. Yet, these measures would serve the important purpose of providing the States, and thus the People, with a means of defending their sovereignty against federal encroachment.

## Endnotes

[1]The five sponsoring organizations are ALEC, the National Governors' Association, the National Conference of State Legislatures, The Council of State Governments and the State Legislative Leaders Foundation.

[2]Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).

[3]The Federalist Papers No. 45 at 292-93 (C. Rossiter ed. 1961) [hereafter cited as The Federalist Papers].

[4]The Federalist Papers No. 39 at 245.

[5]The Supreme Court has recently struck down one of the most egregious forms of these regulatory mandates. In New York v. United States, 112 S. Ct. 2408 (1992), the Supreme Court invalidated the take title provision of the Low-level Radioactive Waste Policy Act pursuant to which a state was required either to provide for the disposal of low-level waste or to take title to it and be held responsible for any damages resulting from failure to take possession. The Court stated that "Congress may not simply commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." Id. at 2420. The Court concluded that if allowed to stand, such congressional practices would have the detrimental effect of blurring the lines of political accountability between state and federal governments: "It may be state officials who will bear the brunt of public disapproval, while the federal officials who devise the regulatory program may remain insulated from the electoral ramifications of their decision." Id. at 2424.

[6]Issues '96: The Candidate's Briefing Book, The Heritage Foundation at 417.

[7]USA Today, Jan. 12, 1995, at 8A citing the U.S. Conference of Mayors.

[8]CATO Handbook For Congress, Cato Institute, 1995, at 66.

[9]National Association of State Budget Officers, 1995 State Expenditure Report

[10]Issues '96: The Candidate's Briefing Book, The Heritage Foundation, at 417.

[11]The Federalist Papers No. 39 at 245-46.

[12]See "Brutus," N.Y.J. Feb. 7, 1788, reprinted in 2 The Complete Anti-Federalist 441, n.13 (Herbert J. Storing ed. 1981).

[13]The Federalist Papers No. 45 at 293.

[14]301 U.S. 1 (1937).

[15]317 U.S. 111 (1942).

[16]United States v. Lopez, 115 S. Ct. 1624 (1995).

[17]Federalist Papers No. 45 at 292-93.

[18]Federalist No. 78.

[19]The Federalist Papers, No. 43 at 278-279.

[20]Of course, Congress' ability to preempt state law is itself limited to those areas in which the Constitution confers legislative authority upon the Congress.

**To the Federal and State Affairs Committee:**

Esteemed Representatives,

I am here today to state my opposition to Resolution 5017.

Something has been happening in the United States that many view with alarm. Federal agents have given themselves authority that has not been delegated by the States and no open application has been given to the States.

State sovereignty is plainly stated and given to us by our Constitution. The Constitution gives the State legislature vastly more power than any other branch of government. Yet, Congress finds itself in the position of being incapable of taking action because over the years Congress itself has transferred what was Congressional powers to the executive branch of government and to private interests. **The solution is to reinstate the Constitution; all of it.**

Some people believe we need a contract with America. We already have one...it's the United States Constitution. It is to this Constitution, this legal, binding Contract With America, that our elected officials take their oath or affirmation to protect and uphold. This duty is owed to the American people.

The Constitution does not change its meaning from day to day. It is not a living document, as some would have us believe, subject to ingenious interpretation by the devine right and motives of bureaucrats. **The Constitution means what it says and says what it means.**

It is time to work on proven solutions rather than 'reinventing the wheel'. We should be investing our time in reading and learning from what our forefathers wrote.

- Their words and wisdom are already in place and should and would guide us through any challenge if we would only let them.
- Their words do not require ingenious interpretation, just common sense.
- Their words recognize that we have Unalienable rights (it is not spelled with "In"; it's spelled with "Un". Unalienable rights are rights that our creator has given us. Nevertheless, inalienable means incapable of being surrendered or transferred. And it is with this particular word, unalienable, that we are brought to the decision facing you today...how to keep our rights from being surrendered or transferred.

As Ben Franklin was walking out after signing the Constitution, a lady asked, "What kind of government did we get?" He responded, "A Republic, Madame - if you can keep it." What Ben Franklin and the other founding fathers feared we are facing today - we have been allowing our rights to be surrendered or transferred.

But, there is a solution...***The Tenth Amendment***. When the federal government tried to mandate that the State of New York accept radioactive waste for disposal, New York pleaded in court that they were exempt from the mandate under the *Tenth Amendment* and the court affirmed the *Tenth Amendment* protection. Therefore, by a state proclaiming its sovereignty, the legislature and people in that state are in the position to select those mandates they will follow, now by choice, not by edict.

With all this in mind, I urgently plead with you to NOT support or pass this Resolution 5017. I strongly urge you to seek the Sovereignty that the *Tenth Amendment* provides the states over the Federal Government as the solution to the ills facing our nation today!

Thank you, Greg Dye

Fed. State
3-13-97
Atch #2

TESTIMONY AGAINST HCR5017

My name is Roger Mundy, Chairman of the Kansas Tenth Amendment Society, the only advocacy group in the State dedicated to the restoration of proper State Constitutional powers, especially in its role in the "federal" system in America, or Federalism. It may seem strange that we come before you to oppose HCR5017, which ostensibly is an attempt to restore Federalism in America. The reason that we oppose this measure is because it would produce the opposite effect - further weakening the States every time the Amendment that it calls for is used.

HCR5017 asks Congress to bring forth an Amendment to Article V of the Constitution to provide a way for the State to propose Amendments subject to Congressional veto. There are two important and dangerous effects of HCR5017:

1) **THE COLOR OF "CONSTITUTIONALITY" TO DENYING THE POWERS OF THE STATES.**
The intent of the Amendment is "proper balance of national and state power" and the Amendments proposed under it will be targeted at restoring State power Those that would actually accomplish this will certainly be vetoed by Congress establishing official Constitutional denial of State powers already guaranteed by the Tenth Amendment to the Constitution. If Congress were inclined to honor these powers, measures to restore Federalism would not be coming forward.

2) **IMPLIES THAT THE STATES WANT A CONSTITUTIONAL CONVENTION.**
The language of HCR5017 could be interpreted by Congress as a "petition" to convene one. Omitted is the fact that the States have petitioned for a con-co under the mistaken belief that a con-con could be limited to single issues. Contrary to popular belief, Congress does not fear a con-con, as evidenced by their enthusiastic anticipation of one that nearly occurred in 1976.

HCR5017 was originally called the "States' Initiative" Amendment and was one of three promoted by the advocates of the Conference of the States. All possessed the same dangers. In fact, the "States' Petition" process that was to deliver them to Congress was a legalistic combination of two procedures of Article V: State "petitions" for a con-con; and State "ratification" of Amendments. It was a con-con on "fast-track", but the States were not informed of this.
(A study of the "States' Petition" process, including an analysis of the three Amendments of the Conference of the States/Federalism Summit is provided with my testimony, today).

CONCLUSION
I salute the intent of the proponents of HCR5017 to restore Federalism, but urge that HCR5017 be dropped. It should be noted that the framers of the Constitution, who were very concerned with preserving State power, did not neglect to provide a means for States to promulgate Amendments. They could easily do so through their "ambassadors" in Congress, the Senate. That power still exists and can be exercised without Constitutional Amendment. It has none of the dangers described above and is far more powerful, arguably the greatest power that the States possess under the Constitution. The Kansas Tenth Amendment Society has outlined a process to exercise this power called the Will of the State process, as I briefly discussed the last time I appeared before this committee. Every member of this committee will receive a full version when it is finalized. It seems ironic that this great power is also in Article V, but is never mentioned, especially by the big forces that push for federal vetoes over State power, or con-cons.

Finally, it should be noted that HCR5017 imputes that the framers of the Constitution "envisioned... a desirable equipoise between national and state powers". This is misleading, what the framers envisioned was an "equipoise" between the power of the State Legislatures - as the voice of the body-politic in the exercise of governmental power - and the power of the People - as the body-politic, itself. Each had their own House in Congress. Each could ratify Amendments. Each were guaranteed their reserved powers in the Tenth Amendment to the Constitution. The national government was (and is) only the agent of the States, mean to be Federal in nature.

Fed v State
3-13-97
Atch #3

# THE STATES' PETITION:
# THE ADJOURNING OF THE U.S. CONSTITUTION

by Roger Mundy, chairman
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Wichita, Kansas 67201

"Let us face reality. The framers have simply been too shrewd for us. They have outwitted us. They designed separated 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: REFORMING AMERICAN GOVERNMENT
published by: Committee on the Constitutional Systems
Director: A.E. Dick Howard, appointed advisor to the Conference of the States.

THE STATES' PETITION is a document that will emerge from the Federalism Summit that will take place in Cincinnati, Oct. 22. After the Conference of the States (COS) was rejected by America, the Council of State Governments (CSG) has decided to (pphrase) "Declare a victory, and hold the Conference . . . then the rest of the states will fall in line". They have eliminated the call for "empowered" delegates, to allay fears that the conference would declare itself a constitutional convention, even though a different sort of Con-Con is their goal. They are bringing in representatives of cities and counties, who will be flattered by their new-found importance into a very agreeable attitude. One thing that has not changed is CSG's President, Gov. Michael Leavitt's insistence "that they must find a mechanism for creating the STATES' PETITION(s). . ."

THE STATES' PETITION will contain proposed amendments to the Constitution, that appear to strengthen state powers, but that actually act to permanently destroy them.

THE STATES' PETITION will be sent to every state legislature **to be ratified.** Upon ratification, it is to be sent to the U.S. Congress.

When the STATES' PETITION is ratified, the states will have performed two Constitutional functions, without even having been aware of it.

**THE STATES' PETITION** legalistically fulfills Article V of the Constitution (the amending provisions of the Constitution), and it will be recognized by Congress as:

**(1)** an **APPLICATION** to Congress **FOR CONVENING A CONSTITUTIONAL CONVENTION,** & **(2)** formally **RATIFYING THE AMENDMENTS** within it.

By the time THE STATES' PETITION reaches Congress, the Amendments within it are no longer proposed amendments, they are **ratified** Amendments. Congress will then recognize the Federalism Summit as a **Constitutional Convention** and they will recognize the Amendments in THE STATES' PETITION as **legally ratified.**

Congress has the power to do so from the Supreme Court in Coleman v. Miller 307 U.S. 433 (1939), which left " . . . ultimate authority in congress in the exercise of its control over the promulgation of the adoption of the amendment." In this case, there are to be several Amendments, but the principle is identical.

Since the Federalism Summit will be led by many known advocates of replacing our Constitutional Republic with a parliamentary form of government, it is likely that when it is adjourned, only that session of the summit will be adjourned. By leaving open the final adjournment of the summit, ostensibly for future summits, they have set the stage for the creation of an entirely new governmental entity in America, a standing Constitutional Convention.

When the first session of the Federalism Summit is adjourned, those who have warned of a Constitutional Convention will be discredited, because a Con-Con never materialized. This will ease the pressure put on state legislators by these newly-discredited patriots. Pressure will increase by the CSG and other very powerful groups for the legislators to ratify THE STATES' PETITION.

Only later, when Congress recognizes the Federalism Summit as a Constitutional Convention (which may not, even then, be openly acknowledged), is the fact of a standing Constitutional Convention realized. Then, truly major changes will begin in earnest . We will then experience "Government by Amendment", until such time that both federal and state governments are subjugated, and eliminated, by this "permanent convention body" or Parliament.

"A States' Petition gains its' authority from the sheer power of the process the states follow to initiate it."

-Michael McCabe (CSG)

## A DEFINITION OF THE STATES' PETITION

In the following definition, the process McCabe is speaking of will be shown as a legalistic version of the Constitutional process for convening a Constitutional Convention combined with another legalistic Constitutional process for ratifying Amendments. The process will be illustrated by quotes from members of the CSG, themselves.

You may notice the definition of States' Petition grows as each quote is considered. This has been done so that it can be understood in its true meaning and power. After these steps there is a final, clearly understandable definition entitled: **THE STATES' PETITION.**

STEPS TO A DEFINITION OF THE STATES' PETITION:

The first step starts with the Webster's Dictionary definition of Petition: "to make . . . application in writing in a formal manner to a superior for some favor or right.";

-then considers the quotes:

"The States' Petition then will be taken back to the states for the approval of each state's legislature.", ". . . the representatives of each state then will gather in Washington to present the Petition and formally request that Congress respond."; (McCabe)

"It (the States' Petition) will constitute the highest form of formal communication between the states and the Congress." (McCabe)

This begins the definition;

The States' Petition: The Application of the legislatures of the several states to Congress.

The second step considers the quote:

"Constitutional amendments included in the Petition will require approval by a super-majority of state legislatures to continue as part of the States' Petition." (McCabe)

This adds to the definition;

The States' Petition: The Application of the legislatures of a super-majority of the several states to Congress for proposing amendments.

The third step considers the quote:

"However, before being presented to Congress, the petition will first be returned to the states, where it must be approved by 3/4 (38) of the legislatures." (McCabe)

This clarifies the definition;

The States' Petition: The Application of the legislatures of 3/4 (38 states) of the several states to be presented to Congress for proposing amendments.

Article V of the Constitution: The Congress . . . on the Application of the Legislatures of 2/3 (34 states) of the several States, **shall call** a Convention for proposing Amendments . . . ",

The definition in our third step, in comparison to Article V above, shows how the States' Petition will cause a Con-Con to be called.

Congress **shall call** a Constitutional Convention at this point, claiming that they had no choice, because of Article V. They will recognize the Federalism Summit as this Con-Con, and since only the first session of the summit was adjourned, Congress will have formed a **standing Constitutional Convention.**

When the States' Petition "will first be returned to the states", from the conference, (this time called a summit), it will be more than approved, it will be **ratified**, "before being presented to Congress."

To continue our definition, the fourth step considers two quotes: "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 . . . delegates of the Conference will present the **ratified** version to both houses of Congress." (Gov. Nelson of Nebraska - CSG)

-and,

"Constitutional amendments included in the Petition will require approval (he means **ratification**) by a super-majority (he means 38) of state legislatures to continue as part of the States' Petition." (McCabe)

By ratifying the States' Petition, Gov. Nelson means **ratifying** the amendments within it. McCabe shows this in his statement, though he is also misleading, using the word approval when he means **ratification**.

This expands the definition;

The States' Petition: The Application of the legislatures of 3/4 (38 states) of the several states to be presented to Congress for proposing amendments, ratified by the legislatures of 3/4 (38 states) of the several states.

The reason that 3/4 (38 states) of the state legislatures are required instead of 2/3 (34 states) becomes apparent. The organizers of the Federalism Summit not only want a Constitutional Convention, they also want the amendments in the States' Petition ratified as part of the Constitution to insure the success of their coup. (I contend that even if the number only reaches 32 states it will still be presented to Congress.)

When the States' Petition is presented to Congress, it will not only compel Congress to call a Constitutional Convention, Congress will also have Amendments **ratified** by 3/4 (38) of the state legislatures. Congress will therefore recognize them as valid, for all intents and purposes, as Amendments to the Constitution.

The final definition is worded to compare it with Article V;

**THE STATES' PETITION;** Application of the legislatures of at least two thirds of the several states, to be presented to Congress for proposing Amendments contained within it, which, shall be valid to all intents and purposes, as part of the Constitution of the United States, having been ratified by the legislatures of three fourths of the several states.

**Article V**; "The Congress,. . .on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which,. . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States. . . "

In conclusion, THE STATES' PETITION is a legalistic fulfillment of Article V requirements to convene a Constitutional Convention and ratify Amendments to the Constitution.

"Relying on the goodwill of the president . . . , the Congress, the bureaucracy, or the courts. . . is so naive as to be laughable."
- Gov. Michael Leavitt (CSG)

## HOW TO SUBJUGATE THE STATES AND THEN, THE FEDERAL GOVERNMENT: A FORMULA TO FORM AN AMERICAN PARLIAMENT

In 1994, Executive Order number 37 came out of the Office of the Governor of the Commonwealth of Virginia. It contained the first official government action to assemble The Conference of the States (COS). It also contained recommendations that went along in the same spirit. Two amendments to the Constitution were recommended; the States' Initiative and the States' Veto. Other measures were recommended such as Tenth Amendment Litigation. Since that time, the proponents of the COS have recommended adding language to the Tenth Amendment, with a third Constitutional "process" amendment. These three amendments were meant to be part of the States' Petition, which was to emerge from the COS.

The COS has been renamed The Federalism Summit, and this time the media has been silent about its taking place. Very little information has been published about the Summit, but it is a certainty that if a States' Petition emerges from it, or any other document that is to be taken to the state legislatures for **ratification**, we will know that the COS has occurred.

"The States' Petition will be, in effect, the action plan . . . ""It is a procedure outside the traditional constitutional process... " (McCabe of the Council of State Governments).

NOTE: If no document is taken to state legislatures to be **ratified**, we must be on guard against "Conventions in three fourths" of the states which could **ratify** a document like the States' Petition.
The results would be the same.

The Three "Process" Amendments To Be Included In The States' Petition:

STATES' VETO: ". . .where three-quarters of the States pass resolutions seeking repeal of objectionable federal legislation or regulations within a prescribed time period, the federal measure would be rendered invalid unless the Congress thereafter overrides the States' action by a two-thirds vote of the Senate and the House of Representatives.
(Vir.E.O.37)

STATES' INITIATIVE: (to be added to Article V of the Constitution)
"Whenever three-fourths of the legislatures of the several states deem it necessary, they shall propose amendments to this Constitution that, after two years, shall be valid to all intents and purposes as part of the Constitution, unless disapproved by two-thirds of both Houses of Congress within two years of the date the amendments are submitted to Congress."
(Intergovernmental Partnership Task Force - CSG)

TENTH AMENDMENT LITIGATION: The Tenth Amendment: "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." (U.S. Constitution) A sentence would be added: "Whether a power is one reserved to the states, or to the people, shall be decided by the Courts."
(IPTF-CSG)

These amendments all have one thing in common, they remove the two most powerful state powers in the Constitution and put them under the power of the federal government.

The Tenth Amendment Litigation amendment places the unquestionable power of the states into the hands of appointed employees of the federal government. This is supposed to force the Supreme Court to hear cases filed under tenth amendment principles. But the Supreme Court is hearing these cases and shouldn't be. (i.e. New York v. U.S., 112 S. Ct. 2408, 1992). The actual reason for proposing this amendment is to permanently prevent the states from exercising their sovereign powers without the federal government's permission.

Both the States' Veto and the States' Initiative amendments place the combined power of the state sovereignties under the federal government. The power of three-quarters of the states acting in unison is the single most powerful governmental action possible in America's Constitutional Republic. It is the power to amend the founding document of our union. It is the power that overthrew the Articles of Confederation. It is the power that empowered The Constitution by its **ratification.** It is the combined power of the Tenth Amendment Sovereignty of a super-majority of states acting in their most sovereign capacity. These amendments are to give Congress, the creation of the states, the authority to override that power!

Neither the States' Veto, nor the States' Initiative confer any power on the states. Rather, both of these amendments permanently remove the legal recognition of the states' combined power. It is ironic that in order to obtain these new amendments, the states have to use the very power that they will lose when these amendments are **ratified** in the States' Petition.

Scenario: Combined Effects of the Amendments and the States' Petition

After the States' Petition is presented to Congress and the new Amendments take effect, federal encroachments increase. The states try the new States' Veto, by "sunsetting" Federal laws. The Federal government continues its actions, claiming "exemption" until the "prescribed time period" has expired. They then continue abuses by simply re-naming the laws "vetoed" or rewording them. If the states can stop this abuse by using the States' Veto again, "Congress thereafter overrides the States' action."

The states seek relief by using the new Tenth Amendment Litigation Amendment, filing suits in the Supreme Court. This becomes very lengthy as many states are also filing suits. To their dismay, most of the suits are decided in favor of the federal government. Also the states find themselves as defendants as the federal government challenges some of the laws and resolutions passed by the individual states that clash with federal policy. This puts a strain on the state budgets and usually results in state losses.

As conditions worsen, the states try the new States' Initiative, to redress the problems encountered above and the problems that led the states to ratify the States' Petition in the first place. The state initiated amendments that would correct some of the problems are defeated by Congress, and only "feel-good" amendments are allowed to progress.

Finally, the states decide that the only solution is to hold a Constitutional Convention to undo the harm done to their Tenth Amendment powers. Two thirds of the states file an application with Congress for a con-con for proposing amendments. Congress either overrides the application based on the precedent set by the States' Initiative and the States' Veto that gave Congress overriding power over a super-majority of states, or perhaps, because Congress claims there already is a con-con in place, the Federalism Summit. This just depends on how the first session of the Federalism Summit was adjourned.

Since the new Amendments have produced nothing but grief for them, and since their access to a Constitutional Convention has been blocked by their own doing, the states seek a reconvening of the Federalism Summit.

When the summit is reconvened, the original rules and bylaws are still in place. Proposed amendments still have to go through the same committees. These were discussed in the literature produced to promote the Conference of the States:

"Where will the proposals come from that will be considered at the COS?" "The Steering Committee will propose rules governing this matter." ". . . we anticipate major national organizations of elected officials (NGA, NCSL, CSG, . . . ) will be invited to submit proposals." (IN OTHER WORDS, THEMSELVES)

"Thus, all proposals will have been scrutinized before being submitted to the COS." (NOW THE FEDERALISM SUMMIT).

The steering committee blocks the states attempts to restore the Constitution in any way that would restore the power the states had already surrendered. They speak of not going backwards, and of finding ways to go forward. Surprisingly, the steering committee does allow amendments that will rein in the federal government. The Federal government complies with the second States' Petition, which effectively boxes it in.

The people rejoice, the monster of the federal government has finally been brought to its knees. They do not realize that they have been ushered into a new era . . . The era of the American Parliamentary Government. The Federalism Summit has triumphed, the State and the Federal governments are both reduced to administrative units of the "government by amendment." They are truly "co-equal partners." Over time, the "permanent convention body" replaces both with a whole new system. The Constitution is replaced with the "Newstates of America Constitution", and the Federalism Summit renames itself with something more permanent sounding, even though "as stated in the Newstates of America Constitution, after 25 years, it too, is to be replaced."

YES, DEAR READER, THIS IS REAL AND DOCUMENTED.

The end goal is, of course, total global tyranny. With the fall of the U.S. Constitution, the rest of the world comes into submission rather quickly.

**MAY GOD SAVE US FROM THIS FATE**

**NO TO THE FEDERALISM SUMMIT**
**NO TO TENTH AMENDMENT LITIGATION**
**NO TO RATIFYING THE STATES' PETITION** (no matter what they may call it)

THE CONSTITUTION: A BARRIER OF PROTECTION

We are a nation of laws. The Constitution as our highest law protects our rights and guarantees our freedoms. The bill HCR 5017 focuses on Article V of the United States Constitution which covers the amending process. I oppose HCR 5017 because I believe the amending process should remain difficult as it was originally intended by framers of the Constitution.

All too often individuals and/or groups want to amend the Federal or State Constitutions by convening a convention, but are unaware that such a convention handled improperly can degenerate into intended or unintended chaos, producing an intended or unintended result. Article V was designed to protect the Constitution, provide a barrier and prevent the former from occurring well inadvance, giving everyone plenty of time to get their thoughts together, and thus prevent the latter(the ultimate evil)from also occuring.

In closing a barrier is protection and anyone or anything that enters in a manner other than proscribed does so illegally. Why then must our elected represenatives weaken that barrier of protection if only to satisfy nothing more then some legislative ego. Had the November 1996 results been differnt STATE SENATOR Clark of district 29 would be working hard to defeat this bill with his vote and encouraging both house and senate members to vote against it also. CITIZEN CLARK asks you to vote no.

THANK YOU.

Daniel S. Clark

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