

**2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HCR 3015**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union, State Capitol

HCR 3015  
2/5/2015  
23306

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Carmen Hart*

### Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which requires a balanced federal budget

### Minutes:

Attachments 1-3

**Chairman Kasper** opened the hearing on HCR 3015.

**Rep. Mark Dosch**, District 32, appeared in support. Attachment 1(:34-5:47)

**Rep. Steiner** If this resolution passes, is there a coordinated effort among states? Does this resolution go by itself?

**Rep. Dosch** The verbiage of this has already been passed by 22 or 23 states already. This is model legislation used by these other states.

**Rep. Mooney** We have \$18 trillion in debt. If a balanced budget amendment is ratified and is the law of the land, where does the debt go?

**Rep. Dosch** That is what our Congress is charged to do. This calls for a balanced budget. It doesn't right now call for paying off our debt that is already out there. We are going to have to work on that and how that is going to occur, I don't know. We have to stop the bleeding. We have to get a balanced budget and then slowly work on over the next years paying off that \$18 trillion.

**Rep. Amerman** Does Line 11 mean it shouldn't be added to any other amendments?

**Rep. Dosch** That is exactly right, because of the fears of the runaway convention. This is for one specific purpose only.

**Rep. Amerman** On Line 11 where it reads "but shall not be aggregated" so when we pass it and get it right would "and" work better than "but"?

**Rep. Dosch** I do not feel qualified to comment on that. I know that the verbiage has to be pretty much the same in all the states. I would be concerned about changing any of the verbiage on this.

**Rep. Wallman** I don't disagree that the debt is out of control. I am just not convinced this is the right answer. Citizens United arguably gives corporations unlimited power to fund elections and, therefore, get people into Congress who may or may not do what the larger populations would want because it is sort of not a little playing field at that point so maybe the people are being represented. That is what I have read. Do you feel that might be another tool or opportunity that could be used to convince Congress to do what the people want which is balance the budget?

**Rep. Dosch** I firmly believe that we have tried. It is not one party or the other. What I see as the real problem behind this is the lack of political will to make those tough decisions in Washington. We see it here in our legislative body. It is easy to say yes. It is hard to say no. It is hard to say we have to be accountable.

**Rae Ann Kelsch**, National Federal of Independent Business, appeared in support. Attachment 2 (13:20-16:35) There are legislators in this body that are members of that Balanced Budget Task Force. I have forwarded that to you which you should have in your inbox.

**Rep. Schneider** Who are the legislators who we could talk to that are members of that Balanced Budget Task Force?

**Rae Ann Kelsch** I know that Rep. Streyle and Rep. Thoreson are. I think Rep. Kasper is, and he thought he was.

**Rep. Karls** We heard another bill with the balanced budget amendment. Are these two different bills? What are the comparisons?

**Rae Ann Kelsch** They are different. This is calling for a balanced budget amendment. The other bills call for other things. NFIB is a limited resource association and group. We decided to go behind one effort and where we pushed that one effort. It was strictly the balanced budget amendment that is the one we are behind.

**Chairman Kasper** Also HB 1138 is a compact approach compared to the convention of the states.

**Rep. Wallman** Can you briefly say what National Federation of Independent Business (NFIB) is?

**Rae Ann Kelsch** We are a membership based organization that consists typically of small businesses. Scheels is one of our members. We are kind of the small business voice of the champion. We have different issues that we feel needs a second voice or an additional voice. Our salesman goes out and talks about what we look at in the legislature, what it is that we are interested in, what types of issues are going to be affecting small business.

One type of issue might be coal. If coal prices go up because there is a shortage of coal, that affects my businesses, because that is what they use to heat their businesses.

**Chairman Kasper** It is a national organization that has chapters in all 50 states.

**Rae Ann Kelsch** We do.

**Pete Hanebutt**, Director of Public Policy for the North Dakota Farm Bureau, appeared in support. Much like the NFIB, we are an organization of independent business people that happen to be farmers. We have a policy that states that we call upon the North Dakota state legislature to initiate an amendments convention to the US constitution. We could interpret our policy to fit several of these things this morning. It seems like the philosophy that we would champion in Farm Bureau on why this is important can be summed up in a way that an uptight Lutheran pastor in Indianapolis stated. The problem with our wonderful American system is that no matter how good of Christians we want to be and teach a man to fish every day, we have more people in this country now going into this century that will vote for free fish than fishing poles. That is where we are at. Unfortunately, it is a problem. I don't know how we get ahead of it and Farm Bureau won't be in all the debate of that, but I think that sums up why our philosophy and our policy book supports this issue.

**Rep. Wallman** Can you explain how people getting free fish has to do with the balanced budget amendment?

**Pete Hanebutt** It gets to the point that we elect people to go to Washington or capitals with very good intentions. Some of them will go and say we are going to limit spending, limit growth, whatever that is, and they fall into the trap of always trying to appease whoever is the shrillest at one time or another. Sometimes that leads to a continuous up ramp of spending growth and whatever. That is a philosophical problem for our organization. I think we get into the thing that every crisis demands spending to follow it, and spending gets out of control that way. That is just a general observation, not something that necessarily is stated in the Farm Bureau policy.

No opposition or neutral.

The hearing was closed.

Andrew Bornemann who had testified in opposition on HB 1138 emailed his testimony a little later that day which also indicates he is in opposition to 3015. Attachment 3.

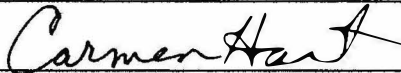
# 2015 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Fort Union, State Capitol

HCR 3015  
2/5/2015  
23367

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which requires a balanced federal budget

### Minutes:

"Click to enter attachment information."

**Chairman Kasper** This resolution is also an Article V resolution. This is a single issue resolution. It proposes that a convention of the states be called to discuss one item only and that is the balanced budget amendment.

**Rep. Laning** made a motion for a DO PASS.

**Rep. Steiner** seconded the motion.

A roll call vote was taken. 10 Yeas, 4 Nays, 0 Absent.

**Rep. Steiner** will carry the bill.

Date: 2-5-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 3015

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Lanning Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson	X		Rep. Kris Wallman		X
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Lanning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Steiner

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3015: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)**  
recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).  
HCR 3015 was placed on the Eleventh order on the calendar.

**2015 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HCR 3015**



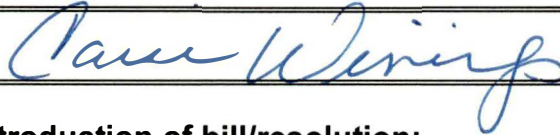
# 2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

HCR 3015  
3/19/2015  
Job # 25092

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which requires a balanced federal budget.

## Minutes:

Attachments 1 - 4

**Chairman Dever:** Opened the hearing on HCR 3015.

**Senator Casper, District 27:** Testified as sponsor and in support of the bill. I got involved in this process as part of my service as a staff member for one on North Dakota's members of Congress. As part of my work there I got the experience to learn about the budget process they have in Washington. Unfortunately over the last decade we have not followed our own rules. There are a whole set of laws and codes that the federal government has that was put in place by congressmen to govern congressmen and how they would pass a budget and spend our federal funds and it is supposed to happen on time and in an orderly manner. We would like to see it happen much more like it happens in North Dakota. But for some reason up in Washington DC they seem to not be able to do that. I think this will be a transformational change in our country and I think it can get our spending back on track. This process is the best way to move forward to see that the federal government holds itself accountable in regard to spending. We are spending 6 to 8% of every dollar of revenue that comes into the government on paying debt interest. That money could go to so many more needs in our communities. The more debt we have then more that percentage goes up.

**(5:00)Chairman Dever:** I do not expect you to know the answer to this question but I am going to ask it up front because I am sure someone will. I understand that it takes 2/3 vote of Congress to pass an amendment then to be ratified by the states. Would it require a 2/3's vote or a simple majority to call a convention of the states?

**Senator Casper:** I think it is 2/3 but I could be wrong about that.

**(5:40)Rae Ann Kelsch, State Director, National Federal of Independent Business:** See Attachment #1 for testimony in support of the bill See Attachment #2 for testimony from Representative Dosch's testimony. (Introduced the following presenter.)

**(9:40)William Fruth, President of POLICOM, Balanced Budget Amendment Task Force:** See Attachment #3 for testimony in support of the bill.

**(36:25) Chairman Dever:** It seems to me that in Congress there may be different levels of guilt but there is no one innocent and I am wondering if you would agree with me that this is not a partisan thing. That everyone in Congress has attributed to the problem; at least generally everyone.

**William Fruth:** When you look at a Republican president with a Democratic Congress and vice versa and all of the different variations that we have had over the last 40 years and in every one of them the national debt went up. I would agree that it is systemic in Washington is where the problem is. It does not matter who is there.

**Chairman Dever:** In a bipartisan way.

**William Fruth:** That is correct.

**Chairman Dever:** If Congress decided they wanted to call a convention without requiring the 34 states, can they do that? Can they propose an amendment?

**William Fruth:** They cannot call it they can only propose an amendment. They can propose an amendment themselves any day of the week with 2/3 vote of both houses. The convention is a convention of the states. The states are the ones causing this convention to happen. Congress cannot call a convention without the application of the states.

**Senator Nelson:** On line 22 of Page 1, says in absence of a national emergency, what is that definition?

**William Fruth:** That is the subject of the convention. Your delegates at the convention will make that definition. They will write the language for the amendment. We are in essence putting in a subject. Likely the subject of what Congress will pass for convening will be pretty much the language of "the convention shall be limited to a balanced budget amendment" or they will phrase it differently. What will likely happen is that you will choose your delegate, begin to have hearings on what you as a state want in the balanced budget amendment. You will begin to craft your own amendment and you will ask your delegation to take your amendment to that convention and toss it into the pot and as a result of all of the states doing that there will be some really good ideas for the language of the amendment.

**Chairman Dever:** Each state will decide the size of their delegation but each state will have one vote?

**William Fruth:** That is correct. All states will be on an even playing field.

**(42:49) Pete Hanabutt, North Dakota Farm Bureau:** Testified in favor of the bill. We have a policy that states that we call upon the legislature to initiate an amendments convention to the US Constitution and in the House I testified that we fell like our policy allows us to testify on almost everything on your agenda today but chose this resolution because it fits the idea of what is in our policy most closely. We like this one in particular.

**(43:55)Don Fotheringham, Freedom First Society:** See Attachment #4 for testimony in opposition to the bill.

**(1:05:35)Senator Cook:** Are you saying that George Mason's comments were made as a delegate to the convention?

**Don Fotheringham:** I do not see attribution of that at all. I just hear the statement being made. A man by the name of Ken Cuchini (sp?) testified in Virginia and used a statement that was preposterous. There is not foundation for it whatsoever. I would call it fraud.

**Senator Cook:** If I said that George Mason was not a delegate to the convention would you agree?

**Don Fotheringham:** He was a Virginia delegate. He was one of the few who did not vote.

**Chairman Dever:** I am confused when you draw a distinction between the state and the people. Each of us here in North Dakota represents approximately 14,000 people and we are elected to be the voice of the people so I am not sure that I necessarily follow your argument.

**Don Fotheringham:** I appreciate that and I think that is an excellent question. The people are the government makers. The framework of the legislature was created in a convention and that convention was sovereign. That sovereignty accounts for your presence here. They provided rules and ground work in which you can operate as state legislators. When it comes to amending that structure it has to go back to the people. I would ask if the people of North Dakota know what is going on here. Do they know what you are doing the sovereignty? I bet you they don't. This is not statutory. It is not business as usual. It is very serious business.

**Chairman Dever:** One of the polls indicates that North Dakota's government is one of the best run governments in the country.

**Don Fotheringham:** I would not doubt it.

**Chairman Dever:** Can I assume that your arguments that you make on this resolution would also apply to the other ones?

**Don Fotheringham:** Yes the principles apply to all six of the measures you are considering today.

**Chairman Dever:** Closed the hearing on HCR 3015.

# 2015 SENATE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee

Missouri River Room, State Capitol

HCR 3015

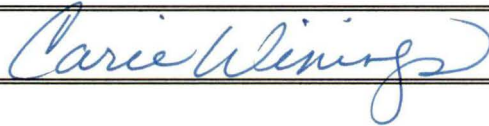
3/19/2015

Job # 25140

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



### Minutes:

No Attachments

**Chairman Dever:** Opened HCR 3015 for committee discussion.

**Senator Poolman:** Moved a Do Pass.

**Senator Davison:** Seconded.

**Chairman Dever:** Any Discussion?

**Senator Flakoll:** This probably would resonate throughout but I think I will be long dead before these probably ever occur.

**Chairman Dever:** It is interesting when the gentleman mentioned that Duane Mutch came and asked us to resend and I was on Judiciary in 2001 when he did that and Senator Mutch was first elected in 1958 and he said that it was the first time that he had ever testified in the Judiciary committee and that resolution had been in place since the 70's.

**Senator Flakoll:** One of the things that any of us clearly knows is what a national emergency or disaster really is.

**Chairman Dever:** That question was asked and the response was that it would be defined in the convention.

**Senator Flakoll:** We see them because of smaller local emergencies like flooding, or a regional incident, but I think it is worth noting. Not that it will change my vote on this. I like the specificity that is provided in this one.

**Chairman Dever:** As we consider all of these, just think of our own situation where yesterday we got the revenue forecast and when we walk out of here we will have a balanced budget but how much easier would it be if we thought to ourselves that the Bank of North Dakota has healthy reserves and the price of oil is going to go us sometime and we can fudge a little bit and take care of it next session. It would be easy to do and difficult to resist but we will have a balanced budget because our constitution requires that we do.

**Senator Cook:** That is the problem. If we didn't have a balanced budget, if we pass a budget that spends too much money and we come back and we cannot carry out that budget and we have to raise taxes, we here in our jobs get fired. The trouble is that Congress can be just as irresponsible but we never fire them. We just keep putting the same dysfunctional people back in there again. We can point the fingers at Congress all we want but I point them to the people that do the electing.

**Chairman Dever:** We the people elect them and fail to exercise the restraint that we would have them exercise.

**Senator Flakoll:** We could argue that we do that in some fashion by bonding. Not to the extent of Minnesota.

**Chairman Dever:** We could have a conversation about our bonding levels now and what they were ten years ago.

**Senator Flakoll:** Certainly. We see a prime example in the state of Minnesota where they do not have enough money so they will just bond for it. An ever increasing percentage of their budget goes towards bonding. We have been fortunate that we have been paying cash on the barrel because of our situations for a little bit of time. We do some of the same things in terms of spending beyond our means. It is just that we refer to it in a different way.

**Chairman Dever:** With the restraint that we do exercise we do it because we don't have a choice.

**Senator Nelson:** I plan to vote against this. I have a problem with a resolve that they would not give me a definition for. I asked what the absence of what a national emergency was and they said that the delegates will come up with that definition. I do not think that this right. I think we should know right off the top what that is. I tend to agree that we need to hold those folks in Congress accountable and get the right people in there and we don't. We just keep sending the same people back over and over.

**Senator Flakoll:** I found it interesting that none of the presenters, who have clearly presented, it is almost like they go from state to state and wrestle at each place they go, with all of the testimony that no one ever brought the Article V portion that was being referenced throughout.

**Chairman Dever:** I just read through that the other day and it was interesting to read it and I think it is pretty clear that states can do this.

**Committee Discussion:** A brief discussion occurred among the members about phone calls that they receive from constituents that were told to call and really did not know what they were calling about.

**A Roll Call Vote Was Taken: 4 yeas, 2 nays, 1 absent.**

**Motion Carried.**

**Senator Dever will carry the bill.**

Date: 3/19  
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3015

Senate Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Poolman Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	HB	
Vice Chairman Poolman	✓		Senator Nelson		✓
Senator Cook		✓			
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 4 No 2

Absent 1

Floor Assignment Dever

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3015: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).  
HCR 3015 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HCR 3015**



#1  
2-5-15  
HCR 3015

# HCR 3015

HOUSE GOVERNMENT AND VETERANS AFFAIRS - REPRESENTATIVE KASPER, CHAIRMAN

February 05, 2015

Mr. Chairman and members of the House Government and Veterans Affairs committee, for the record, my name is Mark Dosch, Representative from District 32 - Bismarck.

18 Trillion Dollars. Its amount that most people can't comprehend. It's amount that I can't comprehend.

Let me try and put this into perspective for you. 18 Trillion Equates to every man, women, and child have been placed \$56,509 into debt by our government. Thus the typical average family of 4 has \$226,000 of debt placed upon them by our government. More than most people's home mortgage.

Unfortunately this issue is a result not of one political party, but the failure of both Republicans and Democrats. A Failure of leadership. A failure of political will to do what is right. A failure of congress and the President.

Can anyone of us conduct our personal or business finances in this way? Can we continue to run to the bank month after month borrowing more and more money, with no plan to repay it? The answer is no.

Do we run our great State of ND in this manner? The answer is no.

Yet we have stood idyll by, allowing a dysfunctional government to run our country in this manner. Debt ceiling increase after debt ceiling increase.... Proposals to even eliminate the pesky ceiling have even been proposed. The President just announced a few days ago, that now that our economy is starting to show signs of life, he is calling for new serge of government spending... it just never ends. Using our own government figures, it is projecting we well be adding another 7 Trillion dollars of debt between now and 2023.

The lack of common sense, fiscal responsibility has eliminated any hope of restoring sanity in the level of government spending.

Who among us would continue to spend, continue to charge us those credit cards, knowing full well we will never be able to repay the money we have spent. How can anyone run up debt and expect someone else to pay for it? And that is exactly what our government is doing. Shame on them... plunging this nation into debt, spending money that they know they will never repay in our life time. Expecting our children and grandchildren to pick up or tab is

unacceptable. Never before in the history of this great nation has one generation left the next generation in such a precarious financial situation. This is why, HCR 3015 is so critical. I know, so some say we shouldn't do this, fearful of having a runaway convention. But, the reality is, if we don't do something now, to stop the bleeding, it won't matter down the road. It is said, that the United States will never be defeated militarily, rather it will be economically. It is also said, whoever owns your debt, owns you, and we are 18 trillion dollars on our way of being owned by foreign governments, this is unacceptable.

No Mr. Chairman and members, I will lend my support to this bill, as I would much rather place my trust in "We the People" and not "We the government".

#2  
2-5-15  
HCR 3015

**HB 3015 – Testimony – A concurrent resolution making a formal  
application to Congress to call a convention for the sole purpose of proposing an  
amendment to the Constitution of the United States  
which requires a balanced federal budget  
NFIB – National Federation of Independent Business**

**February 5<sup>th</sup>, 2015**

Chairman Kasper, Members of the House Government and Veterans Affairs Committee, my name is Rae Ann Kelsch – the State Director and registered lobbyist for the National Federation of Independent Business, NFIB. Thank you for the opportunity to share some thoughts regarding HB 3015. NFIB has worked closely with the Balanced Budget Amendment Task Force in getting 24 resolutions passed.

During the ten years from 1993 to 2002, Congress borrowed \$1.3 trillion to pay for its expenditures. For every dollar of income, Congress spent \$1.13.4 Borrowing during the four years from 2009 – 2012 exploded. Even though expenditures for the wars declined significantly, \$6 trillion was borrowed over four years. On average each year, for every dollar of income, Congress spent \$1.90! Unfortunately, Congress will likely borrow another \$7 trillion by 2023. 5 One of the big questions is ...from where will it get the money? There simply is not enough money available in the world to finance this debt. The Gross National Debt is the accumulated total of all the money borrowed over the years by Congress. The government borrows from two sources: 1) the "Public" and, 2) Federal government trust funds.

Congress plans to borrow about \$7 trillion through 2023. From where will it get the money?

The desire by foreign entities to purchase our debt has waned. Not only because the interest

rate is very low, but also because the Federal Reserve has printed so much currency over the last five years, the value of the U.S. dollar has declined.

Congress has placed the American people in an unconscionable position of being responsible for a debt it did not have to create. Never before in the history of this country has one generation left the next generation in such a precarious fiscal situation. We the people of this country are the victims of the excesses of our government. We will suffer for it. We can do nothing. Doing nothing is always an alternative. We can elect people to office who will stop spending and borrowing. This alternative has not worked for the last 30 years. We can riot in the streets like so many do in Europe. This is not a good idea. The best solution is to make it unlawful for Congress to borrow money by way of a Balanced Budget Amendment to the Constitution. This is the exact purpose of HB 3015.

The North Dakota Legislature meets every two years and is required by the Constitution to balance their budget. If North Dakotans can get the job done in 80 days every other year, then a Congress that meets year round should be held to at least the same standard.

I urge a Do Pass on HB 3015

Members of the committee,

#3 3015  
2-5-15

My name is Andrew Bornemann, and I have been a lifetime resident of our great state of North Dakota, currently farming near Kintyre, ND.

I am standing before you today to state my opposition to HB 1138, and resolutions HCR 3014, HCR 3015, and HCR 3017, which are simple variations of the same bill, and to raise some questions for your consideration.

First though, let us take a moment and read Article V of the US Constitution to which this resolution appeals:

*"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, 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, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."*

I would like to point out that the wording of Article V leaves a lot of questions unanswered. Those in support of an Article V convention like to refer to it as a "Convention of the States", but that language is simply not in the constitution. Granted, that may have been the original intent of our founding fathers, but is that how a proposed convention would work out today? As the wording of Article V does not include specifics such as what is the scope of a convention, who forms the convention, are the delegates apportioned by states or by population, may the delegates be bound by the states sending them to certain topics, who will make those decisions? While I would like to believe that those powers would be reserved to the states, I find it hard to believe that the US congress would not take it upon themselves to make such rules, as they expressly have the responsibility to "Call" the convention, *and they have been told it is their responsibility and have tried to in the past!*

According to a briefing sent to congress April 11<sup>th</sup>, 2014, by the Congressional Research Service entitled "The article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress" (Extremely informative of the views of the National government on this topic, available at <https://www.fas.org/sgp/crs/misc/R42589.pdf>),

"Second, while the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures,

including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states."

Farther, it goes on to say regarding limiting the convention to a certain topic:

"One point on which most observers appear to agree is that an Article V Convention, either limited or general, could not be restricted to consider a specific amendment. During the 1980s campaign for a convention to consider a balanced budget amendment, a number of state legislatures proposed specific amendment language. Some would have accepted a "substantially similar" amendment, while others attempted to limit the convention solely to consideration of their particular amendments. In its 1993 study, the House Judiciary Committee indicated the former might be qualified, but:  
'... an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid. Such an approach robs the Convention of its deliberative function which is inherent in article V language stating that the Convention's purpose is to "propose amendments." If the State legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become instead part of the ratification process.' "

As can be readily seen, there are grave concerns as to the likelihood of either the states being able to set the rules for a convention, or for the scope of a convention being limited to certain topics. Do we really want to open up the doors to a convention where ANY topic may be discussed, or potentially the delegates be apportioned by population or electoral votes? I do not think this is in the best interest of North Dakota.

And besides, is the constitution we have flawed, or just ignored?

I submit that though there is reason for concern at the blatant disregard for the constitution plainly visible in Washington, I believe that changing the constitution is not going to fix the problem, and that a constitutional convention is NOT the right way to address the problem. It would be ineffective at best, and downright dangerous to the very fabric of our society at worst. A much better option would be to start holding our national government accountable to their oaths to uphold the constitution, be it through voting them out, legal proceedings, or even impeachment for their crimes. The problem we face today is not one of an inadequate constitution, but one of an immoral and corrupt government.

In the words of John Adams:

"Gentleman,

While our country remains untainted with the principles and manners which are now producing desolation in so many parts of the world; while she continues sincere, and incapable of insidious and impious policy, we shall have the strongest reason to rejoice in the local destination assigned us by Providence. But should the people of America once become capable

of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practicing iniquity and extravagance, ... expressing in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. " (October 11<sup>th</sup>, 1798, letter to the officers of the First Brigade of Militia of Massachusetts)

These almost prophetic words, spoken over 200 years ago, are I believe coming true today. The problem is not the constitution, but the people responsible for the carrying out of it. Changing the constitution is not the answer, education of the people on the responsibilities of freedom, and the responsibilities and limits imposed on governments by our constitution is I believe the only answer to the problems we now face.

Thank you for your time, and if there are any questions I will do my best to answer them now.

**HB 3015 –Testimony – A concurrent resolution making a formal  
application to Congress to call a convention for the sole purpose of proposing an  
amendment to the Constitution of the United States  
which requires a balanced federal budget**

**NFIB – National Federation of Independent Business**

**February 5<sup>th</sup>, 2015**

Chairman Dever, Members of the Senate Government and Veterans Affairs Committee, my name is Rae Ann Kelsch – the State Director and registered lobbyist for the National Federation of Independent Business, NFIB. Thank you for the opportunity to share some thoughts regarding HB 3015. NFIB has worked closely with the Balanced Budget Amendment Task Force in getting 24 resolutions passed.

You may be wondering who is NFIB? It is 350,000 small and independent business owners united by one clear mission: to promote and protect **your right to own, operate and grow your business.**

**WHO IS NFIB?** Founded in 1943, and headquartered in Washington, DC, the National Federation of Independent Business is America's leading small business advocacy association. 60% of our small and independent business owner members have 5 or fewer employees. 55% of NFIB members report gross sales of \$350,000 or less. NFIB's members determine NFIB's policies. Each NFIB member gets ONE vote. No exceptions.

During the ten years from 1993 to 2002, Congress borrowed \$1.3 trillion to pay for its expenditures. For every dollar of income, Congress spent \$1.13. 4 Borrowing during the four years from 2009 – 2012 exploded. Even though expenditures for the wars declined significantly, \$6 trillion was borrowed over four years. On average each year, for every dollar of income, Congress spent \$1.90! Unfortunately, Congress will likely borrow another \$7 trillion by 2023. 5 One of the big questions is ...from where will it get the money? There simply is not enough money available in the world to finance this debt. The Gross National Debt is the accumulated total of all the money borrowed over the years by Congress. The government borrows from two sources: 1) the "Public" and, 2) Federal government trust funds.



Congress plans to borrow about \$7 trillion through 2023. From where will it get the money? The desire by foreign entities to purchase our debt has waned. Not only because the interest rate is very low, but also because the Federal Reserve has printed so much currency over the last five years, the value of the U.S. dollar has declined.

Congress has placed the American people in an unconscionable position of being responsible for a debt it did not have to create. Never before in the history of this country has one generation left the next generation in such a precarious fiscal situation. We the people of this country are the victims of the excesses of our government. We will suffer for it. We can do nothing. Doing nothing is always an alternative. We can elect people to office who will stop spending and borrowing. This alternative has not worked for the last 30 years. We can riot in the streets like so many do in Europe. This is not a good idea. The best solution is to make it unlawful for Congress to borrow money by way of a Balanced Budget Amendment to the Constitution. This is the exact purpose of HB 3015.

The North Dakota Legislature meets every two years and is required by the Constitution to balance their budget. If North Dakotans can get the job done in 80 days every other year, then a Congress that meets year round should be held to at least the same standard.

I urge a Do Pass on HB 3015

# HCR 3015

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SENATE GOVERNMENT AND VETERANS AFFAIRS - SENATOR DICK DEVER, CHAIRMAN

MARCH 19, 2015

Mr. Chairman and members of the Senate Government and Veterans Affairs committee, for the record, my name is Mark Dosch, Representative from District 32 - Bismarck.

18 Trillion Dollars. Its amount that most people can't comprehend. It's amount that I can't comprehend.

Let me try and put this into perspective for you. 18 Trillion Equates to every man, women, and child have been placed \$56,509 into debt by our government. Thus the typical average family of 4 has \$226,000 of debt placed upon them by our government. More than most people's home mortgage.

Unfortunately this issue is a result not of one political party, but the failure of both Republicans and Democrats. A Failure of leadership. A failure of political will to do what is right.

Can anyone of us conduct our personal or business finances in this way? Can we continue to run to the bank month after month borrowing more and more money, with no plan to repay it? The answer is no.

Do we run our great State of ND in this manner? The answer is no.

Yet we have stood idyll by, allowing a dysfunctional government to run our country in this manner. Debt ceiling increase after debt ceiling increase.... Proposals to even eliminate the pesky ceiling have even been proposed. The President just announced a few days ago, that now that our economy is starting to show signs of life, he is calling for new serge of government spending... it just never ends. Using our own government figures, it is projecting we well be adding another 7 Trillion dollars of debt between now and 2023.

The lack of common sense and fiscal responsibility has eliminated any hope of restoring a reasonable level of government spending.

Who among us would continue to spend, continue to borrow money knowing full well we will never be able to repay the money we have spent. How can anyone run up debt and expect someone else to pay for it? And that is exactly what our government is doing. Shame on them... plunging this nation into debt, spending money that they know they will never repay in their life time. Expecting our children and grandchildren to pick up or tab is unacceptable. Never before in the history of this great nation has one generation left the next generation in

such a precarious financial situation. This is why, HCR 3015 is so critical. I know, so some say we shouldn't do this, fearful of having a runaway convention. But, the reality is, if we don't do something now, to stop the bleeding, it won't matter down the road. It is said, that the United States will never be defeated militarily, rather it will be economically. It is also said, whoever owns your debt, owns you, and when our federal government is relying on foreign and communist governments to buy our debt and finance our out of control spending, this is unacceptable!

No Mr. Chairman and members, I will lend my support to this bill, as I would much rather place my trust in "We the People" and not "they the government".

"To preserve our independence, we must not let our rulers load us with perpetual debt. I wish it were possible to obtain a single amendment to our Constitution ... an additional article, taking from the federal government the power of borrowing,"



Thomas Jefferson.



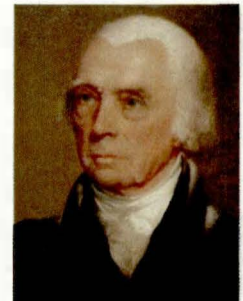
In a letter from George Washington to John Armstrong, our first president wrote "It should be remembered that a constitutional door is open for such amendments as shall be thought necessary by nine (2/3) States"

# Debt, 2015 Deficits, and the Balanced Budget Amendment



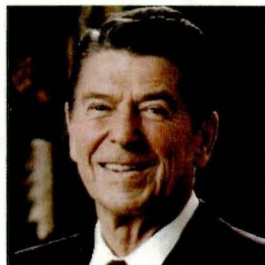
President Lincoln endorsed the power of the people to amend the Constitution through an amendments convention, during his 1st Inaugural Address ... "This

country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their constitutional right of amending it ... I will venture to add that to me the convention mode seems preferable.



In James Madison's Report On the Virginia Resolutions, he wrote "...or two thirds of themselves (states), if such had been their opinion, might, by an application to Congress, have obtained a convention for the same object."

In a letter to Lewis K. Uhler, President Ronald Reagan wrote, "... it is clear that we must rely on the states to force Congress to act on our (balanced budget) amendment. Fortunately, our Nation's Founders gave us the means to amend the Constitution through action of state legislatures."



Balanced Budget Amendment Task Force







*I Am American is one of several groups assisting the BBA Task Force in securing thirty-four states to pass a Balanced Budget Amendment Resolution.*

*I Am American is a multi-state grass roots organization dedicated to educating citizens and legislators about the importance of ratifying constitutional amendments that are necessary to reign in the federal government, save our economy, and preserve the American dream!*

[www.iamamerican.org](http://www.iamamerican.org)



Balanced Budget Amendment Task Force

Researchers affiliated with the Balanced Budget Amendment Task Force created *Debt, Deficits, and the BBA*.

The principal researcher is William H. Fruth, President of POLICOM Corporation, an economic research firm. ([fruth@policom.com](mailto:fruth@policom.com))

For more information on the Balanced Budget Amendment Convention, please visit:

[www.bba4usa.org](http://www.bba4usa.org)

Balanced Budget Amendment Task Force  
2740 SW Martin Downs Blvd. #235  
Palm City, FL 34990

E-mail: [Info@BBA4USA.org](mailto:Info@BBA4USA.org)

# Balanced Budget Amendment Convention



## Debt, Deficits, and the BBA

In 2010, the Florida Legislature placed on the general election ballot the following question:

*BALANCING THE FEDERAL BUDGET ...  
A NONBINDING REFERENDUM CALLING FOR AN  
AMENDMENT  
TO THE UNITED STATES CONSTITUTION*

*Should the United States Constitution be amended  
to require a balanced federal budget without  
raising taxes?*

Yes \_\_\_ No \_\_\_

With almost 5 million votes cast, 72% of Florida voters said "Yes." The measure passed by large margins in every Florida county.<sup>1</sup>

Why are Florida voters supporting a Balanced Budget Amendment? They are fearful of the economic and political future of our nation.

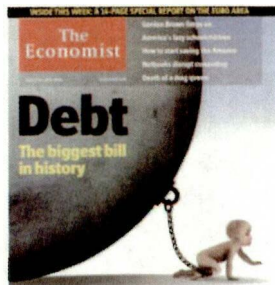
In October, Congress and the President bragged the deficit for Fiscal 2014 was only \$583 billion. This is strange math as the national debt increased \$1.1 trillion during the same period.

The gross national debt is now more than \$18,000,000,000,000.

How much money is this? This is more money than all the debt of all European Union nations combined. It is more money than all the stars in the sky.

It is greater than our gross domestic product (GDP).

In 2014, only 13 of the world's 172 nations had a debt greater than the size of their economy.<sup>2</sup>



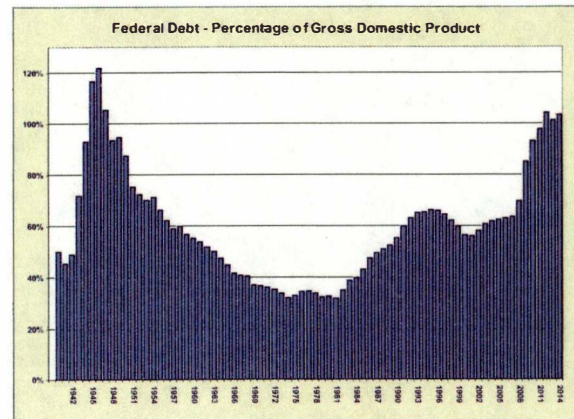
On December 1, 2014, the Gross National Debt for our nation was 102% of the GDP. It has never been that high during peacetime, except in 2012 when it was 104%.<sup>3</sup>

During the height of World War II, the national debt reached 122% of the GDP. After the war, because of the reduction of government spending and a growing economy, the national debt dropped to 36% of GDP in 1980.

Unfortunately, for 41 of the last 43 years (1970 – 2013), "the world's richest nation" borrowed money to fund the costs of its national government.

### % of Debt to GDP

Japan	227%
Greece	175%
Lebanon	146%
Jamaica	139%
Italy	133%
Portugal	129%
Ireland	123%
Cyprus	112%
Bhutan	111%
Singapore	106%
USA	102%
Belgium	102%
China	22%
Russia	13%



## Deficits Cause Debt

During the ten years from 1993 to 2002, Congress borrowed \$1.3 trillion to pay for its expenditures. For every dollar of income, Congress spent \$1.13.<sup>4</sup>

Borrowing during the four years from 2009 – 2012 exploded. Even though expenditures for the wars declined significantly, \$6 trillion was borrowed over four years. **On average each year, for every dollar of income, Congress spent \$1.90!**

<sup>1</sup> Florida Secretary of State, Division of Elections.

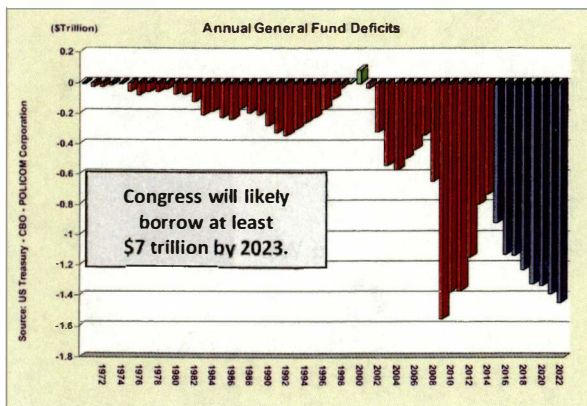
<sup>2</sup> International Monetary Fund (IMF)

<sup>3</sup> History of Federal Debt - US Department of the Treasury

<sup>4</sup> Summary of Receipts and Outlays - Historical Series - US Department of the Treasury.



# Balanced Budget Amendment Convention



Unfortunately, Congress will likely borrow another \$7 trillion by 2023.<sup>5</sup>

One of the big questions is ... from where will it get the money? There simply is not enough money available in the world to finance this debt.

The Gross National Debt is the accumulated total of all the money borrowed over the years by Congress.

The government borrows from two sources: 1) the "Public" and, 2) Federal government trust funds.

## Public Debt

The Public Debt is money borrowed from private and public entities outside the Federal government including the Federal Reserve Bank and foreign entities. Interest must be paid on this debt. The proportion of the debt held by the Public has increased significantly over the years.

In 2007, the Public Debt accounted for 56% of the gross debt. The remainder of the money was borrowed from Federal Trust Funds. On November 1, 2014, of the \$17.9 trillion gross debt, \$12.85 trillion is owed to the Public, 72% of the gross debt. By 2020, Public Debt will grow to 82% of the gross debt.<sup>6</sup>

In order to find sources of funding for its annual deficits, over the years the Federal government has turned to

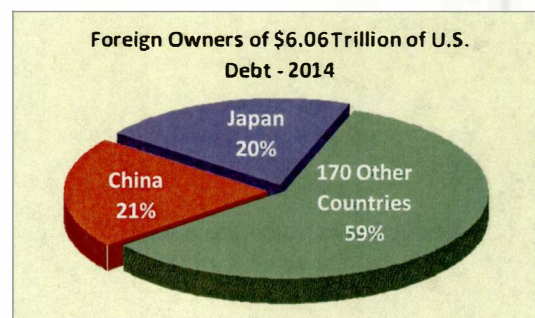
<sup>5</sup> Debt estimate is based upon projections by the CBO, OMB, and Department of Treasury, which reach a total of \$25 trillion by 2023. However, the projections do not take into account additional spending for any armed conflict, natural disaster, new spending programs, expansion of current entitlement benefits, or costs above what was projected for ObamaCare on the day of passage.

<sup>6</sup> Bureau of Public Debt, US Department of the Treasury.

foreign entities. In 2001, foreign entities owned 17% of all debt. However, by 2014, their stake grew to 34%.

Between 2001 and 2012, the Federal government borrowed \$7.9 trillion from the "public" to finance its deficits. Fifty-nine percent of the money came from foreign entities.<sup>7</sup>

China and Japan were the biggest lenders. In 2001, these two countries combined had only loaned our government \$364 billion. However, by 2014, the debt owed to these countries grew to \$2.48 trillion, 20% of the Public Debt.



Why would China and Japan loan our government so much money? It certainly is not because it is a great investment, as the interest rate paid is pitifully low.

They loan us the money in order to have political influence over foreign and trade policy.

## Trade Deficits

There is a fundamental economic principle, which has been true for a thousand years: trade surpluses are good, trade deficits are bad.

When a country has trade surpluses, more of its goods purchased outside the country than what the country imports, wealth flows into the country. When it has trade deficits, wealth flows out of the country.

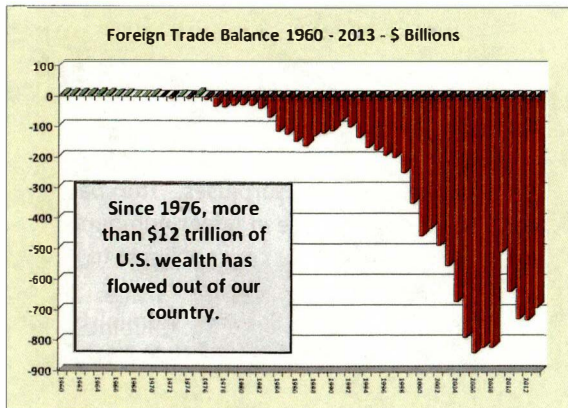
From about 1870 to the end of the World War II, the United States had only a handful of years for which it had a trade deficit. We were a wealth generating, exporting nation. From 1950 through 1973, we had uninterrupted trade surpluses.

<sup>7</sup> Major Holders of Treasury Securities, US Department of the Treasury

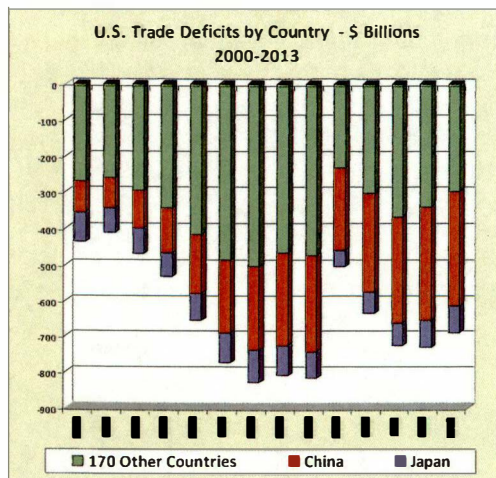
# Balanced Budget Amendment Convention



Unfortunately, we have not had a trade surplus since 1976. The trade deficits have been massive and are draining our nation of its wealth.<sup>8</sup>



No nation would tolerate these trade deficits unless it had too. It would initiate trade policies, which require "fair trade" and simply turn around ships coming from ports, which do not cooperate.



However, the United States must obey the will of its bankers, China and Japan, and allow them to freely send their products to the United States without being required to purchase ours.

During this century, for every dollar of U.S. goods the Chinese purchased, on average each year we imported \$5 dollars of Chinese goods.

On February 23, 2009, Secretary of State Hillary Clinton met with Chinese leaders to encourage them to "roll

over" their existing debt and to continue to finance our government's deficits.

Thirteen days later, on March 8, for no apparent reason, five Chinese naval vessels surrounded and harassed the USNS Impeccable, a naval research vessel in international waters. There was no military reason for China to do this. China simply wanted to let us know they could do it without any pushback from the U.S.

Every time our nation borrows money from foreign entities, we give up political control of our country to others.

Even with the political and economic benefits, foreign entities are losing interest in loaning our government money to finance its annual expenditures. China and Japan's investment is now modest for their standards. The actual amount of money invested in Federal government securities in 2014 barely increased from 2013.

## Owed to Government Trust Funds

Congress has created almost one hundred "trust funds" over the years. Most are very small. A trust fund is essentially a savings account within the government.

A trust fund typically has a dedicated source of funding (tax). The expenditures are legally limited to the purpose of the trust fund. When the trust funds have surpluses, the fund trustees "invest" the money so it can be used in later years.

Unfortunately, Congress has not invested the trust fund surpluses in the private sector, as is the case for funds managed by state and local governments.

For example, the Ohio Public Employees Retirement System has about \$86 billion in assets.<sup>9</sup>

This money is invested in stocks, real estate, bonds, and private enterprises. The profit from these investments typically is enough money to meet the annual cost of the pensions for retired government workers. The trustees expect at least a 7% return on the investments. There is usually no demand on the state's treasury. In the future, if there is a shortfall, the trustees can sell assets to pay for the pensions, not draw from the state's general fund.

<sup>8</sup> International Trade Administration, Department of Commerce.

<sup>9</sup> Ohio Public Employees Retirement System.



# Balanced Budget Amendment Convention

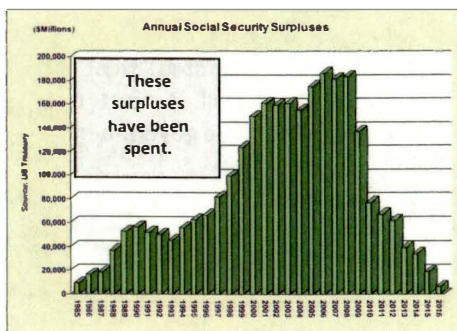


The largest of the Federal government's trust funds is the Social Security Trust Fund.

In the early 1990's, revenue to the Social Security Trust Fund was projected to fall short of disbursements to retired recipients. As a result, Congress, with the assistance of President George H.W. Bush, effectively doubled the social security payroll tax.

Congress told the people the huge tax increase would save the social security program until 2040. It explained the new taxes would create huge surpluses in the fund and be "banked" until a later day. These surpluses would be available when payouts to retirees exceeded the income from taxes.

The surpluses generated in the Social Security Trust Fund between 1985 and 2013 totaled about \$2.7 trillion. If the money had been invested in the private sector for the past 27 years, like state pension funds, even if it generated a modest profit of only 4% per year, there would be \$4.1 trillion of "real" dollars in the fund.



Beginning in 2017, there will no longer be surpluses. Payouts will exceed tax revenue.

Congress will have to begin to repay the \$2.7 trillion it has borrowed, all of it within 20 years.

However, Congress did not invest fund surpluses in anything other than Congress. Congress "borrowed" the money from **every trust fund** and spent the money for anything it desired.

Congress issued non-marketable bonds (cannot be sold to the public) to the trust funds, promising interest and repayment in the future. Unfortunately, Congress does not have a source of funding for repayment and literally issues an IOU for the interest due each year.

Between 2002 and 2008, Congress ran up \$3.3 trillion in deficits. Cash surpluses from the Social Security fund paid for 36% of the deficits, **an average of \$171 billion per year.**

Between 2002 and 2008 deficits totaled \$3.3 trillion. From where did Congress borrow the money?

Social Security Fund	36%
Foreign Entities	54%

Sometime during 2016 or 2017, the Social Security Trust Fund will no longer have surpluses. The baby-boom generation will begin to retire in larger numbers. Income to the fund from taxes will not cover payouts to retirees.

At that point, the Social Security Administration is supposed to draw down on the fund to make up the difference. The \$2.7 trillion plus interest is supposed to last until at least 2035, maybe 2040.

But there is no money in the bank ... just IOU's.

On March 18, 2014, Congressional Budget Director Douglas Elmendorf stated, "... many Americans have paid Social Security taxes for decades, expecting to get benefits in retirement. But the money people paid years ago was used to fund other government activities."

Congress will have to find the cash to replenish the \$2.7 trillion borrowed. What is worse, Congress has been addicted to borrowing (taking) \$150 billion a year from the fund (the surpluses) to finance its deficits.

## Major Trust Funds - November 1, 2014

<b>Total Owed All Trust Funds</b>	<b>\$5,080,104,000,000</b>
<b>Social Security &amp; Disability</b>	<b>\$2,772,614,000,000</b>
<b>Civil Service Retirement</b>	<b>\$839,100,000,000</b>
<b>Military Retirement &amp; Medical</b>	<b>\$757,249,000,000</b>
<b>Medicare</b>	<b>\$191,425,000,000</b>

Source: Bureau of Fiscal Service, Treasury Department

The same problem exists for the Civil Service and Military retirement funds. There is supposed to be money set aside for pensions. But there isn't ... because Congress spent the money on other stuff.

Congress has spent all the surpluses in all of the trust funds, including the James Madison Memorial Fellowship Foundation Trust Fund, which it owes \$37 million.

# Balanced Budget Amendment Convention



## Interest Rate Razzle-Dazzle

Some people fear this debt will hurt our children in the future. Actually, the burden of this debt has already fallen upon the shoulders of every American today.

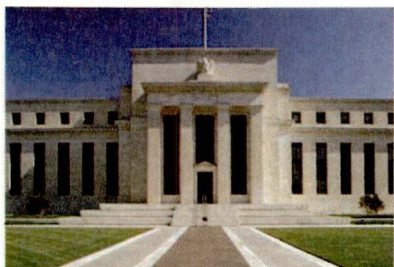
For Fiscal 2014, interest payments on the debt totaled about \$429 billion. This is about 30% of what the federal government collected in personal income taxes (\$1.39 billion).

In 2007 the federal deficit, the amount Congress spent over income, was \$342 billion. Interest paid that

year was \$429 billion including that owed to the Federal trust funds. That year we essentially borrowed the money to pay the interest on the money we previously borrowed.

Wait a minute. How can the interest payment in 2014 be the same as in 2007 when the debt was much less?

The interest is less because the Federal government is doing the old "razzle-dazzle" with interest rates.<sup>10</sup>



Enter the Federal Reserve Bank of the United States.

In order to reduce the amount of money paid for interest on the national debt and to provide a new source to fund annual deficits, the Federal Reserve Bank is now electronically "printing money" to purchase existing bonds and notes and to pay for current Federal deficits.

Between March of 2009 and June of 2014, the Federal Reserve Bank electronically printed almost \$2 trillion and purchased Federal government securities. The interest

rate charged by the Federal Reserve Bank is virtually zero.<sup>11</sup>

Federal Reserve Bank Ownership of Federal Debt	
March 1, 2009	474,619,000,000
November 1, 2014	2,461,622,000,000
Source: Federal Reserve Bank	

History has taught us the printing of currency to pay for its government is the last act of a desperate nation.

As a result, the average interest rate on the national public debt in November of 2014 was only 2.04%. In 2007, it was 4.8%.<sup>12</sup> In 1997, the interest rate was 7.1%.

Average Interest Rate Public Debt	
2014*	2.04%
2007	4.83%
1997	7.10%
*November 1, 2014	

So, what would the interest payment have been in 2013 if the rate were the same as in 2007? At least \$800 billion.

Between 2009 and 2013, deficits totaled \$6.3 trillion. During this five-year period, surpluses in the Social Security Trust fund began to decline and only funded 6% (\$76 billion per year) of the deficit. The Federal Reserve funded 38% of our national debt.

Between 2009 and 2013 deficits totaled \$6.3 trillion. From where did Congress borrow the money?	
Social Security Fund	6%
Foreign Entities	40%
Federal Reserve	38%

## Big Trouble Ahead

Congress plans to borrow about \$7 trillion through 2023. From where will it get the money?

The desire by foreign entities to purchase our debt has waned. Not only because the interest rate is very low,

<sup>10</sup> Razzle-dazzle: a complex maneuver designed to confuse an opponent.

<sup>11</sup> U.S. Treasury securities held by the Federal Reserve – Federal Reserve Bank of St. Louis.

<sup>12</sup> Interest Bearing Securities – US Department of Treasury



# Balanced Budget Amendment Convention



but also because the Federal Reserve has printed so much currency over the last five years, the value of the U.S. dollar has declined.

As an example, from 2002 to 2011, China and Japan combined loaned Congress an average of \$189 billion per year. However, since October of 2011, they have averaged only \$79 billion per year. They are still loaning us money, but not as much.

Additionally, many believe the structure of the U.S. economy has been radically changed and there is less confidence our nation will have rapid economic growth in the future, which places repayment of the debt in question. For several reasons, the amount of debt held by foreign entities will begin to decline in about five years.

**Between 2014 and 2020 deficits will be \$7-\$8 trillion. From where will Congress borrow the money?**

Social Security Fund	0%
Foreign Entities	26%
Unknown source	74%

Since the current interest paid on money borrowed by Congress to finance the deficit is unusually low and unattractive to private investors, in the future the main sources of funding for the deficits will have to come from Trust Funds or from the Federal Reserve Bank by printing currency.

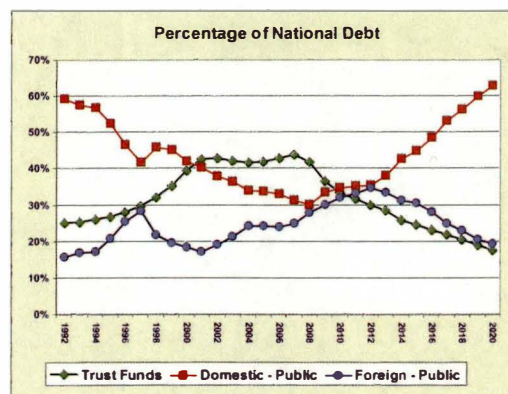
However, the trust funds will not have surpluses in the future and will have to be replenished from general fund revenue.

The following graph shows how trust funds and foreign investment will decline significantly as a funding source for the deficits.

The amount of debt attributed to the trust funds will begin to decline in three years.

To raise private capital, interest rates will have to increase to at least 5% to become attractive for private sector investors.<sup>13</sup>

If that occurs, total interest payments paid by Congress annually will likely grow to more than a trillion dollars, adding another \$600 billion to the national debt each year.



Therefore, the Federal government now has a very difficult problem if it wants to continue deficit spending.

Congress could encourage the Federal Reserve Bank to continue to print currency to fund the Federal government, significantly devaluing our currency and leading to hyperinflation.

Alternatively, Congress could let the marketplace determine interest rates, which will balloon interest payments to be possibly the largest expenditure of the Federal government.

Either scenario could cause a collapse of our national economy and place our system of government in jeopardy.

## ***What Can We Do About It?***

Congress has placed the American people in an unconscionable position of being responsible for a debt it did not have to create.

Never before in the history of this country has one generation left the next generation in such a precarious fiscal situation.

We the people of this country are the victims of the excesses of our government. We will suffer for it.

What can we do to stop it? There are several alternatives.

<sup>13</sup> Congressional Budget Office - January 2014 report.

# Balanced Budget Amendment Convention



We can do nothing. Doing nothing is always an alternative.

We can elect people to office who will stop spending and borrowing. This alternative has not worked for the last 30 years.

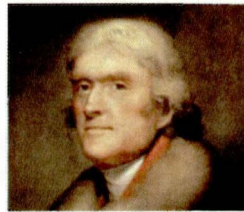
We can riot in the streets like so many do in Europe. This is not a good idea.

The best solution is to make it unlawful for Congress to borrow money by way of a Balanced Budget Amendment to the Constitution.

## Balanced Budget Amendment

"To preserve our independence, we must not let our rulers load us with perpetual debt. I wish it were possible to obtain a single amendment to our Constitution ... an additional article, taking from the federal government the power of borrowing,"

Thomas Jefferson.



### Article V – United States Constitution

*The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, 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, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; ...*

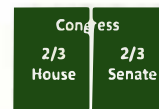
In order to amend the Constitution, an amendment must first be proposed. After it is proposed, it is either accepted (ratified) or not.

Article V of the Constitution spells out the process. An amendment can be proposed in two ways:

- by a resolution adopted by two-thirds of both houses of Congress which it can do at any time,
- by the states at a convention called for the purpose of proposing an amendment.

## Amendment Process

### Propose Amendment



Convention for  
Proposing  
Amendments

### Ratify Amendment



38 States needed.

Ratifying  
Conventions

The first draft of the Constitution at the Philadelphia Convention provided only the states could amend the Constitution. A subsequent version allowed only Congress to propose amendments. The final version included both, equally.

The key to the debate was the insistence that the states have the ability to both propose and ratify amendments, bypassing Congress. The minutes of the Philadelphia Convention are quite clear on this matter. The delegates demanded a provision, which enabled the states to correct the errors of the Federal government.

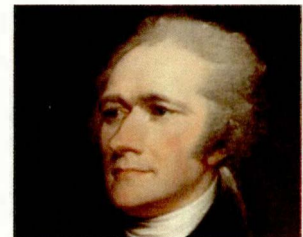
After the amendment is proposed, 38 states must agree to the amendment (ratify) in order for it to become part of the Constitution.

Congress will not propose a meaningful Balanced Budget Amendment. It enjoys spending money too much to place substantive restraints upon itself. There have been repeated efforts to get Congress to propose an amendment. It has always refused.

As a result, the state legislatures must convene a **Balanced Budget Amendment Convention.**

## Convention for Proposing Amendments

Referring to an Article V Convention, Alexander Hamilton wrote, "We may safely rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority."





# Balanced Budget Amendment Convention



A *Convention for Proposing Amendments* is not a "Constitutional Convention" and never should be called such. There is no provision in our Constitution for such a meeting.

Instead, a Convention for Proposing Amendments is an assemblage of representatives from the states with the limited purpose of proposing amendments - the same authority granted to Congress 365 days of the year.

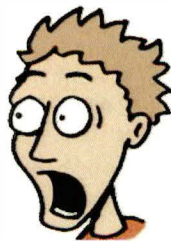
Unfortunately, some good conservative groups fear a Balanced Budget Amendment Convention. They have been told "terrible things" can happen at a convention.

They call it a "Con-Con," a derogative term describing what they believe will be a "run-a-way" convention, a meeting where the attendees can somehow change the Constitution on their own.

**This notion was manufactured by liberal, central government advocates who know if the states exercise their authority to hold an amendments convention, power would shift to the states, away from Washington.**

These opponents will say and do anything to prevent the states from holding a convention.

Therefore, they made up a doomsday scenario, which unfortunately is believed by some conservative groups even today.



Liberal Washington groups popularized the "fear" of a convention in the 1980's, working quietly behind the scenes, to discourage states from holding a Balanced Budget Amendment Convention.

At that time, 32 states (34 needed) had passed resolutions to convene a Balanced Budget Amendment Convention. Unfortunately, the effort stalled because of the myth of a run-a-way convention.

In the 1980's, there was little academic research of founding era documents available to refute the claim that a convention could run-a-way. Fear of the unknown is a powerful motivator and liberals know how to use it.

Luckily, we know more today than in the 1980's.

## Technology to the rescue.

Because of the ability to digitize information, founding era documents, resolutions, Federal case law, and academic studies, which had been hidden away in state records vaults, university archives, and private sector collections are now indexed and readily accessible for review today.

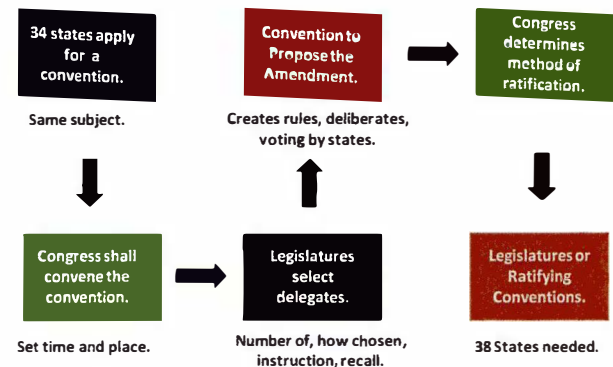


It has been found what was believed to be true about a "Con-Con" has little basis in fact.

Federal Court rulings and the historical record support the following process for a convention.

## Convention Process.

### Convention Process



**34 states apply for a convention.** In order to convene a convention for proposing a balanced budget amendment, thirty-four states (2/3rds) need to pass a resolution for this subject. The resolutions do not have to be the same in their wording, but only need to state the convention is limited to considering a balanced budget amendment.<sup>14</sup>

<sup>14</sup> Most of the findings clarifying the nature of an Article V convention are the result of the research by Professor Robert Natelson, Ret. He is presently a Senior Fellow in Constitutional Jurisprudence at the Independence Institute, Denver, CO and the Montana Policy Institute, Bozeman, MT.

Professor Natelson has created a series of studies and papers, which can be reviewed at <http://www.i2i.org/robnatelson.php>.

# Balanced Budget Amendment Convention



Congress has already decided a convention can be called for a single subject. Over the last 150 years, Congress has received more than 500 “applications” from the states to convene a convention under Article V. However, Congress has never received an application from 2/3rds of the states for the same subject.

If a convention could not be limited to one subject, Congress would have been compelled many years ago to convene a convention after receiving applications equivalent to 2/3rds of the states for different subjects. It was not.

The convention contemplated is a “convention of the states.” Virtually every Constitutional scholar agrees, as this was the only “convention” known to the Framers when the Constitution was written.

The Framers of the Constitution were very familiar with a convention of the states. Most of the delegates at the Constitutional Convention had participated in several interstate conventions during the Founding Era, as there were as many as 20 of them.

Congress shall convene the convention.

Upon receiving thirty-four applications for the same subject, Congress “shall” convene a convention. It has no discretion in the matter. As Alexander Hamilton wrote in the Federalist Papers: Congress’ responsibility in this matter is “obligatory.”

Congress’ only authority is to set the time and place for the convention. It cannot interfere in any manner regarding how the convention will function or its representation.

You see, at this point in the process, the role of Congress is “ministerial.” In fact, Congress is actually serving as an agent for the states, a facilitator to enable the convention.

In order for the states and Congress to have “equal” ability to propose amendments, Congress cannot interfere in the convention of the states in any manner; else, the process would no longer be equal.

The main reason the applications are sent to Congress is that the states need a “mailbox,” for lack of a better word.

Legislatures select delegates.

Since the assemblage is a convention of the states, each state legislature will determine the following:

- 1) how many delegates it will send,
- 2) how the delegates will be chosen,
- 3) what specific instructions the state will give to its delegation,
- 4) and the conditions for recalling a delegate for violating the state’s instructions or the rules of the convention.

The specific instructions created by the legislature will control its delegates. Keep in mind, this is a convention of states, not a convention of delegates.

The instructions can be general in nature such as “use your good judgment in writing a balanced budget amendment.”

Alternatively, the instructions can be extremely restrictive such as “you are prevented from voting in favor of any amendment which does not limit the ability of Congress to raise taxes to balance the budget.”

The delegates are the agents of the legislature. Agency law and the conditions of their appointment bind them. They have absolutely no more authority at the convention than what the legislature has given them.

Most importantly, in order to convene the convention, 34 states previously passed resolutions for the single subject of a balanced budget amendment.

The delegates at the convention will be limited by the convention call, plus the instructions from their legislatures, to only considering a balanced budget amendment. They cannot do otherwise.

Interest in convening a Convention for Proposing a Balanced Budget Amendment has grown significantly among the legislatures.

In fact, the legislatures of several states are considering passage of bills, which will determine the number of delegates, how they will be chosen, and what criminal penalty a misbehaving delegate will suffer.

Convention to Propose the Amendment.

How the convention will function is not a mystery. From the minutes of previous

# Balanced Budget Amendment Convention



conventions of states, the rules and procedures can be easily created.

The delegations will write the rules for the convention, voting will be by state, and the convention will deliberate the issue - a balanced budget amendment.

A vast, vast majority of the delegates will understand the great responsibility they have and will take great care in considering the amendment. To construct an amendment, the delegations will have to create language, which

- 1) will prevent Congress from frivolously creating debt,
- 2) will assure there are provisions to finance armed conflicts or national emergencies,
- 3) is easily understood by the people,
- 4) has a penalty for non-compliance, and
- 5) will likely be ratified by 38 states.

It is highly unlikely a multi-page document will be proposed, which attempts to micromanage Congress.

The process of writing rules for a convention for proposing amendments has already begun.

*The Assembly of State Legislatures* has been formed. It first met in Mount Vernon on December 7, 2013. A second and larger meeting was held in Indianapolis in June of 2014 and a third meeting was held at the Naval Heritage Center in Washington, DC on December 8, 2014.

Not affiliated with any current group attempting to secure state applications for a convention, the group is going to create a set of rules, which can be used for the first convention convened.

The activities and progress of *The Assembly of State Legislators* is discussed on the back cover of this booklet.

Congress determines method of ratification.

If an amendment is proposed, Congress will determine the method of ratification either by the legislatures or by state ratifying conventions. Under either method, approval by 38 states is necessary to add the amendment to the Constitution.

## What is the big fuss about a convention?

So, what is the fuss about a holding a convention? Well, there are organized groups which either want to stop any

convention from being convened or they still believe the propaganda manufactured in the 1980's regarding a convention having extraordinary powers which will get out of control and do all sorts of nefarious things.

Let us look at some of the issues, which they constantly raise.

***The Philadelphia Convention ran-a-way, so will this one.***



Opponents suggest the delegates at the Philadelphia Convention of 1787 violated the "convention call" which limited the convention to only amending the Articles of Confederation. Instead of amending, the delegates created a totally new government.

They suggest since George Washington, James Madison, and others were "dishonorable," then the delegates at a balanced budget amendment convention will also disregard the limits of the convention and propose other amendments.

The opponents base their argument on language from a resolution passed by the Confederation Congress in February of 1787, which included these words:

***(The Convention) be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation.***



What they do not provide for you is the entire resolution, which follows:

***Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation.***

Note the first seven words of the resolution. The Confederation Congress had absolutely no authority over the convention and it knew it. The resolution was only a recommendation for action to be taken by the delegates at the convention which had already been called.

So how did the Constitutional Convention in Philadelphia come about?



# Balanced Budget Amendment Convention



The convention was the result of a recommendation of the Annapolis Convention of 1786. That convention had been called by the Virginia legislature to discuss “interstate commerce.” You see, that is how the states debated and solved interstate problems during the founding era, they had conventions of the states.

Among those attending were James Madison, John Dickinson, and Alexander Hamilton. At the convention, most expressed extreme frustration with the Articles of Confederation and desired to begin to form a new government.

Nevertheless, they could not do it at Annapolis, as that convention was limited to interstate commerce.

Instead, the convention issued a recommendation to the states to have another convention **“to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union.”**

The word “constitution” (as it had been used during the era) did not refer to the Articles of Confederation, but to the entire political system at the time.

In November of 1786, the Virginia Assembly passed a resolution to convene a convention for that subject. At that point, a convention was going to be held. The only question was ... how many states would show up.

By February of 1787, seven of the 13 states had passed resolutions to attend the convention to form a new government. That is when the Confederation Congress passed its resolution.

In total, ten states voted to send delegations to form a new government, while New York and Massachusetts both passed resolutions to limit their delegates to only amending the Articles of Confederation.

Of the 55 delegates who attended the Convention, only two signed (Massachusetts delegates) the Constitution against the will of their states. The convention did exactly what it was called to do.

Most importantly, after George Washington gaveled the close of the Philadelphia Convention, nothing changed.

The convention only proposed the Constitution and had no power to force its adoption. Only after the states ratified the new Constitution was there a change in our government.

This is the case for an amendments convention. It cannot change anything. It can only propose an amendment.

**James Madison was against an Article V convention, so should we be.**



Almost immediately after the 9<sup>th</sup> state ratified the proposed Constitution, the states of Virginia and New York passed resolutions to convene an open convention under Article V. That was before the first Congress met. The purpose was to propose a “bill of rights.”

James Madison wrote a letter opposing that convention. He believed it was too comprehensive so shortly after the Philadelphia convention and that Congress should be given the opportunity to propose the amendments, which it did.



However, Madison not only helped write Article V, but also in his writings he was fully supportive of a convention convened under Article V for, in his words, “a single object.”

**Delegates will do what they want, cannot be controlled, and will propose all kinds of amendments.**



Opponents suggest the delegates attending such a convention are likely to be scoundrels and will summarily dismiss the limited purpose of the convention and all of the laws, which control it.



The opponents for some reason simply disregard all of the case law and legal restraints, which are placed upon the delegates at such a convention.

Additionally, this is a convention of states, not a convention of delegates. It would take a majority of the delegates from a majority of the states to violate not only their oath of office but also the laws of their states in which many are creating criminal penalties for doing such.

Even if that occurs, any amendment proposed other than a balanced budget amendment will be “ultra vires,”



# Balanced Budget Amendment Convention



outside the power of the convention, and could not be sent back to the states for ratification by Congress.

**Congress will set the rules, pick the delegates, and control the convention.**



Since virtually no one trusts Congress, the opponents try to instill fear by suggesting Congress will control this convention.



The opponents ignore the fact this is a convention of the states. In order for the states to have equal opportunity to propose amendments, Congress cannot interfere.

This position is supported by several Federal court cases, which state emphatically that no outside party, including Congress, can interfere with this convention. Period.

Just like the Confederation Congress in 1787 had no authority over the Philadelphia Convention, Congress has no authority over this convention.

**The Convention can change the ratification process.**



Opponents are again trying to instill fear against a convention suggesting that not only will the convention propose any amendment it desires, but somehow has "extra-constitutional" power to summarily amend the constitution at this convention to enable fewer than 3/4ths of the states be able to ratify a proposed amendment.

This is perhaps the most ludicrous idea the opponents suggest.



Article V of the Constitution is very clear that ratification requires 38 states by the legislatures or by ratifying conventions.

In order to change the Constitutional process for ratification, the Constitution would have to be amended.

The convention does not have the power to amend the Constitution, only to propose an amendment.

## What Has Happened?

- 1982: BBA proposed by U.S. Senate, 69-31, but fails to pass in "Tip" O'Neill controlled House. President Reagan urges States to use Article V.
- 1992: 32 States had passed a BBA Convention Resolution over the previous 15 years. The effort stalls as labor unions get Ohio and Michigan to vote no and convince some states to rescind.
- 1990's: Interest in a Balanced Budget Amendment wanes as deficits decline with Graham - Rudman, GOP Congress spending cuts, and unanticipated income from the "dot.com" stock market boom. BBA passes U.S. House but fails in the U.S. Senate, by one vote.
- 1990's - 2010: Organizations which oppose a BBA Convention took advantage of the absence of advocates for a convention and convinced 16 states to rescind their applications, reducing the number of active applications to 16. - **Count - 16**
- 2010: Effort to convene a BBA Convention is initiated by a handful of volunteers. Through their efforts, Florida passes a two-subject resolution: BBA and restraining Federal mandates. **Count - 17**
- 2011: Alabama passes BBA Convention Resolution. **Count - 18**
- 2012: New Hampshire passes BBA Convention Resolution having rescinded in 2010. **Count - 19**
- 2013: Realizing Ohio, Michigan, and Wisconsin never passed a BBA resolution, the volunteers targeted these states. The Michigan Senate passes the resolution. While it had been defeated on three previous occasions, Ohio passes the BBA resolution in December. **Count - 20**
- 2014: The Wisconsin House, Arizona House, and South Carolina House pass the BBA resolution, but because of the objection of one Senator in each state, a vote was not taken in the Senate. Florida passes a single subject BBA resolution. Georgia passes the resolution. Michigan passes the resolution. Even though the state rescinded in 2010, Tennessee passes the resolution, unanimous in the Senate and only three no votes in the House. Louisiana passes the resolution unanimously. **Count - 24**

### ***How Will We Do It?***

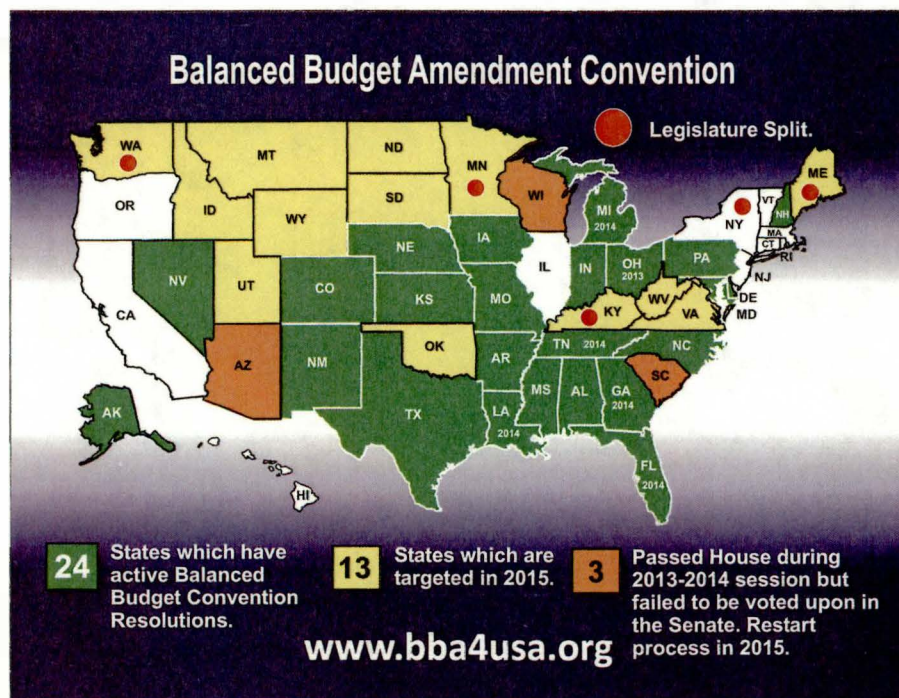
The Balanced Budget Amendment Task Force is a collection of national and state organizations and individuals dedicated to adding a Balanced Budget Amendment to the Constitution of the United States by way of a convention convened under Article V.

The BBA Task Force is coordinating the national effort to convince state legislatures to pass application resolutions for the Convention.

Thirty-four state applications are necessary.

The map shows the 24 states with active resolutions and the states which will be focused upon in 2015. The BBA Task Force will have legislative sponsors in each of the target states.

If you live in a "target" state, contact your State Representative and State Senator and urge them to vote for the Balanced Budget Amendment Convention Resolution.



For more information, contact the BBA Task Force: [info@bba4usa.org](mailto:info@bba4usa.org).



## **The Assembly of State Legislatures**

### **Planning for a Convention for Proposing Amendments**

*In February of 1861 to avert war, the Washington Peace Conference convened at the Willard Hotel in Washington, DC. It was a convention of the states to discuss an amendment regarding slavery. The assembly followed the convention rules established during the 18<sup>th</sup> century, which were well known at the time. It is the last time the states assembled to discuss an amendment to the Constitution.*



*On December 7, 2013, a historic meeting was held at George Washington's home, **Mount Vernon**. Legislators from about 30 states met to discuss how to create a process for writing rules for a convention for proposing amendments provided for in Article V of the Constitution for any amendment subject. This is the first time since 1861 legislators gathered to discuss the process of amending the Constitution.*

*The Mount Vernon Assembly, now known as **The Assembly of State Legislatures**, met again June, 2014 in Indianapolis at the **Indiana Capitol** and again in December, 2014 at the **Naval Heritage Center** in Washington, DC. Hundreds of currently serving legislators from 33 states have attended. The process of writing the rules for a convention is being completed. The **Assembly of State Legislatures** has determined:*



- *That the Assembly is not affiliated with any current movement to apply for a convention for any subject or any political party.*
- *That its efforts moving forward is to draft proposed rules and procedures or any provisions as shall appear to them necessary, being a power not delegated to Congress but reserved to the States, under which an Article V Convention for proposing amendments would function.*
- *That the work product of The Assembly of State Legislatures will serve as recommendations for a Convention for proposing amendments called by Congress, thus allowing the amending convention to focus on drafting language of an amendment(s) instead of the administrative process.*

*Committees met during the summer and fall of 2014.*

*When The Assembly of State Legislatures completes its task of creating rules for a convention, State legislatures will be able to instruct their delegates to a future convention to adopt and adhere to these rules for any subject in the applications. This will provide comfort regarding how a convention will function and let Congress know creating rules is not its responsibility.*

[www.theassemblyofstatelegislatures.org](http://www.theassemblyofstatelegislatures.org)



# BULLETIN

COMMITTEE TO RESTORE THE CONSTITUTION®

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SEPTEMBER 1989

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## NEVADA LEGISLATORS EXPUNGE 1979 CALL FOR CONSTITUTIONAL CONVENTION



CARSON CITY, NEVADA, 24 JUNE, 1989: Mouryne B. Landing, Chief Clerk of the Nevada State Assembly, carries out Assembly Resolution 20 that directs the expungement from the Journal of the Assembly of the 1979 resolution calling for a convention to amend the United States Constitution. The 1979 resolution was expunged for fraud because of the representation made in 1979 that a constitutional convention summoned by the states could be limited to a single subject (balanced budget amendment). From the left are Guy Louis Rocha, Nevada State Archivist, David Horton, Legal Counsel of The Committee to Restore the Constitution, who suggested the move, Frankie Sue Del Pappa, Nevada Secretary of State and Assemblyman Bob Price, Chief Sponsor of the Expungement Resolution. All eight Nevada Assemblymen who were serving in the Assembly in 1979 when the resolution calling for the Constitutional Convention was passed, supported the expungement move. The vote was unanimous.

Horton explained how expungement differs from rescission: In rescission, the Legislative Body says: "We did something that we no longer agree with: We changed our minds." With expungement, the Legislative Body is saying: "We were defrauded by false representations into putting something into our Journal that never would have appeared there, but for the false representations. We therefore are correcting our Journal by removing from it our assent to a resolution that was fraudulently obtained." Expungement is not only a more emphatic form of disapproval than rescission, it shows that there never was a valid assent by Nevada to the calling of a Constitutional Convention.

("EXPUNGE" continued page 2)



**T. DAVID HORTON**, Attorney at Law, Counsel, Committee to Restore the Constitution, Inc., Sweetland Building, 305 North Caron Street, Carson City, Nevada 89701, (702) 883-1966. Member, District of Columbia, Virginia and Nevada State Bar; member United States 9th Circuit Court of Appeals for the District of Columbia; Chairman, Executive Council, Defenders of the American Constitution, Inc.; Publisher, Square Dollar Series; Professional Witness before numerous Congressional Committees in matters pertaining to Constitutional inquiries; Graduate Ohio State University, American University, Washington, D.C., Catholic University, Washington, D.C., and Hamilton College, Clinton, New York.

ASSEMBLY RESOLUTION NO. 20—ASSEMBLYMEN PRICE, McGAUGHEY, GASTON, SCHOFIELD, SEDWAY, THOMPSON, ADLER, LAMBERT, SPINELLO, CALLISTER, FAY, MARVEL, GIBBONS, CHOWNING, REGAN, DUBOIS, BERGEVIN, MYRNA WILLIAMS, JEFFREY, KERNS, GARNER, FREEMAN, SWAIN, ARBERRY, HUMKE, WENDELL WILLIAMS, WISDOM, NEVIN, PORTER, BOGAERT, SPRIGGS, DIAMOND, TRIGGS, MCGINNESS, KISSAM, SHEERIN, CARPENTER, EVANS, BROOKMAN, SADER AND DINI

JUNE 24, 1989

Read and adopted

SUMMARY—Expunges call for Constitutional Convention from records of Assembly. (BDR R-1426)

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

ASSEMBLY RESOLUTION—Expunging a certain call for a Constitutional Convention from the records of the Assembly.

- 1 WHEREAS, The original support by Nevada for requesting the Congress of
- 2 the United States to call a Constitutional Convention was based upon the
- 3 representation that the Convention would be limited to proposing a balanced
- 4 budget amendment to the Constitution of the United States of America; and
- 5 WHEREAS, The Constitution of the United States does not provide for a
- 6 Constitutional Convention to be restricted to a single subject; and
- 7 WHEREAS, The Constitution of the United States does not need to be
- 8 changed in order to balance the budget of the United States, but the existing
- 9 provisions which limit the expenditures to those purposes authorized by the
- 10 states when they agreed to the Constitution of the United States need to be
- 11 enforced; and
- 12 WHEREAS, The adoption by the Nevada Assembly of Senate Joint Resolution
- 13 No. 8 of the 60th session of the Legislature (File No. 39) requesting the
- 14 Congress of the United States to call a Constitutional Convention was there-
- 15 fore induced by fraud; and
- 16 WHEREAS, "Fraud colors everything it touches," and the appropriate
- 17 remedy is for the Assembly to expunge from its Journal its passage of Senate
- 18 Joint Resolution No. 8 of the 60th session of the Legislature requesting the
- 19 Congress of the United States to call a Constitutional Convention; now,
- 20 therefore, be it
- 21 RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, That the Chief
- 22 Clerk of the Assembly draw a black border around the portion of the 1979
- 23 Assembly Journal whereby the Assembly passed Senate Joint Resolution No.
- 24 8 and write across the face thereof: "Expunged by order of the Assembly
- 25 this 24th day of June, 1989"; and be it further

— 2 —

- 1 RESOLVED, That certified copies of this resolution, together with the
- 2 expunged portion of the Assembly Journal be forwarded to the Governor, the
- 3 Senate of the State of Nevada, the Speaker of the House of Representatives of
- 4 the United States, the Vice President of the United States as President of the
- 5 Senate and the Nevada Congressional Delegation.

FROM THE ASSEMBLY DAILY JOURNAL,  
NEVADA STATE LEGISLATURE, SIXTY-FIFTH SESSION, 24 JUNE 1989

Assemblyman Price moved the adoption of the resolution. Remarks by  
Assemblyman Price:

Thank you, Mr. Speaker. First, I want to thank my colleagues in this honorable house for their support over the last two sessions in our effort to stop the headlong rush that some special interest groups and constitutional revisionists are making toward convening

a constitutional convention in their hopes of scrapping that beloved 202-year-old document that has served us so well for two centuries and 41 presidents, the Constitution of the United States.

As you know, in 1987 and earlier this session, the assembly forwarded to

the senate, resolutions to rescind Nevada's 1979 petition to Congress calling for a constitutional convention. Both resolutions died in the Senate Finance.

Today, I am asking this honorable house for its continued support by using a procedure first implemented 156 years ago by Senator Thomas Hart Benton, Democrat of Missouri, in 1833 during a four-year fight with Daniel Webster, John C. Calhoun and Henry Clay. By the way, I have distributed a short history and explanation of the "Motion to Expunge" on your desks.

Benton (father-in-law of John C. Fremont) was a zealous supporter of western interests and frontier explorations.

In 1837, Senator Benton was successful in getting the U.S. Senate to pass a motion to expunge from the record a stinging resolution passed in 1833 censuring President Jackson.

On your desks, I have also placed a xeroxed copy of section 444, "Motion to Expunge," taken from Mason's Manual. As you can see, this motion is used when it is desired to not only rescind an action, but to express a very strong disapproval of prior actions. Let me say that this is also a strong disapproval of my own prior actions since I voted for S.J.R. 8 in 1979.

The purpose of this action today is to send a strong, clear message to Congress that after 14 years there is no longer a "consensus" in Nevada desiring to call a constitutional convention. Not only is there not a consensus, but the 1979 action was so objectionable that we have expunged it from the record.

It is my hope that other states will follow Nevada's lead.

The founding fathers designed Article V of the Constitution to provide a means of action for the citizens when there was a "consensus" of two-thirds of these several states desiring some action and Congress refused to respond.

In the event that the proponents of a constitutional convention are able to persuade four more states to petition Congress for a convention, our action here today, and hopefully future actions of other states, will provide constitutional lawyers' strong, solid arguments that there is no longer a "consensus" in many states that had years earlier petitioned Congress.

Hopefully our Constitution will remain safe.

Resolution adopted unanimously.



POLITICS & POLICY

CAPITAL JOURNAL  
By Gerald F. Seib

## Clinton Begins Quest to Find A 'Vital Center'

ON THE NIGHT he was re-elected, President Clinton suggested that he wanted to spend his second term governing from the "vital American center."

This raises a very good question. What in the world is the "vital American center" anyway?

Today, Mr. Clinton will try to answer that question. He is to give a big speech to his old friends at the Democratic Leadership Council, mother ship of all those "New Democrats" who yearn to occupy that political center.



This will be the most serious policy speech Mr. Clinton gives between his election and his inauguration, so it bears watching for signs of what is to come in the next four years.

In the eyes of the White House, Mr. Clinton's first task today is to expunge any sense of what one aide calls a "jump-ball mentality" at the beginning of the second Clinton term. That is to say, the White House wants to attack the notion (prominent though it may be) that Mr. Clinton's governing ideology is up for grabs as he starts his second term. Today's message will be that Mr. Clinton ran not as a liberal but as a more conservative New Democrat, and that he will dance with the ideology that brought him here.

THERE IS GREAT SYMBOLISM in this. When he finally decided to run for president the first time five years ago, Mr. Clinton made his real debut speech before this same Democratic Leadership Council, a group he once led. In that speech, Mr. Clinton defined himself as a new kind of Demo-

## Balanced-Budget Amendment Is Up for Grabs In House While Suppo Strengthens in Senate

By CHRISTOPHER GEORGES  
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON - Two years ago, balanced-budget-amendment proponents needed just one more vote to pass their measure. This time, they will need 11.

That's the number of freshmen House Democrats they will have to convince—out of about 22 who say they are undecided—to win the necessary 290 House votes.

The political equation is the reverse of the last Congress, when a GOP constitutional amendment requiring a balanced budget failed in the Senate by a single vote after sailing through the House by a lopsided 300-132. In the new Senate, where Republicans gained seats, supporters need the vote of just one of six Democratic freshmen lawmakers, and Sen.-elect Mary Landrieu of Louisiana appears to be it. She is firmly committed to the proposed amendment, her spokesman confirmed this week.

But the House is seen by both sides as up for grabs when the amendment comes to a vote, which is expected early next year. "A lot of people still have to be convinced it's the right thing to do," says Texas Democratic Rep. Charles Stenholm, a lead sponsor of the amendment. And the Clinton White House will be out to convince congressional Democrats that a constitutional amendment is the wrong way to go just as both parties are near a balanced-budget deal on their own.

### Exodus of Supporters

The House battle over the amendment, which requires a two-thirds vote in each chamber of Congress and ratification by 38 states, will essentially pivot on the votes of about a half-dozen of the 73 freshmen lawmakers. Because 61 of the 73 House members who retired or were defeated this year had supported the amendment two years ago, advocates have their work cut out.

For example, new Democratic Reps. Rod Blagojevich of Illinois and Dennis Kucinich of Ohio, both of whom ousted GOP backers of the amendment, will be tough sales for proponents. "I'm walking into this with some reluctance," says Rep.-elect Blagojevich. "It depends on how the measure is drafted."

Even Democratic freshmen from right-leaning districts are wary. While North Carolina Rep.-elect Bobby Gooden

**Senate Line-Up**

Senator	Position
Al D'Amato, R-N.Y.	Supports
Bob Dole, R-Kan.	Opposes
Frank Lautenberg, D-N.J.	Opposes
Mike Mansueti, D-Ga.	Undecided
Sen. John Chafee, R-R.I.	Undecided
Sen. Jesse Helms, R-N.C.	Undecided

*Source: House and Senate Republican and Democratic Leaders*

that the amendment is a necessary tool for fiscal discipline — by arguing that the government occasionally needs to run a deficit to allow it to respond to economic downturns and to help promote economic growth.

This year, opponents will supplement their case with a new argument: If both Congress and president agree to a detailed plan to balance the budget over five years, why force ourselves to do what we've already done? And why tinker with the Constitution to do it? "That argument hurts us on the surface," says amendment backer Rep. Roemer. "But it doesn't help anyone if we convince ourselves we have the budget situation under control."

If the budget-deal argument fails, opponents will fall back on their most successful past strategy: pushing an array of variations on the amendment that would allow lawmakers to tell constituents they voted for a balanced-budget amendment, while ensuring that no one version passes. The most popular would exempt Social Security funds from the equation. The ultimate

Impact would be to force the government to cut projected spending by hundreds of billions dollars more than would be required under the current version.

### Possible 'Disaster'

Of course, liberals would be horrified if Republicans called their bluff and passed this version, but it also would likely the doom the measure's chances for ratification by the states. "It would be a disaster," says amendment supporter Pete Sepp, a spokesman for the National Taxpayer's Union.

"If we get it through, it's going to have to be the same version as 1995," says Colorado GOP Rep. Dan Schaefer, a lead amendment sponsor. The current version allows Congress to waive the balanced-budget requirement by a majority vote in times of war or military threat.

Meanwhile, in the Senate, amendment supporters are optimistic of victory, and with good reason. None of the 10 returning Senate Democrats who voted for the amendment in 1995 will switch their votes, provided the bill's language is precisely the same as two years ago, according to interviews this week. So, presumably, Sen.-elect Landrieu's vote would be all they would need.

Still, Republican supporters are wary of last-minute conversions by Democratic backers. Two years ago, California Democratic Sen. Dianne Feinstein, after campaigning in favor of the amendment, voted against it. Democrats finally appear to be out of potential converts. But, says Idaho GOP Sen. Larry Craig, the lead sponsor of the amendment: "Senior members have a tendency to figure out a way around their promises."

PR

"D"

2A0503

HOUSE VOTE 300 TO 126  
SENATE 1 VOTE SHORT!



## IS A CONVENTION A DELIBERATIVE BODY, OR A RATIFYING BODY?

In 1963 the Council of State Governments promoted a constitutional convention to settle the matter of apportionment. Twenty-eight applications contained specific language to limit the scope of the convention. Professor Bonfield explains why it cannot be limited or specified:

Article V contemplates this kind of a 'Convention . . . for proposing Amendments,' the resolutions sponsored by the Council of State Governments should be deemed insufficient applications within the meaning of that provision. Instead of requesting a deliberative convention with full power to propose to the states any amendments dealing with the subject in question that it thinks proper, these resolutions demand 'a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States.' As a result, the resolutions in issue really call for a convention empowered solely to approve or disapprove in a mechanical way the text of specific amendments that have already been "proposed" elsewhere. In this sense, the proponents of these resolutions seek to make the 'Convention' part of the ratifying process, rather than part of the deliberative process for 'proposing' constitutional amendments. Consequently, the resolutions in question should not empower Congress to call a convention authorized to submit amendments to the states for ratification. They are not 'Application[s for a] Convention : . . for proposing amendments' as Article V demands; rather, they are applications for a convention empowered solely to approve or disapprove the submission to the states of particular amendments 'proposed' elsewhere.

Bonfield, Arthur Earl, "Proposing Constitutional Amendments by Convention: Some Problems," 39 Notre Dame Law. 659 (1964)



# STANFORD LAW SCHOOL

November 16, 1991

## Personal Statement, Professor Gerald Gunther

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

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



Gerald Gunther,  
William Nelson Cromwell Professor of Law

Crown Quadrangle  
Stanford, California  
94305

#4 pg 5



## Professor says constitutional review would be 'catastrophe'

By IRVIN MOLOTSKY  
cr1987 N.Y. Times

WASHINGTON — As the Constitution approaches its 200th anniversary, Professor Forrest McDonald, a leading constitutional scholar, wonders why anyone would want to tinker with it, either now or any time soon.

"I think it would be a catastrophe," he said the other day, as he prepared to deliver the annual Jefferson Lecture sponsored by the National Endowment for the Humanities.

Thirty-two states, just two short of those needed, have approved calling a convention to discuss changes in the constitution. The immediate issue is a proposed constitutional amendment requiring that the federal budget be balanced, but the convention could call for any other changes it wishes, hence McDonald's concern over its becoming a runaway.

"Certainly it would be a runaway," he said. "There would be no way it wouldn't be a runaway."

But even if the convention approves changes in the Constitution, McDonald is confident that the states would fail to ratify them by a three-fourths majority, as required. What exists is better than anything anyone can come up with now, he said.

In his speech Wednesday, before 1,100 people in the old Pension Building, McDonald said that the Constitution was approved in 1787 by men who were the products of "America's golden age, the likes of which we shall not see again."

As for the suggestion that peo-

ple today are more sophisticated, more knowledgeable than those who wrote the Constitution, McDonald said: "That assumption is as presumptuous as it is uninformed. To put it bluntly, it would be impossible

McDonald was given a \$10,000 award for having been selected the Jefferson Lecturer, the highest honor for achievement in the humanities conveyed by the federal government, an instrumentality of whose author-

*To put it bluntly, it would be impossible in America today to assemble a group of people with anything near the combined experience, learning and wisdom that the 55 authors of the Constitution took with them to Philadelphia in the summer of 1787.*

Forrest McDonald,  
constitutional scholar

in America today to assemble a group of people with anything near the combined experience, learning and wisdom that the 55 authors of the Constitution took with them to Philadelphia in the summer of 1787."

McDonald noted that 35 of the 55 delegates had attended college. Then he quoted from the requirements for admission to King's College (now Columbia University) in the 18th century: the ability to read and translate from the original Latin into English the first three of Tully's "Select Orations" and the first three books of Virgil's "Aeneid"; to translate the first 10 chapters of the Gospel of John from Greek into Latin; to be "expert in arithmetic," and to have a "blameless moral character."

### Jefferson Lecturer

"I ask you," McDonald said, "how many Americans today could even get into college, given those requirements?"

It is wary. He will repeat the lecture this Wednesday at the University of Kansas at Lawrence.

The chairman of the endowment, Lynne V. Cheney, also presented McDonald with an engraving of a Gilbert Stuart painting of Thomas Jefferson.

The audience of historians, writers and others enjoyed the irony: They were aware of McDonald's reputation as perhaps the nation's leading advocate of the policies of Alexander Hamilton, the Federalist who favored a strong role in government by men of wealth, and here the professor was being given a portrait of Hamilton's great rival, Jefferson, the more egalitarian Democratic-Republican.

In his speech, McDonald did not touch on the way in which the Constitution treated slaves, an issue that is being debated today even as it was 200 years ago.

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

CHAMBERS OF  
CHIEF JUSTICE BURGER  
RETIRED

June 22, 1988

Dear Phyllis:

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

I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose."

With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Our 1787 Constitution was referred to by several of its authors as a "miracle." Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention. I have discouraged the idea of a Constitutional Convention, and I am glad to see states rescinding their previous resolutions requesting a Convention. In these Bicentennial years, we should be celebrating its long life, not challenging its very existence. Whatever may need repair on our Constitution can be dealt with by specific amendments.

Cordially,



Mrs. Phyllis Schlafly  
68 Fairmount  
Alton, IL 62002

#4 pg 7

Notre Dame Law School  
Notre Dame, Indiana 46556

Direct Dial Number  
219-239-5667

December 7, 1987

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

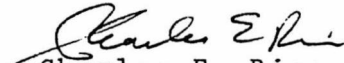
Dear Mr. Fotheringham:

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

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

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

Sincerely,

  
Charles E. Rice  
Professor of Law

Enclosure

#4 pg 8

BRIGHAM YOUNG  
UNIVERSITY

REX E. LEE  
PRESIDENT

THE GLORY OF GOD  
IS INTELLIGENCE

December 18, 1989

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

Dear Mr. Hunter:

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

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

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

I hope this is helpful to you.

Sincerely,



Rex E. Lee

REL:jn

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

CHAMBERS OF  
CHIEF JUSTICE BURGER  
RETIRED

June 22, 1988

Dear Phyllis:

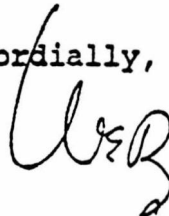
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Cordially,



Mrs. Phyllis Schlafly  
68 Fairmount  
Alton, IL 62002

#4 pg 10

Notre Dame Law School  
Notre Dame, Indiana 46556

Direct Dial Number  
219-239-5667

December 7, 1987

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

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

Sincerely,

  
Charles E. Rice  
Professor of Law

Enclosure

#4 pg 11



SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

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

April 16, 1987

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

Dear Representative Hackney:

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

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

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

#4 pg 12

The Honorable Clint Hackney

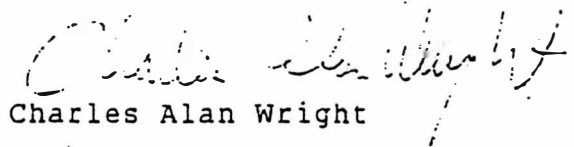
April 16, 1987

Page 2

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles Alan Wright".

Charles Alan Wright





THE  
UNIVERSITY  
OF UTAH

COLLEGE OF LAW  
SALT LAKE CITY, UTAH 84112

November 29, 1983

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

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

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

Jefferson B. Fordham

#4 pg 14

ROBERT H. BORK

SUITE 700  
1150 SEVENTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

January 16, 1990

BY FAX

Representative Reese Hunter  
House of Representatives  
318 State Capitol  
Salt Lake City, Utah 84114

Dear Representative Hunter:

This is in response to your letter of January 11, 1990, and your telephone call to me concerning constitutional conventions. Specifically, you asked for my opinion on the question: "Can a constitutional convention be limited by Congress or the states to a single issue?"

As I mentioned to you on the telephone, this is a question about which serious constitutional scholars have disagreed. It is my view, however, that a federal constitutional convention could not be limited to a single issue. Article V provides that "on the Application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing Amendments, which . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified . . . ." The text thus seems quite clear: Congress' only option upon application of the states is to call a convention "for proposing Amendments" in the plural. The power of a simple majority of Congress to call a convention to propose a single amendment on a specified topic has not been granted.

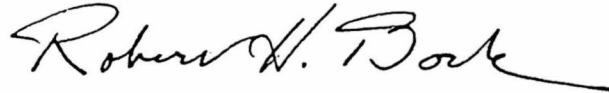
In any event, even if Congress could specify that a convention was called as to a single issue, that limitation would seem unenforceable. I doubt that the Supreme Court would declare a ratified amendment void on the ground that the convention had gone beyond Congress' instructions. The original Philadelphia convention went well beyond the purposes for which it was called and nobody has suggested the Constitution is a nullity for that reason.

#4 pg 15

Accordingly, I do not see how a convention could be limited to one topic once it had been called. If Congress wishes to put a single amendment on a specified topic before the states, it must do so by a two-thirds vote of both Houses.

I hope this response is helpful to you.

Sincerely,

A handwritten signature in cursive script that reads "Robert H. Bork". The signature is written in dark ink and has a fluid, somewhat stylized appearance.

Robert H. Bork

RHB/jac

UNIVERSITY OF MARYLAND SCHOOL OF LAW

500 WEST BALTIMORE STREET

•

BALTIMORE, MARYLAND 21201

STATEMENT OF PROFESSOR CHRISTOPHER BROWN

The most alarming aspect of the fact that 32 of the necessary 34 states have called for a constitutional convention is the threat this development poses to a system that has worked so well for nearly 200 years. We are on the brink of encountering the risks of radical surgery at a time when the patient is showing no unusual signs of difficulty. If this country were faced with an uncontrollable constitutional crisis, such risks might be necessary; but surely they have no place in the relatively placid state of present day constitutional affairs. Now is not the time for the intrusion of a fourth unknown power into our tripartite system of government.

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

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



Statement of Professor Neil H. Cogan

I agree almost entirely with the foregoing memorandum.

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

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