Senator Close called the meeting to order at 8:07 a.m.

SENATE MEMBERS PRESENT:	ASSEMBLY MEMBERS PRESENT:
Senator Close, Chairman	Co-Chairman Hayes
Senator Hernstadt	Mr. Stewart
Senator Don Ashworth	Mr. Banner
Senator Dodge	Mr. Brady
Senator Ford	Mr. Coulter
Senator Raggio	Mr. Fielding
Senator Sloan	Mr. Horn
	Mr. Malone
	Mr. Polish
	Mr. Prengaman
	Mr. Sena
SENATE MEMBERS ABSENT:	ASSEMBLY MEMBERS ABSENT:
None	None

ASSEMBLY JOINT RESOLUTION 17

> Requests Congress to call a convention limited to proposing amendment to Constitution to restrict abortion.

Senator Close outlined the rules that were established for this hearing.

Assemblyman Peggy Westall, primary sponsor of the resolution, stated that she felt the legislative record would show that she was a freedom of choice advocate, however, she stated that when it came to taking a human life she had to draw the line as it concerned choice. She said she would wish the Committees to consider how early a baby is really a baby. She noted the resolution is not asking to abolish abortion, rather it asks to restrict abortion. She further stated that with the means of detecting pregnancy, there should almost never be a late abortion.

Kathy Lauboch said that abortion is legal in the United States today as a result of a United States Supreme Court decision in 1973 that replaced states' laws. She said that abortion on demand is available for the entire nine months of pregnancy. She then presented slides showing actual cases of abortion (Exhibit A shows several pictures that were a part of the slide presentation).

Dr. John DeTar said that three years ago a report was prepared by the Armed Forces War Colleges concerning the demographic consequences of abortion. He said that the country may become indefensible due to decreased birth rates associated in part to increased numbers of abortions. He said that allowing the death of infants through abortion could some day

result in an attitude that life at other age levels can be exterminated for the benefit of the populace. He said that people could find their own children killing them with the same reasoning as there would be for abortion.

Patricia Glenn presented her written statement (Exhibit B) along with a brochure concerning abortion.

Rosa Matthews presented a written statement (Exhibit C) to the Committees.

Sister Margaret Patricia McCarran stated that the American conscience was bothered about abortion. She said that with majority rule, people who are in the minority learn to live with the wishes of the majority. She said that in the U.S. Supreme Court decision about abortion, Congress could have established the jurisdiction of the decision, but she said no action such as this was taken. She said that individuals had a choice. She said that abstinence could be practiced, but when a person chooses not to do so, there was no choice about what nature did about it.

Betty Burns asked why when peace treaties were being signed were people in this country declaring war on unborn babies. She said that young people need to be educated about contraceptives. She said young people should be encouraged to face up to their responsibilities.

Addison Millard, State Deputy for the Knights of Columbus, presented a letter of support of A.J.R. 17 (Exhibit D).

Janine Hansen Triggs stated that supporters of this resolution have come to the Legislature as this being the only alternative open for protecting the lives of millions of unborn babies. She said that since the 1973 U.S. Supreme Court decision, a right-to-life discussion has not been held in Congress.

Mrs. Triggs said that 14 states have passed a call for a convention regarding abortion. She said the Nevada Legislature easily passed the constitutional convention call for a balanced budget. She asked how much more important it would be to call a convention for the protection of an unborn child.

Mrs. Triggs said that a 1974 report of the American Bar Association had stated that a constitutional convention could be handled so as not to release a radical force in the American system. She said that the charge of radicalism for this type of convention was a disservice to the American people.

Father James Buckley said that the slides shown earlier had shown that there is human life from the first moment of conception. He referred to a study by scientists who said there was not a particular point in time where they could say that

a fetus changed from not being life to being human life. He also referred to a 1964 Planned Parenthood publication that said that abortion kills the life of a baby after it has begun.

Father Buckley said that the decision of the U.S. Supreme Court withdrew the claim of this country to protect the right to life. He referred to a case in Santa Ana, California, where a doctor had been tried for murder for the death of an infant that had been aborted alive. The doctor was found innocent in this case. He said that if human life is not respected, in time this country will be doing away with the aged and invalids.

Mr. Coulter asked if it was the position of the Catholic Church that there would be no abortion for any reason. Father Buckley answered that abortion could only be allowed for the safety of the mother's life such as in the case of a tubal pregnancy.

Sean Morton Downey said that there had not been mentioned the U.S. Supreme Court decision of January 9, 1979, that said that the life of an aborted baby accidentally born alive did not have to be saved.

Mr. Downey told of a 12-year-old girl that had visited a Planned Parenthood office and said that she had missed two menstrual periods and thought she might be pregnant. He said this office referred her to an abortion clinic, also telling her that her parents did not have to know about what might be done. The clinic gave her a urine test for pregnancy which they said was positive. He said the reason he knew of this story was the fact that his daughter had gone to the clinic. He said she was not pregnant.

Senator Hernstadt questioned Mr. Downey about his role as a lobbyist before Congress and why Congress has not been receptive to a right-to-life amendment to the Constitution. Mr. Downey said that individual Congressmen have been responsive to this amendment, but committee chairmen who would have to hear the amendment have not been receptive.

Joyce Young said that never before in modern times except in Germany has there been a complete disregard for human life. She said that when a person's life is in danger through illness or by accident, doctors work frantically to try to save the life. She said that a new "code of ethics" is trying to come in that would rationalize abortion by saying it is no longer wrong. She further stated that there is no such thing as an unwanted baby because for every woman that is contemplating abortion, there is a married couple who wants to adopt and love the child.

Charles Anderson presented a written statement (Exhibit E) to the Committees. Mr. Anderson spoke for his wife, Marie, who was present and stated that he was thankful for the right-to-life that she has had although she is in an invalid state.

Susan Kennedy appeared before the Committees with her son, Jacob. She said she was concerned that in teaching her children that killing was wrong, she did not want to country as a whole to be following the idea that abortion was right.

Adonna Thormahlen stated that a study done in New York had shown that 45% of children born were unplanned. She said that children may be unplanned, but there are no unwanted children. She said she felt that money spent to encourage and perform abortions could be better spent in other areas.

Shirlene Hundley spoke in opposition to abortion. She said she had been an older mother. Because of religious beliefs and her conscience, she said she chose not to have an abortion. She said the baby had been born with cancer, but it had been a joy. She said that she enlists the Committees' support of the resolution.

Nancy Came stated that only God has the right to legislate life and death. She said that she has worked with young girls who have had abortions, and they retain a feeling of guilt for a long time because of the abortion. She said she had heard of a case involving an 80-year-old woman who still had guilt feelings over an abortion she had had at 20 years of age.

Janet Hanifan stated that she was chairman of the Carson Valley Pro-Life Coalition. She read a letter from Dr. Marsh in Gardnerville opposing abortion. The letter was not submitted to the Committees.

Chris Neff said she had been encouraged by her first husband to get an abortion when she became pregnant. She said that through the encouragement of her parents, she had the baby, and the baby had now been adopted by Mrs. Knapp's second husband.

Jolene Kobe stated that she was a registered nurse and had worked in an infant intensive care unit in Sacramento. She said that babies in the ward usually were able to survive. She said that one night a baby that had been aborted alive, and was bigger than a lot of the babies naturally born alive, was brought to the infant ICU. However because of the abortion circumstances, it was not able to survive. She said she had to ask herself why this baby did not have as much of a right to live as the other babies in the ward.

Jana Gardner stated that she had been married eight years before she was able to have a baby. In that time, she contacted an adoption agency. The agency said that there were

no babies available. She said she had to assume that babies that could be available for adoption were being the victims of abortion.

Also submitted to the Committees and attached to the minutes are "The Challenge to be 'Pro Life'" (Exhibit F), "A Limited Federal Constitutional Convention" (Exhibit G), "The Case for Con-Con" (Exhibit H), "Why a Constitutional Convention?" (Exhibit I), "The Convention/Call, February 14, 1979" (Exhibit J), "The U.S. Supreme Court Has Ruled It's Legal to Kill a Baby..." (Exhibit K), and "Amendment of the Constitution by the Convention Method Under Article V" (Exhibit L).

Dr. Louise Bayard-de-Volo, Executive Director of Planned Parenthood of Northern Nevada, presented a short statement (Exhibit M) to the Committees. She said that a moral issue is something that cannot be legislated. She said that legislating against something does not make it stop.

Dr. Bayard-de-Volo said that the basic issue is the right to choice. She said that women should have the choice of what happens to their bodies. She said there is a lot in the news about unwanted children. Welfare costs have risen, and she said this would be described to the Committees. She said that those favoring abortion were in the majority in this country.

Dr. Bayard-de-Volo, in reference to the previous statement by Mr. Downey, stated that the incident which was referred to about the teenager going into a Planned Parenthood office could not have been the Northern Nevada office of Planned Parenthood. She said that her office encourages children to get their parents' participation in decisions concerning pregnancy.

James Tucker, an attorney, stated that the call for a constitutional convention was an extreme step. He said this should only be undertaken in unusual circumstances with compelling reasons. He said the Committees should consider whether the situation regarding abortions had reached such an extreme. He said that a constitutional convention would have a shattering effect on the constitutional structure.

Mr. Tucker said that the U.S. Supreme Court in its decision on abortion had considered both pro and con sides of the issue. He said that the court had given to the individual states the ability to regulate abortion.

Mr. Tucker said that anti-abortion forces have been able to restrict funding of abortions. He said these forces are still working in an effort to overturn the U.S. Supreme Court's decision. He said that one of the things contemplated by the writers of the Constitution was that one special interest group could not change the Constitution to force on the people in general their own personal beliefs.

Mr. Tucker said it was important not to be swept up by emotion. He said that people will trample the thing that is necessary to retain their own freedom in the course of obtaining a particular goal.

Dr. Joseph Murphy said he regretted that religion had been inserted into this hearing. He said that there have always been abortions in this country, and he said it was a great step forward when the legality of abortion was declared by the U.S. Supreme Court. He said that abortion was a health problem, and the solution would be to have clean, early, safe, and inexpensive abortions. He related the statistics regarding abortion related injuries that were treated in the Cook County, Illinois, Hospital before and after abortion was legalized.

Senator Hernstadt asked the doctor if he had ever seen a woman commit suicide because she was not able to obtain an abortion. Dr. Murphy answered that he had not.

Dr. Donovan Roberts stated that this discussion was a problem involving meaning and quality of human life. He said that those that have been so aggressive in behalf of a respect for life have not rallied for a constitutional convention for other outcasts or victims of war. He said that the choice for abortion is one made in a time of acute distress. He said that programs should be developed to ease the burden of pregnancy and to generate a greater compassion for the unwed mother. He said that in the testimony against abortion he had heard no word of compassion for the mother.

Ellen Pillard presented a written statement (Exhibit N) to the Committees. She further stated that she knew of women who had taken their lives because of unwanted children. She raised the concern of a pregnancy that was a result of incest having to go the full term. She said that the decision proposed by anti-abortionists would be no decision at all. She said further that there were 25 children presently in the custody of the Nevada State Welfare Department who were not adopted. She said this would indicate that there are unwanted children. She further stated that the FBI has reported about a 4% pregnancy rate in rape cases. She said that it is not possible to deal with this type of problem by denying a woman the freedom of choice.

Dr. Ira Pauly, professor at the University of Nevada, Reno, stated that autopsy reports from large cities of women in child-bearing ages showed that 10% of the women had embryoes in their uterus. He said that the question seemed to be one of morality, and he said those who favor the resolution are trying to push their morals on others. He said that to be considered would be the social reaction to an unwanted child if an abortion is not allowed.

Mylan Barin Roloff presented prepared testimony (Exhibit O) to the Committees.

Robert J. McNutt, Stated Clerk of the Presbytery of Nevada, presented prepared testimony (Exhibit P) to the Committees.

Stephen L. Gomes, Ph.D., President of Planned Parenthood of Northern Nevada, presented prepared testimony (Exhibit Q) to the Committees.

Mary-Ellen McMullen presented prepared testimony (Exhibit R) to the Committees.

Susan Hill presented prepared testimony (Exhibit S) to the Committees.

Written testimony was presented (Exhibit T) to the Committees in behalf of Dr. Donald I. Mohler.

Dr. Dean Hoffman of the U.S. Public Health Service stated that a constitutional convention was very inadequate and inappropriate to express concern on the abortion issue. He said that there was a feeling of unity needed in the country at this time, and in view of this, he felt that decisions made by the U.S. Supreme Court should be respected. He said that he thought one of the issues was power and control. He said people do not need to be bludgeoned into a point of view.

Dr. Richard L. Siegel, Vice President of the American Civil Liberties Union of Nevada, referred to a study recently completed by the union regarding problems with a constitutional convention. He said he had also published studies regarding public opinion polls. He said that the public has favored legalized abortion in these polls. He said that the public has also favored the death penalty. He stated his regret that the public has its way so much, but he felt that the Legislature should respect the public will.

Vivian Freeman, a registered nurse and member of the board for Northern Nevada Planned Parenthood, stated that she resented implications which she said were made by those opposing abortion that the supporters of abortion did not revere life. She said that in her work as an R.N., she had many pictures in her mind of women that had subjected themselves to illegal abortions. She said these were the result of no sex education and teaching from parents. She said she kept thinking she was having a nightmare that the country was trying to go back to the conditions that existed prior to the 1973 decision of the U.S. Supreme Court regarding abortion.

Peggy Twedt of the League of Women Voters said that the League was opposed to passage of the resolution. She said that a decision regarding abortion should be left to a woman, and it should also be a family decision if a family is involved. She said that placing this restriction in the U.S. Constitution

would be bringing the Federal government into the lives of individuals and families in making decisions that should not be assumed by the government. She said that an amendment against abortion would be costly and ineffective.

Stephanie Lamboley, Nevada Women's Political Caucus, asked where were the advocates for life after birth. She criticized Mr. Downey, an earlier speaker, for placing his daughter in the situation he described.

Pat Gothberg of the Nevada Nurses Association stated that her organization was divided on the abortion issue. However, in their legislative philosophy, the first criteria is the well-being of the consumer. She said that with this criteria being considered, the group felt that the law should remain as it presently exists.

Written testimony was submitted to the Committees from Joni Kaiser of the American Friends Service Committee (Exhibit U).

Also submitted to the Committees were the following articles: "The Right to Choose: Facts on Abortion" (Exhibit V), "Poll: Majority Support Abortion Decision" (Exhibit W), and "Twelve Abortion Facts" (Exhibit X).

At this point testimony ceased, and the floor was opened for questions from members of the Committees.

Senator Ford asked Mr. Downey and Mr. Millard if each human being had a right to life that was inviolate, what would be their feelings respectively regarding capital punishment. Mr. Downey answered that he was against capital punishment. Mr. Millard, speaking for the Knights of Columbus, stated that the group had not taken a position on capital punishment. However, he stated that he personally believed in capital punishment.

Mr. Coulter asked Mr. Downey what the form of an amendment regarding abortion would take. Mr. Downey suggested that the amendment to the Constitution would read that "life is sacred at all points of its development until natural death with the exception of saving the life of the mother."

Senator Hernstadt noted that it had been stated that with the present abortion rates, there would not be enough youthful citizens to defend the country in wartime. He asked if it was okay to love a child and then see it drafted into the service to be killed. Mr. Downey answered that abortion was wanton killing of a human being in the womb. He said that the mere fact a person goes to war does not mean that the person would be killed.

The meeting was adjourned at 10:49 a.m.

Respectfully submitted,

Carl R. Ruthstrom Jr.

Carl R. Ruthstrom, Jr.
Assembly Secretary

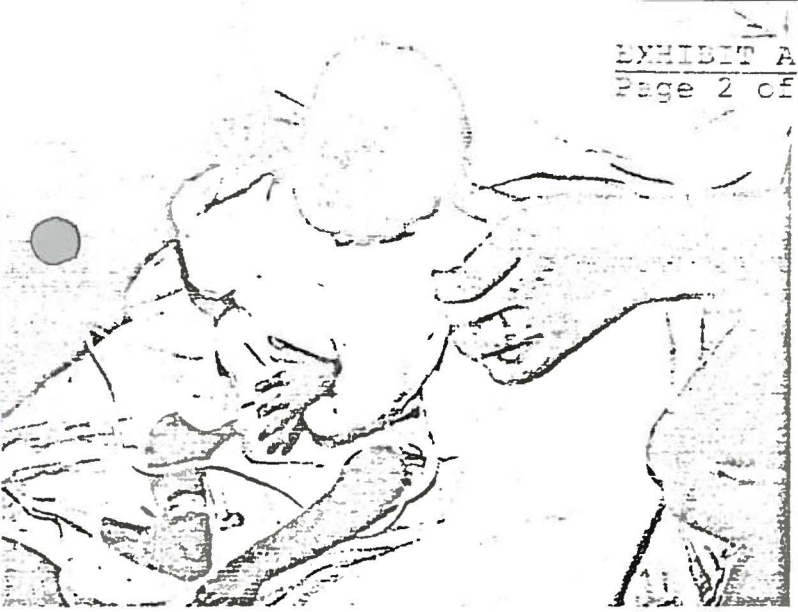
Life

21 Week Baby
Born Alive
(photo, 3 weeks later)

or

21 Week Baby
Killed by Abortion

Death



Baby Born 18 Weeks after Conception

Marcus Richardson was born 1-1-72 in Cincinnati, Ohio, 19 weeks and 6 days after the first day of his mother's last menstrual period (18 weeks after conception). A pregnancy normally totals 40 weeks. He is pictured here 9 weeks after birth, a perfectly normal child.

Some states use "viability" or ability to survive outside the womb as a measurement of the humanity of the unborn. Thirty years ago, however, "viability" was about 30 weeks. Now it is as early as 20 weeks. In 20 more years it may be at 10 or 12 weeks. What is changing is the increasing sophistication of our external life support systems. The babies are the same. Therefore, "viability" cannot be used to judge the baby's humanity. Rather it measures the skill and equipment of the doctors, nurses, and hospital in which the baby is born.

Eleven to Twelve Weeks

At this stage all organ systems are functional. He breathes, swallows, digests, and urinates. He is very sensitive to pain, recoiling from pinprick and noise, and seeks a position of comfort when disturbed. Soon he will sleep and wake with his mother. If his amniotic fluid is sweetened, he will swallow more often, if it is made sour he will quit swallowing.

He can be taught by sound signals to anticipate and recoil from a pain stimulus, but no two little ones will respond the same, they are already individuals. At this stage Arnold Gesel has said, "The organization of his psychosomatic self is well underway."

After this time nothing new will develop or function, only further growth and maturation.

Caesarean Section Abortion (Hysterotomy)

This method is exactly like a C-section until after the cord is cut. In Caesarean Section, the baby's phlegm is sucked out, and she is taken to intensive care, newborn nursery where everything is done to care for.

The baby in this picture weighing two pounds (a 24 week pregnancy) was to be aborted. She was cut free, dropped in a bucket, and left to die. At this age they all move, breathe and some will even cry.

In 1971, about 4000 of these abortions were done in New York. Since all of these babies are born alive, this means that 4000 babies were aborted alive and left to, or encouraged to, die.

Salt Poisoning Abortion at 19 Weeks

This so-called "product of pregnancy" is the result of the second most common type of abortion done in the U.S. and Canada.

This method is done after 16 weeks when enough fluid has accumulated in the sac around the baby. A long needle is inserted through the mother's abdomen into the baby's sac and a solution of concentrated salt is injected into it. The baby breathes in and swallows the salt and is poisoned by it. The outer layer of skin is burned off by its corrosive effect. It takes over an hour to slowly kill a baby by this method.

If the mother is fortunate and does not develop any complications she will go into labor and about one day later will deliver a wretched dead little baby such as the one above.

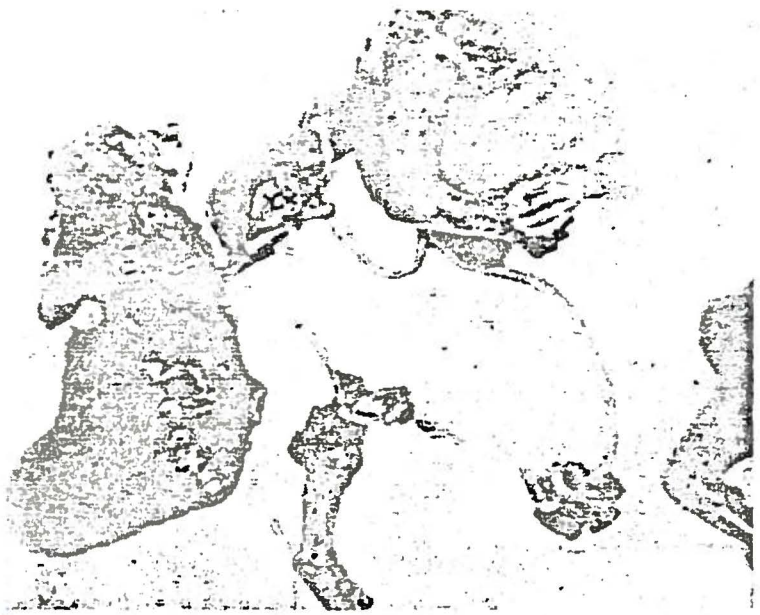
Tiny Human Feet @ 10 Weeks

These perfectly formed feet demonstrate that the baby's tiny body is compietely formed at this time.

at six weeks — "quickening" occurs — that is movement begins.
— human brain activity can be recorded on the electroencephalogram.
at 18 days — the human heart begins to beat.
at conception — human life begins. At that moment a new being exists — totally different from the body of either the mother or the father (different chromosomal makeup)
— human (46 chromosomes)
— alive (capable of replacing his own dying cells)
— and needing only food and time to grow into an adult human.

Human Life at Eight Weeks

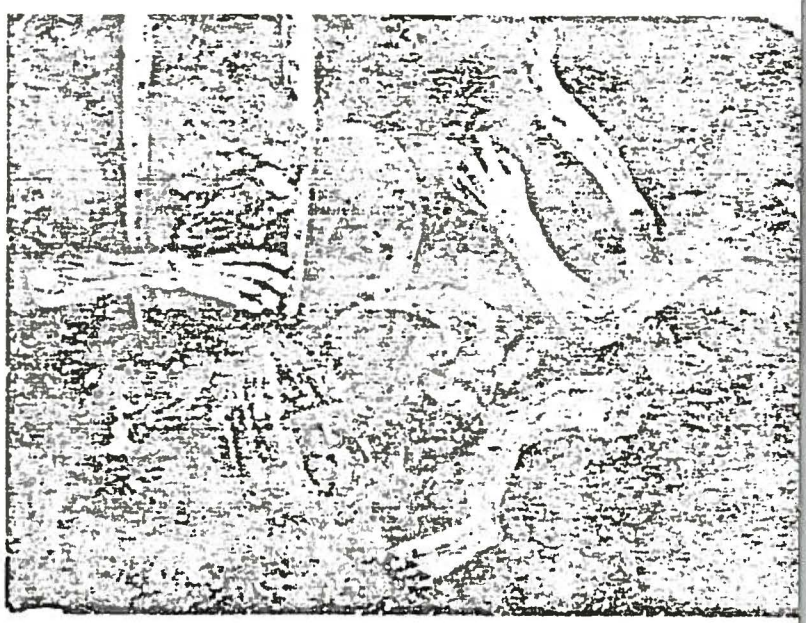
At this stage:
— he (or she) will grab an instrument placed in his palm and hold on
— an electrocardiogram can be done
— he "swims freely in the amniotic fluid with a natural swimmer's stroke"



D & C Abortion at 12 Weeks

Performed between 7 and 12 weeks, this method utilizes a sharp urved knife. The uterus is approached through the vagina. The cervix m[illegible] of the womb) is stretched open. The surgeon then cuts the tiny [illegible] pieces and cuts and scrapes the placenta from the inside walls [illegible] uterus. Bleeding is usually profuse.

One of the jobs of the operating nurse is to reassemble the parts to [illegible]e sure the uterus is empty, otherwise she will bleed or become infected.



Suction Abortion at 10 Weeks

Over 75% of all abortions performed in the U.S. and Canada are done by this method. It is like the D & C except that a powerful suction tube is inserted. This tears apart the body of the developing baby and his placenta, sucking the "products of pregnancy" into a jar. Sometimes the smaller body parts are recognizable as on this picture.

All of the photos in this brochure, except dead baby on Page 1, have been entered as scientifically documented, sworn evidence before the Federal District Court of Connecticut by Attorney General Killian.

What of the U.S. Supreme Court Decision?

This has opened all fifty states to abortion on demand until the cord is cut. It prevents any state from forbidding abortion when needed for the life *or health* of the mother. "Health" specifically includes mental health. Ample precedence in legal (U.S. Supreme Court, Vuitch case) and practice (California, Wash. D.C.) has shown that "mental health" is abortion on demand.

The Dred Scott Decision in 1857 ruled that black people were not "persons" in the eyes of the Constitution. Slaves could be bought, sold, used or even killed as property of the owner. That decision was overturned by the 14th Amendment.

Now the court has ruled that unborn people are not "persons" in the eyes of the Constitution. They can be killed at the request of their owners (mothers). This dreadful decision can only be overturned by another constitutional amendment.

The fact of human life in the womb cannot be denied. To today allow one age group of humans to be killed because they are socially burdensome will lead inexorably to allowing the killing of other humans at other ages who have become socially burdensome.

But legalizing abortion would eliminate criminal abortions!

This is purely wishful thinking, and a completely false statement. Consistent experience has been that when laws are liberalized, the legal abortion rate skyrockets, the illegal abortion rate does not drop, but frequently also rises. The reason consistently given is the relative lack of privacy of the official procedures. (Europe, Japan, Colorado, etc.)

Doesn't a mother have a right to her own body?

This is not her body but the body of another human person. Since when have we given to a mother the right to kill her children — born or unborn?

Abortion is only a religious question, isn't it?

No, Theology certainly concerns itself with respect for human life. It must turn to science, however, to tell it when life begins. The question of abortion is a basic human question that concerns the entire civilized society in which we live. It is not just a Catholic or Protestant, or Jewish issue. It is a question of who lives or dies.

Isn't abortion another means of birth control?

No. Do not confuse abortion with birth control. Birth control prevents new life from beginning. Abortion kills the new life that has already begun.

Why bring unwanted babies into the world?

An unwanted pregnancy in the early months does not necessarily mean an unwanted baby after delivery. Dr. Edward Lenoski (U. of S. Cal.) has conclusively shown that 90% of battered children were planned pregnancies.

"A world without unwanted children, wives, oldsters, etc., would be a perfect world. The measure of our humanity is not that we won't always have unwanted ones among us but what we do with them. Will we try to help them? or kill them?"

Willke, *Handbook on Abortion*

What about the girl who's been raped?

Pregnancy from rape is extremely rare.
A scientific study of 3,500 cases of rape treated in hospitals in the Minneapolis-St. Paul area revealed zero cases of pregnancy. This study took place over a ten-year period.

The Educator, Sept. 1970

What if the mother threatens suicide?

Suicide among pregnant women is almost unknown. In Minnesota in a 15-year period, there were only 14 maternal suicides. Eleven occurred after delivery. None were illegitimately pregnant. All were psychotic.

Are there after-effects to the mother?

After legal abortion there is an increase in sterility of 10%, of miscarriages of an additional 10%, of psychiatric aftermath (9 to 59% in England), of Rh trouble later. Tubal pregnancies rise from 0.5 to 3.5% and premature babies from 5 to 15%. There can be perforation of the uterus, blood clots to the lung, infection, and later fatal hepatitis from blood transfusions.

But isn't it cruel to allow a handicapped child to be born — to a miserable life?

The assumption that handicapped people enjoy life less than "normal" ones has recently been shown to be false. A well-documented investigation has shown that there is no difference between malformed and normal persons in their degree of life satisfaction, outlook of what lies immediately ahead and vulnerability to frustration. "Though it may be both common and fashionable to believe that the malformed enjoys life less than normal, this appears to lack both emperical and theoretical support."

Paul Cameron & D. Van Hoeck, Am. Psychologic Assn. Meeting, 1971

Human Garbage—"These dead babies had reached fetal ages of 18 to 24 weeks before being killed by abortion. This is the result of one morning's work at a Canadian teaching hospital."

A new ethic?

For two millenia in our western culture, specifically protected by our laws, and deeply imprinted into the hearts of all men has existed the absolute value of honoring and protecting the right of each person to live. This has been an inalienable, and unequivocal right. The only exceptions have been that of balancing a life for a life in certain situations or by due process of law.

Our new permissive abortion laws represent a complete about-face, a total rejection of one of the core values of western man, and an acceptance of a new ethic in which life has only a relative value. No longer will every human have an absolute right to live simply because he exists. Man will now be allowed to exist only if he measures up to certain standards of independence, physical perfection, or utilitarian usefulness to others. This is a momentous change that strikes at the root of western civilization.

It makes no difference to vaguely assume that human life is more human post-born than pre-born. What is critical is to judge it to be, or not to be, human life. By a measure of "more" or "less" human, one can easily and logically justify infanticide and euthanasia. By the measure of economic and/or social usefulness, the ghastly atrocities of Hitlerian mass murders came to be. One cannot help but be reminded of the anguished comment of a condemned Nazi judge who said to an American judge after the Nuremburg trials: "I never knew it would come to this." The American judge answered simply: *"It came to this the first time you condemned an innocent life."*

Willke, *Handbook on Abortion*

Isn't it true that restrictive abortion laws are unfair to the poor?

It is probably true that it is safer for a rich person to break almost any law, than for a poor person to do so. Perhaps the poor cannot afford all the heroin they want. Rich people probably can. Does that mean we should make heroin available to everyone? Not everything that money can buy is necessarily good. The solution is not to repeal laws, but to enforce them fairly. Laws restricting abortion can be, and frequently have been, adequately enforced.

Isn't abortion safer than childbirth?

No, in the late stages it is far more dangerous. Even in the first three months at least twice as many mothers die from legal abortions as from childbirth.

What of the Population Explosion?

"Fertility in the United States has dropped, for the first time, below the "replacement" level of 2.1 children a family that is necessary to achieve zero population growth."

New York Times, Dec. 5, 1972

If the current decline in the world birth rate continues "it should be possible to reduce the world crude birth rate to less than 20 and the world population growth rate to less than 1% per annum by 1980" (same as U.S.A.).

World Fertility Trends During the 1960's, R. Ravenholt, director, off. of population USAID

Constructive Answers

"Choosing abortion as a solution to social problems would seem to indicate that certain individuals and groups of individuals are attempting to maximize their own comforts by enforcing their own prejudices. As a result, pregnant school girls continue to be ostracized, mothers of handicapped children are left to fend for themselves, and the poor are neglected in their struggle to attain equal conditions of life. And the only solution offered these people is abortion. It becomes very disturbing when we think that this destructive medical technique may replace love as the shaper of our families and our society."

"We must move toward creating a society in which material pursuits are not the ends of our lives; where no child is hungry or neglected; where even defective children are valuable because they call forth our power to love and serve without reward. Instead of destroying life, we should destroy the conditions which make life intolerable. Then, every child regardless of its capabilities or the circumstances of his birth, could be welcomed, loved, and cared for."

Induced Abortion, A Documented Report, p. 134.

Testimony presented at joint Judiciary Hearing on
A.J.R. 17
March 28, 1979

My name is Patricia Glenn. For the past five years I have been the Director of Lifeline, the non-profit volunteer agency which offers assistance to anyone faced with an unwanted pregnancy. I would like to share with you something of our work.

For a variety of complex social and personal reasons, many unmarried young girls are today forced to answer the frantic question -- Am I Pregnant? At this point in her life, the girl cares little about philosophical answers to abstract questions. She needs least of all a lecture on her past behavior, or threats to punish or ostracize her. What she needs immediately and wholeheartedly are love, concern, and practical support. Often her most vital need is simply someone to talk to - someone who truly cares - about her and her unborn child.

We at Lifeline and at hundreds of similar organizations across the country offer this support to anyone who calls us. We first of all listen and then attempt to help her solve her problems and find whatever type of aid she might require - be it psychological, medical, or financial. Often she is unaware that many community programs are already available to assist her. Her first reaction is usually one of panic - a panic all too often encouraged and taken advantage of by those who would rush her off to an abortion clinic without any realization of what is to happen to her and to her unborn baby.

We almost always encourage the girl to communicate with her parents and enlist their support. Almost invariably they come through in a way which is a surprise to both the girl and the parents themselves. We have had parents tell us that seeing through the problems of such a pregnancy has actually brought their family closer together than they ever thought possible. This is in marked contrast to the consistent policy of the abortionists to attempt to bypass not only parental permission but even to deny the parents the knowledge that their minor daughter is pregnant.

The girl who is scheduled for abortion is almost never completely informed about two literally "life or death" matters. The first is that her body is about to undergo a completely unnatural and possibly dangerous procedure, with hemorrhage, infection, and future sterility as definite risks. The second involves the development of the baby at the time of abortion - the fact that this little human being is already a definite person in his own right - involved in some of the most magnificent maneuvers of growth of his entire lifetime.

Occasionally a change of home environment is necessary for the pregnant girl's welfare. At the present time there is an urgent need for a live-in facility in the Northern Nevada area where the girl could reside during the latter part of her pregnancy and learn to care for herself and her new little one, particularly if she should decide to keep the child after birth. If adoption is the chosen course, there are certified agencies readily available. For there is no such thing as an "unwanted child" in our country today. There are so many more families eager to provide a loving, secure home than there are babies to adopt.

In short, what we try to do is to see the girl through the problems of pregnancy so that she can retain her own dignity and self-respect while providing that most precious gift of life itself to another human being.

What is it we ask of you, our elected legislators. Simply that you help us protect these lives - both that of the mother and of her unborn child. Society is entitled to expect that what is legal is also morally right. To single out, as did the Supreme Court's decision of 1973, the helpless unborn as <u>legal</u> victims of this act of terrorism that is abortion is a travesty on the very word "justice."

As long as we hold out as legal the killing of the innocent by abortion, <u>we</u> must bear the guilt of every panic-stricken girl who unknowingly destroys her own flesh and blood by the abortionist's mercenary hand.

Only a "Yes" vote for a constitutional convention to propose a Human Life Amendment can remedy the present shameful situation.

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Because we all want to protect human life, we must known when life begins.

Life Before Birth

Some say human life begins at birth. But doctors and scientists tell us that long before then, and even before the mother feels her unborn baby's movements within, the miniature infant wakes and sleeps, squirms about, squints, swallows, breathes fluid, hiccups, digests, hears, tries to cry, can feel pain, flexes his or her fingers, punches, kicks and even sucks his or her thumb--or toes.

All of this vigorous activity occurs in the first half of pregnancy.

Most pregnancies aren't even detected until the 6th week. By then, the baby's heart has been beating for 3 or 4 weeks, brain waves can be read, the nervous system has been complete for about 2 weeks, and he or she is about to begin moving, although the mother will not feel it for 3 1/2 months more.

By the 8th week, the baby's skeleton, head, face, arms, legs, fingers (with fingerprints), toes, circulatory and major muscle systems are complete, and all of his or her bodily organs are present in rudimentary states.

By the 12th week, the baby already shows a distinct individuality in both appearance and behavior, with facial expressions resembling those of his or her parents.

By the 16th week, the baby's eyelashes have grown.

At 16 1/2 weeks, all 20 milk-teeth buds are in place.

By the 20th week, hair appears on the baby's head.

By the 22nd week, the baby can open his or her eyes.

Life Begins at Conception

Scientists agree that a new life begins at conception.

The September, 1970 issue of California Medicine (official journal of the California Medical Association) said it's a "scientific fact" that "human life begins at conception and is continuous, whether intra- or extra-uterine, until death."

In its special issue, The Drama of Life Before Birth, LIFE magazine states, "The birth of a human really occurs at the moment the mother's egg cell is fertilized by one of the father's sperm cells," that is, at conception.

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Even the New York court which upheld that state's permissive abortion law admitted, "in the contemporary medical view, the child begins a separate life from the moment of conception."

At conception, a genetically unique individual begins life. All of the characteristics he or she will have as an adult are already determined--including eye color, skin pigmentation, sex and intelligence potential. This new individual's life will consist of continually overlapping, progressive stages of growth and development from that instant through childhood, adolescence, maturity, old age and death. All that is needed is nourishment and time to grow.

This life will not begin at birth, 9 months later. Birth will be only a change in the place of residence of an already-living, active person. That's why Oriental people consider a child to be one year old 3 months after birth.

None of us doubt that we were the same persons before and after our births, much less that we were alive. And it's obvious that we were human--we had human parents!

An unborn baby is just as much a living human being as any of us, and therefore has a right to keep his or her life.

But some still say that the scientific facts don't matter--that we don't need to respect the new human life in the womb. They say that deliberately taking an unborn baby's life is no different than removing a diseased appendix. As if the baby wasn't alive, or human. Or couldn't feel the pain.

Abortion: Death Before Birth

Even though abortion is the most common "surgical procedure" performed in the United States today (over 2,000,000 babies are aborted per year), it's the only one not fully described to the "patient" beforehand. That's because abortion is not only fatal to the baby, it's dangerous to the mother.

Three English doctors recently commented, "...the public is misled into believing that legal abortion is a trivial incident, even a lunch hour procedure...There has been almost a conspiracy of silence regarding risks."

In May, 1968, the American College of Obstetrics and Gynecology officially stated, "...the inherent risk of an abortion is not fully appreciated, both by many in the profession, and certainly not by the public."

In February, 1971, Dr. J. K. Russell, Chief of Obstetrics and Gynecology at the University of Newcastle-Upon-Tyne, England, reported, "The public got the idea that therapeutic abortion is easily and quickly done and carries few complications. This is wrong. There are complications."

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Dr. Paul Brenner, who helped liberalize California's abortion law, said in April, 1972, "Now, five years later, I am appalled at the conditions under which the vast majority of these now-legalized procedures are being performed."

Mothers who abort their babies may suffer infection, hemorrhage, sterility, blood clotting, brain damage, perforation or laceration of the womb and other dangerous complications and, later in life, tubal pregnancies, chronic miscarriage or premature birth. In its pamphlet, Plan Your Children for Health and Happiness, Planned Parenthood warned, "An abortion kills the life of a baby after it has begun. It is dangerous to your life and health. It may make you sterile so that when you want a child you cannot have it."

Abortion: The Living End

When a mother decides to abort her baby, it is done in one of four ways:

1. Dilation and Curettage. The mouth of the womb is forced open with clamps. The abortionist inserts a curette, a spoon-shaped knife with sharp, serrated edges, and methodically scrapes out the womb, dismembering the baby alive. The fragments of the baby are pulled out with a forceps. Profuse bleeding is normal.

2. Suction Curettage. A powerful vacuum tube with a sharp-edged tip is inserted into the womb and the baby inside is sucked out in shreds.

A common complication in both kinds of curettage abortions is failure to remove all of the pieces of the baby, causing bleeding or infection, and necessitating another operation.

3. Saline Infusion. (Used after 16 weeks, when the baby is so large that curettage is too dangerous to the mother.) A long needle is inserted into the mother's abdomen, piercing the womb. A toxic salt solution is injected. The baby inhales the solution, goes into convulsions and, perhaps as long as two hours later, dies--of poisoning. The salt also burns the baby's skin.

The mother goes home. When labor starts, she returns to the hospital (if she can make it), where she gives birth to a (usually) dead baby, 24-48 hours after the injection. Sometimes it is several days, or even weeks, before the dead baby is finally delivered.

Although saline abortions are so dangerous to the mother that they were banned in Japan over 20 years ago, hundreds of thousands of babies are killed by this method annually in North America.

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4. Hysterotomy. If the saline method can't be used, the abortionist performs a hysterotomy, which is like a Caesarean section. He makes a long incision in the mother's abdomen. The baby is taken out and struggles for a time. Sometimes the baby whimpers. He or she is dropped in a bucket and dies, usually of suffocation or through drowning.

The mothers are at least partially anesthetized during these procedures. The babies aren't.

Several of the techniques for killing babies in hospitals are illegal to use for killing animals in slaughterhouses.

In rare cases, late-term babies have survived saline or hysterotomy abortions. Otherwise, they go into the hospital incinerator or garbage can, occasionally before they are completely dead. Thousands of still-living, aborted babies are used as human guinea pigs in "medical experiments" in European and North American laboratories. Such babies have even been vivisected.

But no matter what method is used, or will be used in the future, an abortion at any stage of pregnancy destroys a human life.

Abortion Solves Nothing

It's no wonder that a young woman, who would be horrified if she ran over a puppy or a kitten with her car, suffers deep-rooted guilt when she realizes that she has taken her baby's life--a burden she must bear as long as she lives. Doctors have found that guilt feelings over abortion often lead to chronic mental illness.

You can undo a pregnancy by abortion. But you can't undo the abortion. Because you can't undo death.

By aborting babies, we're trying to solve our own problems by taking the lives of others--others who are simply "unwanted." And when we start doing that, we're in a pretty bad way.

There are already news stories about "defective" babies being killed in hospitals in the United States--after birth. Some intellectuals have called for this kind of infanticide, pointing out that if we may kill "defective" babies before birth, there is no reason we may not kill them after birth--or kill "unwanted" elderly people (euthanasia or "mercy killing"), which more and more people are demanding.

Everyone has compassion for the helpless victims of war, disease and disaster. Shouldn't we also care about the most helpless and innocent of all--the unborn child? And if we can try to save whales and polar bears from extinction, shouldn't we do something for the most precious of all "endangered species?"

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Compassionate Alternatives

Many girls and women who find themselves with unwanted pregnancies don't really want to abort their babies, but feel it's the easiest and best solution to their problem. Many young single girls think more of sparing their parents the shame and embarrassment they know their pregnancy will cause. Or, under pressure from parents, family or friends, they feel they have little choice but abortion. Pregnancy counselors often act as if abortion were the only alternative. Most of them receive cash kickbacks from abortion mills for referrals. No one really seems to care.

But there are people who care. Groups have sprung up everywhere to help pregnant girls and women, married or single, in any way necessary. They care that much about you and your baby.

Birthright, Lifelines and similar groups are friends you can count on. They know you are facing perhaps the greatest personal crisis of your life. You don't have to face it alone.

In these completely private, non-sectarian groups, women volunteers from all walks of life offer the loving, personal, strictly confidential help you need, completely without charge. Working with qualified professionals--doctors, social workers, attorneys, psychologists, clergymen of all faiths--they will help you explore the alternatives available so you can choose the one that's best for you and your baby. Without pressure.

They can help you with a place to live; financial assistance; medical care and maternity services; professional counseling; employment; adoption. Whatever you and your baby need. And after your baby is born they will continue to help you solve problems and make decisions about the future. All they are saying is give life a chance.

Every pregnant girl or woman has a right to have her baby--and every baby has a right to be born. No matter how troubled or impossible the situation looks, if you are contemplating abortion, call your nearest Birthright or Lifeline and let them help you. You owe it to yourself and to your unborn child to know all the facts and alternatives before you make a decision. You're never alone--you have so many friends who do care about you and your baby.

Make a decision you can live with. Both of you.

Reno Lifeline - 322-4692.

If the number of the nearest Birthright or Lifeline is not listed in your telephone book or newspaper classified ads, call one of these regional numbers for information and help:

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Atlanta (404) 688-4496; Baltimore (301) 323-7444; Boston (617) 782-5151; Chicago (312) 233-0305; Cincinnati (513) 241-5433; Cleveland (216) 228-5998; Dallas (214) 691-8881; Denver (303) 321-3780; Detroit (313) 882-1000; Los Angeles (213) 380-8750; Milwaukee (414) 272-5860; Minneapolis (612) 338-2353; Newark (201) 743-2061; New York (212) 260-2700; Philadelphia (215) 877-7070; Pittsburgh (412) 621-1988; St. Louis (314) 773-0980; San Francisco (415) 863-0800; Seattle (206) 776-3133; Washington, D.C. (202) 526-3333.

This report was prepared in consultation with Dr. and Mrs. James V. McNulty of Los Angeles, Dr. McNulty practices obstetrics and gynecology, and Mrs. McNulty is actress Ann Blyth.

Produced by Infomat and distributed by Right to Life, 708 Silver Spur Road, Rolling Hills Estates, California 90274, (213) 377-0444.

Testimony of Rosa Matthews
Room 131, Legislative Building, Carson City
March 28, 1979

Madam Chairman, Committee members,

I am Rosa Matthews, a Carson City housewife and mother. For the past six years I have been involved with a group of volunteers promoting a respect for life in our community by distributing literature, making slide presentations, serving on LIFELINE, an emergency hotline to help pregnant women and by providing layettes, cribs, bassinettes, etc., to those women having babies, but not having material goods to give them.

Our slides have been shown in Gardnerville, Fallon, Smith Valley and Hawthorne. All but the most closed minds want to know the marvelous manner in which babies are conceived and develop in the womb, and about the hideous horror of abortion, by which babies are killed inside and outside the womb.

We have presented our slides to youngsters, teenagers, men's groups, women's groups, church groups and to a political group.

And not once did anyone deny that what they were watching was indeed a baby. There's something in our gut that tells us that. Why even my little boy who watched me one evening flashing the slides on a wall said, "Mama, that's a baby!" when he saw the curled up fetus. And later while viewing the bloody abortion slide--"What's the matter with that baby?" And then, "Why would they do that to a baby?" Good Question!

And there is no simple answer. But one answer might be that we have made it too easy for women to abort their young. So easy, that each year about 1 million abortions occur. In Nevada in 1976 there were 2,382 abortions compared to 9,906 live births, or to put it another way, for every 4 live births there is one abortion. The figures for Nevada are dwarfed by those from across the country. However, I would ask you ladies and gentlemen to envision even one dead baby on your desk, then 2, then 3, then 4, until you've reached 2,382. Ghastly!

Invariably after a slide presentation on abortion the question will arise---"But what if the pregnancy were a result of rape?" Pregnancy resulting from criminal rape is extremely rare. A ten year study in Minnesota showed no pregnancies from 3500 forcible rape cases. I spoke yesterday to a local police detective who said in his career he's never seen it happen. Medical treatment is available when the rape is reported shortly after it happened. But, still, what if? Rape is an unnatural violent act. Why compound the crime and conflict by another such act--abortion. It might not help the woman and certainly doesn't help the baby. Talk about an innocent victim!

The other question that comes up is--but won't an unwanted baby become a battered child?

Statistics show otherwise. Child abuse rises rapidly in countries adopting permissive abortion laws. In the United States it has nearly tripled. If we can stand by while one million unborn are abused to the point of death, it does not surprise me to learn of other types of child abuse.

To my mind it is a question of respect--a deep and sincere respect for life.

As a state and as a country I think we can do better than to kill off our most innocent future citizens. I ask you to give us the opportunity to let us try.

Thank you!

EXHIBIT D

Knights of Columbus

NEVADA STATE COUNCIL

March 26, 1979

TO: THE HONORABLE MEMBERS OF THE NEVADA STATE LEGISLATURE

RE: ABORTION AND A.J.R. 17

The Knights of Columbus of the State of Nevada strongly support the adoption of A.J.R. 17 requesting the Congress of the United States to propose an amendment to the Constitution of the United States to protect human life by restricting abortion. We accept the following:

1. The necessity of protecting innocent human life is one of the fundamental purposes of civilized law and government.

2. The beginning of pregnancy is the beginning of human life.

3. Abortion kills new life that has already begun.

4. It is not a mother's right or freedom to kill or not to kill an innocent unborn child.

5. Permissive abortion laws represent a total rejection of the fundamental values of man.

The Knights of Columbus reject the notion that a human fetus is nothing more than a biological lump that can be disposed of for a variety of reasons--convenience, family planning, dislike of children, or the embarrassment of illegitimacy. We are unwilling to be directed by a moral policy based on individual convenience. We believe in the sacredness of human life from conception to the grave and respectfully urge that this legislature adopt A.J.R. 17 in recognition of these basic human values.

Respectfully submitted,

ADDISON A. MILLARD, STATE DEPUTY

DANIEL R. WALSH, CHAIRMAN STATE LEGISLATIVE AND DECENCY COMMITTEE

734 28

DEFENSE OF LIFE, LIBERTY, AND PURSUIT OF HAPPINESS

GREETINGS AND RESPECTFUL SALUTATIONS TO THE HONORED MEMBERS AND VISITORS AT THIS JOINT HEARING OF THE ASSEMBLY AND SENATE JUDICIARY COMMITTEES TO LISTEN TO REASONS TO REINFORCE WITH GREATER CLARITY THE CONSTITUTIONAL GUARANTEES PROTECTING OUR "INALIENABLE RIGHTS TO LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS."

NEITHER THE CONSTITUION NOR ANY OTHER MAN MADE LAW GIVES ANYONE THE RIGHT TO LIFE SINCE SUCH A RIGHT EXISTS INDEPENDENTLY OF ANY LAW, BUT OUR CONSTITUION AND OTHER LAWS ARE MEANT TO PROTECT THIS RIGHT, WHICH IS NEITHER POLITICAL NOR PAROCHIAL AS SUCH, BUT ONE OF THE BASIC HUMAN RIGHTS OF ALL MANKIND.

I HAVE HAD THE HONOR AND PRIVILEGE WITH MILLIONS OF OTHER SERVICE-MEN OF TAKING THE OATH TO UPHOLD AND DEFEND THOSE RIGHTS AGAINST UNJUST AGGRESSORS AND OTHER ENEMIES OF OUR COUNTRY BY SERVING OVER 20 YEARS IN THE USAF AND RECEIVING AN HONORABLE RETIREMENT. I AM HERE TO CONTINUE DEFENDING THOSE RIGHTS, REGARDLESS OF THE STAGES OF DEVELOPMENT OF BORN AND UNBORN AMERICANS POSSESSING THOSE RIGHTS!

WE ALL AGREE THAT ANY SERVICEMAN WHO SHIRKED HIS DUTIES AND RESPONSIBILITIES, REGARDLESS OF THE DIFFICULTIES INVOLVED, WAS LABELED AND TREATED AS A SHIRKER, DESERTER, OR EVEN TRAITOR!

WHY, THEN, SHOULD WE TOLERATE LAWS GIVING "LEGAL" DIGNITY TO THOSE WHO SHIRK AND DESERT THE DUTIES AND RESPONSIBILITIES OF CARING FOR AND/NURTURING THE LIFE OF THE CHILD THEY PROCREATED WHILE EXERCISING THEIR FREE CHOICE? THEIR INDIVIDUAL RIGHTS AND FREEDOM OF CHOICE EXISTED PRIOR TO THE EXISTENCE OF ANOTHER'S RIGHT TO LIFE WHICH BEGAN FROM THE MOMENT OF EXISTENCE. ONE PERSON'S RIGHTS END AT THE EDGE OF ANOTHER PERSON'S RIGHTS. DIRECT ABORTION KILLING OF A HELPLESS, INNOCENT, NON-AGGRESSIVE UNBORN CHILD IS THE LOWEST LEVEL OF UNJUST AGGRESSION AND COWARDICE THAT CAN BE PERFORMED OR SUPPORTED BY ANYONE!

THERE ARE NO NOBLE, HONORABLE, UNSELFISH, OR TRULY HUMANITARIAN REASONS TO APPROVE THE DIRECT ABORTION KILLING OF ANOTHER HUMAN BEING. THE ONLY ONES WHO ARE REALLY BENEFITING FROM SUCH ACTIVITIES ARE THE OWNERS AND OPERATORS OF THESE MULTI-MILLION DOLLAR "KILL MILLS" WHO GO ABOUT LIKE THE WOLVES IN SHEEP'S CLOTHING LAPPING UP THE BLOOD OF THE SLAUGHTERED INNOCENTS.

FOR LOVE OF GOD, COUNTRY, AND LIFE, ITSELF, DON'T LET THE GALLENT EFFORTS AND DEATHS OF ALL THOSE WHO SERVED AND FOUGHT FOR THE RIGHT TO LIFE AND OTHER HUMAN RIGHTS, TO HAVE BEEN IN VAIN OR BECOME A MASSIVE SHAM AND MOCKERY OF ALL THE HUMAN VALUES THAT A CIVILIZED PEOPLE HOLD SO DEARLY.

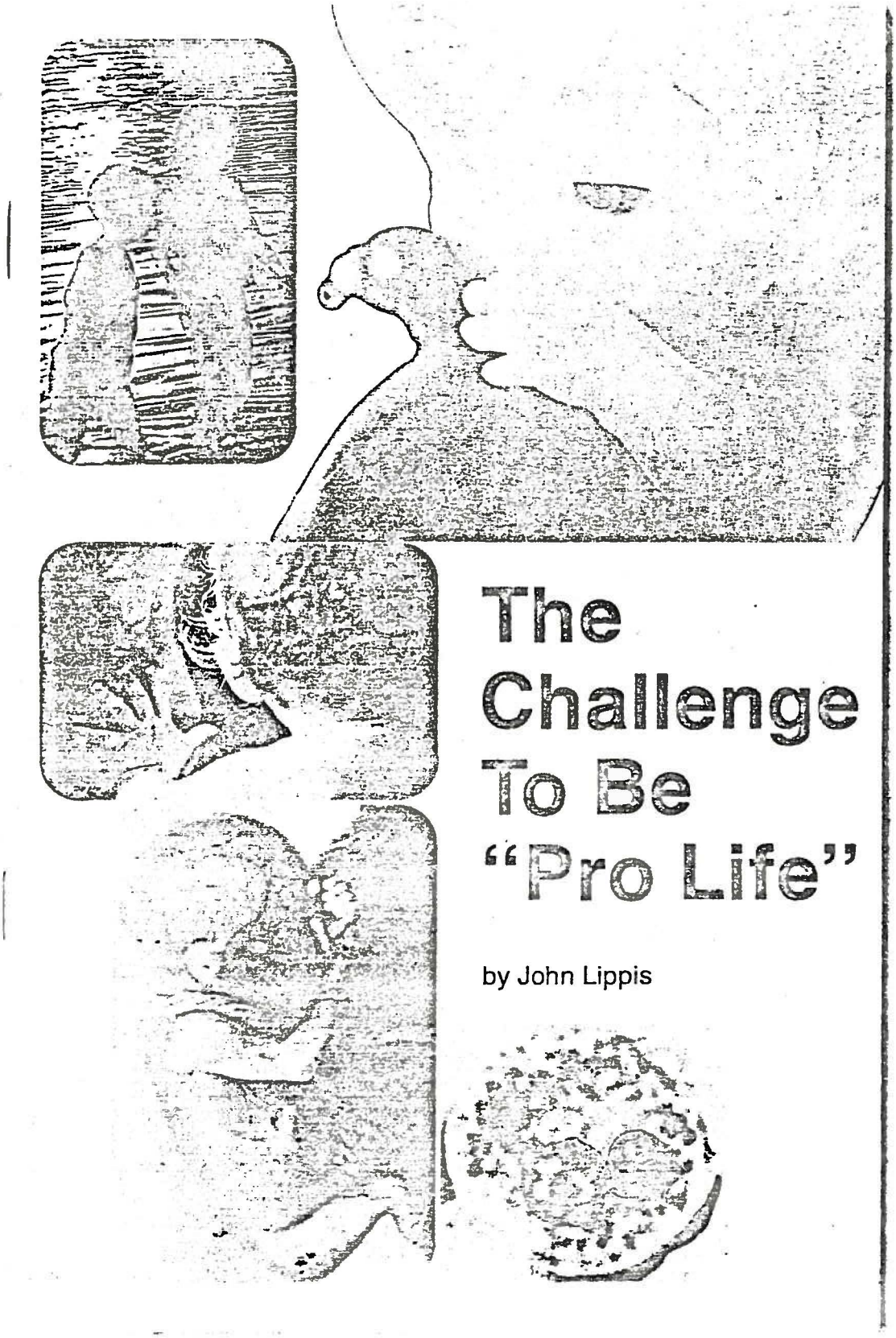
EVEN THE UNITED NATIONS IN ITS "DEDICATION OF THE RIGHTS OF THE CHILD," NOVEMBER 20, 1959, DECLARED "BECAUSE OF HIS PHYSICAL AND INTELLECTUAL IMMATURITY, NEEDS SPECIAL PROTECTION AND SPECIAL CARE, ABOVE ALL AN APPROPRIATE JURIDICAL PROTECTION BOTH <u>BEFORE</u> AND AFTER HIS BIRTH."

Charles F. Anderson

CHARLES F. ANDERSON
TSGT, USAF (RETIRED)
P.O. BOX 785
RENO, NEVADA 89504

AMERICAN CONCEIVED HELPLESS INFANT
LIFE DEFENDERS (C.H.I.L.D.) OF GOD

MARCH 28, 1979



The Challenge To Be "Pro Life"

by John Lippis

Courtesy of Dr. Landrum B. Shettles

If there be sorrow
let it be for things undone
undreamed
unrealized
unattained,
to these add one:
love withheld
restrained.

Mari Evans

My thanks to all who helped; especially Corinne Vause, Elizabeth Moore, Charles MacGregor, Mary Ellen McCaffrey, Shirley Murtaugh, Mrs. Judie Brown, and Dr. J. Willke for his technical assistance.

Special thanks to Phil Di Matteo for first producing this booklet, and especially Anne, whose unselfish support made it possible.

The Challenge To Be Pro Life

This booklet is about abortion. It's an unpleasant subject, but important to understand because its current legalization reflects changing attitudes toward human worth and rights. Today, laws are increasingly redefining human worth as only 'conditional', (as in abortion) depending on its 'wantedness', mental and physical capabilities, or economic feasibility. These laws are not confined to the unborn. The 'conditional value' ethic offers what some believe will be a utopian world, where population, poverty, old age, birth defects and disability will be controlled with expedience and certainty.

The Pro Life philosophy affirms that *all* human life is precious, and equally deserving of protection under the law. As the killing of burdensome human beings becomes more acceptable, Pro Life groups offer life-sustaining solutions to help all involved, and represent the interests of those unable to speak for themselves—the helpless born and unborn.

In writing this booklet, we have no wish to distress those who have had an abortion. They have not received the assistance they deserved. Needing help, they were given expedient answers, but not constructive ones. We hope, that by presenting the facts, abortion may be understood for the great inadequacy that it represents, and these personal tragedies may be prevented in the future.

The Puzzle Abortion

Legal abortion is a perplexity. Proponents claim it's an issue of women's rights, but it's based upon suppression of the pre-born child's right to live, making it an issue of *human* rights. Others portray abortion as a social remedy, though history is full of evidence to the contrary, and little has been done to research the underlying reasons that cause some women to seek it. Legal abortion hasn't solved the problems it was supposed to solve, most have only multiplied. Poorly done and illegal abortions haven't ceased, and may not have even diminished since legalization. Abortion was once considered an act of final despair for the mother and doctor as well, but now it's casually used as a form of birth control. Most women who abort have not been practicing contraception, though methods and information are more available than ever.

Euphemisms are often used to describe abortion and the unborn child, and play an important part in its acceptance and legalization. While these vague terms make it seem less objectionable, they cause many people to use or accept it unknowingly. Mothers often discover too late the scientific truth that 'removal' of the 'products of conception' simply means killing. Abortion is referred to as 'therapeutic', but medically indicated abortions for physical or psychiatric reasons are nearly non-existent. With respect to the child, it certainly *does not* prolong life, or enhance health. Because of advancements in medicine, many major hospitals haven't done an abortion 'to save the life of the mother' in two decades; yet abortion is now the most common elective surgical procedure performed.

The most common reason given for abortion is mental health, (mental duress), yet abortion will not cure any known mental illness and has been proven to *often* be psychologically harmful to the mother. Mental awareness cannot grow from abortion because reality—especially the child's personhood—must be avoided to accept it. Guilt feelings are common after abortion, and also reflect insufficient counseling or uninformed consent. There are physical consequences as well. Unfortunately, most attention has been drawn to the issue of 'rights' and little to the examination of abortion as a poor and harmful treatment that neither heals nor cures, but can frustrate a mother's most basic instincts (protection of her child) and leave scars that last a lifetime.

We invite you to examine abortion carefully; the facts may surprise you. Consider the *'conditional value'* ethic that must be accepted with it. We believe that life is a miracle, naturally good and worth preserving; an opportunity 'everyone' has a right to have protected. Abortion is contrary to all that life is; reflecting our ignorance and fear. We need better . . . so that the children may live, and women may have the support, equality, and respect they deserve . . . so that our society may progress.

About The Cover

The larger picture on the outside cover shows a photograph of a living eight-week-old unborn child (fetus). The inside cover photo is of an 11-week-old child (from a spontaneous miscarriage). From the moment of conception, each was a *complete*, yet still developing human person, lacking only nutrition and time for full development. These children, *usually between these stages of maturity (8-11 weeks)*, lose their life violently and painfully by abortion.

A delightful description of the unborn child is written by Dr. A.W. Liley, world-renowned research professor of Fetal Physiology at the National Women's Hospital in Auckland, New Zealand, and known as the "Father of Fetology".

". . . Biologically, at no stage can we subscribe to the view that the foetus (English spelling) is a mere appendage of the mother. Genetically, mother and baby are separate individuals from conception. . . .

On reaching the uterus, this young individual implants in the spongy lining and with a display of physiological power, suppresses his mother's menstrual period. This is his home for the next 270 days and to make it habitable the embryo develops a placenta and a protective capsule of fluid for himself.

By 25 days the developing heart starts beating, the first strokes of a pump that will make 3,000 million beats in a lifetime. By 30 days and just two weeks past mother's first missed period the baby, a quarter inch long, has a brain of unmistakable human proportions, eyes, ears, mouth, kidneys, liver and umbilical cord and a heart pumping blood he has made himself.

By 45 days, [when brainwaves first can be measured on an EEG] about the time of the mother's second missed period, the baby's skeleton is complete, in cartilage not bone, the buds of the milk teeth appear and he makes the first

movements of his body and new grown limbs, although it will be another 12 weeks before mother notices movements. By 63 days he will grasp an object placed in his palm and can make a fist.

We know that he moves with a delightful easy grace in his buoyant world, that foetal comfort determines foetal position. He is responsive to pain and touch and cold and sound and light. He drinks his amniotic fluid, more if it is artificially sweetened, less if it is given an unpleasant taste. He gets hiccups and sucks his thumb. He wakes and sleeps. He gets bored with repetitive signals but can be taught to be alerted by a first signal for a second different one. And finally he determines his birthday, for unquestionably the onset of labour is a unilateral decision of the foetus. Of the 45 generations of cell division needed to get from the fertilized ovum to the adult, 41 divisions have occurred by the time we were born and the final tedious four occupy childhood and adolescence.

This then is the foetus we know and indeed we each were. This is the foetus we look after in modern obstetrics, the same baby we are caring for before and after birth; who before birth can be ill and need diagnosis and treatment just like any other patient.

This is also the foetus whose existence and identity must be so callously ignored or energetically denied by advocates of abortion."[1]

From this and all other scientific information, we can easily understand that there is no essential difference between the fertilized ovum *we all once were*, the embryo, fetus, infant, adolescent and adult. They are only stages of development for the same person. The fetus is not merely a 'potential' human being, who is magically 'switched on' to personhood at birth; rather, he is a unique individual, alive and active, aware of his environment, and developing faster than he will ever again. Even the child's personality is well under way, and will be carried into infancy and mature adulthood.

In the context of human rights guaranteed by our Constitution, it appears irrational that the human fetus, most helpless of all persons, is denied the one freedom vital to his survival—the Right to Life.

1. A.W. Liley, *"A Case Against Abortion"*, Whitcombe & Tombs, Ltd., 1971, quoted in *Handbook on Abortion*, Hayes Pub. Co., Willke, pg. 26, 1975.

History Repeats Itself

On January 22, 1973, the U.S. Supreme Court made a decision with serious implications. By a 7 to 2 ruling, it declared unconstitutional all state laws protecting preborn children from abortion. Previously, most states had laws limiting abortion to rare and extreme cases, usually when the mother's life was in danger.

Regarding the unborn child's *individual human personhood* irrelevant, the Court stated *"legal personhood does not exist prenatally"*, and therefore ruled that the child is not entitled to legal protection of his or her life.

Before the Court's decision, (as early as 1795) state laws fully recognized the unborn child's personhood. Until 1973, the child's life, and even his ability to sue, inherit, and qualify for Social Security benefits were closely protected by law, regardless of the child's gestational age.

As to the state's ability to regulate abortion, the Court ruled as follows:

—No restrictions on abortion in the first three months. The husband's wishes may not interfere—the state may not even regulate the type or quality of abortion services or facilities offered.

—No restrictions from three months until viability except those needed to make the procedure safe for the mother. (States may require that the abortion be done in a hospital, etc.)

—Abortion may be *"proscribed"* after viability unless one doctor says it is necessary for the *"health"* of the mother. The Court defined *"health"* as anything related to the well-being of the mother, including 'mental stress', age, family problems, economic considerations, etc. This definition allows abortion on request at any time before birth.

Ironically, the Court denied the unborn child's rights guaranteed by the 14th Amendment to the Constitution—the same Amendment that had been enacted to overturn an earlier Supreme Court decision (Dred Scott, 1857) which excluded Black Americans from *'legal personage'* and upheld slavery as legal. The 14th Amendment reads as follows:

"Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction that equal protection of the laws."

In 1857, the Court's decision was based on skin color. Today it is literally on the basis of living environment, for as long as the child lives in the womb, he or she can be killed by abortion.

Viability

Viability means 'capable of living'. The unborn child, regardless of age, is 'capable of living' if allowed to develop naturally in the womb. Legal viability,

however, means capable of living *outside the womb* (medically assisted) and was a major consideration in the Court's decision to legalize abortion.

This decision holds human life worthy of protection only if capable of existing by itself—but the founding principles of this nation hold all persons "created equal" and endowed with the "inalienable" right to life, regardless of abilities or other conditions. These principles are the key to human equality and freedom, and protecting the helpless is essential to preserving them. By ignoring these sound rules through the 'viability' concept, the Court has precariously redefined the fundamental basis for all human rights.

Ironically again, however, though viability was a major factor in legalizing abortion, legally viable babies (approx. 20 weeks after conception) are still not protected. Using broad interpretations of the mother's "health", such as mental stress, family or economic problems, the Court allows abortion of any child until the day it's born; and abortion in the 6-7½ month of pregnancy is not uncommon.

Nature, Violence, And Methods Of Abortion

Most arguments for legal abortion presuppose it to be simple, gentle, and medically sound—beneficial to the mother, humane to the child. *This is not true.* During pregnancy, a mother's body works instinctively to protect and nourish her baby. Abortion, unlike medical procedures that work *with* the body to heal, unnaturally interrupts these bodily functions, and may have long-term and harmful mental and physical effects for the mother. It is a violent death for the child.

Natural ways are known to benefit the mind and body, violent ones to harm. Examine the methods of abortion and ask yourself—which is being offered?

SUCTION ASPIRATION

- Used in most (80%) abortions up until the 12th week of pregnancy. The child is completely formed, and quite sensitive to pain by 8 weeks.
- Anesthesia is given the mother (not the child).
- The mouth of the womb (cervix) is dilated. Sometimes it is damaged because during pregnancy the cervix is closed tight to protect the baby.
- A suction curette (hollow tube with a knife-like edged tip) is inserted into the womb.
- A strong suction (28 times stronger than that of a vacuum cleaner) tears the baby to pieces, drawing them into a container. Great care must be used to prevent the womb from being perforated.
- Sometimes, in a very early suction abortion, a smaller tube can be inserted and the cervix does not have to be dilated so severely; this is called a *'menstrual extraction'*. Often, however, the tube does not remove all the pieces and infection will result, requiring the cervix to be fully dilated and a 'D&C' performed.

DILATION AND CURETTAGE (D&C)

- Similar to the suction method except for insertion of a loop-shaped knife (curette) which cuts the baby apart, and scrapes the pieces out through the cervix.

COMBINATION SUCTION AND D&C

- If the suction method doesn't remove all fetal parts, infection will result, requiring a 'D&C' scraping to clean the womb.
- Recently, later suction abortions are being done. The placenta is often first destroyed, or the cord severed, causing the baby to bleed to death. A curette is then used to dismember the child, and forceps to remove the sections. This method is becoming increasingly popular, accounting for ¾ths of all 13-15 week abortions; ¼ of those 16-20 weeks; and 10% of all abortions past 21 weeks. (CDC Abortion Surveillance Report, April, 1977)

SALINE INJECTION (SALT POISONING)

- Though outlawed in Japan and other countries due to its inherent risk to the mother, this procedure is widely used in the U.S. after the baby is 16 weeks old.
- A concentrated salt solution is injected into the amniotic sac.
- The baby breathes and swallows the solution—and dies 1 to 2 hours later, from salt poisoning, dehydration, hemorrhages of the brain and other organs, and convulsions. The baby's skin is often stripped off by the salt solution.
- The mother goes into labor and a dead or dying baby is delivered 24 to 48 hours later.

PROSTAGLANDIN ABORTION

- *Prostaglandins* are hormones needed for birth. Injecting them into the sac induces premature birth of a child usually too young to survive.
- Salt is often injected first, killing the baby before birth, to make the procedure less distressful for the mother and staff.

HYSTEROTOMY

- Similar to the Caesarean Section, though its purpose is to kill rather than save the child.
- Hysterotomy is used if the saline or prostaglandin method has failed, or when a tubal ligation is to be done at the same time. Almost all these babies are born alive.
- The abdomen and womb are opened surgically; the baby lifted out; the cord clamped. The child usually struggles for a while, then dies.
- Some babies, if not encouraged to die, may survive this operation and are subsequently adopted.

These are the realities of the *'termination of pregnancy'*, though most people are unaware of [illegible]. True *'freedom of choice'* implies being knowledgeable of the

choices to be had, but at this time, there exist nearly no state laws of informed consent which would ensure that women seeking abortion know how the procedure is done, the possible side-effects, or a description of their child and its stage of development.

Physical Complications From Abortion

Another misconception of abortion is its alleged safety, often described as 'safer than childbirth'. Mortality from childbirth has steadily declined and in the western world is now about 15 deaths per 100,000 deliveries. Childbirth in any one year is now safer than taking the contraceptive pill which has upwards of 20 deaths per 100,000 women per year.[1]

Published reports of legal abortion deaths confusingly range from 1.2 to 75 deaths per 100,000 abortions.[2] One reason for this inconsistency is that the *majority* of abortion-caused deaths do not occur during the procedure; but only afterwards. Examples include uterine infection, peritonitis, hemorrhage, and risks from complications requiring surgery, such as a perforated uterus or later tubal pregnancy. Unlike times past when hospitals were on the look-out to report evidence of illegal abortions, deaths from these complications are now seldom recorded as 'abortion related'.

Though the available reports indicate an average mortality rate of 30/100,000[3,4] for all abortions and 17/100,000 for the 1st trimester abortions only (supposedly the safest type); realistically, with today's medicine early abortion and childbirth are seldom *lethal* to the mother. Even illegal abortions resulted in relatively few maternal deaths, (see "Facts for Thought") because they did not involve the later term, more dangerous procedures allowed today; neither was abortion practiced on the scale that it has been since legalization.

More relevant to the question of safety are the frequent complications that result from abortion because of its unnatural technique and inherent conflict with mother's body; especially relating to later pregnancies. U.S. statistics are not accurate because no state has effective reporting requirements and even the best medical centers completely lose to any follow-up investigation nearly 50% of the abortions they do.[2] But controlled studies on abortion's side-effects have been done throughout the world, and many countries have restricted abortion because of them.

Probably most comprehensive is the *Wynn Report,*[5] a compilation of 75 international studies by authors not morally opposed to abortion. The findings show the *short- and long-term* complications to be frequent and serious, especially relating to young women, first pregnancies, and women who wish to bear children later. The researchers conclude that abortion should be *avoided* by these women because of the risks.

Most comprehensive studies show that 10% of all suction and 'D&C' abortions will result in immediate complications and 25-30% in long-term side-effects usually pertaining to later pregnancies.[2,3,4,5] Immediate complications from early abortion include:

- *Hemorrhage, bad enough to need transfusions ..... 2 to 5% of all women.*

- *Perforation of the uterus, this causes peritonitis ..... ½ to 1%.*
- *Infection, from mild to fatal ..... 25%.*

Late complications relate to damage done to the cervix (weakening it); to the endometrium (damage to the lining of the womb); and to partial or total blockage of the fallopian tubes. Among these aftermath are:

- *Hepatitis from blood transfusions, blood clots and emboli, anaesthetic deaths.*
- *Prematurity in subsequent pregnancy triples after one abortion and is five times greater after three abortions. Premature birth is the primary cause of infant mortality (twice as many babies die after birth) and a major cause of mental retardation in children.*
- *First trimester miscarriages double.*
- *Second trimester miscarriages increase ten-fold (1000%).*
- *Sterility has been reported at 25% (Czechoslovakia), 15% (Finland), 10% (Japan), 7% (Poland), but is reported as rare by Planned Parenthood.*
- *Rh factor sensitization.*
- *There are a number of problems in subsequent labor and delivery including adherent placenta, and uterine rupture.*
- *Psychological Harm–psychiatric studies[3,4] have documented that 11 to 23% of aborted women experience "serious self-reproach and guilt", often accompanied by various psychosomatic symptoms. Approximately 1% had "gross psychiatric breakdowns" which have sometimes led to post-abortion suicides or attempts. Women with previous emotional problems or mental illness had the highest incidence of post-abortion related mental disorders.*

These represent very high risk rates, many times normal, and are side-effects from only early abortions; later procedures are more dangerous. In an official statement the American College of Obstetrics and Gynecology has said:

> *"It is emphasized that the inherent risk of an abortion is not fully appreciated, both by many in the profession, and certainly not by the public."*

We urge any woman considering abortion, all pregnancy counselors, and parents to weigh these conclusions soberly. Copies of the Wynn Report are available.[5]

1. British Journal Lancet, *Mortality Among Oral-Contraceptive Users,* 8 Oct. 1977.
2. HANDBOOK ON ABORTION, Hayes Publishing, Willke, 1975, p. 83.
3. *Induced Abortion, A Documented Report,* Available through Minnesota Citizens for Life, Box 744, Rochester, Minn.
4. *Abortion and Social Justice,* Sheed & Ward, Inc. Hilgers & Horan, 1972.
5. *Some Consequences of Induced Abortion to Children Born Subsequently,* M&A Wynn, reprints from Marriage and Family Newsletter, Vol. 4, No. 234, 1973 Col[illegible]ille, Minnesota 56321.

Facts For Thought

• ILLEGAL ABORTION

80-90% of all illegal abortions were done by doctors; many the same who now do them legally.

Criminal and 'back-alley' abortions aren't appreciably reduced by legalizing abortion on demand. U.S. figures aren't yet available, but studies in 11 major countries[1] (some with a 20 year experience) show the criminal abortion rate unchanged in eight, and actually *increased* in three (Germany, Great Britain, and Yugoslavia) after legalization.

The reason is human nature. When the law sanctions abortion, it is often regarded too casually: Many no longer question its safety or moral implications, and a 'back-street' abortion offers anonymity, lower cost, and a quick arrangement without records or red tape.

The Supreme Court forbade state regulation of early abortion facilities. Free to operate without state guidelines, many clinics have opened to compete for the profitable abortion business. They have made early abortion readily available, but it's a well known fact among abortion referral agencies that some offer services no better than the 'back-alley' type.

The solution to illegal abortion will not be found by legalizing it; but only by recognizing the social inadequacies that cause women to seek abortion, and correcting them. The key is public education about (1) the realities of unborn children and what abortion actually is, so this procedure will no longer be mistaken for a 'victimless' act; (2) that methods of self induced abortion rarely end a pregnancy but usually cause illness and sometimes death; (3) that constructive alternatives and help are available. The problems, lack of support and prejudices that can make a pregnancy seem intolerable at times are real but correctable; and solving them will provide a humane answer to abortion and a lasting contribution to the social reform women deserve.

• RAPE AND PREGNANCY

Pregnancy resulting from criminal rape is extremely rare. (Not to be confused with statutory rape (minors)—sometimes statistics often mix the two.) For many scientific reasons women rarely conceive from rape. A ten year study in Minnesota showed no pregnancies from 3,500 forcible rape cases.[2] A Czechoslovakian study showed out of 86,000 consecutive abortions, only 22 were done for rape.

Though state laws allowed abortion for rape and incest long before it was liberalized, it's questionable to assume the trauma of rape and subsequent pregnancy is best remedied by abortion. Both are unnatural, violent acts. The mental conflict from preventing the child's survival could only add to the damage already done. Psychiatrists tell us, that in these cases, it is impossible to predict when an abortion will not be more detrimental to the health of the mother than any duress from carrying the child to term.

1. *Induced Abortion, A Documented Report,* chap. 7, 2nd Edition, Jan. 1973, by Dr. Thomas W. Hilgers, MD.
2. *Zero Pregnancies in 3,500 Rapes,* The Educator, Vol. 2, No. 4, Sept. 1970.

Pregnancies that might occur from rape can usually be prevented if the victim will seek treatment at a hospital immediately. If pregnancy does result, *a child then exists*; no less innocent or in need of our support than its mother, but one who loses his or her life if that support is not given. Though compelling emotions are aroused when thinking of rape and pregnancy, abortion will never be anything but a destructive approach to a human problem; and justifying easy abortion laws with the 'rape' argument reflects a total misunderstanding of both issues.

• ILLEGAL ABORTION DEATHS

The public was led to believe thousands of women died annually from illegal abortions, hence the necessity for its legalization. The facts are: In 1967, 160 women died in the U.S. from all abortions (legal, illegal, spontaneous) and 140 in 1972. These are two average years before legalization nationwide. Because of the increased numbers of abortions (especially later term) since legalization and public acceptance, the New York State Department of Health reported (1972) *more women dying from legal abortions than did from illegal procedures.* (See "Complications" footnote 3.)

• RETARDATION AND BIRTH DEFECTS

Abortion causes *prematurity* in subsequent births. Prematurity is a major cause of mental retardation and birth defects in children. Statistics point out: *More children are born retarded or handicapped because of their mother's previous abortion than those destroyed by it for reasons of potential retardation or handicaps.* (See Wynn Report, "Complications" and "Handicaps".) Dr. J.C. Willke states that it is a solidly documented fact that the chance for miscarriage is *doubled,* and for having a premature baby is *tripled* after having one so called 'safe, legal abortion'.[1]

• UNWANTED PREGNANCY — UNWANTED CHILD

Scientific studies have consistently proven that unwanted pregnancy does not cause, and is not related to the so called 'unwanted child'. It is fashionable to believe that the worst possible fate for a mother (or child) is an unplanned or unwanted pregnancy, but a 1976 study done in New York by Dr. Nicholas Zill (Foundation for Child Development) interviewed 2,000 children and their parents and found that even today: 56% were planned pregnancies; 44% were unplanned or unwanted. *Yet 9 out of 10 parents said they would do it again if given the chance–the child added something to their lives . . .*

• ADOPTION

In one recent year, there were 800,000 couples in the U.S. cleared and waiting to adopt but only 100,000 babies available to be placed. Because of abortion, the shortage of babies to adopt is so acute they are now being bought and sold in America on a 'black market'.

• TEENAGE ABORTION AND FEDERAL FUNDING

Nationally, over one million unborn children are annually destroyed through abortion. The federal government pays for approx. 300,000 of these. Though listed as *'therapeutic'*, 98% of them are *not medically indicated* for the mental or physical health of the mother. 210,000 of these Medicaid abortions were done to teenagers in

1. Dr. and Mrs. J. Willke, *Abortion, How It Is,* 1975, Hayes Pub. Co., 6304 Hamilton Ave. Cincinnati, Ohio, 45224.

1977, after the Supreme Court decision allowing minors abortion without their parents' consent. By funding this operation in this manner, teens are often counseled to abort without giving the parents any knowledgeable opportunity to advise or guide their children.

• ABORTION FOR THE POOR

Organizations and leaders that represent the poor such as the Confederation De La Raza, Nation of Islam (Muslem), Southern Leadership Conference, Caesar Chavez, Rev. Jesse Jackson, and American Indian leader, Dr. Constance Redbird Uri have strongly condemned abortion on the grounds that while the poor are sometimes denied decent housing, education, food and income, they are generally encouraged to destroy their unborn children.

There are many examples of this growing belief that poverty related problems are most easily solved by 'reducing the numbers of the poor'. Documented cases include *popularizing abortion and pressuring welfare recipients to use it; coerced sterilizations and those even done without the patient's knowledge.* These are spin-offs of the *'conditional value'* ethic which denies that each human life is more valuable than the social, economic conditions surrounding it. Leaders of the poor identify this ethic as the fundamental obstacle thwarting their attempts to attain social progress for the disadvantaged.

Child Abuse

Anyone discussing abortion will usually hear that unwanted babies should be aborted because they are destined to become *battered children,* and abortion will reduce their numbers because every child born will be 'wanted'. To accept this requires believing that abortion *itself* isn't a form of child abuse, but more important—the statements are false.

Statistics show that child abuse rises dramatically in countries adopting permissive abortion laws. In the short U.S. experience, it has nearly *tripled*; in Great Britain—*increased tenfold.* Japan has freely used abortion as birth control for 20 years, yet infanticide has become so frequent it's now a major national concern.

The reason for this curious relationship between the legal sanction of abortion and increased child abuse is not clearly understood, but it does indicate changing attitudes toward children. More can be learned by examining who battered children are.

Contrary to popular belief, abused children come from every background and socio-economic class. Most are wanted children, planned and joyfully anticipated. A large ongoing study, undertaken at the *University of Southern California* revealed this about battered children:[1]

- *91% have been planned pregnancies*
- *90% have been legitimate.*
- *24% were named after their parents as compared to only 4% of a control group.*

1. Edward Lenowski, Professor of Pediatrics, *674 Cases of Battered Children,* University of Southern California, 1973.

This unusual insight into child abuse is substantiated by many other studies. James Walsh of the Illinois Department of Child and Family Services has said:

> *[Child battering parents commonly] "Grew up in a hostile environment, and were abused themselves . . . When the children fail to satisfy their emotional needs [expectations of perfection] the parents react with the same violence they experienced as children."*

Clearly, unwanted pregnancies or unwanted children are not the reason for child abuse. Neither are they *related* to each other (see Facts for Thought). In searching for the answers to child abuse, the thinking behind 'wanted' (in contrast to 'welcome') should be examined closely, and the more obvious question asked—wanted for what reasons?

The answer to this question is leading to effective counseling and outreach programs to help abusing parents and families cope with their problems.

'Wanted-Unwanted'

'Wanted-Unwanted' . . . these terms characterize the true meaning of abortion on demand. Being the only considerations needed to abort one child, or keep another, they reflect the double standards found in most prejudice: A wanted pregnancy is usually described as *'mother carrying her baby'*, but unwanted, pregnancy is likened to a venereal disease; and the child, the *'product of conception,'* or *'uterine contents'*, can be *'terminated'* or *'removed'* by abortion.

This thinking has made it socially acceptable to abort babies with treatable imperfections or even those with an undesired sex, after scrutinizing them through *aminocentesis.*[1] These cases seem extreme, but perhaps no more unfair or discriminatory than abortion of a child who is simply 'unwanted'.

Some abortion advocates still claim that unwanted pregnancies produce delinquent or retarded children, though this theory has been disproven for many years by an entire literature of scientific evidence on the subject.[2] Unfortunately, there has been an influential promotion of the idea that unwanted or unplanned pregnancies are *'second class'* pregnancies, and parents are being led to believe that unless their children are planned, they're destined for unhappiness.

There are only two studies in the entire world that indicate any unfavorable effects (some studies have found favorable ones) on children born from unwanted pregnancies. These were of women who sought and were denied abortion. The differences from planned or 'wanted' pregnancies were only slight, the problems mild; but even these stemmed more from the unstable characteristics of the parents than from the children.

Today, many cite human problems as indications for legal abortion, (such as illegal abortion) instead of implementation of the scientific research available to treat the causes of these problems. A good example is teenage pregnancy. Because of the tendency for teenagers to give birth prematurely, their children

1. A procedure whereby the fluid surrounding the baby can be analyzed to detect the presence of some diseases, genetic defects, and the sex of the child.
2. Excerpts from nine such studies/reports are available from your authors.

may run a higher risk of birth defects and retardation *if the mother doesn't receive the best of prenatal care.* Hospitals such as Johns Hopkins in Baltimore have shown that with this care, teenage pregnancy risks (to the mother and the child) are no different than those of women in their prime childbearing years.

Pro-abortion educational materials, however, rarely if ever emphasize the need for first class prenatal care to deal with teenage pregnancy; their emphasis is usually on its hopelessness and risks, focusing on abortion as the one sure cure, even though the risks of abortion and the difficulties it causes in subsequent pregnancies are highest among teenagers and younger women.

Child abuse is another example. Even today, advocates of abortion still justify their cause by claiming that every aborted child is one less battered child, inadvertently implying to parents who have misgivings about their pregnancy that they are potential *'child beaters'*, and should therefore abort. This fallacy has been an impediment to the solution of child abuse. If it hadn't been for the eventual application of the scientific evidence that proved this theory untrue, child abuse and its causes might never have been understood and effective therapy introduced. (See "Child Abuse") It would be considered just another malady of 'unwanted children' to be corrected by elimination of the child.

These examples illustrate the predicament of the unwanted child, victimized not by his own shortcomings, but only through those of a society attempting to solve its social problems by readily allowing abortion for any reason; pretending that *prenatal death* is a desirable alternative to whatever misfortune may or may not befall the child in later life. The 'unwanted' child is even misnamed: for every woman contemplating abortion, there is a couple 'wanting' a child to adopt and love. As many adoption agencies have said: *"There are no unwanted children . . . only misplaced ones."*

The New Ethic

Many feel legal abortion is necessary in today's society; and until the reasons for it are eliminated, will remain so. What's not understood is that abortion *creates its own need* by perpetuating a disregard for the unborn child. Because the child's rights aren't socially recognized, or legally represented, his identity becomes more obscure, and abortion . . . commonplace.

This one-sidedness has fostered a cheapening of unborn human life to such a degree that today, abortion for any reason is considered socially acceptable; and the child who is not perfect or wanted enough . . . a discard. A good example of the change in thinking or 'new ethic' resulting from this paradox is International Planned Parenthood. Founded by Margaret Sanger, *who strongly opposed abortion,* it was intended as an educative organization to promote the use of contraception by married couples. In 1964 Planned Parenthood stated:

> *"An abortion kills the life of a baby after it has begun. It is dangerous to your life and health. It may make you sterile so that when you want a child you cannot have it. Birth control merely postpones the beginning of life."*[1]

1. Planned Parenthood World Population, *Plan Your Children,* New York, 1964.

Today, Planned Parenthood is a world leader is procuring abortion, and sponsored the case which resulted in the recent Supreme Court decision permitting a minor to abort without her parents' consent. In its literature on abortion, *"... kills the life of a baby ..."* is no longer mentioned, though this statement is a straightforward and educative description of abortion.

Probably the most revealing article written about the 'new ethic' was an editorial in the *California Medical Journal*, Sept. 1970. It recognized, endorsed, and projected the effects of the ethic with a sobering intimacy:

"The reverence of each and every human life has been the keystone of western medicine, and is the ethic which has caused physicians to try to preserve, protect, repair, prolong, and enhance every human life.

Since the old ethic has not been fully displaced, it has been necessary to separate the idea of abortion from the idea of killing which continues to be socially abhorrent. The result has been the curious avoidance of the scientific fact, which everyone knows, that human life begins at conception, and is continuous, whether intra- or extra-uterine, until death.

The very considerable semantic gymnastics [word twisting] which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices.

It is suggested that this schizophrenic sort of subterfuge is necessary because, while a new ethic is being accepted, the old one has not yet been fully rejected."[1]

The author projected that birth control and birth selection inevitably would be extended to death selection and control (euthanasia), whether *"by the individual or by society"*, and recommended to the medical profession:

"... examine this new ethic, recognize it, and prepare to apply it" for "what is almost certain to be a biologically oriented society."

One final note: Since then, many medical schools no longer require recitation of the Hippocratic Oath, the code of ethics that has guided western medicine for 2,000 years, and which specifically *forbids* the practice of abortion and euthanasia.

The Mentally And Physically Handicapped

Many well-intentioned people would condone destroying the mentally or physically handicapped, 'for their own good', through abortion. While it's natural to hope that children won't be brought into the world with handicaps or imperfections; when considering abortion for this purpose, the truth must be examined. The unborn candidate for abortion has *already* been 'brought into the world'—*inside his mother's body*—and is essentially no different than the born child.

Most abortions for these purposes are performed after *amniocentesis*, a procedure used to detect fetal abnormalities. The child is usually 15 weeks or older,

1. Copies available from your authors; address on last page.

and is active, aware, and fully formed. (See photo on back cover or description by A.W. Liley on pg. 2.) *Most of these children have treatable maladies—many are correctable.* One example is the mongoloid child, whose condition is often used to justify abortion. In reality mongoloids are the most affectionate of children, with IQ's ranging up to 70—the mental capacity of a 12 year old. While abortion is said to 'prevent' these children, honesty requires that we view it for what it is... *killing them; because they are not perfect enough.*

Great progress has been made in treating diseases and deformities that were 'incurable' only a few years ago. In many ways, abortion is undermining the need for further research and effort by creating the attitude that these children are 'misfits' who never should have lived. This attitude will lead to destroying the *born* handicapped, children and others, for the same reason. Unlike abortion, detection and destruction *after birth* can be performed with 100% accuracy and without risk to the mother.

Already, some doctors and research teams have proposed that newborns not be considered 'persons' until one month or older, for the purpose of more *thorough evaluation.* Dr. Joseph Fletcher, leader of the Euthanasia movement in America, has proposed that the defective child be destroyed *even if against the parents' wishes.*

Dr. Everette Koop, nationally known pediatric surgeon and speaker has said: *"Abortion has so cheapened life that infanticide is already being practiced in this country; and tragically, by those who have had the role as advocate for the lives of children—pediatricians and pediatric surgeons."* Attempts in some states to enact legislation permitting active euthanasia (direct killing) for the mentally retarded also bear evidence of this movement toward the destruction of what some feel are 'meaningless' lives.

There are other consequences as well. Comprehensive studies warn:[1,2] *Because of later premature births caused by abortion, (see "Complications") more handicapped children will be born because of abortion than those destroyed through it.*

Insight into the human experience reveals that the handicapped have as much right to live and seek their fullest potential as the non-handicapped. They are no more out of place than the intellectuals and athletes who are also a part of a diversified human spectrum. As to the handicapped person's potential to adjust to life, the following statement from the proceedings of the *American Pathologic Association* meeting (1971) sums it up well:

"Though it may be common and fashionable to believe that the malformed enjoys life less than normal, this appears to lack both empirical [practical experience] and theoretical support." (P. Cameron, Van Hoeck)

Also from the handicapped family's standpoint: No organization of parents of mentally retarded children has ever endorsed abortion. As author Ken Kesey *("One Flew Over The Cuckoo's Nest")* has observed while discussing his opposition to abortion and euthanasia: *"No one can judge the value of another's trip."*

1. Wynn Report—see "Complications" and "Facts for Thought".
2. The Challenge of Prematurity, Cavanaugh, M.D., Medical World News, Feb. 1971, *"Every Woman Has the Right to Know the Dangers of Le[illegible] Abortion."*

Abortion And A Sign Of The Times

One of the most important considerations for examining legal abortion is its effect on youth. Since legalization, there has been an unprecedented increase in sexual activity among teenagers. With this has come rising numbers of pregnancies, abortions, and sexual violence. These indicate much confusion, and an irresponsible, sometimes destructive attitude toward sexuality.

In spite of this, organizations like Planned Parenthood, who describe the problem as 'epidemic' in proportions, continue to recommend more easily available abortions as one solution. They are not facing the moral confusion abortion is creating through its double standards toward unborn children (see 'Wanted-Unwanted') and the irresponsible attitude toward sex it perpetuates.

Before legalization, sexual activity had to be approached seriously. There was an obligation by the individuals concerned and the community, to the child that might result. Now, with abortion on demand, that responsibility is *'optional'*, encouraging a careless attitude toward sex in many ... especially *men*: The unborn child, being essentially the *'property'* and responsibility of the mother alone, has given men less reason than ever before to act responsibly with their sexuality. This chauvinistic attitude of abandoning women *'to their own devices'* where sexual responsibility is concerned has done nothing to further the cause of equality, or the respect for one another that men and women deserve.

There are other destructive aspects as well. Abortion counselors and psychologists report a disturbing number of women using abortion as a form of *self-hatred.* Most of these are among the 'repeaters' (women having more than one abortion). Constituting up to 25% of all aborters, many of them are said to subconsciously desire pregnancy, and then use abortion in a game of self-punishment. In many cases this cycle is only broken when the mother rewards herself by having the baby; thus replacing her self-hatred with love.

Abortion is also linked to the recent increases in female and teenage suicide. Prior to legalization, a 15 year study in Minnesota revealed that suicide rates for women were only 25% those of men. *(Contrary to fashionable beliefs, suicide rates among pregnant women were found to be extremely rare—only 17% those of non-pregnant women.)*[1] Now, however, since the legalization of abortion, the suicide rates of women have *surpassed* those of men. Many psychiatrists, including Dr. Thomas Hilgers, nationally known author and speaker, point to post-abortion psychosis and guilt as prominent among the reasons for this. Dr. Ben Sheppard, physician and Juvenile Court Judge, has said:

> *"Young adolescents who have had abortions may verbalize relief, but their internal feeling is psychic trauma and loss of personal morality which will persist throughout life."*

1. *Details, documentation.* "Willke Handbook on Abortion", 5th ed. pg. 47, 1975.

Perhaps the best indicator of how abortion is affecting our young—and testimonial for using only creative solutions when dealing with them—was written unknowingly in a *Good Housekeeping* article (April 5, 1977) exploring *"Teenage Suicide"*. Though not referring to abortion, one statement seems particularly relevant to the teachings of the abortionist philosophy:

> *"... Beset by gloom and despondency, they [today's teenagers] become convinced that 'death' is the only solution to the chronic problem of living."*

There is no question that an unwanted pregnancy can cause intense mental strain, (also social and economic problems) but the psychological damage from abortion can be far worse. Few doctors would deny that giving birth is the most naturally healthy, risk free way of *'terminating'* a pregnancy. Modern psychiatric therapy along with support from an understanding society (in short, genuine pregnancy counseling) offers a constructive, scientifically consistent treatment all can live with ... mother, child, and society.

Sex Education ... Or Training

As an organization, Pro Life groups do not address the question of sex-education. This issue is best left to parents themselves. But in view of other organizations' efforts to bring about mandatory sex-education in school systems, claiming it will reduce the *'epidemic'* number of abortions among youth;[1] some facts and observations are in order.

Our human sexuality is perhaps the most fundamental identity we possess. It's the energy of our personality for giving and receiving, and the basis for the lives we lead, the roles we pursue. It combines our compelling need for love with the naturalness of blossoming new life.

Though each person may view his or her own differently, a realistic understanding of our sexuality is needed for healthy growth and maturity. Usually, this understanding is best taught in a natural family environment, where a mature insight, and responsible attitude toward sexuality can be fostered. Sex education supplemented in schools should follow these guidelines carefully.

Presently, however, more emphasis is being placed upon *'sexual training'*, consisting of the *hows and how-nots* of genital stimulation, birth control, venereal disease, and abortion. Though referred to as sex-education, *'training'* does not provide the understanding needed for sexual growth, and tends to perpetuate the misconception that the sex act is the focal point of human sexuality and the key to countless other endeavors for happiness.

'Training' is purported to be given within a non-judgmental, morally neutral framework, but the mere fact that these methods are taught without additional supportive knowledge already *implies* a pre-considered, defacto legitimacy; endorsed by the community and the instructor who is willing to teach them.

In these and other subtle ways, Sex Training can encourage and even *'program'* sexual activity, without psychologically preparing the student for it. Premature sexual involvement of this type can cause what psychologists call *'fixation'*, (arrested psycho-sexual growth) and may ultimately lead to a regressive inability for sexual expression beyond genital gratification.

Experts agree that although sex-training methods and information become more well known and available each year, in and out of school, statistics show that destructive sexual activity only increases. There are more abortions, VD, and psychologically injured children who are seeking acceptance and companionship, but drawn instead into a social system of patterned relationships—staged and taught by adults. Intercourse is implicitly encouraged as a contemporary *skill*, or a 'mature' method of dealing with the unspoken frustrations programmed into them by a society seeking happiness and commercial profit through sexual exploitation. A study just completed in Denmark by Dr. Michael Harry—where sex-training has been mandatory in school systems for 7 years—statistically shows these same results. [2]

Sex-Training advocates excuse these results with promises of better programs which will teach maturing and responsibility; but these values differ with the cultural and moral backgrounds of each family, and the methods taught by sex-training already illustrate what some consider to be 'mature sexual responsibility'. So it remains imperative that parents maintain their natural right to decide *and know* what type of instruction will be given their children.

Still, this is not the only answer: Separating sex from the context of love and family is possibly too unnatural a concept to ever teach successfully, nor can understanding and respect be built upon years of parental neglect. It's a changing world, and parents must prepare their children for its challenges and pitfalls.

Could it also be that abortion so violates the nature of human sexuality ... human behavior, and basic moral judgment; that to rationalize and accept it, we must first disguise it with euphemisms that confuse our instincts. And to keep abortion ... contrive *peripheral remedies* for the moral chaos it brings, avoiding the question that must ultimately be asked: *Can we expect our youth to be responsible when our laws reflect that we are not? Can we expect them to care, when we have avoided caring for the weakest and youngest of them?*

1. A leader of sex-education expansion and primary influence for the type of sex-ed presently taught—which will be examined in this essay—is Planned Parenthood; whose efforts were instrumental in legalizing abortion, promoting it as 'safe and simple', and making it easily accessible to adolescents without their parents' consent. Their continuing plan to reduce 'unwanted' pregnancies and reduce the numbers of abortions while at the same time increasing abortion's easy availability, seems at best a contradiction of messages.

2. *Denmark Today: The Causes And Effects Of Sexual Liberty*, Dr. Michael Harry—Reprinted in Marriage and Family Newsletter, P.O. Box 922, Peterborough, [illegible]io, K9J7A5.

It's Your Decision

Since the beginnings of American democracy, each generation has had the obligation to deal with issues involving the definition and protection of human rights. Abortion is one of these issues and its importance cannot be overstated.

It was no accident the constitutional framers recognized the right to life *"inalienable"* and basic to the meaning of freedom and equal protection under the law. It's *essential* to the governing of a pluralistic society. Thomas Jefferson wrote: *"The care of human life and not its destruction ... is the first and only legitimate object of good government ..."*

Today, however, the law has varied from this sound concept and allowed certain individuals (unborn) to be considered *'less equal'* than others; this is no different than the prejudices of the past against the Negro and later Black Americans, women, the American Indian and others. In each instance, freedom has been confused with a 'free choice', irrespective of the innocent who have suffered and were denied recognition of their rights.

But we can only learn from history ... the present requires much more. Abortion is law today, and as long as we ignore the scientific truth of the child's separate, human existence and call abortion only a 'personal' issue, we will continue to abandon mother and child to its dehumanizing procedures, and postpone the day when we'll offer better answers. As long as our society allows abortion, there will be little effective pressure to implement creative solutions in dealing with problem pregnancy.

Ask yourself ... *Can human worth be so simply determined by its 'wanted- or unwantedness' ... or its economic or demographic practicability?*

Does reverence for life only include those who are planned ... or those who are perfectly developed?

Are we truly 'free' when we allow millions of children to be destroyed because we haven't time or inclination to care for them?

Can our concern for children born in less than the best of conditions lead us to destroy them through abortion; supposedly for their 'own good'?

If abortion continues to be thought of as a cure, instead of a symptom, we will inevitably become, as was predicted, a *"biologically oriented society"*,[1] where expediency through *"death selection and control"* will be the law of the land as abortion is now. One final question:

Is this our legacy, the "better world" we will leave to our children ... and their children?

This is why everyone, regardless of any other interests, should be a part of the Pro Life Movement. Do not be confused by slogans of *'imposing your morality on others'*. Every person has the right—and the obligation—to voice his or her opinion as to the future of the fundamental principles upon which this country was founded. The decision is yours ... the time to speak is now.

1. See "The New Ethic", pages 12 and 13.

What You Can Do

There are several ways to voice Pro Life opinions and constructively work toward eliminating abortion. The key is education. When the public is educated with accurate information regarding the unborn child, and what abortion does to the child and the mother, abortion will again be seen as harmful, ineffective, and inhumane; and our society will then address our human problems with creative solutions that reflect universal human worth.

The first step is to be informed. Detailed information, reprints, and books are available on any subject regarding human life issues from your local Right to Life or Pro Life office. Stay informed of state and local issues by being on their mailing list. For current events, one of the best Pro Life periodicals is the *National Right To Life News. (Nat'l Press Bldg. Suite 341, 14th St. NW Washington, DC, 20045; annual subscription, $6.00.)*

Secondly, don't be stingy with your Pro Life views. Share them all with your friends and groups. Discuss abortion with young people; usually they're very interested but rarely exposed to unbiased information.

Third . . . *write letters;* State Representatives and Senators, Congressmen. Voice your opinion—they represent you. Ask for a *Human Life Amendment* to the Constitution to overturn the Supreme Court decision of 1973. Letters to the editors of newspapers and magazines are valuable.

For those who wish to do more, joining or supporting a Right to Life or Birthright organization offers a compelling and often rewarding opportunity to give first-hand help to women facing problem pregnancies. They offer counseling, medical and financial assistance referrals, and other alternatives to abortion; as well as school educational programs and a public speakers bureau.

For those more politically motivated, there are Pro Life groups whose goals include:

- Informing the public of current legislation regarding human life issues.
- Identifying and encouraging the election of Pro Life candidates, regardless of party affiliation.
- Promoting new legislation to safeguard the respect for human life and opposing laws such as the legalization of fetal experimentation and euthanasia.
- Enacting a *Human Life Amendment (HLA)* which would restore the original spirit of the Constitution, guaranteeing the Right to Life to all human beings, born and unborn, young, old, and handicapped.

So join us now, and give a little of yourself. Contribute financially if you can. *People* are the Pro Life Movement and we have something for EVERYBODY!

For more information, write: *National Right to Life Committee, Nat'l Press Bldg., Suite 341, 14th St. NW, Washington, D.C. 20045.*

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Living 14 Week Unborn Child In The Womb

With permission, Hayes Publishing Co., Cincinnati, Ohio.

He (Omoro) said that three groups of people lived in every village. First were those you could see—walking around, eating, sleeping, and working. Second were the ancestors, whom Grandma Yaisa had now joined.

"And the third people—who are they?" asked Kunta.

"The Third People," said Omoro, "are those waiting to be born."

—Alex Haley, *Roots*

Distribution compliments of:
National Right to Life Committee
529 14th St. NW #341
Washington, DC 20045

A Limited Federal Constitutional Convention

Robert M. Rhodes

Published in the public interest by

Americans for a Constitutional Convention

Suite 825 • 529 14th Street, NW • Washington DC 20045

Dear Fellow Citizen:

In the ongoing struggle to protect the unborn, Americans for a Constitutional Convention here makes available "A Limited Federal Constitutional Convention" by Robert M. Rhodes.

One of the principal arguments used by pro-abortionists to defeat applications in the state legislatures for a national Constitutional Convention to protect the unborn is that such a Convention would open a "Pandora's Box" -- that it would be a runaway Convention, and destroy, among other things, the Bill of Rights.

It is interesting to observe that this argument has rarely been used in the more than four hundred convention applications which have originated in every state in the Union since our Republic was founded. Applications calling for the direct election of United States Senators, revenue sharing, apportionment -- in other words, political and economic issues -- have raised no such outcry. But when we come to a great moral issue striking at the sanctity of human life -- the protection of the unborn -- we hear sanctimonious and cynical protestations from pro-abortionists about a runaway Convention.

As Mr. Rhodes points out, "... state legislatures may petition Congress to convene a Constitutional Convention for proposing amendments dealing with a particular subject, several subjects, or general Constitutional revision. Congress, by virtue of its necessary and proper clause powers, may define and restrict the work of an article V convention through the convention call. Finally, consistent with the reasonable intent of the framers, Congress is obliged to limit the scope of a convention to the general subject matter or problem at which the state applications are directed."

We believe that Mr. Rhodes' article, because of its fine scholarship and thoroughness, effectively demolishes the runaway Convention argument of the pro-abortionists.

Dan Buckley
Chairman

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A LIMITED FEDERAL CONSTITUTIONAL CONVENTION

ROBERT M. RHODES*

Article V of the United States Constitution provides that constitutional amendments may be initated in two ways — by two-thirds of both houses of Congress or by a convention called by Congress at the request of two-thirds of the state legislatures.[1] The second initiation option was provided to afford states an opportunity to bypass congressional refusal to originate amendments of significant state and national concern.[2] Although the architects of the Constitution evidently viewed the two methods as equivalent alternatives, initiation through state legislative application has never been accomplished; each of the twenty-six ratified amendments has been proposed by Congress.[3] As a result of this historical preference, little precedent exists relating to state initiation of amendments.[4]

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*A.B., 1964, J.D. 1968, University of California (Berkeley); M.P.A. 1973, Harvard University; Executive Assistant to the Speaker of the Florida House of Representatives, 1970-1972.

1. The full text of article V reads: "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."

2. "The founders included the convention alternative in the amending article to enable the states to initiate constitutional reform in the event the national legislature refused to do so." Ervin, *Proposed Legislation To Implement the Convention Method of Amending the Constitution*, 66 MICH. L. REV. 875, 885 (1968).

3. Between 1788 and October 1971 the states submitted a total of 304 applications for a constitutional convention. The following subjects have received the support of at least ten states: reapportionment (33), 1957-1969; direct election of Senators (31), 1893-1911; limitation of federal taking power (28), 1939-1960; prohibition of polygamy (27), 1906-1916; general constitutional revision (22), 1788-1929; and return portion of federal taxes to states (15), 1965-1971. 117 CONG. REC. 16,519 (1971). Subsequent to this report by Senator Ervin, four additional states submitted revenue sharing applications. *See* note 6 *infra*.

4. Responding to the lack of clarity concerning article V convention procedures, Senator Ervin introduced S. 2307 in the 90th Cong., 1st Sess. Ervin, *supra* note 2, at 875. *See Hearings on S. 2307 Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary*, 90th Cong., 1st Sess. (1967) [hereinafter cited as *1967 Hearings*]. The bill was revised and reintroduced in the 91st Cong., 1st Sess. as S. 623. The Subcommittee reported

The paucity of understanding concerning the unused article V convention procedure became apparent when national organizations representing state legislators joined forces in 1970 to prod congressional action on federal revenue sharing.[5] Pursuant to article V, a united effort was commenced to secure applications from thirty-four states requesting Congress to convene a constitutional convention dealing solely with revenue sharing. Thirteen states had enacted a model application,[6] or a similar version, by the time revenue sharing was passed into law.[7]

The most perplexing of the several questions raised by the revenue sharing convention campaign was whether a convention created by state application may be limited to a single subject or whether such a convention must open the entire Constitution to revision. The authority of the states and Congress to impose limitations on an article V convention is not evident through a literal construction of the article's language.[8] Moreover, the Supreme Court has been noticeably silent regarding questions raised by the amendment process.[9] The convention route has been useful in the past,[10] however, and it is

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S. 623 to the full Committee on June 19, 1960, but no action was taken by the Judiciary Committee. The legislation was reintroduced in the 92d Congress on Jan. 26, 1971, as S. 215 [hereinafter cited as *Ervin Bill*]. On April 27, 1971, the Subcommittee on Separation of Powers reported the measure to the full Committee on the Judiciary. On July 31, 1971, the Committee reported S. 215 to the Senate with an accompanying report, S. REP. No. 92-336, 92d Cong., 1st Sess. (1971) [hereinafter cited as 1971 REPORT]. S. 215 passed the Senate on Oct. 19, 1971, 117 CONG. REC. 16,569 (1971). However, it received no action by the House Judiciary Committee during the 92d Congress. The bill has been reintroduced in the 93d Congress as S. 1272, sponsored by Senators Ervin and Brock.

5. These organizations were the National Legislative Conference, the National Society of State Legislators, and the National Conference of State Legislative Leaders.

6. States that applied to Congress for a convention on revenue sharing during this campaign were: Arizona, Delaware, Florida, Iowa, Massachusetts, New Jersey, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, and West Virginia. Louisiana passed the model application with slight variations.

7. The State and Local Fiscal Assistance Act of 1972, Pub. L. No. 92-512, was enacted by the House on October 12, 1972, and by the Senate on Oct. 13, 1972.

8. Article V states that Congress shall call "a Convention for proposing Amendments." If these words are literally construed, it might be argued that a convention could not create an entirely new instrument to supersede the present Constitution, since its work would be confined to proposing amendments. Nevertheless, the convention could propose the equivalent of a new Constitution by a series of separate amendments. *See* C. BRICKFIELD, PROBLEMS RELATING TO A FEDERAL CONSTITUTIONAL CONVENTION, STAFF OF HOUSE COMM. ON THE JUDICIARY, 85th Cong., 1st Sess. (Comm. Print 1957) [hereinafter cited as BRICKFIELD, 1957]. *But cf.* Black, *Amending the Constitution: A Letter to a Congressman*, 83 YALE L.J. 196 (1972): "It is my contention that Article V, properly construed, refers, in the phrase 'a Convention for proposing Amendments,' to a convention for proposing such amendments as to that convention seem suitable for being proposed."

9. It has been suggested that many of the significant questions raised by article V will not be resolvable by the courts. *See* L. ORFIELD, THE AMENDING OF THE FEDERAL CONSTITUTION 7-36 (1942); Dowling, *Clarifying the Amending Process*, 1 WASH. & LEE L. REV. 215 (1940); Note, *Proposing Amendments to the United States Constitution by Convention*, 70 HARV. L. REV. 1067 (1957). In Coleman v. Miller, 307 U.S. 433 (1939), the Supreme Court held that the effectiveness of a state's ratification of a proposed amendment, which it had previously rejected, and the period of time within which a state could validly ratify a proposed amend-

clear from the revenue sharing campaign that the limitation issue must be clarified before legislatures will confidently employ their constitutional prerogative to initiate amendments.[11]

This article will examine the limitation issue, initially analyzing the legislative history of article V. Additionally, the practical effects of the framers' decision to provide both the national and state legislatures an opportunity to initiate federal constitutional change will be examined.

History of the Amendment Process at the 1787 Constitutional Convention

The Virginia Plan, consisting of fifteen resolutions, was presented to the convention delegates by Edmund Randolph on May 29. Resolution thirteen dealt directly with amendments:[12]

> 13. Resolved that provision ought to be made for the amendment of the Articles of the Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

Randolph's resolution was considered by the Commitee of the Whole on June 5 in a discussion focusing on the proposition "that provision ought to be made for [hereafter] amending the system now to be established, without requiring

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ment were non-justiciable political questions within the exclusive determination of Congress. Strong dicta in a concurring opinion by Justice Black suggests that all questions arising in the amendment process may be non-justiciable: "Undivided control of [the amending] process has been given by the article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." *Id.* at 459 (concurring opinion). However, there is evidence from several cases that some of the questions arising in the amendment process can be settled by the judiciary. *Compare* Leser v. Garnett, 258 U.S. 130 (1922); Dillen v. Glass, 250 U.S. 368 (1921); National Prohibition Cases, 253 U.S. 350 (1920); Hawke v. Smith, 253 U.S. 221 (1920). *See also* Trombatta v. Florida, 353 F. Supp. 575 (M.D. Fla. 1973), wherein the court held article 10, §1 of the Florida constitution unconstitutional under article V of the United States Constitution. The Florida article provided that the state legislature could not take action on any proposed amendment to the United States Constitution unless a majority of the members thereof were elected after the proposed federal amendment is submitted for state ratification.

10. "The campaign for direct election of Senators was stymied for decades by the understandable reluctance of the Senate to propose an amendment that jeopardized the tenure of many of its members. Frustrated by the Senate, the reform movement shifted to the States, and a series of petitions seeking to invoke the convention process were submitted to Congress. Rather than risk its fate at the hands of a convention, the Senate then relented and approved the proposed amendment, which was speedily ratified." 1971 Report, *supra* note 4, at 6.

11. Regarding the introduction of S. 215, Senator Ervin has commented: "Most important, there is no law on the books that would confine a convention to a specific amendment. If we are to avoid the possibility of a runaway convention and a constitutional crisis, I believe it is imperative that orderly procedures be established for the conduct of a constitutional convention." 117 Cong. Rec. 16,510 (1971).

12. 1 M. Farrand, The Records of the Federal Convention of 1787, at 22 (1911) [hereinafter cited as Records].

the assent of the National Legislature."[13] Although Pinckney "doubted the propriety or necessity of it,"[14] Gerry favored the resolution and expressed the view that: "The novelty and difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the Government." Gerry further noted that "nothing had yet happened in the States where this provision existed to prove its impropriety."[15] Nevertheless, further consideration of the proposition was postponed.[16]

On June 11 Randolph's resolution was again considered by the Convention. Madison reports that "several members did not see the necessity of the [Resolution] at all, nor the propriety of making the comment of the National Legislature unnecessary."[17] Colonel Mason, however, urged the adoption of such a provision:[18]

> The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their consent on that very account.

The Committee of the Whole failed to accept the last portion of Mason's argument, but supported the proposition "that provision ought to be made for the amendment of the Articles of the Union, whensoever it seems necessary."[19]

Late in July the policy conclusions reached during the early sessions were submitted to a drafting committee known as the "Committee of Detail."[20]

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13. *Id.* at 121.

14. *Id.* at 121-22.

15. *Id.* Provisions for amending the colonial constitutions were incorporated into the charters of eight colonies. *See* S. FISHER, THE EVOLUTION OF THE CONSTITUTION OF THE UNITED STATES 178-80 (1910). In Delaware, Maryland, and South Carolina use of the amendment process was reserved to the legislature. In Georgia, Massachusetts, New Hampshire, Pennsylvania, and Vermont amendments were to be made by conventions. Both of these methods were joined in article V. *See* BRICKFIELD, 1957, *supra* note 8, at 2.

16. Seven states voted to postpone consideration; three voted to debate the amendment process immediately. RECORDS, *supra* note 12, at 202.

17. *Id.* at 202-03.

18. *Id.* Article XIII of the Articles of Confederation authorized amendment only upon the assent of Congress and the legislatures of all the states. 1 DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION AS RECOMMENDED AT THE GENERAL CONVENTION AT PHILADELPHIA IN 1787, at 84 (J. Elliot ed., reissue 1907) [hereinafter cited as DEBATES].

19. RECORDS, *supra* note 12, at 203.

20. 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 97 (1911) [hereinafter cited as 2 RECORDS]. John Rutledge of South Carolina was designated chairman and Edmund Randolph, James Wilson, Oliver Ellsworth, and Nathaniel Gorham were elected to the Committee.

Article XIX of the Committee draft presented to the Convention on August 6 and adopted without amendment on August 30,[21] provided:[22]

> On application of the Legislatures of two-thirds of the states in the Union, *for an amendment* of this Constitution, the Legislature of the United States shall call a Convention *for that purpose.*

Careful consideration should be given the language of this article. Although some controversy existed concerning Congress' role in the amendment process,[23] the development of a specific amendment procedure was left to the Committee of Detail. Article XIX embodied a compromise between those delegates favoring state initiation of amendments, unfettered by the National Legislature, and those members wishing to preserve some national role in the amendment process. Hence, the draft enabled the states to apply for "an amendment" to the Constitution, and mandated Congress to assemble a convention "for that purpose." Of significance is the clause "for that purpose," which directly modifies "Convention." If two-thirds of the states apply for an amendment, article XIX clearly mandates that a convention called by Congress pursuant to such applications must be limited to the purpose or general subject matter contained in the state applications. Moreover, by employing the specific language "an amendment," the draftsmen of the Constitution demonstrated a clear intention to enable state legislatures to request a convention for consideration of limited constitutional change. Such intent was not modified by subsequent Convention action.

On September 10 Gerry moved to reconsider the Convention's adoption of article XIX. Since the Constitution was to be paramount to state constitutions Gerry was concerned with the possibility that "two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert the state constitutions altogether."[24] Hamilton seconded Gerry's motion, but with a different view in mind. "It had been wished by many and was much to have been desired," Hamilton observed, "that an easier mode for introducing amendments had been provided by the articles of confederation."[25] Hence, Hamilton contended:[26]

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21. *Id.* at 188 (emphasis added).

22. When the Convention took up article XIX on August 30, Gouverneur Morris suggested "that the Legislatures should be left at liberty to call a Convention, whenever they please." However, no delegate support was forthcoming for this concept and the article was adopted in the form proposed by the Committee on Detail. *Id.* at 468.

23. RECORDS, *supra* note 12, at 22, 121.

24. 2 RECORDS, *supra* note 20, at 557-58.

25. *Id. See also* RECORDS, *supra* note 12, at 121.

26. 2 RECORDS, *supra* note 20, at 557-58 (emphasis added). Madison joined the argument and attacked the "vagueness of the terms" previously adopted by the Convention. "How was a Convention to be formed? By what rule decide? What would be the force of its act?" queried Madison. *Id.* Substantive responses to these questions are provided in the *Ervin Bill*, *supra* note 4.

> It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new system. The mode proposed was not adequate. The State Legislatures will not apply for alterations but with a view to increase their own powers — the National Legislature will be the first to perceive and will be the most sensible to the necessity of amendments, and ought *also* to be empowered, whenever two thirds of each branch should concur, to call a Convention. . . .

Gerry's motion to reconsider carried[27] and, following several proposed amendments relating to granting the National Legislature initiating power,[28] Madison, seconded by Hamilton, proposed a substitute for the entire articles:[29]

> The Legislature of the United States whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the United States.

The Madison-Hamilton compromise was adopted by the Convention, 9-1.[30]

Significantly, the Madison-Hamilton proposal did not attempt to limit or restrict in any manner the power of state legislatures to initiate particular amendments. Legislatures clearly were granted such authority under the originally adopted article XIX. Hamilton was concerned only with granting the National Legislature amendment parity with the state legislatures so as to preserve the federal-state balance of power; hence, his argument that the National Legislature "ought also to be empowered . . . to call a convention."[31] Scrutiny of convention debate and the legislative antecedents of article V thus

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27. The vote was 9-1. Only New Jersey voted to retain the language adopted on August 30. 2 RECORDS, *supra* note 20, at 557-58.

28. Sherman, seconded by Gerry, moved to add to the article the words: "[O]r the Legislature may propose amendments to the several States for their approbation but no amendments shall be binding until consented to by the several States." Wilson offered a motion to make consent of two-thirds of the states sufficient, which was rejected 5-6. A later motion to permit three-fourths of the states to make an amendment effective was adopted without dissent. *Id.*

29. *Id.* at 559.

30. *Id.* The single "no" vote was Delaware. *See* Kurland, *Article V and the Amending Process*, in D. BOORSTIN, AN AMERICAN PRIMER 130 (1966): "The nature of the political compromises that resulted from the 1787 Convention was reason for those present not to tolerate a ready method of undoing what they had done. Article V, like most of the important provisions of the Constitution, must be attributed more to the prevailing spirit of compromise that dominated the Convention than to dedication to principle." *See also* HOUSE COMM. ON JUDICIARY, PROBLEMS RELATING TO STATE APPLICATION FOR A CONVENTION TO PROPOSE A CONSTITUTIONAL LIMITATION ON TAX RATES, 82d Cong., 2d Sess. 4 (1952) [hereinafter cited as 1952 REPORT].

31. 2 RECORDS, *supra* note 20, at 557-58.

reveals that Madison and Hamilton viewed the two modes of initiating amendments as equivalent alternatives and that they envisioned a process whereby both the state and National Legislatures would be able to apply to Congress for specific constitutional amendments.[32]

On September 15 the Convention considered the report of the Committee on Style, which had been appointed "to revise and place the several parts" approved by the Convention "under their proper heads."[33] The Committee integrated former article XIX, as amended, into a new article V. Initially, Gouverneur Morris moved to amend article V so as to require a convention on application of two-thirds of the states.[34] The previously adopted language of the Madison-Hamilton proposal would have required the states to petition Congress, which would presumably propose and develop specific amendments. Morris' proposal would enable two-thirds of the states to require Congress to call a convention to propose amendments. Madison "did not see why Congress would not be as much bound to propose *amendments applied for by two thirds of the states* as to call a convention on the *like application*."[35] Nevertheless, he raised no objection to the Morris motion, which was adopted unanimously.[36]

Finally, and significantly, two further acts of the delegates merit consideration. Sherman moved to amend article V in a manner so as "to leave future conventions to act like the present Convention, according to circumstances."[37] Additionally, Randolph moved "that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention."[38] Both of these proposals were rejected by the 1787 Convention. Opposing the motions, Pinckney reflected the general feeling of the delegates: "The Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not be repeated . . . ."[39] All states rejected the Sherman and Randolph proposals, thus evincing a definite desire not to open the Constitution to general revision in the future. Such action by the delegates reflects their concern that general conventions are indeed "serious things, and ought not to be repeated" whenever a particular amendment is desired. Hence, they insured that the Constitution, through article V, provided

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32. The Senate Judiciary Committee has concluded that the framers "refrained from any evaluation or differentiation of the two procedures for amendment incorporated into Article V; they tended to view the convention merely as an alternative safeguard available to the States whenever Congress ceased to be responsive to popular will and persisted in a refusal to originate and submit constitutional amendments for ratification." 1971 RECORDS, *supra* note 4, at 4.

33. 2 RECORDS, *supra* note 20, at 554.

34. *Id.* at 629.

35. *Id.* (emphasis added).

36. *Id.*

37. *Id.*

38. *Id.* at 631. Randolph and Mason were concerned that: "This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it." *Id.* at 631-32.

39. *Id.*

both Congress and the states with a constitutional mechanism to correct particular and specific constitutional infirmities. Such action effectively obviated the need for frequent general conventions, which might vitiate the fruits of the delegates' labor during the summer of 1787.

A General Convention — Argument and Rebuttal

Dual Purpose Argument

Opponents of a limited federal constitutional convention[40] have suggested that by providing two different processes for originating amendments, the framers of article V contemplated different responses to different problems. It is therefore contended that, since one process clearly contemplates congressional initiation of particular amendments, the alternative process may be used by the states only to initiate a call for a general constitutional convention.[41]

Certainly the final language of article V lacks clarity on this point.[42] No specific power is explicitly granted the legislatures to initiate individual amendments; however, it is suggested that the states may petition Congress to convene a limited federal constitutional convention.[43] Initially, three points should be noted. First, if the framers intended that the legislatures should be able to request only a general convention, would they not have explicitly provided for such authority, instead of leaving it to inference?[44] Second, the dual purpose argument presumes the framers intended that the convention called

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40. *See, e.g.*, Black, *supra* note 8, at 201: "Nothing 'desirable or practical' is to be served by the alternative route, except a possible need . . . . to take care of a *general* dissatisfaction with the national government, or a breakdown thereof." *See also* Wheeler, *Is a Constitutional Convention Impending?*, 21 Ill. L. Rev. 782, 795 (1927). *But cf.*, Child, *Revolutionary Amendments to the Constitution*, 10 Constitutional Rev. 27 (1926), *quoted in* Brickfield, 1957, *supra* note 8, at 19: "Conventions must be limited to specific subject matter and under no circumstances could it be given general revisionary powers . . . ."

41. Convention must be general in scope and a state application calling for a specific amendment can have no binding or legal effect on a convention. Wheeler, *supra* note 40, at 795.

42. *See* note 8 *supra*.

43. *Ervin Bill, supra* note 4, §2, authorizes state legislatures to request the calling of a convention for the purpose of proposing one or more amendments to the Constitution. Questions concerning the adoption of a state resolution are to be determined solely by Congress (§3(b)). State applications remain in effect seven years (§5(a)). This approach is consistent with a 1957 draft prepared by Dr. Brickfield for the House Committee on the Judiciary, which authorizes state legislatures to request either a general convention or a convention to propose specific amendments. Brickfield, 1957, *supra* note 8, at 27-28.

44. State constitutions have explicitly reserved to the voters the power to convene a general constitutional convention to consider a revision of the entire constitution. *E.g.*, Fla. Const. art. XI, §4(a). Prior constitutions of this state enabled the legislature to call a convention to propose amendments or to propose an entirely new constitution. Fla. Const. art. XIV, §§1-3 (1838, 1861, 1865). *See also* Alas. Const. art. XIII, §4: "Constitutional Conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention." *But cf.* Nev. Const. art. 16, §2; N.Y. Const. art. 19, §1; Tenn. Const. art. 16, §3.

by the states could conceivably have no relationship to the subject that originally motivated the applications.[45] Finally, if the states may initiate a call for only a general convention, must it follow that Congress may only propose individual amendments and be precluded from proposing a general convention? Such an unreasonable conclusion must necessarily be drawn from the premise offered by the dual purpose argument, which, as will be shown, is totally unsupported by convention action and debate, as well as the framers' intent supplied in *The Federalist Papers.*

The history of the 1787 Convention provides helpful insight as to the legislative compromise that ultimately became article V. As previously noted, the framers were concerned with developing a reasonable procedure for amending the Constitution, which at the same time would be responsive to popular will and would secure a stable governmental foundation. Meeting only four years after the end of the Revolutionary War, the delegates were understandably sensitive to the possibility that rights and powers delegated in the Constitution might need to be withdrawn or rearranged in light of the exigencies of future years. Experience under the Articles of Confederation had revealed the undesirability of binding the new government to an amendatory process requiring consent of every state.[46] Hence, the original Virginia Plan recognized the necessity for, in Colonel Mason's words, "an easy, regular, and Constitutional" amendatory process.[47] The proposal of the Committee on Detail adopted by the Convention on August 30, explicitly empowered the state legislatures to apply to Congress for "an amendment" to the Constitution. The Madison-Hamilton substitute, which provided the basic article V framework, skillfully meshed the philosophies of states rights supporters and staunch centralists by providing dual initiation procedures. The compromise met the objections raised by both camps: (1) that the national government would be loathe to correct its own failings and that such abuses could only be constitutionally remedied by state initiative; and (2) that improprieties in the states and deficiencies in national power would most likely be corrected only through initiative taken by the National Legislature. Hence, the Madison-Hamilton substitute was not an attempt to limit in any manner the power of state legislatures to initiate particular amendments. The substitute merely sought to grant the National Legislature initiation parity with state legislatures. The two amendment processes, therefore, must be viewed as equal alternatives.[48] The reports of the Convention do not rebut this conclusion and provide no indication that the framers intended for state legislatures to concern themselves only with total constitutional revision, while Congress alone would initiate specific

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45: *See* text accompanying notes 50-53 *infra* for a more intensive consideration.

46. *See* text accompanying note 18 *supra.* Charles Pinckney of South Carolina expressed the general dissatisfaction with the unanimous consent requirement for amendments by stating: "It is to this unanimous consent the depressed situation of the union is undoubtedly owing." 5 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 601 (1911).

47. RECORDS, *supra* note 12, at 202-03.

48. HOUSE COMM. ON THE JUDICIARY, 86TH CONG., 1ST SESS., STATE APPLICATIONS ASKING CONGRESS TO CALL A FEDERAL CONSTITUTIONAL CONVENTION 7 (Comm. Print 1959) [hereinafter cited as STATE APPLICATIONS (1959)].

amendments. In addition, the Convention's September 15 vote to reject proposals that would have required general national convention consideration of proposed amendments further reveals the delegates' reasonable intention that a general convention "ought not to be repeated" whenever a particular amendment is desired.

This interpretation is further supported by reference to article V in *The Federalist Papers*. In *Federalist*, No. 43, Madison explained:[49]

> That useful alterations will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It *moreover equally enables the General and the state Governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other.*

Consistent with the Convention debate, Madison's commentary clearly draws no distinction between the prerogatives of the state and national governments to originate "an amendment of errors," as revealed through experience with the Constitution over a period of time.[50]

Moreover, Hamilton, in the 85th *Federalist*, convincingly supported the authority of state legislatures, as well as the Congress, to originate specific amendments:[51]

> *Every* amendment to the Constitution, if once established, would be a *single proposition*, and might be brought forward *singly*. There would then be no necessity for management or compromise, in relation to any other point — no giving or taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten states, were united in the desire of a *particular* amendment, that amendment must infallibly take place.

Hamilton specifically emphasized the desirability of isolating support for each amendment as a safeguard against logrolling through a general revision of the Constitution. Careful attention, therefore, must be given the language "single proposition," "singly," and "particular amendment." Again, any dis-

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49. *As quoted in* 1971 REPORT, *supra* note 4, at 8 (emphasis added).

50. Judge Story, commenting on the framers' intent as to the amendment process has observed: "It was obvious, too, that the means of amendment might avert, the most serious perils to which confederated republics are liable and by which all have hitherto been shipwrecked. . . . They knew the price and jealousy of state power in confederacies; and they wished to disarm them of their potency, by providing a safe means to break the force . . . which would, from time to time . . . be aimed at the Constitution. They believed that the power of amendment was . . . the safety-valve to let off all temporary effervescences and excitements; and the real effective instrument to control and adjust the movements of the machinery when out of order or in danger of self-destruction." 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 599 (1891).

51. *As quoted in* 1971 REPORT, *supra* note 4, at 8 (emphasis added).

tinction between "single" amendments originating with the states and those derived from Congress is noticeably absent.

In addition, as a practical matter, tying state applications exclusively to a call for a wide-open convention would effectively destroy the legislatures' power to propose amendments.[52] Given the sole option of petitioning Congress for a general convention, it is unrealistic to expect states to exercise article V powers.[53] Thus barring massive national discontent with the existing constitutional framework, the power of state legislatures to originate the "amendment of errors" contemplated by Madison would effectively be vitiated if every state petition for a specific amendment were interpreted as a request for a general convention.

Finally, Congress has long recognized the prerogative of states to petition for a single purpose convention or for a general convention. Congress has treated as substantively separate, rather than cumulative, the over 300 state requests for a convention.[54] To treat these diverse requests for limited reformation as requests for general revision would be illogical and contrary to the stated desires of the petitioning states. For example, article V would be reduced to an absurdity if Congress were forced to call a general convention upon the application of ten states seeking to outlaw busing, seven states desiring to modify the income tax, eleven states wanting revenue sharing, and six states supporting a reversal of federal reapportionment policy. If cumulative treatment had been intended, a general convention is clearly long overdue. Fortunately, Congress has concluded that a convention shall be assembled only when the petitions dealing with a particular subject are received from two-thirds of the states.

1787 Convention Precedent Argument

Arguably, since the original 1787 Convention was not limited to the specific subject areas that were ostensibly the reasons for convocation, precedent for wide-open article V conventions does exist. However, any possible precedential value is weakened by the fact that the 1787 Convention was called to amend the Articles of Confederation, which lacked reasonable and effective provisions for amendment,[55] whereas the Constitution does not suffer from such infirmity.

Additionally, although the 1787 Convention's actions were clearly ultra vires and beyond the scope of the Convention call, Congress ratified the Con-

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52. BRICKFIELD, 1957, *supra* note 8, at 20: "The convention method . . . would be reduced to an unworkable absurdity both from the standpoint of the states having a voice in the convention process and from the magnitude of the operation and its ultimate effect on our government, if only general conventions were permissible under Article V."

53. Kauper, *The Alternative Amendment Process: Some Observations*, 66 MICH. L. REV. 912 (1968).

54. *See* 117 CONG. REC. 16,519 (1971) (remarks of Senator Ervin); STATE APPLICATIONS (1959), *supra* note 48, at 7.

55. The Federal Constitutional Convention called by the Congress of the Confederation under the Articles was "for the sole and express purpose of revising the Articles of Confederation." Documents Illustrative of the Formation of the Union of the American States, H.R. Doc. No. 398, 69th Cong., 1st Sess. 46 (1927).

vention's action and transmitted the proposals to the states. At no time did the Convention seek to bypass or overrule the Congress.[56] There is, therefore, precedent for submitting the work product of the Convention to congressional scrutiny before transmittal to the states, allowing Congress to disapprove convention proposals that vary from the general subject matter outlined in the convention call.[57] In addition, if a convention today proposed amendments on subjects other than those specified in the call, those proposals and any implementing legislation enacted pursuant thereto could arguably be deemed unconstitutional under article V. Hence, the Constitution provides a possible limitation on a runaway convention through the courts and a definite limitation through the ratification process that were not formally available under the Articles of Confederation.

Constitutional Sovereignty Argument

An additional stance espoused by general convention proponents suggests that a constitutional convention is a "premier assembly" of the people, charged by the people with the duty of framing, amending, or revising a constitution. For such purposes the convention is vested with the total sovereign power of the citizens and is therefore supreme to all other branches of government.[58] From this premise, it is argued that neither Congress nor the states may limit the scope of the convention's deliberations.[59] This argument initially implies

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56. J. BECK, THE CONSTITUTION OF THE UNITED STATES: YESTERDAY, TODAY — AND TOMORROW? 173 (1924), *quoted in* BRICKFIELD, 1957, *supra* note 8, at 17. Jameson has drawn a useful distinction between "revolutionary" and "constitutional" conventions. Revolutionary conventions consist of bodies that in time of crisis assume or are provisionally delegated the functions of government. Hence, they either supplant or supplement the existing government. In contrast, constitutional conventions are creatures of the government's fundamental law and therefore "ancillary and subservient and not hostile and paramount" to the existing government. J. JAMESON, CONSTITUTIONAL CONVENTIONS 6, 10 (4th ed. 1867). A convention convened pursuant to article V clearly would be of the constitutional type and subservient to the strictures and limitations placed upon it in the convocation call. *See also* Dennis v. United States, 183 F.2d 201 (2d Cir. 1950), *aff'd*, 341 U.S. 404 (1951), wherein Judge Learned Hand rejected the theory that a convention once convened may disregard directions and article V procedures and adopt extra legal means to establish a new Constitution. The Supreme Court, in affirming, observed that the Constitution can only be changed by peaceful and orderly means. United States v. Dennis, 341 U.S. 494, 501 (1951).

57. *Ervin Bill, supra* note 4, §10(b), provides that questions concerning the scope of the convention's work are to be determined solely by Congress. Section 11(b)(1) enables Congress to disapprove a proposed amendment on the ground that it pertains to a subject different from that described in the resolution calling the convention. Pursuant to such action, the ultra vires proposal would not be transmitted to the states for ratification. *But cf.* Note, *Amending the Constitution*, 85 HARV. L. REV. 1631 (1972), for a critique of this enforcement mechanism.

58. BRICKFIELD, 1957, *supra* note 8, at 16; 46 CONG. REC. 2769 (1911) (remarks of Senator Heyburn). "A constitutional convention even if elected under a congressional mandate that it could deal with only one subject, could run away. After all, it would be a duly created constitutional convention, and it could propose any amendments which it decided it wished to propose, subject to ratification." 113 CONG. REC. 10,108 (1967) (remarks of Senator Javits).

59. *See* Livermore v. Waite, 103 Cal. 113, 36 P. 424, 426 (1894); Koehler & Lange v. Hill,

that the people cannot, or prefer not to, delegate to a convention a portion of their sovereign power, as opposed to surrendering total sovereignty.[60] No grounds for such an unreasonable conclusion are suggested by the proponents of the sovereignty argument. Moreover, such a contention ignores the fact that a convention is not *sui generis* — it cannot exist by itself, but must be convened by Congress pursuant to article V.[61] The convention, therefore, exercises no governmental power beyond that granted by congressional call.[62] Further, the product of the convention would not have the force of law until ratified by the requisite number of states, pursuant to article V. A constitutional convention that exceeds the bounds of existing constitutional and statutory provisions must be considered extra-legal and its acts would not alter existing provisions.[63]

Congressional Responsibility To Call a Convention

Given that state legislatures may initiate a call for a limited convention pursuant to article V, the question naturally arises whether Congress must call a convention upon receipt of the requisite number of state applications. A number of commentators have viewed Congress' responsibility in calling a convention as obligatory.[64] For example, Senator Ervin has commented:[65]

> Article V states that Congress "shall" call a convention upon the applications of the legislatures of two-thirds of the states. I have absolutely no doubt that the article is peremptory and that the duty is mandatory, leaving no discretion to the Congress to review the wisdom of the state applications. . . . To concede to the Congress any discretion to consider the wisdom and necessity of a particular convention call would in effect destroy the role of the states.

Support for this position is gleaned from Hamilton in *Federalist*, No. 85:[66]

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60 Iowa 543, 14 N.W. 738, 751 (1883); Sproule v. Fredericks, 69 Miss. 898, 11 So. 472 (1892); McMullen v. Hodge, 5 Tex. 34, 73, 77 (1849); Loomis v. Jackson, 6 W. Va. 613, 708 (1873).

60. *Cf.* the Pennsylvania Supreme Court's declaration in Wood's Appeal, 75 Pa. 59, 70 (1874): "The right of the people is absolute in the language of the bill of rights, 'to alter, reform, or abolish their government in such manner as they may think proper.' This right being theirs, they may impart so much or so little of it as they deem expedient."

61. *See* discussion in note 56 *supra*.

62. *See* Bonfield, *The Dirksen Amendment and the Article V Convention Process*, 66 MICH. L. REV. 949, 993 (1968); BRICKFIELD, 1957, *supra* note 8, at 16; Note, *The Constitutional Convention, Its Nature and Powers and the Amending Process*, 1916 UTAH L. REV. 403, 404.

63. *See* discussions of Jameson's revolutionary-constitutional convention distinction, note 56 *supra*. *See also* discussion of *Ervin Bill* §11(b)(1), *supra* note 57.

64. 1952 REPORT, *supra* note 30, at 15; Bonfield, *supra* note 62, at 977; BRICKFIELD, 1957, *supra* note 8, at 19. For a discussion of a possible ninth amendment remedy if Congress refuses to call a convention upon proper state application, see Ritz, *The Original Purpose and Present Utility of the Ninth Amendment*, 25 WASH. & LEE L. REV. 17 (1968).

65. Ervin, *Proposed Legislation To Implement the Convention Method of Amending the Constitution*, 66 MICH. L. REV. 875, 885 (1968).

66. 1971 REPORT, *supra* note 4, at 12 (emphasis added).

> By the fifth article of the plan the Congress will be *obliged,* "on the application of the legislatures of two-thirds of the states [which at present amounts to nine] to call a convention for proposing amendments, which *shall be valid* to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof." The words of this article are peremptory. The Congress "*shall* call a convention." Nothing in this particular is left to discretion.

Thus, under constitutional mandate, Congress must assemble a convention when the required two-thirds of the states have submitted petitions.

A Limited Convention

Although little controversy exists regarding Congress' duty to call a convention when article V requirements are satisfied, there is substantial argument concerning congressional authority to restrict the deliberations of a federal constitutional convention.[67] Although without clear legal or historical precedent, it appears that, since Congress must call the convention and since no specifics concerning the nature of the conventions' proceedings are constitutionally provided, Congress is vested with implied power under the necessary and proper clause[68] to establish policy concerning such procedural matters as the time and place of the meeting, the number of delegates, the manner and date of delegate elections, the nature of representation at the convention, as well as voting and adoption procedures.[69] Moreover, given the breadth of the necessary and proper executing authority, it is further suggested that Congress may define and limit the substantive parameters of the convention's work.[70] Such congressional limitation would directly implement the federal constitutional prerogative of the states under article V, and would further enable Congress to execute its article V responsibilities. Congressional restriction would therefore adequately meet the Supreme Court's test in *McCulloch v. Maryland* that "any means which tended directly to the execution of the constitutional powers of the government, [are] in themselves constitutional."[71]

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67. *See* notes 8, 41, 52, 58, 59 *supra.*

68. U.S. Const. art. I, §8.

69. L. Orfield, The Amending of the Federal Constitution 43-44 (1939); 1952 Report, *supra* note 30, at 15; Note, 70 Harv. L. Rev., *supra* note 9, at 1067, 1075-76.

70. *See* Brickfield, 1957, *supra* note 8, at 16, 19. "[N]one but the legislature can either prescribe or indicate the purposes for which it [the convention] is to assemble. Accordingly, as we shall see, our legislatures nearly always expressly declare, with more or less precision, those purposes, whether to make a general revision of the Constitution, or to consider specific subjects, accompanying that declaration sometimes with a prohibition to consider other subjects." J. Jameson, *supra* note 56, at 364.

71. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 419 (1819). "But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.* at 421.

Thus, Congress may restrict convention consideration to a single subject, a limited number of subjects, or a total revision of the Constitution.[72] This conclusion requires only that the convention's will must be exercised within the framework set by the act or resolution calling the convention,[73] and does not restrict the convention's freedom to exercise its will and develop specific substantive responses to issues presented.

A more difficult question arises regarding the power of state legislatures to restrict the work of the convention through state application. Although neither the states nor Congress may limit an article V convention to the specific terms of a proposed amendment, the history of article V suggests that Congress has a constitutional duty under article V to reflect the will of the state legislative applications in its convention call. An article V convention should therefore be restricted through the call to proposing amendments dealing with the general subject matter contained in state applications.[74]

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72. Congress' role in the article V convention process is similar to the role state legislatures play in convening state constitutional conventions. Although the people exercise ultimate control over a state convention, as a practical matter, the legislature plays an effective and controlling role in convening the convention. Specifically, the powers of state conventions may be effectively limited by the terms of the legislative act calling it into existence, if the approval for such limitation is obtained from the people at an election for that purpose. *See* Bradford v. Shine, 13 Fla. 393, 7 Am. Rep. 239 (1871); Gaines v. O'Connell, 305 Ky. 397, 408, 204 S.W.2d 425, 431 (1947); State v. American Sugar Refining Co., 137 La. 407, 415, 68 So. 742, 745 (1915); Opinion of the Justices, 60 Mass. (6 Cush.) 573, 575 (1833); State *ex rel.* Wineman v. Dahl, 6 N.D. 81, 85-86, 68 N.W. 418, 420 (1896); Wells v. Bain, 75 Pa. 39, 48, 15 Am. Rep. 563, 572-73 (1874); Woods' Appeal, 75 Pa. 59, 69-70 (1874); *In re* The Constitutional Convention, 55 R.I. 56, 98-99, 178 A. 433, 452-53 (1935); State *ex rel.* McCready v. Hunt, 9 S.C. (2 Hill) 1, 222-23 (1834); Cummings v. Beeler, 189 Tenn. 151, 171-78, 223 S.W.2d 913, 921-24 (1949); Staples v. Griemer, 183 Va. 613, 622-23, 33 S.E.2d 49, 54-55, 158 A.L.R. 495, 515 (1945). *See also* 1 T. COOLEY, TREATISE ON CONSTITUTIONAL LIMITATIONS 84-85 (8th ed. 1927). Sturm reports that during the 31 year period, 1938-1968, there were 23 referenda in 16 states on the question of unlimited conventions and 10 in five states on a limited convention. Referenda on limited convention calls resulted in a higher percentage of public approval than those dealing with unlimited authorizations. Sturm concludes that the limited convention has grown greatly in popularity and the authority of such assemblies has been successfully limited to stated subjects. A. STURM, THIRTY YEARS OF STATE CONSTITUTION MAKING: 1938-1968, 64-67 (1970). *See also* A. Sturm, *State Constitutions,* in 19 THE BOOK OF THE STATES: 1972-73, at 10 (1972).

73. STATE APPLICATIONS (1959), *supra* note 48, at 3-4: "There is little argument concerning the power of the convention to develop specific responses to the problems presented to it. The process of proposing amendments clearly requires convention consideration of a number of possible alternative solutions to a problem before a specific proposal is developed. Hence, development of the specific wording of a proposed amendment should be left to the convention. *But cf. Amending the Constitution To Strengthen the States in the Federal System,* 36 STATE GOV'T 10 (1963).

74. *Ervin Bill, supra* note 4, §6(a), provides that if both Houses of Congress determine that the requisite number of states have applied for a convention on the same subject, Congress must convene a convention on that subject. Section 8 restricts the convention's work to the subject or subjects named in the congressional resolution convening the convention. As a further safeguard, delegates would be required to subscribe to an oath to refrain from proposing or voting in favor of any proposed amendment not named in the convention resolution. *But cf.* Note, *Proposing Amendments to the United States Constitution by Con-*

This contention, however, has not received universal support. The suggestion has been made that the nature of the right conferred upon state legislatures in requesting Congress to call a convention is nothing more than the right of petition.[75] Moreover, it has been insisted that, since Congress must call the convention and specify the details relative to such convocation, only the National Legislature, in its discretion, may define the convention's agenda.[76] Hence, the assertion that:[77]

> State legislatures . . . have no authority to limit an instrumentality set up under the federal constitution. . . . The right of the legislatures is confined to applying for a convention and any statement of purposes in their petition would be irrelevant as to the scope of powers of the convention.

These arguments lack appreciation of the framers' intent in providing the convention alternative. The drafters included the convention method in the amending article to enable states to initiate constitutional reform if the National Legislature refused to do so.[78] The first version of article V endorsed by the 1787 Convention explicitly provided that a constitutional convention shall be limited by Congress to the subject matter contained in state applications.[79] Subsequent Convention action did not modify such policy. This view is supported by debates in the state ratifying conventions revealing that proponents of the proposed Constitution clearly contemplated that the work of a convention would cohere to state wishes.[80] Moreover, in view of the trend in the states to request only a limited convention, the Judiciary Committee of the House of Representatives has concluded:[81]

> [T]here would seem to be no logical reason whatsoever for overlooking the language contained in the petitions of the states and forcing a gen-

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vention, 70 HARV. L. REV. 1067, 1076 (1957) (the convention is morally obligated to restrict its debates to the subject matter set out in the state applications. Nevertheless, Congress may not properly limit the scope of the convention's deliberations through the call).

75. Wheeler, *supra* note 40, at 795.

76. 1952 REPORT, *supra* note 30, at 15.

77. L. ORFIELD, *supra* note 69, at 45.

78. "Sir, the most powerful obstacle to the members of Congress betraying the interest of their constituents is the state legislatures themselves, who will be standing bodies of observation, possessing the confidence of the people, jealous of federal encroachments, and armed with every power to check the first essays at treachery." Remarks of Alexander Hamilton, New York State Ratifying Convention, as quoted in 2 DEBATES, *supra* note 18, at 261.

79. *See* text accompanying notes 18-23, *supra*.

80. *See* remarks of Mr. Adams (Mass.) and Mr. Stillman (Mass.), 2 DEBATES, *supra* note 18, at 136, 173-74. A similar view is reflected in the editorial by a contemporary advocate of the Constitution, James Sullivan of Massachusetts: "The 5th Article also provides that the states may propose any alterations which they see fit, and that Congress shall take measures for having them carried into effect." Cassius XI, *The Massachusetts Gazette*, No. 394, Dec. 25, 1787, *quoted in* P. FORD, ESSAYS ON THE CONSTITUTION OF THE UNITED STATES 45 (1892).

81. 1952 REPORT, *supra* note 30, at 11-12. In 1931, New York State applied for a convention to repeal the 18th amendment "and no other Article of the Constitution," 75 CONG. REC. 48 (1931).

> eral convention upon those states requesting nothing more than a single amendment to the Constitution. A contrary determination would oftentimes be at variance with the very wishes of those States submitting applications to the Congress as well as constitute a very narrow and restrictive interpretation of Article V itself.

Additionally, since article V requires Congress to call a convention only when a consensus exists among two-thirds of the states with regard to the subject of a proposed change, the convention should not be allowed to ignore such a consensus and address problems not contemplated by state applications. Madison, in *The Federalist,* No. 43, recognized article V as a means to enable the general and state governments to originate "the amendment of errors pointed out by experience."[82] That both the National Legislature and the states may initiate useful alterations suggested by their unique perspectives and experiences is evident. If Congress does not incorporate the consensual desires of the states into the convention call, the experiences of the states would effectively be ignored.

Moreover, Madison expressed concern in this same tract with "that extreme facility which would render the Constitution too mutable."[83] If the general subject matter of the convention were not limited by Congress to the problem agreed upon by at least thirty-four states, the Constitution would indeed "be rendered too mutable." Constitutional change should not be considered by a convention until two-thirds of the states conclude that such change is desirable. If thirty-four states request a convention on a particular subject, and Congress refuses to limit the convention to such subject, the National Legislature would be empowered to convene a convention totally disassociated from the state consensus that served as the constitutional prerequisite for its creation and legitimate action.[84]

Finally, since it would require only a majority vote of Congress to adopt a convention resolution,[85] the National Legislature, if allowed to ignore the will of the states in defining the convention's work, would be able to bypass the article V requirement that two-thirds of both Houses must support a congressionally initiated amendment. Such a process would dilute the two-thirds mandate by subjecting the Constitution to change at the will of only a congressional majority, and would clearly render the Constitution more mutable than intended under the procedures envisioned by the framers.

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82. *As quoted in* 1971 REPORT, *supra* note 4, at 8.

83. *Id.*

84. *See* Bonfield, *supra* note 62, at 992-98.

85. "The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, etc., where not otherwise expressly provided." L. Deschler, JEFFERSON'S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. Doc. No. 439, 91st Cong., 2d Sess. 252 (1971). Since article V simply provides that Congress shall call a convention, only a majority vote of the Congress is required to convene such a convention. The *Ervin Bill, supra* note 4, §6(a), provides Congress shall convene a convention by concurrent resolution of both Houses. Since such a resolution is not legislative in nature, it is not sent to the President for approval. L. DESCHLER, *supra* at 186.

Conclusion

The foregoing analysis reveals that state legislatures may petition Congress to convene a constitutional convention for proposing amendments dealing with a particular subject, several subjects, or general constitutional revision. Congress, by virtue of its necessary and proper clause powers, may define and restrict the work of an article V convention through the convention call. Finally, consistent with the reasonable intent of the framers, Congress is obliged to limit the scope of a convention to the general subject matter or problem at which the state applications are directed. Concomitantly, Congress should not recognize the validity of proposals developed by a convention that exceed congressional strictures reflected in the convention call.

EXHIBIT H
Page 1 of 3

THE CASE FOR CON-CON

1973
1974
1975
1976
1977
1978

Since the 1973 Supreme Court abortion decision, despite the gallant efforts of thousands of pro-lifers and hundreds of pro-life organizations, THE PRO-LIFE MOVEMENT HAS NOT MANAGED TO GET A HUMAN LIFE AMENDMENT DISCUSSED ON THE FLOOR OF CONGRESS. Neither discussion nor passage of a Human Life Amendment by Congress is imminent today. CONSEQUENTLY, AN INCREASING NUMBER OF PRO-LIFERS FAVOR A CONSTITUTIONAL CONVENTION AS AN ALTERNATIVE METHOD OF AMENDING THE CONSTITUTION AS PROVIDED UNDER ARTICLE V. Many legitimate questions have been raised by pro-lifers regarding the advisability of a Constitutional Convention. The purpose of this booklet is to provide answers to the questions raised most often.

1) Wouldn't a Constitutional Convention leave the door wide open for a States Rights Human Life Amendment?

The answer to this question is to be found in the wording of the resolutions. The Con-Con resolutions passed thus far have clearly stipulated that the desire of each state legislature has been to convene a Constitutional Convention to frame and submit to the American people an amendment which will prohibit abortion on demand in all 50 states. ALL CON-CON RESOLUTIONS PASSED THUS FAR HAVE CALLED FOR A MANDATORY HUMAN LIFE AMENDMENT. Furthermore, if Congress called a convention in violation of the intent expressed in the required 34 resolutions, it would be acting unconstitutionally.

2) Is there a danger of a "runaway convention", i.e., of radicals gaining control and totally rewriting the Constitution and changing our form of government?

Bear in mind that a Constitutional Convention has no more power to amend our Constitution than does the Congress of the United States. As is the case with a Constitutional Amendment emanating in Congress, any amendment framed by a Constitutional Convention must receive the ratification of three-fourths of the states (38) before it becomes a part of our Constitution. THIS IS IDENTICALLY THE SAME PROCEDURE WHICH MUST BE FOLLOWED TO ULTIMATELY APPROVE A CONSTITUTIONAL AMENDMENT EMANATING IN CONGRESS. The three-fourths requirement, therefore, and the expressed intent of the Legislatures provide all the controls that are needed.

3) Will the Con-Con movement erode the manpower and money now being used to prevail on Congress to frame and submit a Human Life Amendment?

After five years of futile efforts, and the stark reality of little or no chance of securing even a release of a Human Life Amendment for disucssion on the floor of Congress, Con-Con will provide fresh hope in a real and practical way to overcome the pro-life inertia. FOR CON-CON PRESENTS A MEANS TO END ABORTION ON DEMAND WHICH IS NOT DOMICILED WITHIN THE WASHINGTON SPHERE OF INFLUENCE BUT IN THE LEGISLATURES OF THE INDIVIDUAL STATES. Con-Con is appealing to the strong pro-life feeling in each state as attested by the anti-abortion laws which existed at the time of the 1973 Supreme Court decision. It is not the intent or the desire of Con-Con to discourage efforts to obtain a Mandatory Human Life Amendment through the Congress. ON THE CONTRARY, CON-CON SUPPORTERS BELIEVE THAT ITS EFFORTS ARE COMPLEMENTARY AND MAY WELL HASTEN THE DAY THAT CONGRESS WILL FRAME AND SUBMIT A HUMAN LIFE AMENDMENT TO THE AMERICAN PEOPLE.

If Congress does not act, or does not act in accordance with the expressed desires of the states as indicated in their resolutions, THE CON-CON EFFORT WILL INSURE THE SUBMISSION OF A MANDATORY HUMAN LIFE AMENDMENT.

4) Can a Constitutional Convention be limited in scope to one issue or will there be a danger of having to deal with numerous issues if the convention is called?

According to many constitutional scholars, A BETTER CASE CAN BE MADE FOR LIMITING STATE CONVENTION CALLS TO ONE ISSUE RATHER THAN REQUIRING OR EVEN ALLOWING A MULTIPLE-ISSUE CALL. The

validity of this argument is convincingly established by an in depth study of constitutional language, the evolvement of that language as recorded in historical papers and the expressed intent of the authors of the Constitution. The American Bar Association in its booklet entitled "Amendment of the Constitution"* concurs in this opinion. After two years of intensive research and study by a committee of nine distinguished constitutional attorneys, THEIR CONCLUSIONS AND RECOMMENDATIONS WERE UNANIMOUSLY MADE WITH ONLY ONE MINOR DISSENT. If unanimity can be reached by nine experts in the field of constitutional law, isn't it time that pro-lifers also closed ranks behind the Con-Con effort?

5) Some people claim that if a large enough number of Con-Con resolutions are passed just short of the required 34, Congress will frame the desired amendment and submit it to the states in order to avoid a Constitutional Convention. Is this true?

At this point it is impossible to know what Congressional reaction would be to such a circumstance. There are many people who believe that Congress will avoid a Constitutional Convention by acting before the 34th resolution is passed. HOWEVER, IT IS ABUNDANTLY CLEAR THAT PRO-LIFE FORCES CANNOT PREDICT CONGRESSIONAL REACTION AND MUST, THEREFORE, RECOGNIZE CON-CON AS THE MEANS TO CALL THE QUESTION RATHER THAN A CHANCE TO FORCE IT. If Congress should act earlier and in accord with the intent of the resolutions, much time and many lives would be saved. However, if Congress should not act, or should not act in accordance with the stated intention of the state legislatures, THE CON-CON EFFORT PROVIDES DEFINITE ASSURANCE THAT THE ISSUE OF ABORTION WILL BE PRESENTED TO THE AMERICAN PEOPLE FOR THEIR DECISION.

6) The Constitutional Convention method of amending the Constitution will open a Pandora's box by raising too many unanswered questions!

Civilization's emergence has been characterized by its insatiable curiousity - its ever-present eagerness to seek answers. To avoid a timely course of action because it has never been followed before is to deny the vision of Columbus, the Declaration of Independence, the Emancipation Proclamation, atomic energy and space exploration. After an exhaustive two-year study of the Con-Con question, the American Bar Association found no noteworthy obstacle including procedural to a Constitional Convention. Two hundred State Constitutional Conventions have already provided many of the answers. The American Bar Association has provided the remaining answers in its booklet "Amendment of the Constitution."* TO CONTINUE TO ALLOW THE QUESTION OF PROCEDURE TO IMPEDE THE ONLY FORMIDABLE PRO-LIFE EFFORT TO DATE IS TO INADVERTENTLY ENTER INTO A COLLUSION WITH ANTI-LIFE FORCES WHICH RELY UPON CONFUSION AND DISUNITY TO DEFEAT OUR PRO-LIFE EFFORT.

7) If a Constitutional Convention were convened and its Human Life Amendment rejected by the states, wouldn't Congress be justified in turning down subsequent requests for Human Life Amendments on the basis that the issue had already been decided?

Possibly, but what is the pro-life alternative? WE MUST REALIZE THAT THE HLA BOTTLENECK IS THE WILL OF CONGRESS. Our efforts are not being thwarted by a reticent committee chairman, but are being discreetly sabotaged for the sake of political expediency.

Why should the Congressional power structure incur the wrath of the multi-million dollar abortion industry when it can hide behind a rule deficiency? Congress has the means at its disposal to overrule recalcitrant committee chairmen but it has elected not to do so in the case of the HLA.

Why should the career politicians in Congress allow themselves to be subjected to risks of taking a stand on a highly emotional issue when the issue can be forever buried by parliamentary hornswoggling? Obviously, the status quo is of Congressional design and will not be changed until Congress is required to do so. To accept, therefore, the possibility of the defeat of a Con-Con Human Life Amendment as a reason for dissent is to assume that a viable alternative exists. REALISTICALLY, WE HAVE ONLY CON-CON.

8) Aside from the method most likely to insure submission of a Human Life Amendment to the American people, which method is most likely to insure its passage?

If an amendment originates in Congress, the major impetus would have been provided from outside the state legislatures, thus depriving them of a thorough consideration of the issues which usually precedes passage of a Con-Con resolution. Legislators would be called upon to consider a highly controversial issue amidst the confusion which would inevitably be wrought by the American Civil Liberties Union, NARAL, Planned Parenthood, and NOW. Compare the pitfalls of the Congressional approach to the Con-Con method which virtually assures passage by avoiding submission of the HLA until all but four states needed for final passage will have previously acknowledged their acceptance of its intent. To assume that the 34 states passing Con-Con resolutions will ultimately ratify the resultant HLA is not unreasonable.

9) In the answer to question (6), reference was made to the Con-Con effort as "the only formidable pro-life effort to date." Please explain further.

Pro-life forces have not even managed to get a Human Life Amendment discussed on the floor of Congress, much less passed. Many reasons can be cited for the pro-life ineffectiveness, but the fact is that the pro-life strength in Congress is presently eroding as attested by the 1977 Hyde Resolution vote. SUDDENLY, HOWEVER, THE AMERICAN CIVIL LIBERTIES UNION, NARAL, PLANNED PARENTHOOD AND NOW, HAVE MADE THE DEFEAT OF THE CON-CON MOVEMENT THEIR TOP PRIORITY. Why? Obviously because this is the most formidable pro-life threat to which these organizations have been subjected. Ironically, it is anti-life forces, not pro-life forces, which have recognized the latent power of the Con-Con movement. Pro-lifers must realize that the opportunities offered by Con-Con will quickly fade if not promptly utilized.

Our only means to successfully counteract the abortion industry's effort to preserve abortion on demand is through immediate unity and effort.

Won't You Join Con-Con Today?

* Copies available from:

Southerners for a Constitutional Convention
P.O. Box 888
Shreveport, Louisiana 71161

"Vice is a monster of so frightful mien,
As to be hated, needs but to be seen;
Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace."

Alexander Pope

Americans for a Constitutional Convention

Why a Constitutional Convention?

(202) 347-3245

ANNE V. HIGGINS
PUBLIC RELATIONS DIRECTOR

SUITE 825, 529-14TH ST. NW
WASHINGTON, D.C. 20045

FACT SHEET ON CALLING A CONSTITUTIONAL CONVENTION

- Article V of the Constitution of the United States provides that Constitutional Amendments may be proposed in either of two ways— by 2/3 of both houses of Congress or in response to the applications of 2/3 of the state legislature.
- Growing disenchantment among state legislators with Congress' failure to pass a Human Life Amendment to reverse the 1973 U.S. Supreme Court "abortion on demand" decisions has generated strong state-level support for calling a Constitutional Convention as the only available means for ending abortion-on-demand.
- 13 states have already passed such applications. They are: New Jersey, Rhode Island, Utah, South Dakota, Arkansas, Massachusetts, Louisiana, Indiana, Missouri, Nebraska, Delaware, Kentucky and Pennsylvania.

  In every single one of these states the resolution has passed by an over-whelming margin in both houses.
- A Constitutional Convention can make no change in the Constitution. Anything that a Constitutional Convention proposes for ratification by the states must be ratified thereafter by 76 legislative bodies in 38 states (¾).
- The procedures bill introduced in Congress (HR 7008 & S 1880) provides that state petitions to the Congress which request the calling of a convention under Article V shall state the nature of the Amendment or Amendments to be proposed by such conventions. Upon receipt of valid applications from 2/3 or more of the states requesting a convention on the *same* subject or subjects, Congress is required to call a convention specifying in the resolution the nature of the amendment or amendments for the consideration of which the convention is being called.

  The states could require the Congress to submit a single subject or problem, *demanding action on it alone.* The Convention would then be confined to that subject, but it would be free to consider the propriety of proposing the form the amendment should take.
- A Constitutional Convention is a right reserved to the states, guaranteed by Article V of the United States Constitution, and is a perfectly valid method of proposing amendments to the Constitution.
- Abortion-on-demand—which means the mass slaughter of more than a million babies each year—is the most terrible issue to face Americans since slavery. If unique and/or unprecedented means are necessary to solve the abortion dilemma, we must not fear to take them.

The following questions are among those most frequently asked concerning this vital issue of protecting human life in our times.

WHY MUST WE CHANGE THE CONSTITUTION?

The question is understandable. Our Constitution is sacred to us as Americans. Under the Constitution, the responsibility for writing the law is with Congress; the responsibility for executing the law is with the Executive; the responsibility for interpreting the law resides with the Supreme Court.

However, the disastrous 1973 U.S. Supreme Court "abortion-on-demand" decisions (Roe v. Wade and Doe v. Bolton) removed the unborn child from the protection of the law in the United States. The only way to restore their right to life is for an amendment to the Constitution.

The Congress, our legislative body, has refused to allow an amendment to even get out of Committee for a vote.

The Executive Branch won't use its power to curtail abortion funding or abortion and our government, directly and indirectly has been in the position of espousing abortion at home and abroad.

ISN'T IT A RADICAL MEASURE TO TAKE?

We all know that the political process can be as good or as bad as the people that are part of it. The ABA Constitutional Convention Study Committee in 1973 stated: "...The charge of radicalism does a disservice to the ability of the states and people to act responsibly when dealing with the Constitution. ...so long as the convention method of proposing amendments is a part of our Constitution, it is proper to establish procedures for its implementation and improper to place unnecessary and unintended obstacles in the way of its use."

HOW CAN WE CHANGE THE CONSTITUTION?

Article V of the U.S. Constitution provides for two methods of amending the Constitution. The first, and most widely known is for two-thirds (⅔'s) of both Houses of Congress to propose an amendment for ratification by three-fourths (¾'s) of the state legislatures. This has been the process pro-life organizations have been pursuing since the disastrous 1973 Supreme Court "abortion-on-demand" decisions.

The other method provided for in Article V is for a call for a Constitutional Convention by two-thirds (⅔'s) of the state legislatures for the purpose of considering, and then subsequently proposing an amendment for eventual ratification by three-fourths (¾'s) of the state legislatures.

THIS SECOND PROVISION IS IN OUR CONSTITUTION BECAUSE OUR FOUNDING FATHERS HAD A PURPOSE IN MIND. THIS ALTERNATIVE METHOD GIVES THE STATE LEGISLATURES A ROLE IN ADDRESSING A *GRAVE* CONSTITUTIONAL ISSUE OR CRISIS, WHEN CONGRESS FAILS TO ACT, OR IS *UNWILLING* TO ACT.

There can be no doubt that the death by abortion of millions of unborn babies, and *the failure of Congress to take meaningful action to protect those lives* presents us with exactly the situation the Founding Fathers had in mind when they provided for this ALTERNATIVE method of amending the Constitution in Article V.

Is there a danger of a "runaway convention," i.e., of radicals gaining control and totally rewriting the Constitution and changing our form of government?

Bear in mind that a Constitutional Convention has no more power to amend our Constitution than does the Congress of the United States. As is the case with a Constitutional Amendment emanating in Congress, any amendment framed by a Constitutional Convention must receive the ratification of three-fourths of the states (38) before it becomes a part of our Constitution. THIS IS IDENTICALLY THE SAME PROCEDURE WHICH MUST BE FOLLOWED TO ULTIMATELY APPROVE A CONSTITUTIONAL AMENDMENT EMANATING IN CONGRESS. The three-fourths requirement, therefore, and the expressed intent of the Legislatures provide all the controls that are needed.

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WHAT SAFEGUARD EXISTS TO PROTECT THE U.S. CONSTITUTION FROM UNWANTED CHANGE?

A constitutional convention cannot add or subtract a single word from the Constitution, just as the Congress itself cannot. WHATEVER IS PROPOSED BY A CONSTITUTIONAL CONVENTION CAN ONLY BECOME LAW WHEN RATIFIED BY 38 STATES (76 SEPARATE LEGISLATIVE BODIES). The convention is simply a substitute for the role of Congress – it bypasses a Congress where two men, Representative Don Edwards and Senator Birch Bayh, refuse to even permit the Congress to consider a constitutional amendment on the Right to Life.

WHAT STATES HAVE ALREADY PASSED THE CONVENTION CALL FOR AN AMENDMENT TO PROTECT THE UNBORN?

Indiana, Rhode Island, Massachusetts, New Jersey, Delaware, Pennsylvania, Missouri, Louisiana, Arkansas, Utah, Kentucky, South Dakota, and Nebraska have all passed the Convention Call.

HOW DOES ARTICLE V READ?

ARTICLE V
U.S. 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; 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.

WHAT WAS THE REASON FOR ARTICLE V IN OUR CONSTITUTION?

James Madison, in explaining the reasons for Article V said:

"That useful alterations (in the Constitution) will be suggested by experience, could not but be foreseen. It was requisite, therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or the other."

1861, Abraham Lincoln, in his first inaugural address, remarked:

"...many worthy and patriotic citizens are desirous of having the National Constitution amended...I fully recognize the rightful authority of the people over the whole subject to be exercised in either of the modes prescribed in the instrument itself; and I should ...favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves..."

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At this point it is impossible to know what Congressional reaction would be to such a circumstance. There are many people who believe that Congress will avoid a Constitutional Convention by acting before the 34th resolution is passed. HOWEVER, IT IS ABUNDANTLY CLEAR THAT PRO-LIFE FORCES CANNOT PREDICT CONGRESSIONAL REACTION AND MUST, THEREFORE, RECOGNIZE CON-CON AS THE MEANS TO CALL THE QUESTION RATHER THAN A CHANCE TO FORCE IT. If Congress should act earlierand in accord with the intent of the resolutions, much time and many lives would be saved. However, if Congress should not act, or should not act in accordance with the stated intention of the state legislatures, THE CON-CON EFFORT PROVIDES DEFINITE ASSURANCE THAT THE ISSUE OF ABORTION WILL BE PRESENTED TO THE AMERICAN PEOPLE FOR THEIR DECISION.

Aside from the method most likely to insure submission of a Human Life Amendment to the American people, which method is most likely to insure its passage?

If an amendment originates in Congress, the major impetus would have been provided from outside the state legislatures, thus depriving them of a thorough consideration of the issues which usually precedes passage of a Con-Con resolution. Legislators would be called upon to consider a highly controversial issue amidst the confusion which would inevitably be wrought by the American Civil Liberties Union, NARAL, Planned Parenthood, and NOW. Compare the pitfalls of the Congressional approach to the Con-Con method which virtually assures passage by avoiding submission of the HLA until all but four states needed for final passage will have previously acknowledged their acceptance of its intent. To assume that the 34 states passing Con-Con resolutions will ultimately ratify, the resultant HLA is not unreasonable.

ISN'T THE CALL FOR A CONVENTION VERY UNUSUAL FOR A STATE LEGISLATURE TO PASS?

Most emphatically, *no*. The grass-roots provision in Article V has been employed by every state in the Union. Most states have passed numerous calls for a convention on a wide variety of issues, such as apportionment of state legislatures, busing, prayer in the schools, direct election of senators. The 24 states that have passed Convention Calls for a balanced budget have been in the news of late. There have been more than 400 calls for Constitutional Conventions on different subjects.

WHY CONGRESS MIGHT HAVE REASON TO FEAR A CONVENTION.

The "grassroots provision" of Article V of the Constitution has already scared Congress twice in this century. Such authorities as the American Bar Association Special Constitutional Convention Study Committee and the U.S. Senate Judiciary Committee's constitutional scholars agree that the potential power of the states under Article V of the Constitution was first demonstrated in 1908. In that year, Congress suddenly reversed itself on the issue of direct election of U.S. Senators and rammed through what is now the 17th Amendment* in order to head off what looked like an inevitable Constitutional Convention. The amendment (which most scholars consider to have faced years of Washington opposition for rather self-serving reasons) was suddenly embraced by Congress when 23 state legislatures had already petitioned for a convention. (Since there were four fewer states in the Union at that time, the drive for a Constitutional Convention was only 8 states short of the required two-thirds consensus.) Faced with a choice between losing political face and giving up political POWER to a temporary assemblage brought into being by spontaneous popular sentiments for the first time in American history, Congress thus proved long ago that the "grassroots provision" of Article V is indeed a powerful instrument for a majority of the American people to really DO something about their frustrations when their elected representatives in Washington will not. Politicians are quick to react to an idea "whose time has come."

WHAT HAVE THE PRO-LIFE LEADERS IN THE UNITED STATES CONGRESS HAD TO SAY ABOUT A CONVENTION CALL ON RIGHT TO LIFE?

The most eloquent champion of the unborn in the House of Representatives, Henry Hyde, recently wrote to a constituent: "I am pleased to endorse the call for a Constitutional Convention as one more avenue for those of us who wish to protect the right to life of the unborn. ...I see great advantages in carrying the fight to the state legislatures as well. The more people working towards our eventual goal in as many areas as possible, the better. Only a few of us can concentrate on Congressional action, while the call for a Constitutional Convention can directly involve many more people back home."

HAS CONGRESS TAKEN ANY ACTION TO SET GUIDELINES FOR A CONVENTION SHOULD ONE BE CALLED?

FEDERAL CONSTITUTIONAL CONVENTION PROCEDURES ACT

The Federal Constitutional Convention Procedures Act has been introduced in the U.S. Congress by Sen. Jesse Helms and by Rep. Henry Hyde These are nearly identical to the bill by Sen. Sam Ervin which unanimously passed the U.S. Senate in 1971 and 1973 (but was bottled up by a House committee chairman precisely because the bill would have effectively wiped out the "Pandora's Box" arguments and thus enhance the potential power of state legislatures).

What would the "Ervin Bill" do?

In his preparation for introducing "The Federal Constitutional Convention Procedure Act" in the U.S. Senate, Senator Helms has circulated a brief outline that pinpoints the highlights of his bill (which with the exception of several technical changes, is identical to the original "Ervin Bill"). In response to the many questions we have received from state legislators, we print Helms' entire outline here:

1. States use the same procedure for adopting convention application as they use for the passage of statutes, but without the approval of the Governor.
2. Receipt of an application by Congress is to be announced on the Floor of both Houses, and copies sent to each Member of Congress and state legislature.
3. Each application is to remain in effect for 7 years, unless rescinded by the state legislature.
4. Applications may be rescinded by state legislatures until two-thirds of the states have submitted applications, then all applications remain in effect.
5. After Congress determines the validity of the applications, it shall pass a concurrent resolution calling for a convention.
6. The convention must be convened within 1 year after adoption of the concurrent resolution by Congress.
7. Delegates to the convention shall be popularly elected, one delegate from each congressional district and two additional at large delegates from each state.
8. The convention shall elect its own officers.
9. Each delegate may cast one vote.
10. Each delegate's vote must be recorded and a verbatim record kept.
11. Amendments shall be proposed by majority vote of the delegates.
12. The convention shall be limited to subjects named in the concurrent resolution and that delegates subscribe to an oath to refrain from proposing or voting in favor of any proposed amendment not so named.
13. The convention shall be terminated 1 year after date of its first meeting, unless Congress extends its life.
14. Questions arising as to convention procedures shall be determined solely by Congress.
15. Congress may disapprove a proposed amendment on the ground that substantial procedural irregularities occurred at the convention or that the amendment pertains to a subject different from that described in the resolution calling the convention.
16. Congress may not disapprove a proposed amendment on the ground that it disagrees with the substance of the amendment.
17. Congress must transmit the proposed amendment to the states for ratification.
18. The proposed amendment must be ratified by three-fourths of the states.
19. Each state shall adopt its own rules of procedure for ratifying proposed amendments, except that any state ratifying action shall be valid without the assent of the Governor.
20. State ratifications may be rescinded by the same process by which the amendment was ratified, except that a ratification may not be rescinded when there are valid ratifications by three-fourths of the states within the requisite time.

VOLUME 3, NUMBER 2

The Convention/CALL

February 14, 1979

MISSISSIPPI PASSES CON/CON * UPROAR ON BALANCED BUDGET SEEN AS HELPING CONVENTION DRIVE *

MISSISSIPPI BECAME THE 14TH STATE TO PASS CON/CON: on Feb. 7, the State Senate took final action on a (valid -- see below!) resolution that reads in part "that the Congress of the United States is hereby requested to call a convention pursuant to Article V ... for the sole purpose of proposing an amendment to the United States Constitution" on abortion (and goes on to suggest wording similar to the State's anti-abortion law struck down by the Supreme Court in 1973). The fight was led by Senate President Pro Tempore (i.e., the presiding officer) William Alexander himself; the vote was -- as it has been in virtually every state to pass Con/Con -- a crushing 45-3. The House had already passed the measure on Jan. 29 by another landslide, 98-11 (there, Dem Rep. Ed Jackson managed it, with some effective support from Rep. Jim Simpson, among others). Con/Con strategists consider Mississippi an important strategic victory -- a breakthrough in the "Southern Tier" that could help greatly in neighboring states (look for more details and analysis in the next issue!).

THE WHITE-HOT CONTROVERSY OVER A CONSTITUTIONAL CONVENTION has been grabbing the headlines -- and confusing the pundits -- for weeks now. But of course it's the threat of a "Balanced Budget" convention (a "BB/Con"), not an anti-abortion ("Con/Con") one, that has caused the national furor. It all burst out when California Gov. Jerry Brown fired off the first salvo of his '80 Presidential campaign (in his second inaugural speech Jan. 8 -- see Con/Call's Jan. 19 issue) by supporting the convention idea if Washington refused to respond to public demand for "Proposition #13" style spending restraints. The press response has been amazing: all kinds of people are coming up with surprising arguments on all sides, and the "sides" themselves are getting hopelessly muddled, with Dems and Republicans, liberals and conservatives -- even Administration officials -- popping up unexpectedly on the "wrong" side, or both sides.

It's a far cry from the muffled response to the Con/Con drive for an anti-abortion convention that began in earnest just two years ago (and has already won in 13 states with little national -- as distinguished from local -- media coverage). Then, the scenario was plain and simple: a small band of determined anti-abortionists, convinced that there was no foreseeable chance of getting a Human Life Amendment out of the Congress, determined to push for the alternative route provided by the Constitution's Article V; their big problem was to get people to take the convention idea seriously. Few state legislators, nor even most local pro-lifers, had ever seriously considered the idea. The opposition was equally clear-cut: virtually nobody but the pro-abortionists damned the convention, or raised the "Pandora's Box" bugbear that any convention would open up the whole Constitution, the Bill of Rights, and Lord knows what else to instant destruction (surely the best-kept "secret" of the whole Constitutional Convention uproar is the obvious fact that no convention can do anything more than what the Congress has done throughout U.S. history, i.e., propose amendments which must then be ratified by three-quarters of all the states; thus even a "runaway" convention would change nothing unless 38 of the 50 states decided to confirm its actions -- and the far-from-over struggle to ratify the ERA amendment is vivid proof of how hard the states can resist unpopular amendments!).

Jerry Brown's "Convention Call" changed everything. All he really did was serve notice that he meant to mobilize growing voter frustration at "do-nothing" government in support of his own effort to unseat Carter -- just as he rode the highly-symbolic "Proposition #13" tide (which he originally opposed) to his stunning re-election landslide last November. The "Convention route" was an obvious and handy vehicle: anti-abortionists have succeeded in restoring its "currency" (last time it was a hot public issue was in the mid-60's, when the late Sen. Everett Dirksen led a drive that came within just two states of

(over, please)

getting a convention to reverse the Supreme Court's re-apportionment decisions) while, in what has to be the "sleeper" political operation of the 70's, the balanced-budget forces were getting state legislatures to pass resolutions on their issue -- virtually unhampered by the smear-and-scare tactics pro-abortionists were using against Con/Con (it was not at all unusual for a state legislator who had opposed Con/Con on "Pandora's Box" grounds to turn right around and support BB/Con -- sometimes in votes only weeks or days apart -- without a murmur of such "patriotic" fears!). By the time the anti-tax-and-spending issue became the big issue in last year's election campaigns, BB/Con promoters claimed that they had gotten 22 states to pass convention resolutions -- and it suddenly dawned on "everybody" that a budget convention was a "real possibility" (at first, the 22-state claim was largely accepted by both the politicians and the media -- but no longer -- see below).

Thus all hell broke loose when Brown put the issue in orbit (whatever his own views -- if he has any constant ones -- Jerry seems to have an uncanny sense of what sells in the political marketplace). At his Jan. 17 news conference, President Carter (as expected) opposed the convention idea -- using, sure enough, some of the "Pandora's Box" arguments -- but it seemed clear that what he really feared was budget-limitation itself (indeed, his own Attorney General Griffin Bell later said he thought Congress could limit any convention -- for more see below). Just two days later, Teddy Kennedy got into the act, signing a newspaper column (see the Worcester, Mass. Evening Gazette, Jan. 19) that evidently got nationwide distribution: he admitted that "By now, every person in public life has begun to feel the power of the citizens' revolt" -- but he clung to the old argument that Congress can pass any/all constitutional amendments without raising the "serious threat to the integrity of the Constitution" that a convention poses. Then (did he really mean to do it?) his article gives this fascinating additional reason: "The call for a convention is unwise for another reason. On issues where amendments have been suggested in recent years -- such as school busing, abortion, school prayer or reapportionment -- the proponents could not achieve their goal except by amending the Constitution [*our emphasis --Ed.*]. But it is not necessary to take this step to achieve the goal of a balanced budget." (As it happens, this is exactly what we pointed out in our last issue, and we certainly welcome Kennedy's support!)

Since the Carter-Kennedy response, there has been a steady stream of articles and news stories in almost every major publication -- and four more states passed BB/Con calls: Feb. 1, Utah became the 26th state to do so (the Feb. 12 issue of U.S. News and World Report in a full-page rundown of the "ABC's of a Constitutional Convention," says 27 have). More, Newsweek (Feb. 12) also gave BB/Con major coverage, listing not only the 26 "states that have passed a resolution" but also four more in which one state legislative house has already passed them -- and five "other states likely to pass it" -- if all nine of these "hot prospect" states act, the putative total would hit 35, or one more than necessary to trigger a convention! But hold on: the Washington Star's Lyle Denniston (Feb. 2), a highly respected political reporter, published an analysis that questioned the validity of at least eight of the then-current 26 BB/Con resolutions, because they evidently don't even mention a convention and, says Denniston, "Most constitutional scholars have maintained" that the "states must make clear that they want the convention method used." The main thrust of his story, in fact, is that the Congress is by no means "ready to hand the [budget] issue to a constitutional convention" -- so his digging into the wording of the resolutions was welcome news to the running-scared congressmen. Indeed, Liberal Dem Sens. Birch Bayh and Alan Cranston almost immediately picked up the cue, and charged (see the New York Times, Feb. 7) that maybe "only 14 or 16 states" had passed "valid" calls (Cranston, the story later reports, "issued a statement listing only 14 states as having filed effective petitions with Congress"). Denniston, by the way, concludes with two paragraphs of great interest to Con/Con supporters, and we quote them in toto: "Among other reasons why the convention call is being resisted, at least by liberals in both houses, is that the anti-abortion forces are also making progress in seeking a constitutional convention. So far, 13 states have adopted resolutions demanding a convention to write a strong anti-abortion amendment. Those resolutions are clear in insisting upon the convention method" [*our emphasis --Ed.*] -- in other words, all 13 are valid; with Mississippi's action, therefore, Con/Con now has as many valid Calls -- 14 -- as Senator Cranston says BB/Con has!

While Denniston is undoubtedly right in reporting that Capitol Hill's liberals are the vanguard of the terrified-of-a-convention forces, the issue (as we noted) continues to cut across the usual conservative/liberal split, e.g., House Republican Minority Leader John Rhodes has "grave reservations" (see Washington Post, Feb. 6) about BB/Con -- and evidently about any convention: Rhodes criticized Attorney General Bell's contention that a convention can be limited, saying "Every other lawyer I know doesn't believe it's possible to limit the scope of such a convention" and, says the Post, "raised the specter" of a convention "dealing with all sorts of controversial issues, from the Equal Rights Amendment and abortion to gun control." Needless to say, Rhodes' statement has infuriated many anti-abortion leaders (Rhodes actively sought "pro-life" support two years ago when he thought that the abortion issue might beat him in Arizona!) and, we're told, many of the House Republicans he's supposed to be leading ("He's simply out of touch," one House staffer told Con/Call, "most of our guys are pro-convention if it comes to that. This isn't the first time he's played into the hands of the 'born-again conservative' Democrats."). And Ronald Reagan -- who has enjoyed strong anti-abortion support so far -- certainly isn't supporting the convention idea (nor has he made any distinction between BB/Con and Con/Con!). Also, Sen. Paul Laxalt (RR's '76 campaign manager) publicly worried about a convention (on CBS-TV's "Face the Nation," Feb. 4) for "Pandora's Box" reasons, but added that he'd "be all for" a limited convention -- presumably including Con/Con.

Fact is, the Republican leadership projects such confusion over the BB/Con "threat" that it's managed to confuse the press. When Party Leaders met in Easton, Md., in early February, the balanced-budget amendment was -- needless to say -- a top-priority item for debate. What did they decide? Well, the NY Times headlined (Feb. 5) "Republicans Would Curb Spending With a Constitutional Amendment" -- and the story said that the idea was to "divert support from a drive for a constitutional convention." But the Wash. Post's top political reporter, David Broder, covered the same story the same day, and reported "Republican Party leaders today rejected as 'gimmickry' the call for a constitutional amendment ..."! (He too found that many rank-and-file Republicans think the GOP is again allowing the Dems to preempt "another popular issue.") Even the syndicated columnists are getting all tangled up on BB/Con. Some surprising examples: Ultra-liberal (and pro-abortion) Joe Kraft (see the Post, Feb. 6) did an admiring column on Jerry Brown, prominently quoting his very strong and telling plug for the whole convention idea ("To say a constitutional convention is a danger is like saying we're finished as a country. That's like saying there were giants in the 18th century -- Madison and Mason and Jefferson and Hamilton. But the 200 million Americans today can't produce giants. That's a Washington view."); and Conservative (but also pro-abortion) James Jackson Kilpatrick, who admits (see his "Send for the Ervin Bill" in the Baltimore Sun, Jan. 25) that "even a faint prospect of a constitutional convention gives me the willies" ends up urging Congress to get busy on legislation to provide convention ground-rules. The "Ervin Bill," as regular readers of this newsletter know, was crafted by former Sen. Sam (of Watergate-hearings fame) and passed the Senate unanimously twice (in '71 and '73); it would not only define the whole convention procedure but also make a "single-issue" convention virtually mandatory (i.e., the only way multiple issues could be considered would be if 34 states passed resolutions on the same set of issues -- i.e., a virtual impossibility). It was never even considered by the House (a single committee chairman simply refused to let it out!) If it had been passed -- or if it or a similar bill were passed now -- it would obviously destroy the whole "Pandora's Box" argument.

Needless to say, that is why Congress' anti-convention -- and pro-abortion -- members don't want to pass (or even vote on) the Ervin Bill, but it remains immediately available (it has already been re-introduced in this session, by Jesse Helms in the Senate on Jan. 15 and Henry Hyde in the House, Jan. 31). That, in effect, is what Attorney General Bell had in mind when he "OK'd" a convention -- to everybody's surprise, presumably including Jimmy Carter. The Post's story (Feb. 5), headlined "Bell Sanctions a Limited Constitutional Convention," says "Bell believes Congress can set limits on what kind of amending a Constitutional Convention could do" and quotes him as saying flat-out: "I absolutely do think limits can be set" and "I think Congress has a duty to do so"! Con/Con supporters heartily agree -- but the Senator who would have to get Ervin moving again is none other than Birch Bayh! (Birch has said that he's willin' to "begin hearings soon" on Ervin -- but

his pro-abortion allies at the National Abortion Rights Action League have already assured us -- see last issue -- that his real intention is "to put the skids" to Ervin.)

Perhaps the best commentary of all came from Columnist William Safire (by no means an anti-abortionist) in his NY Times essay (Feb. 5). He writes: "The convention method ... was provided by the Founding Fathers as a way of lighting a fire under the Congress if the Government in Washington did not prove responsive to the will of most of the states. The threat of a convention has been used before to induce Congress to propose amendments for states to then ratify; but in 200 years, those who proposed the convention method have never needed to go all the way. ... [the] shrill, anguished reaction from Washington illustrates the wisdom of the Founders: a growing central government is unlikely to share its power ... without a powerful threat from the states." And he concludes that the convention "specter haunting Washington is doing its job ... The people will be heard, even when the Government does not want to hear; the framers of the Constitution found the most ingenious way, two centuries ago, to make sure of that." To be sure, Safire too is speaking about BB/Con: he might not be so eloquent about an anti-abortion convention. But what he says applies perfectly well to Con/Con; he illuminates vividly -- beautifully -- both the motivation and the intentions of anti-abortionists: they have no desire whatever to wreck the Constitution that alone guarantees them the means of redress they are attempting to use in order to rescue that fundamental right to life that the Supreme Court destroyed and the Congress refuses to restore.

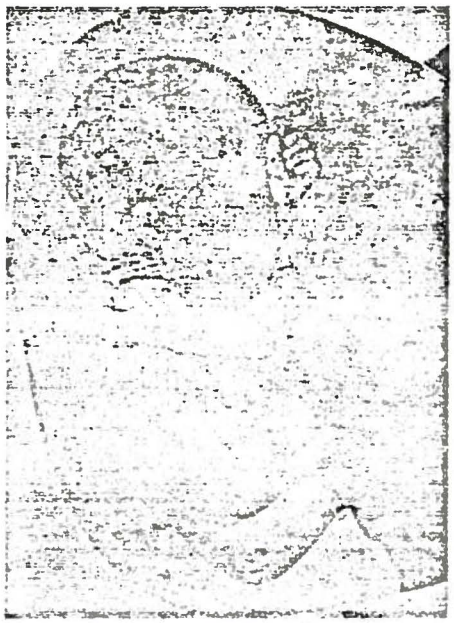
At least one thing now seems certain: whatever happens re the budget (and just about everybody thinks Congress will head off a BB/Con somehow), Con/Con has gained enormously from the uproar. The Convention Option is no longer an esoteric historical curiosity, but a living, breathing contender with a wallop powerful enough -- obviously -- to win main-event bouts. Pro-abortionists can no longer rely on "Pandora's Box" -- as of now, a majority of the nation's state legislators have voted for convention resolutions, and can judge for themselves how impressive this "new" weapon is (the Constitution remains untouched, but Washington is on the run!). Likewise, millions of concerned citizens now know what a convention is all about, and aren't likely to believe that an idea with such widespread and prestigious support is for "kooks only." As for anti-abortionists -- whether those who started the whole convention effort or those (probably the majority) who hesitated to support it fully -- they cannot forget what all Americans have just witnessed: the people can be heard, and the Convention Option magnifies their voice. It will be pursued now with renewed vigor.

Con/Con advocates weren't sitting back waiting for all this. Although Mississippi is the first outright win so far this year, the carefully-planned '79 drive is making progress in other states as well. In Wyoming, the Senate -- by the "usual" lopsided majority (20-8) -- passed a Con/Con Jan. 19; the House battle goes on (there was a Feb. 5 setback in the judiciary committee, but Chairman Ellen Crowley will try again soon). In Montana, a House judiciary committee passed a Con/Con (10-8) Jan. 29; it's due for a full House vote anytime now (and supporters are confident they'll win). In North Dakota (Jan. 30) the Senate passed it (32-18) and, as we go to press, House hearings are also expected momentarily. Ohio (where there remains considerable "right-to-life" foot-dragging on the issue) is stirring: the Cleveland Plain Dealer ran a front-page story on the 700 Ohioans who went to Washington for the Jan. 22 March -- including a report of the Con/Con pep-talk they heard from Americans for a Constitutional Convention Vice-Chairman Anne Higgins (Con/Con strategists consider Ohio a key state: neighboring Pennsylvania and Indiana have already passed resolutions, and both Illinois and Michigan almost did last December -- an Ohio victory might encourage both to pass Con/Con this year). Other states are due to take up the measure in the weeks ahead, and Con/Con got a big (and welcome) boost from Wisconsin's new Republican Governor Lee Dreyfus who, in his first State of the State message (see the Milwaukee Journal, Jan. 30) told state legislators that they should "move toward resolving the dispute between pro-abortion and anti-abortion forces in society" by calling for "a national constitutional convention limited to the issue of abortion." Said Dreyfus: "That action alone will justify the entire existence of this legislative session"!

THE U.S. SUPREME COURT HAS RULED IT'S LEGAL TO KILL A BABY...

of this age
8 WEEK LIVE BABY IN SAC.

or this age
14 WEEK LIVE BABY IN SAC.



or this age
28 WEEK LIVE BABY

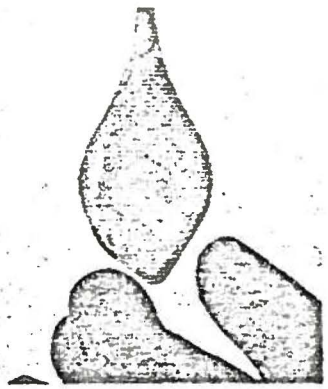
The only requirement is that:
— the baby still lives inside the mother.
— the mother wants the baby killed.
— the doctor is willing to do the killing.

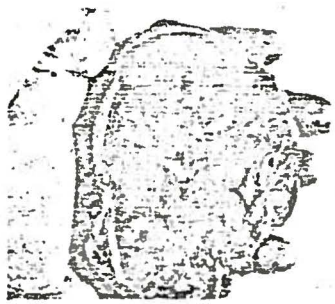
EXHIBIT K
Page 2 of 4

3 MONTHS: All organ systems function. After this, he or she breathes (fluid), swallows, digests, urinates, has tiny liquid bowel movements, sleeps and wakes, tastes, hears, feels pain and can be taught things.

5 MONTHS: Sometimes a baby can survive if born.

6 WEEKS: There is first movement (quickening). There is measurable human brain function as recorded on the Electroencephalograph.





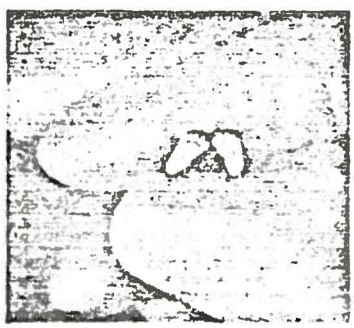
10 DAYS | 18 DAYS | 40 DAYS | 10 WEEKS | 3 MONTHS | 4 MONTHS | 5 MO

HUMAN LIFE BEGINS AT FERTILIZATION — ZYGOTE — EMBRYO — FETUS

0.1 OZ. | 0.4 OZ. | 1 OZ. | 2 OZ. | ½ LB. | 1 L

10 DAYS: This new individual with a dramatic display of hormone power, stops his mother's menstrual periods and from then on completely controls the mother's body.

18 DAYS: The heart begins to beat. By 21 days, it is pumping, through a closed circulatory system, a blood type usually differing from the mother's.



10 WEEKS: The structure of the human body is completely formed.

4 MONTHS: A fully functioning very tiny baby.

It is now legal for any physician to kill a baby while the mother is in labor and not commit a crime.

How? The U. S. Supreme Court in its January 22, 1973 decision (ROE v. WADE) on abortion ruled that:

A state is forbidden to "proscribe" (forbid) abortion anytime prior to birth if in the opinion of "one licensed physician" an abortion is necessary to preserve "the life or health" of the mother. (ROE v. WAD

Her life? — few would argue.

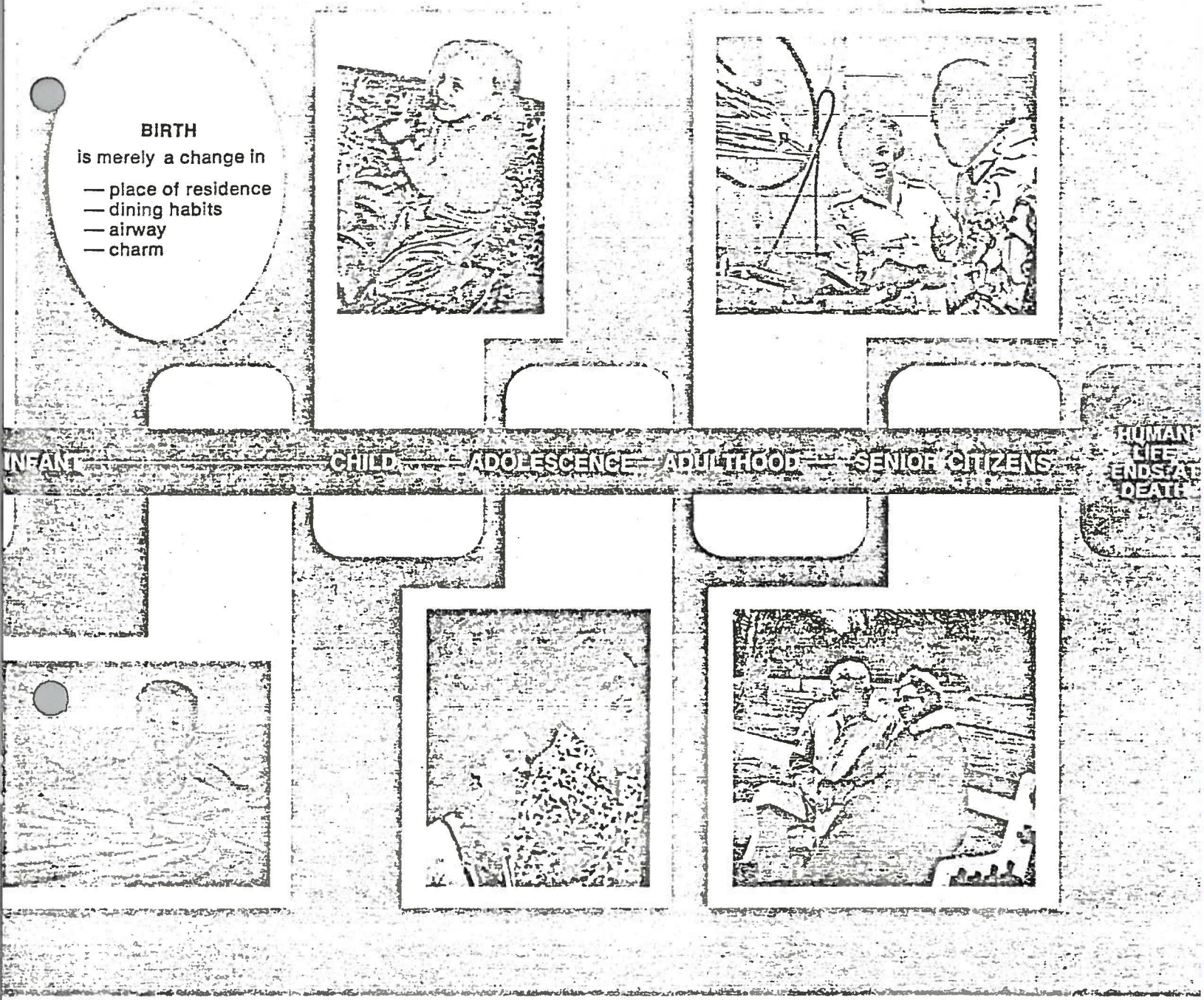
Her health? — what did they mean by health?

These are not medical reason

IT IS NOW LEGAL FOR A PHYSICIA FOR SOCIAL REA

734 80

The legal word for human life is "person



For her "health." By the Court's own definition, the word "health" means:

. . "The medical judgment may be exercised in he light of all factors — physical, emotional, sychological, familial, and the woman's age — elevant to the well-being of the patient. All these actors may relate to health." (DOE v. BOLTON)

It includes when a pregnancy would:

"Force upon a woman a distressful life and future."
Produce "psychological harm."
"Will tax mental and physical health by child care."
Will bring the distress "associated with the unwanted child."
Will "bring a child into a family already unable psychologically or otherwise to care for it."
Will bring the "continuing difficulties and stigma of unwed motherhood." (ROE v. WADE)

these are social reasons.

TO KILL A BABY
ONS AT ANY TIME PRIOR TO BIRTH

734 81

The use of the word [person] is such that it has application only postnatally." (ROE v. WADE)

Have we ever, in a civilized society given to one person (the mother) the complete legal right to kill another (the baby) in order to solve that first person's personal problem?

The U. S. Supreme Court has excluded an entire age group of humans from legal personhood and with it their right to life.

They used as partial justification for allowing this killing, the argument that the unborn is not yet capable of "meaningful life," were not "persons in the whole sense." (Roe v. Wade). It is no coincidence that euthanasia is being recommended for those who no longer have "meaningful existence."

How long will it be before other groups of humans will be defined out of legal existence when it has been decided that they too have become socially burdensome?

SENIOR CITIZENS BEWARE
MINORITY RACES BEWARE
CRIPPLED CHILDREN BEWARE

Once the decision has been made that *all* human life is no longer an unalienable right, but that some can be killed because they are a social burden, then the senile, the weak, the physically and mentally inadequate and perhaps someday even the politically troublesome are in danger.

It did happen once before in this century you know. Remember Germany?

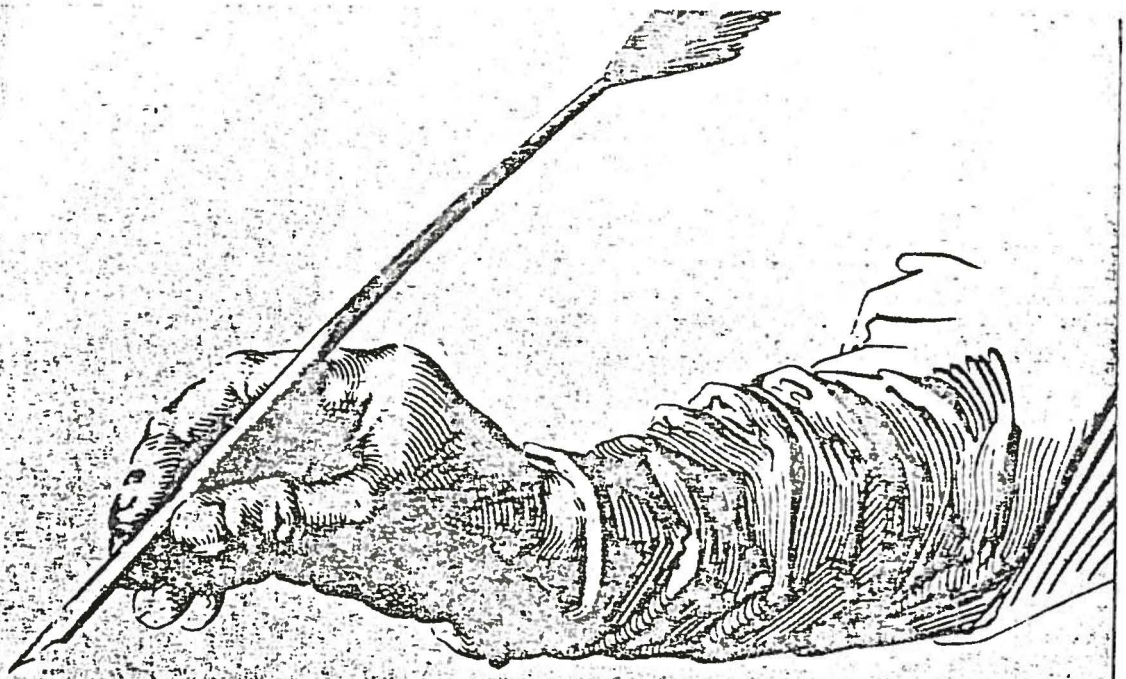
ARE YOU GOING TO STAND FOR THIS?

HOW CAN YOU CHANGE IT?

THE ONLY WAY IS TO PASS A CONSTITUTIONAL AMENDMENT

Write one letter a week until it passes
to your Senator, Congressman, newspaper, radio and TV station, etc.
Join your Right to Life group. Give it your time, energy and support.

SUPPORT A HUMAN LIFE AMENDMENT



AMENDMENT OF THE CONSTITUTION

BY THE CONVENTION METHOD UNDER ARTICLE V

AMERICAN BAR ASSOCIATION

SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE

ABA

Special Constitutional Convention Study Committee

The Honorable C. Clyde Atkins,
Chairman
P.O. Box 3009
Miami, Florida 33101

Warren Christopher, Esq.
611 West 6th Street
Los Angeles, California 90017

Professor David Dow
University of Nebraska
College of Law
Lincoln, Nebraska 68508

John D. Feerick, Esq.
919 Third Avenue
New York, New York 10022

Adrian M. Foley, Jr., Esq.
Gateway I
Newark, New Jersey 07102

The Honorable Sarah T. Hughes
Federal Courthouse
1100 Commerce Street
Dallas, Texas 75221

Dean Albert M. Sacks
Harvard University Law School
Cambridge, Massachusetts 02138

EXHIBIT L
Page 3 of 52

The Honorable William S. Thompson
Suite 205, Building B
Superior Court of DC
Washington, D.C. 20001

Samuel W. Witwer, Esq.
141 West Jackson Boulevard
Chicago, Illinois 60604

The following resolutions were approved by the American Bar Association House of Delegates in August, 1973, upon the recommendation of the ABA Constitutional Convention Study Committee.

WHEREAS, the House of Delegates, at its July 1971 meeting, created the Constitutional Convention Study Committee "to analyze and study all questions of law concerned with the calling of a national Constitutional Convention, including, but not limited to, the question of whether such a Convention's jurisdiction can be limited to the subject matter giving rise to its call, or whether the convening of such a Convention, as a matter of constitutional law, opens such a Convention to multiple amendments and the consideration of a new Constitution"; and

WHEREAS, the Constitutional Convention Study Committee so created has intensively and exhaustively analyzed and studied the principal questions of law concerned with the calling of a national constitutional convention and has delineated its conclusions with respect to these questions of law in its Report attached hereto,

NOW, THEREFORE, BE IT RESOLVED, THAT, with respect to the provision of Article V of the United States Constitution providing that "Congress . . . on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments" to the Constitution,

1. It is desirable for Congress to establish procedures for amending the Constitution by means of a national constitutional convention.
2. Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislatures.
3. Any Congressional legislation dealing with

such a process for amending the Constitution should provide for limited judicial review of Congressional determinations concerning a constitutional convention.

4. Delegates to a convention should be elected and representation at the convention should be in conformity with the principles of representative democracy as enunciated by the "one person, one vote" decisions of the Supreme Court.

BE IT FURTHER RESOLVED, THAT, the House of Delegates authorizes the distribution of the Report of the Constitutional Convention Study Committee for the careful consideration of Federal and state legislators and others concerned with constitutional law and commends the Report to them; and

BE IT FURTHER RESOLVED, THAT, representatives of the American Bar Association designated by the President be authorized to present testimony on behalf of the Association before the appropriate committees of the Congress consistent with this resolution.

Our Committee originated from a suggestion by the Council of the Section of Individual Rights and Responsibilities that a special committee representing the entire Association be created to evaluate the ramifications of the constitutional convention method of initiating amendments to the United States Constitution. The suggestion was adopted by the Board of Governors at its meeting in Williamsburg, Virginia, on April 29, 1971, and was accepted by the House of Delegates at its meeting in July 1971.

In forming the Committee, the Association authorized it to analyze and study all questions of law concerned with the calling of a national constitutional convention, including, but not limited to, the question of whether a convention's jurisdiction can be limited to the subject matter giving rise to its call, or whether the convening of a convention, as a matter of constitutional law, opens a convention to multiple amendments and the consideration of a new constitution.

The Committee thus constituted consists of two United States District Judges, a Judge of the Superior Court of the District of Columbia, a present and a former law school dean, two former presidents of state constitutional conventions, a former Deputy Attorney General of the United States, and a private practitioner with substantial experience in the amending process.

Comprising the Committee are: Warren Christopher, a California attorney, former Deputy Attorney General of the United States, and Vice President of the Los Angeles County Bar Association; David Dow, former Dean and currently Professor of Law, Nebraska College of Law, a

member of Nebraska's Constitutional Revision Commission, and a former member of the Board of Directors of the American Judicature Society; John D. Feerick, a New York attorney who served as advisor to the Association's Commission on Electoral College Reform and a member of the Association's Conference on Presidential Inability and Succession; Adrian M. Foley, Jr., a New Jersey attorney, a member of the House of Delegates, and President of the Fourth New Jersey Constitutional Convention (1966); Sarah T. Hughes, United States District Judge for the Northern District of Texas; Albert M. Sacks, Dean, The Harvard Law School, and former chairman of the Massachusetts Attorney General's Advisory Committee on Civil Rights and Civil Liberties; William S. Thompson, Judge of the Superior Court of the District of Columbia, chairman of the Association's Committee on World Order Under Law, and a member of the Association's Committee on Federal Legislation; and Samuel W. Witwer, an Illinois attorney, a member of the Board of Directors of the American Judicature Society, and President of the Sixth Illinois Constitutional Convention (1969-1970). Robert D. Evans, assistant director of the Association's Public Service Activities Division, has served ably as our liaison.

Throughout our two-year study the members of the Committee have been ever mindful of the nature and importance of the task entrusted to them and they have endeavored to uncover and understand every fact and point of view regarding the amending article. Beginning with our organizational meeting in Chicago on November 20, 1971, the Committee has met frequently and has spent an enormous amount of time studying, discussing and analyzing the questions concerned with the calling of a national constitutional convention. We all have been guided by the hope of rendering to the Association a thorough, objective and realistically constructive final report on a fundamental article of the United States Constitution, as other special committees have done in such fields as presidential succession and electoral college reform.

In August 1972 we filed with the House of Delegates a detailed interim report setting forth certain tentative conclusions reached as a result of our research and deliberations since our organizational meeting. Since that report, we have re-examined all of the matters commented upon in it and have studied other questions concerning the amending article which were not specifically discussed in our earlier report.

In our work the Committee has been the beneficiary of substantial quantities of valuable research and background material provided by twelve law students, to whom we express our deep gratitude. These students are: Richard Altabef, Edward Miller, Mark Wattenberg, and Richard Weisberg of Columbia Law School; Joan Madden and Barbara Manners of Fordham Law School; Shelley Z. Green and Henry D. Levine of Harvard Law School; Andrew N. Karlen and Barbara Prager of New York Law School; Michael Harris of St. John's Law School; and Marjorie Elkin of Yale Law School. The memoranda and papers prepared by these students have been filed at the Cromwell Library in the American Bar Center in Chicago.

I take pride in the fact that the conclusions and recommendations set forth in this report are unanimous (in every instance but one*).

C. Clyde Atkins,+
Chairman

734 88

*That single instance appears at page 10, *infra*.

+The Committee's Chairman is a United States District Judge for the Southern District of Florida, a former member of the House of Delegates (1960-66), and a past president of the Florida Bar (1960-61).

There are few articles of the Constitution as important to the continued viability of our government and nation as Article V. As Justice Joseph Story wrote: "A government which . . . provides no means of change . . . will either degenerate into a despotism or, by the pressure of its inequities, bring on a revolution."[1] James Madison gave these reasons for Article V:

> "That useful alterations [in the Constitution] will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other."[2]

Article V sets forth two methods of proposing and two methods of ratifying amendments to the 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 . . . ."

Up to the present time all amendments have been proposed by the Congress and all but one have been ratified by the state legislature mode. The Twenty-First Amendment was ratified by conventions called in the various states. Although there

has not been a national constitutional convention since 1787, there have been more than 300 applications from state legislatures over the past 184 years seeking such a convention.* Every state, at one time or another, has petitioned Congress for a convention. These state applications have ranged from applications calling for a general convention to a convention dealing with a specific subject, as, for example, slavery, anti-polygamy, presidential tenure, and repeal of prohibition. The pressure generated by numerous petitions for a constitutional convention is believed to have been a factor in motivating Congress to propose the Seventeenth Amendment to change the method of selecting Senators.

Despite the absence at the national level since 1787, conventions have been the preferred instrument for major revision of state constitutions. As one commentator on the state constitution-making process has stated: "The convention is purely American—widely tested and used."[3] There have been more than 200 conventions in the states, ranging from 15 in New Hampshire to one in eleven states. In a substantial majority of the states the convention is provided for by the state constitution. In the remainder it has been sanctioned by judicial interpretation and practice.[4]

Renewed and greater efforts to call a national constitutional convention have come in the aftermath of the Supreme Court's decisions in *Baker* v. *Carr*[5] and *Reynolds* v. *Sims.*[6] Shortly after the decision in *Baker* v. *Carr*, the Council of State Governments recommended that the states petition Congress for a national constitutional convention to propose three amendments to the Constitution. One would have denied to federal courts original and appellate jurisdiction over state legislative apportionment cases; another would have established a "Court of the Union" in place of the Supreme Court; and the third would have amended Article V to allow amendments to be adopted on the basis of identically-worded state petitions.[7] Twelve state petitions were sent to Congress in 1963 and 1964 requesting a convention to propose an amendment which would remove state legisla-

*These applications are classified by subject and state in *Appendix B*, Part One. They are also discussed generally in Barbara Prager's paper, which is also included in *Appendix B*, Part Two.

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the federal judiciary. In December 1964 the Council of State Governments recommended at its annual convention that the state legislatures petition Congress for a national constitutional convention to propose an amendment permitting one house of a state legislature to be apportioned on a basis other than population.

By 1967 thirty-two state legislatures had adopted applications calling for a constitutional convention on the question of apportionment. The wording of these petitions varied. Several sought consideration of an amendment to abolish federal judicial review of state legislative apportionment. Others sought a convention for the purpose of proposing an amendment which would "secure to the people the right of some choice in the method of apportionment of one house of a state legislature on a basis other than population alone." A substantial majority of states requested a convention to propose a specific amendment set forth *haec verba* in their petitions. Even here, there was variation of wording among a few of these state petitions.[8]

On March 18, 1967 a front page story in *The New York Times* reported that "a campaign for a constitutional convention to modify the Supreme Court's one-man, one-vote rule is nearing success." It said that the opponents of the rule "lack only two states in their drive" and that "most of official Washington has been caught by surprise because the state legislative actions have been taken with little fanfare." That article prompted immediate and considerable discussion of the subject both in and out of Congress. It was urged that Congress would be under no duty to call a convention even if applications were received from the legislatures of two-thirds of the states. Others argued that the words of Article V were imperative and that there would be such a duty. There was disagreement as to whether applications from malapportioned legislatures could be counted, and there were different views on the authority of any convention. Some maintained that, once constituted, a convention could not be restricted to the subject on which the state legislatures had requested action but could go so far as to propose an entirely new Constitution. Adding to the confusion and uncertainty was the

fact that there were no ground rules or precedents for amending the Constitution through the route of a constitutional convention.

As the debate on the convention method of initiating amendments continued into 1969, one additional state* submitted an application for a convention on the reapportionment issue while another state adopted a resolution rescinding its previous application.[9] Thereafter, the effort to call a convention on that issue diminished. Recently, however, the filing of state applications for a convention on the school busing issue has led to a new flurry of discussion on the question of a national constitutional convention.

The circumstances surrounding the apportionment applications prompted Senator Sam J. Ervin to introduce in the Senate on August 17, 1967 a bill to establish procedures for calling a constitutional convention. In explaining his reasons for the proposed legislation, Senator Ervin has stated:

> "My conviction was that the constitutional questions involved were far more important than the reapportionment issue that had brought them to light, and that they should receive more orderly and objective consideration than they had so far been accorded. Certainly it would be grossly unfortunate if the partisanship over state legislative apportionment—and I am admittedly a partisan on the issue—should be allowed to distort an attempt at clarification of the amendment process, which in the long run must command a higher obligation and duty than any single issue that might be the subject of that process."[10]

After hearings and amendments to the original legislation, Senator Ervin's bill (S.215) passed the Senate by an 84 to 0 vote on October 19, 1971.[11] Although there was no action in the House of Representatives in the Ninety-Second Session of Congress, comparable legislation is expected to receive attention in both Houses in the future.+

*Making thirty-three in all, including applications from two state legislatures made in 1963.

+S. 215 was re-introduced in the Senate on March 19, 1973, as S.1272 and was favorably reported out of the Subcommittee on Separation of Powers on June 6, 1973, and passed the Senate July 9, 1973. That legislation is set forth and discussed in *Appendix A*.

The submission by state legislatures during the past thirty-five years of numerous applications for a national constitutional convention has brought into sharp focus the manifold issues arising under Article V. Included among these issues are the following:

1) If the legislatures of two-thirds of the states apply for a convention limited to a specific matter, must Congress call such a convention?
2) If a convention is called, is the limitation binding on the convention?
3) What constitutes a valid application which Congress must count and who is to judge its validity?
4) What is the length of time in which applications for a convention will be counted?
5) How much power does Congress have as to the scope of a convention? As to procedures such as the selection of delegates? As to the voting requirements at a convention? As to refusing to submit to the states for ratification the product of a convention?
6) What are the roles of the President and state governors in the amending process?
7) Can a state legislature withdraw an application for a convention once it has been submitted to Congress or rescind a previous ratification of a proposed amendment or a previous rejection?
8) Are issues arising in the convention process justiciable?
9) Who is to decide questions of ratification?

Since there has never been a national constitutional convention subsequent to the adoption of the

in attempting to answer these questions. In searching out the answers, therefore, resort must be made, among other things, to the text of Article V, the origins of the provision, the intent of the Framers, and the history and workings of the amending article since 1789. Our answers appear on the following pages.*

*While we also have studied a great many related and peripheral issues, our conclusions and recommendations are limited to the principal questions.

General

Responding to our charge, our Committee has attempted to canvass all the principal questions of law involved in the calling of a national constitutional convention pursuant to Article V. At the outset, we note that some, apprehensive about the scope of constitutional change possible in a national constitutional convention, have proposed that Article V be amended so as to delete or modify the convention method of proposing amendments.[12] On the other hand, others have noted that a dual method of constitutional change was intended by the Framers, and they contend that relative ease of amendment is salutary, at least within limits. Whatever the merits of a fundamental modification of Article V, we regard consideration of such a proposal as beyond the scope of our study. In short, we take the present text of Article V as the foundation for our study.

It is the view of our Committee that it is desirable for Congress to establish procedures for amending the Constitution by the national constitutional convention method. We recognize that some believe that it is unfortunate to focus attention on this method of amendment and unwise to establish procedures which might facilitate the calling of a convention. The argument is that the establishment of procedures might make it easier for state legislatures to seek a national convention, and might even encourage them to do so.[13] Underlying this argument is the belief that, at least in modern political terms, a national convention would venture into uncharted and dangerous waters. It is relevant to note in this respect that a similar concern has been expressed about state constitutional conventions but that 184 years' experience at that level furnishes little support to the concern.[14]

We are not persuaded by these suggestions that we should fail to deal with the convention method, hoping that the difficult questions never arise. More than 300 applications during our constitutional history, with every state legislature represented, stand as testimony that a consideration of procedure is not purely academic. Indeed, we would ignore at great peril the lessons of the recent proposals for a convention on legislative apportionment (the one-person, one-vote issue) where, if one more state had requested a convention, a major struggle would have ensued on the adequacy of the requests and on the nature of the convention and the rules therefor.

If we fail to deal now with the uncertainties of the convention method, we could be courting a constitutional crisis of grave proportions. We would be running the enormous risk that procedures for a national constitutional convention would have to be forged in time of divisive controversy and confusion when there would be a high premium on obstructive and result-oriented tactics.

It is far more prudent, we believe, to confront the problem openly and to supply safeguards and general rules in advance. In addition to being better governmental technique, a forthright approach to the dangers of the convention method seems far more likely to yield beneficial results than would burying our heads in the sands of uncertainty. Essentially, the reasons are the same ones which caused the American Bar Association to urge, and our nation ultimately to adopt, the rules for dealing with the problems of presidential disability and a vice-presidential vacancy which are contained in the Twenty-Fifth Amendment. So long as the Constitution envisions the convention method, we think the procedures should be ready if there is a "contemporaneously felt need" by the required two-thirds of the state legislatures. Fidelity to democratic principles requires no less.

The observation that one Congress may not bind a subsequent Congress does not persuade us that comprehensive legislation is useless or impractical. The interests of the public and nation are better served when safeguards and rules are prescribed in advance. Congress itself has recognized this in many areas, including its adoption of and subsequent reliance on legislative procedures for handling such matters as presidential electoral vote disputes and contested elections for the House of Representatives.[15] Congressional legislation fashioned after intensive study, and in an atmosphere free from the emotion and politics that undoubtedly would surround a specific attempt to energize the convention process, would be entitled to great weight as a constitutional interpretation and be of considerable precedential value. Additionally, whenever two-thirds of the state legislatures had applied for a convention, it would help to focus and channel the ensuing discussion and identify the expectations of the community.

In our view any legislation implementing Article V should reflect its underlying policy, as articulated by Madison, of guarding "equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults."[16] Legislation should protect the integrity of the amending process and assure public confidence in its workings.

Specific

It is our conclusion that Congress has the power to establish procedures governing the calling of a national constitutional convention limited to the subject matter on which the legislatures of two-thirds of the states request a convention. In establishing procedures for making available to the states a limited convention when they petition for such a convention, Congress must not prohibit the state legislatures from requesting a general convention since, as we view it, Article V permits both types of conventions (pp. 11-19 *infra*).

We consider Congress' duty to call a convention whenever two-thirds of the state legislatures have concurred on the subject matter of the convention to be mandatory (p. 17).

We believe that the Constitution does not assign the President a role in either the call of a convention or the ratification of a proposed amendment (pp. 25-28).

We consider it essential that legislation passed by Congress to implement the c[illegible]ntion method should provide for limited judicial review of congressional action or inaction concerning a constitu-

tutional convention. Provision for such review not only would enhance the legitimacy of the process but would seem particularly appropriate since, when and if the process were resorted to, it likely would be against the backdrop of some dissatisfaction with prior congressional performance (pp. 20-25).

We deem it of fundamental importance that delegates to a convention be elected and that representation at the convention be in conformity with the principles of representative democracy as enunciated by the "one-person, one-vote" decisions of the Supreme Court (pp. 33-37). One member of the Committee, however, does not believe that the one-person, one-vote rule is applicable to a constitutional convention.

We believe also that a convention should adopt its own rules of procedure, including the vote margin necessary at the convention to propose an amendment to the Constitution (pp. 19-20).

Our research and deliberations have led us to conclude that a state governor should have no part in the process by which a state legislature applies for a convention or ratifies a proposed amendment (pp. 28-30).*

Finally, we believe it highly desirable for any legislation implementing the convention method of Article V to include the rule that a state legislature can withdraw an application at any time before the legislatures of two-thirds of the states have submitted applications on the same subject, or withdraw a vote rejecting a proposed amendment, or rescind a vote ratifying a proposed amendment so long as three-fourths of the states have not ratified (pp. 32-33, 37-38).

*We, of course, are referring to a substantive role and not a role such as the agency for the transmittal of applications to Congress, or for receipt of proposed amendments for submission to the state legislature, or for the certification of the act of ratification in the state.

Authority of an Article V Convention

Central to any discussion of the convention method of initiating amendments is whether a convention convened under Article V can be limited in its authority. There is the view, with which we disagree, that an Article V convention would be a sovereign assemblage and could not be restricted by either the state legislatures or the Congress in its authority or proposals. And there is the view, with which we agree, that Congress has the power to establish procedures which would limit a convention's authority to a specific subject matter where the legislatures of two-thirds of the states seek a convention limited to that subject.

The text of Article V demonstrates that a substantial national consensus must be present in order to adopt a constitutional amendment. The necessity for a consensus is underscored by the requirement of a two-thirds vote in each House of Congress or applications for a convention from two-thirds of the state legislatures to initiate an amendment, and by the requirement of ratification by three-fourths of the states. From the language of Article V we are led to the conclusion that there must be a consensus among the state legislatures as to the subject matter of a convention before Congress is required to call one. To read Article V as requiring such agreement helps assure "that an alteration of the Constitution proposed today has relation to the sentiment and felt needs of today . . . ."[17]

The origins and history of Article V indicate that both general and limited conventions were within the contemplation of the Framers. The debates at the Constitutional Convention of 1787 make clear that the convention method of proposing amend-

with the congressional method. As Madison observed: Article V "equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other."[18] The "state" method, as it was labeled, was prompted largely by the belief that the national government might abuse its powers. It was felt that such abuses might go unremedied unless there was a vehicle of initiating amendments other than Congress.

The earliest proposal on amendments was contained in the Virginia Plan of government introduced in the Convention on May 29, 1787 by Edmund Randolph. It provided in resolution 13 "that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto."[19] A number of suggestions were advanced as to a specific article which eventuated in the following clause in the Convention's Committee of Detail report of August 6, 1787:

> "On the application of the Legislatures of two thirds of the States in the Union, for *an amendment* of this Constitution, the Legislature of the United States shall call a Convention *for that purpose*."[20]

This proposal was adopted by the Convention on August 30. Gouverneur Morris's suggestion on that day that Congress be left at liberty to call a convention "whenever it pleased" was not accepted. There is reason to believe that the convention contemplated under this proposal "was the last step in the amending process, and its decisions did not require any ratification by anybody."[21]

On September 10, 1787 Elbridge Gerry of Massachusetts moved to reconsider the amending provision, stating that under it "two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert the State-Constitutions altogether." His motion was supported by Alexander Hamilton and other delegates. Hamilton pointed to the difficulty of introducing amendments under the Articles of Confederation and stated that "an easy mode should be established for supplying defects which will probably appear in the new System."[22] He felt that Congress would be "the first to perceive" and be "most sensible to the necessity of Amendments," and ought also to be authorized to call a convention whenever two-thirds of each branch concurred on the need for a convention. Madison also criticized the August 30 proposal, stating that the vagueness of the expression "call a convention for the purpose" was sufficient reason for reconsideration. He then asked: "How was a Convention to be formed? by what rule decide? what the force of its acts?" As a result of the debate, the clause adopted on August 30 was dropped in favor of the following provision proposed by Madison:

> "The Legislature of the U-S- whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U.S."[23]

On September 15, after the Committee of Style had returned its report, George Mason strongly objected to the amending article on the ground that both modes of initiating amendments depended on Congress so that "no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive ...."* Gerry and Gouverneur Morris then moved to amend the article "so as to require a convention on application of" two-thirds of the states.[24] In response Madison said that he "did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application." He added that he had no objection against providing for a convention for the purpose of amendments "except only that difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided."[25]

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*Mason's draft of the Constitution, as it stood at that point in the Convention, contained the following notations: "Article 5th – By this article Congress only have the power of proposing amendments at any future time to this constitution and should it prove ever so oppressive, the whole people of Amer[illegible] can't make, or even propose alterations to it; a doctrine [illegible]y subversive of the fundamental principles of the rights and liberties of the people," 2 The Records of the Federal Convention of 1787, at 629 n. 8

Thereupon, the motion by Morris and Gerry was agreed to and the amending article was thereby modified so as to include the convention method as it now reads. Morris then successfully moved to include in Article V the proviso that "no state, without its consent shall be deprived of its equal suffrage in the Senate."

There was little discussion of Article V in the state ratifying conventions. In *The Federalist* Alexander Hamilton spoke of Article V as contemplating "a single proposition." Whenever two-thirds of the states concur, he declared, Congress would be obliged to call a convention. "The words of this article are peremptory. The Congress 'shall call a convention'. Nothing in this particular is left to the discretion of that body."[26] Madison, as noted earlier, stated in *The Federalist* that both the general and state governments are equally enabled to "originate the amendment of errors."

While the Constitutional Convention of 1787 may have exceeded the purpose of its call in framing the Constitution,* it does not follow that a convention convened under Article V and subject to the Constitution can lawfully assume such authority. In the first place, the Convention of 1787 took place during an extraordinary period and at a time when the states were independent and there was no effective national government. Thomas Cooley described it as "a revolutionary proceeding, and could be justified only by the circumstances which had brought the Union to the brink of dissolution."[27] Moreover, the Convention of 1787 did not ignore Congress. The draft Constitution was submitted to Congress, consented to by Congress, and transmitted by Congress to the states for ratification by popularly-elected conventions.

Both pre-1787 convention practices and the general tenor of the amending provisions of the first state constitutions lend support to the conclusions that a convention could be convened for a specific purpose and that, once convened, it would have no authority to exceed that purpose.

*This is because it was called "for the sole and express purpose of revising the Articles of Confederation and reporting . . . such alterations and provisions therein as shall . . . render the federal constitution adequate to the exigencies of government and the preservation of the Union."

Of the first state constitutions, four provided for amendment by conventions and three by other methods.[28] Georgia's Constitution provided that

> "no alteration shall be made in this constitution without petitions from a majority of the counties, . . . at which time the assembly shall order a *convention to be called for that purpose*,* specifying the alterations to be made, according to the petitions referred to the assembly by a majority of the counties as aforesaid."[29]

Pennsylvania's Constitution of 1776 provided for the election of a Council of Censors with power to call a convention

> "if there appear to them an absolute necessity of amending any article of the constitution which may be defective . . . . But the articles to be amended, and the amendment proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject."[30]

The Massachusetts Constitution of 1780 directed the General Court to have the qualified voters of the respective towns and plantations convened in 1795 to collect their sentiments on the necessity or expediency of amendments. If two-thirds of the qualified voters throughout the state favored "revision or amendment," it was provided that a convention of delegates would meet "for the purpose aforesaid."

The report of the Annapolis Convention of 1786 also reflected an awareness of the binding effect of limitations on a convention. That Convention assembled to consider general trade matters and, because of the limited number of state representatives present, decided not to proceed, stating:

> "That the express terms of the powers to your Commissioners supposing a deputation from all the States, and having for object the Trade and Commerce of the United States, Your Commissioners did not conceive it advisable to proceed on the business of their mission, under the Circumstances of so partial and defective a representation."[31]

In their report, the Commissioners expressed the opinion that there should be another convention, to consider not only trade matters but the

*Note the similarity between this lan[illegible] (emphasis ours) and the language contained in the earliest drafts of Article V (p. 12, *supra*).

amendment of the Articles of Confederation. The limited authority of the Annapolis Commissioners, however, was made clear:

> "If in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct, dictated by an anxiety for the welfare, of the United States, will not fail to receive an indulgent construction.
>
> * * *
>
> "Though your Commissioners could not with propriety address these observations and sentiments to any but the States they have the honor to Represent, they have nevertheless concluded from motives of respect, to transmit Copies of this Report to the United States in Congress assembled, and to the executives of the other States."

From this history of the origins of the amending provision, we are led to conclude that there is no justification for the view that Article V sanctions only general conventions. Such an interpretation would relegate the alternative method to an "unequal" method of initiating amendments. Even if the state legislatures overwhelmingly felt that there was a necessity for limited change in the Constitution, they would be discouraged from calling for a convention if that convention would automatically have the power to propose a complete revision of the Constitution.

Since Article V specifically and exclusively vests the state legislatures with the authority to apply for a convention, we can perceive no sound reason as to why they cannot invoke limitations in exercising that authority. At the state level, for example, it seems settled that the electorate may choose to delegate only a portion of its authority to a state constitutional convention and so limit it substantively.[32] The rationale is that the state convention derives its authority from the people when they vote to hold a convention and that when they so vote they adopt the limitations on the convention contained in the enabling legislation drafted by the legislature and presented on a "take it or leave it" basis.[33] As one state court decision stated:

> "When the people, acting under a proper resolution of the legislature, vote in favor of calling a constitutional convention, they are presumed to ratify the terms of the legislative call, which thereby becomes the basis of the authority delegated to the convention."[34]

> "Certainly, the people, may, if they will, elect delegates for a particular purpose without conferring on them all their authority . . . ."[35]

In summary, we believe that a substantively-limited Article V convention is consistent with the purpose of the alternative method since the states and people would have a complete vehicle other than the Congress for remedying specific abuses of power by the national government; consistent with the actual history of the amending article throughout which only amendments on single subjects have been proposed by Congress; consistent with state practice under which limited conventions have been held under constitutional provisions not expressly sanctioning a substantively-limted convention;[36] and consistent with democratic principles because convention delegates would be chosen by the people in an election in which the subject matter to be dealt with would be known and the issues identified, thereby enabling the electorate to exercise an informed judgment in the choice of delegates.

Power of Congress with Respect to an Article V Convention

Article V explicitly gives Congress the power to call a convention upon receipt of applications from two-thirds of the state legislatures and to choose the mode of ratification of a proposed amendment. We believe that, as a necessary incident of the power to call, Congress has the power initially to determine whether the conditions which give rise to its duty have been satisfied. Once a determination is made that the conditions are present, Congress' duty is clear—it "shall" call a convention. The language of Article V, the debates at the Constitutional Convention of 1787, and statements made in *The Federalist,* in the debates in the state ratifying conventions, and in congressional debates during the early Congresses make clear the mandatory nature of this duty.*

*Upon receipt of the *first* state application for a convention, a debate took place in the House of Representatives on May 5, 1789, as to whether it would be proper to refer that application to committee. A number of Representatives, including Madison, felt it would be improper to do so, since it would imply that Congress had a right to deliberate upon the subject. Madison said that this "was not the case until two-thirds of the State Legislatures concurred in such application, and then it is out of the power of Congress to decline complying, the words of the Constitution being express and positive relative to the agency Congress may have in case of

While we believe that Congress has the power to establish standards for making available to the states a limited convention when they petition for that type of convention, we consider it essential that implementing legislation not preclude the states from applying for a general convention. Legislation which did so would be of questionable validity since neither the language nor history of Article V reveals an intention to prohibit another general convention.

In formulating standards for determining whether a convention call should issue, there is a need for great delicacy. The standards not only will determine the call but they also will have the effect of defining the convention's authority and determining whether Congress must submit a proposed amendment to the states for ratification. The standards chosen should be precise enough to permit a judgment that two-thirds of the state legislatures seek a convention on an agreed-upon matter. Our research of possible standards has not produced any alternatives which we feel are preferable to the "same subject" test embodied in S.1272. We do feel, however, that the language of Sections 4, 5, 6, 10 and 11 of S.1272 is in need of improvement and harmonization so as to avoid the use of different expressions and concepts.

We believe that standards which in effect required applications to be identical in wording would be improper since they would tend to make resort to the convention process exceedingly difficult in view of the problems that would be encountered in obtaining identically worded applications from thirty-four states. Equally improper, we believe, would be standards which permitted Congress to

applications of this nature." The House thus decided not to refer the application to committee but rather to enter it upon the Journals of Congress and place the original in its files. 1 Annals of Congress, cols. 248-51 (1789). Further support for the proposition that Congress has no discretion on whether or not to call a constitutional convention, once two-thirds of the states have applied for one, may be found in IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 178 (2d ed 1836) (remarks of delegate James Iredell of North Carolina); 1 Annals of Congress, col. 498 (1796) (remarks of Rep. William Smith of South Carolina during debate on a proposed treaty with Great Britain); Cong. Globe, 38th Cong., 2d Sess. 630-31 (1865) (remarks of Senator Johnson).

whether or not to call a convention.*

In addition to the power to adopt standards for determining when a convention call should issue, we also believe it a fair inference from the text of Article V that Congress has the power to provide for such matters as the time and place of the convention, the composition and financing of the convention, and the manner of selecting delegates. Some of these items can only be fixed by Congress. Uniform federal legislation covering all is desirable in order to produce an effective convention.

Less clear is Congress' power over the internal rules and procedures of a convention.+ The Supreme Court's decisions in *Dillon* v. *Gloss*[37] and *Leser* v. *Garnett*[38] can be viewed as supporting a broad view of Congress' power in the amending process. As the Court stated in *Dillon* v. *Gloss*: "As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule." On the other hand, the legislative history of Article V reflects a purpose that the convention method be as free as possible from congressional domination, and the text of Article V grants Congress only two express powers pertaining to a convention, that is, the power (or duty) to call a convention and the power to choose the mode of ratification of any proposed amendment. In the absence of direct precedents, it perhaps can be said fairly that Congress may not by legislation interfere with matters of procedure because they are an intrinsic part of the deliberative characteristic of a convention.[39] We view as unwise and of questionable validity any attempt by Congress to regulate the internal proceedings of a convention. In particular, we believe that Congress should not impose a vote

*See our discussion at pages 30-31, *infra*.

+For a related discussion, see the debates which took place at the time the Twenty-First Amendment was being formulated concerning the extent of congressional power over state ratifying conventions. *See, e.g.*, 76 Cong. Rec. 124-34, 2419-21, 4152-55 (1933); 77 Cong. Rec. 481-82 (1933); 81 Cong. Rec. 3175-76 (1937). Former Attorney General A. Mitchell Palmer argued that Congress could legislate all the necessary provisions for the assembly and conduct of such conventions, a view that was controverted at the time by former Solicitor General James M. Beck.

requirement on an Article V convention. We are influenced in this regard by these factors:

First, it appears from our research that throughout our history conventions generally have decided for themselves the vote that should govern their proceedings. This includes the Constitutional Convention of 1787, the constitutional conventions that took place between 1776 and 1787, many of the approximately two hundred state constitutional conventions that have been held since 1789, and the various territorial conventions that have taken place under acts passed by Congress.[40] Second, the specific intent of the Framers with regard to the convention method of initiating amendments was to make available an alternative method of amending the Constitution—one that would be free from congressional domination. Third, a reading of the 1787 debates suggests that the Framers contemplated that an Article V convention would have the power to determine its own voting and other internal procedures and that the requirement of ratification by three-fourths of the states was intended to protect minority interests.[41]

We have considered the suggestion that Congress should be able to require a two-thirds vote in order to maintain the symmetry between the convention and congressional methods of initiating amendments. We recognize that the convention can be viewed as paralleling Congress as the proposing body. Yet we think it is significant that the Constitution, while it specifies a two-thirds vote by Congress to propose an amendment, is completely silent as to the convention vote.

Judicial Review

The Committee believes that judicial review of decisions made under Article V is desirable and feasible. We believe Congress should declare itself in favor of such review in any legislation implementing the convention process. We regard as very unwise the approach of S.1272 which attempts to exclude the courts from any role. While the Supreme Court's decision in *Ex parte McCardle*[42] indicated that Congress has power under Article III to withdraw matters from the jurisdiction of the federal courts, this power is not unlimited. It is questionable whether the power reaches so far as to permit Congress to change

results required by other provisions of the Constitution or to deny a remedy to enforce constitutional rights. Moreover, we are unaware of any authority upholding this power in cases of original jurisdiction.[43]

To be sure, Congress has discretion in interpreting Article V and in adopting implementing legislation. It cannot be gainsaid that Congress has the primary power of administering Article V. We do not believe, however, that Congress is, or ought to be, the final dispositive power in every situation. In this regard, it is to be noted that the courts have adjudicated on the merits a variety of questions arising under the amending article. These have included such questions as: whether Congress may choose the state legislative method of ratification for proposed amendments which expand federal power; whether a proposed amendment requires the approval of the President; whether Congress may fix a reasonable time for ratification of a proposed amendment by state legislatures; whether the states may restrict the power of their legislatures to ratify amendments or submit the decision to a popular referendum; and the meaning of the requirement of a two-thirds vote of both Houses.[44]

Baker v. *Carr* and *Powell* v. *McCormack* suggest considerable change in the Supreme Court's view since *Coleman* v. *Miller*[45] on questions involving the political process.

In *Coleman*, the Court held that a group of state legislators who had voted not to ratify the child labor amendment had standing to question the validity of their state's ratification. Four Justices dissented on this point. The Court held two questions non-justiciable: the issue of undue time lapse for ratification and the power of a state legislature to ratify after having first rejected ratification. In reaching these conclusions, the Court pointed to the absence of criteria either in the Constitution or a statute relating to the ratification process. The four Justices who dissented on standing concurred on non-justiciability. They felt, however, that the Court should have disapproved *Dillon* v. *Gloss* insofar as it decided judicially that seven years is a reasonable period of time for ratification, stating that Article V gave control of the amending process to Congress and

that the process was "political in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." Even though the calling of a convention is not precisely within these time limits and the holding in *Coleman* is not broad, it is not at all surprising that commentators read that case as bringing Article V issues generally within the rubric of "political questions."

In *Baker* v. *Carr*,[46] the Court held that a claim of legislative malapportionment raised a justiciable question. More generally, the Court laid down a number of criteria, at least one of which was likely to be involved in a true "political question," as follows:

> "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment for multifarious pronouncements by various departments on one question."[47]

Along with these formulas, there was additional stress in *Baker* v. *Carr* on the fact that the Court there was not dealing with Congress, a coordinate branch, but with the states. In reviewing the precedents, the Court noted that it had held issues to be nonjusticiable when the matter demanded a single-voiced statement, or required prompt, unquestioning obedience, as in a national emergency, or contained the potential embarrassment of sitting in judgment on the internal operations of a coordinate branch.

Perhaps the most striking feature of *Baker* and its progeny has been the Court's willingness to project itself into redistricting and reapportionment in giving relief. In addition, some of the criteria stressed by the Court as determinative of "political question" issues were as applicable to Congress as to the states.

In *Powell*,[48] the Court clearly marked out new ground. The question presented was the constitutionality of the House of Representatives' decision

to deny a seat to Congressman-elect Powell, despite his having fulfilled the prerequisites specified in Article I, Section 2 of the Constitution. Even though it was dealing with Congress, and indeed with a matter of internal legislative operation, still it held that the question was a justiciable one, involving as it did the traditional judicial function of interpreting the Constitution, and that a newly elected Representative could be judged as to qualifications only as to age, citizenship, and residence. The Court limited itself to declaratory relief, saying that the question of whether coercive relief was available against employees of Congress was not being decided. But the more important aspect of the decision is the Court's willingness to decide. It stressed the interest of voters in having the person they elect take a seat in Congress. Thus, it looked into the clause on qualifications and found in the text and history that Congress was the judge of qualifications, but only of the three specified.

It is not easy to say just how these precedents apply to judicial review of questions involving a constitutional convention under Article V. It can be argued that they give three different doctrinal models, each leading to a different set of conclusions. We are inclined to a view which seeks to reconcile the three cases. *Powell* may be explained on the theory that specially protected constitutional interests are at stake, that the criteria for decisions were rather simple, and that an appropriate basis for relief could be found. *Baker* is more complex, but it did not involve Congress directly. The state legislatures had forfeited a right to finality by persistent and flagrant malapportionments, and one person, one vote supplied a judicially workable standard (though the latter point emerged after *Baker*). Thus, *Coleman* may be understood as good law so far as it goes, on the theory that Congress is directly involved, that no specially protected interests are threatened, and that the issues are not easily dealt with by the Court.

Following this approach to the three cases, some tentative conclusions can be drawn for Article V and constitutional conventions. If two-thirds of the state legislatures apply, for example, for a convention to consider the apportionment of state legisla-

tures, and Congress refuses to call the convention, it is arguable that a *Powell* situation exists, since the purpose of the convention method was to enable the states to bring about a change in the Constitution even against congressional opposition. The question whether Congress is required to act, rather than having discretion to decide, is one very similar in quality to the question in *Powell*. The difficulty not confronted in *Powell* is that the relief given must probably be far-reaching, possibly involving the Court in approving a plan for a convention. There are at least two answers. The Court might find a way to limit itself to a declaratory judgment, as it did in *Powell,* but if it must face far-reaching relief, the reapportionment cases afford a precedent. In some ways, a plan for a convention would present great difficulties for a court, but it could make clear that Congress could change its plan, simply by acting.[49]

If one concludes that the courts can require Congress to act, one is likely to see the courts as able to answer certain ancillary questions of "law," such as whether the state legislatures can bind a convention by the limitations in their applications, and whether the state legislatures can force the call of an unlimited convention. Here we believe Congress has a legislative power, within limits, to declare the effects of the states' applications on the scope of the convention. Courts should recognize that power and vary their review according to whether Congress has acted.

Consequently, this Committee strongly favors the introduction in any implementing legislation of a limited judicial review.* It would not only add substantial legitimacy to any use of the convention process but it would ease the question of justiciability. Moreover, since the process likely would be resorted to in order to effect a change opposed by vested interests, it seems highly appropriate that our independent judiciary be involved so that it can act, if necessary, as the arbiter.

In view of the nature of the controversies that might arise under Article V, the Committee believes that there should be several limits on judicial

Appendix A sets forth suggestions as to how such review might be provided for in S.1272.

consideration. First, a Congressional determination should be overturned only if "clearly erroneous." This standard recognizes Congress' political role and at the same time insures that Congress cannot arbitrarily void the convention process.

Second, by limiting judicial remedies to declaratory relief, the possibility of actual conflict between the branches of government would be diminished. As *Powell* illustrated, courts are more willing to adjudicate questions with "political" overtones when not faced with the institutionally destructive need to enforce the result.

Third, the introduction of judicial review should not be allowed to delay the amending process unduly. Accordingly, any claim should be raised promptly so as to result in an early presentation and resolution of any dispute. We favor a short limitation period combined with expedited judicial procedures such as the selection of a three-judge district court. The possibility of providing original jurisdiction in the Supreme Court was rejected for several reasons. Initiation of suit in the Supreme Court necessarily escalates the level of the controversy without regard to the significance of the basic dispute. In addition, three-judge district court procedures are better suited to an expedited handling of factual issues.

We do not believe that our recommendation of a three-judge court is inconsistent with the American Bar Association's position that the jurisdiction of such courts should be sharply curtailed. It seems likely that the judicial review provided for will occur relatively rarely. In those instances when it does, the advantages of three-judge court jurisdiction outweigh the disadvantages which the Association has perceived in the existing three-judge court jurisdiction. In cases involving national constitutional convention issues, the presence of three judges (including a circuit judge) and the direct appeal to the Supreme Court are significant advantages over conventional district court procedure.

Role of Executive
(i) President

There is no indication from the text of Article V that the President is assigned a role in the amending process. Article V provides that "Congress" shall propose amendments or call a convention for proposing amendments and, in either case,

Article I, Section 7 of the Constitution, however, provides that "every Order, Resolution, or Vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President" for his approval and, if disapproved, may be repassed by a two-thirds vote of both Houses.

It has, we believe, been regarded as settled that amendments proposed by Congress need not be presented to the President for his approval. The practice originated with the first ten amendments, which were not submitted to President Washington for his approval, and has continued through the recently proposed amendment on equality of rights. The question of whether the President's approval is required was passed on by the Supreme Court in *Hollingsworth* v. *Virginia*.[50] There, the validity of the Eleventh Amendment was attacked on the ground that it had "not been proposed in the form prescribed by the Constitution" in that it had never been presented to the President. Article I, Section 7 was relied upon in support of that position. The Attorney General argued that the proposing of amendments was "a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of investing the President with a qualified negative on the Acts and Resolutions of Congress." It was also urged that since a two-thirds vote was necessary for both proposing an amendment and overriding a presidential veto, no useful purpose would be served by a submission to the President in such case. It was argued in reply that this was no answer, since the reasons assigned by the President for his disapproval "might be so satisfactory as to reduce the majority below the constitutional proportion." The Court held that the amendment had been properly adopted, Justice Chase stating that "the negative of the President applies only to the ordinary cases of legislation: he has nothing to do with the proposition or adoption of amendments to the Constitution."[51] What was not pointed out, but could have been, is that had the President's approval been found necessary, it would have created the anomaly that only amendments proposed by Congress would be subject to the requirements inasmuch as Article I, Section 7 by its terms could not apply to action taken by a national constitutional convention.

Subsequent to *Hollingsworth*, the question of the President's role in the amending process has been the subject of discussion in Congress. In 1803 a motion in the Senate to submit the Twelfth Amendment to the President was defeated.[52] In 1865 the proposed Thirteenth Amendment was submitted to President Lincoln and, apparently through an inadvertence, was signed by him. An extensive discussion of his action took place in the Senate and a resolution was passed declaring that the President's signature was unnecessary, inconsistent with former practice, and should not constitute a precedent for the future.[53] The following year President Andrew Johnson, in a report to the Congress with respect to the Fourteenth Amendment, made clear that the steps taken by the Executive Branch in submitting the amendment to the state legislatures was "purely ministerial" and did not commit the Executive to "an approval or a recommendation of the amendment."[54] Since that time, no proposed amendment has been submitted to the President for his approval and no serious question has arisen over the validity of amendments for that reason. Thus, the Supreme Court could state in 1920 in *Hawke* v. *Smith* that it was settled "that the submission of a constitutional amendment did not require the action of the President."

While the "call" of a convention is obviously a different step from that of proposing an amendment, we do not believe that the President's approval is required. Under Article V applications from two-thirds of the state legislatures must precede a call and, as previously noted, Congress' duty to issue a call once the conditions have been met clearly seems to be a mandatory one. To require the President's approval of a convention call, therefore, would add a requirement not intended. Not only would it be inconsistent with the mandatory nature of Congress' duty and the practice of non-presidential involvement in the congressional process of initiating amendments but it would make more difficult any resort to the convention method. The approval of another branch of government would be necessary and, if

not obtained, a two-thirds vote of each House would be required before a call could issue. Certainly, the parallelism between the two initiating methods would be altered, in a manner that could only thwart the intended purpose of the convention process as an "equal" method of initiating amendments.

While the language of Article I, Section 7 expressly provides for only one exception (*i.e.*, an adjournment vote), it has been interpreted as not requiring presidential approval of preliminary votes in Congress, or, as noted, the proposal of constitutional amendments by Congress, or concurrent resolutions passed by the Senate and the House of Representatives for a variety of purposes.* As the Supreme Court held in *Hollingsworth,* Section 7 applies to "ordinary cases of legislation" and "has nothing to do with the proposition or adoption of amendments to the Constitution." Thus, the use of a concurrent resolution by Congress for the issuance of a convention call is in our opinion in harmony with the generally recognized exceptions to Article I, Section 7.

(ii) State Governor

We believe that a state governor should have no part in the process by which a state legislature applies for a convention or ratifies a proposed amendment. In reaching this conclusion, we are influenced by the fact that Article V speaks of "state legislatures" applying for a convention and ratifying an amendment proposed by either Congress or a national convention. The Supreme Court had occasion to focus on this expression in *Hawke*

*The concurrent resolution is used to express "the sense of Congress upon a given subject," Watkins, C.L., & Riddick, F.M., *Senate Procedure: Precedents and Practices* 208 (1964); to express "facts, principles, opinions, and purposes of the two Houses," Deschler, L., *Jefferson's Manual and Rules of the House of Representatives* 185-186 (1969); and to take a joint action embodying a matter within the limited scope of Congress, as, for instance, to count the electoral votes, terminate the effective date of some laws, and recall bills from the President, Evins, Joe L., *Understanding Congress* 114 (1963); Watkins and Riddick, *supra* at 208-9. A concurrent resolution was also used by Congress in declaring that the Fourteenth Amendment should be promulgated as part of the Constitution. 15 Stat. 709-10. Other uses include terminating powers delegated to the President, directing the expenditure of money appropriated to the use of Congress, and preventing reorganization plans taking effect under general powers granted the President to reorganize executive agencies. For an excellent discussion of such resolutions, see S. Rep. No. 1335, 54th Cong., 2d Sess. (1897).

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v. *Smith*[55] *(No. 1)* in the context of a provision in the Ohio Constitution subjecting to a popular referendum any ratification of a federal amendment by its legislature. The Court held that this requirement was invalid, reasoning that the term "legislatures" had a certain meaning. Said the Court: "What it meant when adopted it still means for the purpose of interpretation. A Legislature was then the representative body which made the laws of the people."[56] The ratification of a proposed amendment, held the Court, was not "an act of legislation within the proper sense of the word" but simply an expression of assent in which "no legislative action is authorized or required." The Court also noted that the power to ratify proposed amendments has its source in the Constitution and, as such, the state law-making procedures are inapplicable.

That the term "Legislature" does not always mean the representative body itself was made clear by *Smiley* v. *Holm.*[57] That case involved a bill passed by the Minnesota legislature dividing the state into congressional districts under Article I, Section 4. The bill was vetoed by the governor and not repassed over his veto. As for the argument that the bill was valid because Article I, Section 4 refers to the state "Legislatures," the Court stated:

> "The use in the Federal Constitution of the same term in different relations does not always imply the same function . . . . Wherever the term 'legislature' is used in the Constitution it is necessary to consider the nature of the particular action in view . . . ."[58]

The Court found that the governor's participation was required because the function in question involved the making of state laws and the veto of the governor was an integral part of the state's legislative process. In finding that Article I, Section 4 contemplated the making of laws, the Court stated that it provided for "a complete code for congressional elections" whose requirements "would be nugatory if they did not have appropriate sanctions." The Court contrasted this function with the "Legislature's" role as an electoral body, as when it chose Senators, and a ratifying body, as in the case of federal amendments.

It is hard to see how the act of applying for a convention invokes the law-making processes of

proposed amendment. If anything, the act of ratification is closer to legislation since it is the last step before an amendment becomes a fundamental part of our law. A convention application, on the other hand, is several steps removed. Other states must concur, a convention them must be called by Congress, and an amendment must be proposed by that convention. Moreover, a convention application, unlike legislation dividing congressional districts, does not have the force of law or operate directly and immediately upon the people of the state. From a legal point of view, it would seem to be contrary to *Hawke* v. *Smith* and *Leser* v. *Garnett* to require the governor's participation in the application and ratification processes.[59]

The exclusion of the governor from the application and ratification processes also finds support in the overwhelming practice of the states,[60] in the views of text-writers,[61] and in the Supreme Court's decision in *Hollingsworth* v. *Virginia* holding that the President was excluded from any role in the process by which amendments are proposed by Congress.[62]

Article V Applications

(i) Content

A reading of Article V makes clear that an application should contain a request to Congress to call a national convention that would have the authority to propose an amendment to the Constitution. An application which simply expressed a state's opinion on a given problem or requested Congress itself to propose an amendment would not be sufficient for purposes of Article V. Nor would an application seem proper if it called for a convention with no more authority than to vote a specific amendment set forth therein up or down, since the convention would be effectively stripped of its deliberative function.* A convention should have latitude to amend, as Congress does, by evaluating and dealing with a problem.

On the other hand, an application which expressed the result sought by an amendment, such as providing for the direct election of the President, should be proper since the convention itself would be left free to decide on the terms of the specific amendment necessary to accomplish that objective. We agree with the suggestion that it should not be necessary that each application be identical or propose similar changes in the same subject matter.[63]

In order to determine whether the requisite agreement among the states is present, it would seem useful for congressional legislation to require a state legislature to list in its application all state applications in effect on the date of its adoption whose subject or subjects it considers to be substantially the same. By requiring a state legislature to express the purpose of its application in relation to those already received, Congress would have additional guidance in rendering its determination. Any such requirement, we believe, should be written in a way that would permit an application to be counted even though the state involved might have inadvertently but in good faith failed to identify similar applications in effect.

(ii) Timeliness

In *Dillon* v. *Gloss,* the Court upheld the fixing by Congress of a period during which ratification of a proposed amendment must be accomplished. In reaching that conclusion the Court stated that "the fair inference or implication from Article V is that the ratification must be within some reasonable time after proposal, which Congress is free to fix." The Court observed that

> "as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do."[64]

We believe the reasoning of *Dillon* v. *Gloss* to be equally applicable to state applications for a national constitutional convention. The convening of a convention to deal with a certain matter certainly should reflect the "will of the people in all sections at relatively the same period . . . ." In the absence of a uniform rule, the timeliness or untimeliness of state applications would vary, it seems, from case to case. It would involve, as the Supreme Court suggested with respect to the ratification area in *Coleman* v. *Mi* a consideration of "political, social and economic conditions

*In commenting on the ratification process, the Supreme Court stated in *Hawke* v. *Smith (No. 1)*. "Both methods of ratification, by legislatures or conventions, *call for action by deliberative assemblages* representative of the people, which it was assumed would voice the will of the people." 253 U.S. at 226-27 (emphasis added).

which have prevailed during the period since the submission of the [applications] . . . ."[65]

A uniform rule, as in the case of ratification of proposed amendments since 1918,[66] would add certainty and avoid the type of confusion which surrounded the apportionment applications. Any rule adopted, however, must take into account the fact that some state legislatures do not meet every year and that in many states the legislative sessions end early in the year.

Although the suggestion of a seven year period is consistent with that prescribed for the ratification of recent proposed constitutional amendments, it can be argued that such a period is too long for the calling of a constitutional convention, since a long series of years would likely be involved before an amendment could be adopted. A shorter period of time might more accurately reflect the will of the people at a given point in time. Moreover, at this time in our history when social, economic and political changes frequently occur, a long period of time might be undesirable. On the other hand, a period such as four years would give states which adopted an application in the third and fourth year little opportunity to withdraw it on the basis of further reflection. This is emphasized when consideration is given to the fact that a number of state legislatures do not meet every year. Hence, a longer period does afford more opportunity for reflection on both the submission and withdrawal of an application. It also enables the people at the time of state legislative elections to express their views. Of course, whatever the period it may be extended by the filing of a new proposal.

The Committee feels that some limitation is necessary and desirable but takes no position on the exact time except it believes that either four or seven years would be reasonable and that a congressional determination as to either period should be accepted.

(iii) Withdrawal of Applications

There is no law dealing squarely with the question of whether a state may withdraw an application seeking a constitutional convention, although some commentators have suggested that a withdrawal is of no effect.[67] The desirability of having a rule on the subject is underscored by the fact that state legislatures have attempted to withdraw applications, particularly during the two most recent cases where a large number of state legislatures sought a convention on a specific issue.* As a result, uncertainty and confusion have arisen as to the proper treatment of such applications.

The Article V Convention
(i) Election of Delegates

During the Senate debates of October 1971 on S.215, no one suggested any limitation on the power to withdraw up to the time that the legislatures of two-thirds of the states had submitted proposals. Since a convention should reflect a "contemporaneously-felt need" that it take place, we think there should be no such limitation. In view of the importance and comparatively permanent nature of an amendment, it seems desirable that state legislatures be able to set aside applications that may have been hastily submitted or that no longer reflect the social, economic and political factors in effect when the applications were originally adopted. We believe Congress has the power to so provide.

From a slightly different point of view, the power to withdraw implies the power to change and this relates directly to the question of determining whether two-thirds of the state legislatures have applied for a convention to consider the same subject. A state may wish to say specifically through its legislature that it does or does not agree that its proposal covers the same subject as that of other state proposals. The Committee feels that this power is desirable.

Finally, we can see no problem with respect to a state changing a refusal to request a convention to a proposal for such a convention. All states, of course, have rules of one sort or another which restrict the time at which a once-defeated proposition can be again presented. If these rules were to apply to the call of a federal convention and operate in a burdensome manner, their validity would be questionable under *Hawke* v. *Smith*.

We believe it of fundamental importance that a constitutional convention be representative of the people of the country. This is especially so when it is borne in mind that the method was intended to make available to the "people" a means of remedying abuses by the national government. If the

*That is, the reapportionment and tax limitation applications.

convention is to be "responsive" to the people, then the structure most appropriate to the convention is one representative of the people. This, we believe, can only mean an election of convention delegates by the people. An election would help assure public confidence in the convention process by generating a discussion of the constitutional change sought and affording the people the opportunity to express themselves to the future delegates.

(ii) Apportionment of Delegates

Although there are no direct precedents in point, there is authority and substantial reason for concluding, as we do, that the one-person, one-vote rule is applicable to a national constitutional convention. In *Hadley* v. *Junior College District*, the Supreme Court held that the rule applied in the selection of people who carry on governmental functions.[68] While a recent decision, affirmed without opinion by the Supreme Court, held that elections for the judiciary are exempt from the rule, the lower court stated that "judges do not represent people."[69] Convention delegates, however, would represent people as well as perform a fundamental governmental function. As a West Virginia Supreme Court observed with respect to a state constitutional convention: "[E]ven though a constitutional convention may not precisely fit into one of the three branches of government, it is such an essential incident of government that every citizen should be entitled to equal representation therein."[70] Other decisions involving conventions differ as to whether the apportionment of a state constitutional convention must meet constitutional standards.[71]

Of course, the state reapportionment decisions are grounded in the equal protection clause of the Fourteenth Amendment and the congressional decision in *Wesberry* v. *Sanders*[72] was founded on Article I, Section 2. Federal legislation providing for a national constitutional convention would be subject to neither of these clauses but rather to the Fifth Amendment. Yet the concept of equal protection is obviously related to due process and has been so reflected in decisions under the Fifth Amendment.[73]

Assuming compliance with the one-person, one-vote rule is necessary, as we believe it is, what

standards would apply? While the early cases spoke in terms of strict population equality, recent cases have accepted deviations from this standard. In *Mahan* v. *Howell*, the Supreme Court accepted deviations of up to 16.4% because the state apportionment plan was deliberately drawn to conform to existing political subdivisions which, the Court felt, formed a more natural basis for districting so as to represent the interests of the people involved.[74] In *Abate* v. *Mundt*, the Court upheld a plan for a county board of supervisors which produced a total deviation of 11.9%.[75] It did so on the basis of the long history of dual personnel in county and town government and the lack of built-in bias tending to favor a particular political interest or geographic area.

Elaborating its views on one person, one vote, the Committee believes that a system of voting by states at a convention, while patterned after the original Constitutional Convention, would be unconstitutional as well as undemocratic and archaic. While it was appropriate before the adoption of the Constitution, at a time when the states were essentially independent, there can be no justification for such a system today. Aside from the contingent election feature of our electoral college system, which has received nearly universal condemnation as being anachronistic, we are not aware of any precedent which would support such a system today. A system of voting by states would make it possible for states representing one-sixth of the population to propose a constitutional amendment. Plainly, there should be a broad representation and popular participation at any convention.

While the representation provisions of S. 1272 allowing each state as many delegates as it has Senators and Representatives in Congress are preferable to a system of voting by states, it is seriously questionable whether that structure would be found constitutional because of the great voting weight it would give to people of one state over the people of another.* It can be argued that a representation system in a convention which parallels the structure in Congress does not violate

*Use of an electoral-college-type formula would mean that 15 states would be overrepresented by 50 p[illegible] or more, with the representation rising to close to 375 perce[illegible] for Alaska. California, on the other hand, would be under-

due process, since Congress is the only other body authorized by the Constitution to propose constitutional amendments. On the other hand, representation in the Congress and the electoral college are explicit parts of the Constitution, arrived at as a result of compromises at the Constitutional Convention of 1787. It does not necessarily follow that apportionment plans based on such models are therefore constitutional. On the contrary, the reapportionment decisions make clear that state plans which deviate from the principle of equal representation for equal numbers are unconstitutional. As the Supreme Court stated in *Kirkpatrick* v. *Preisler*:

> "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes."[76]

In our view, a system allotting to each state a number of delegates equal to its representation in the House of Representatives should be an acceptable compliance with one-person, one-vote standards.* We reach this conclusion recognizing that there would be population deviations of up to 50% arising from the fact that each state would be entitled to a delegate regardless of population. It would be possible to make the populations substantially equal by redistricting the entire country regardless of state boundaries or by giving Alaska one vote and having every other state elect at large a multiple of 300,000 representing its population or redistrict each state on the new population unit.[77] None of these methods, however, seems feasible or realistic. The time and expense involved in the creation and utilization of entirely new district lines for one election, especially since state election machinery is readily available, is one factor to be weighed. Another is the difficulty of creating districts crossing state lines which would adequately represent constituents from both states. There is also the natural interest of the voter in remaining within his state. Furthermore, the dual nature of our political system strongly supports the position that state boundaries be respected. *Abate*

*We have not studied the District of Columbia question, although we note that the District does not have a role in the congressional method of initiating amendments or in the ratification process.

v. *Mundt*, although distinguishable regarding apportionment of a local legislative body, suggests an analogy on a federal level. The rationale of the Court in upholding the legislative districts within counties drawn to preserve the integrity of the towns, with the minimum deviation possible, could be applicable to apportionment of a convention. The functional interdependence and the coordination of the federal and state governments and the fundamental nature of the dual system in our government parallel the relationship between the county and towns in *Abate*. Appropriate respect for the integrity of the states would seem to justify an exception to strict equality which would assure each state at least one delegate. Thus, a system based on the allocation of Representatives in Congress would afford maximum representation within that structure.

(iii) Members of Congress as Delegates

We cannot discern any federal constitutional bar against a member of Congress serving as a delegate to a national constitutional convention. We do not believe that the provision of Article I, Section 6 prohibiting congressmen from holding offices under the United States would be held applicable to service as a convention delegate. The available precedents suggest that an "office of the United States" must be created under the appointive provisions of Article II[78] or involve duties and functions in one of the three branches of government which, if accepted by a member of Congress, would constitute an encroachment on the principle of separation of powers underlying our governmental system.[79] It is hard to see how a state-elected delegate to a national constitutional convention is within the contemplation of this provision. It is noteworthy in this regard that several delegates to the Constitutional Convention of 1787 were members of the Continental Congress and that the Articles of Confederation contained a clause similar to Article I, Section 6.

We express no position on the policy question presented, or on the applicability and validity of any state constitutional bars against members of Congress simultaneously serving in other positions.

Ratification

As part of our study, the Committee has considered the advisability of including in any statute implementing the convention method a rule as to

ratification of a proposed amendment or withdraw a rejection vote. In view of the confusion and uncertainty which exists with respect to these matters, we believe that a uniform rule would be highly desirable.

The difficult legal and policy question is whether a state can withdraw a ratification of a proposed amendment. There is a view that Article V envisions only affirmative acts and that once the act of ratification has taken place in a state, that state has exhausted its power with respect to the amendment in question.[80] In support, it is pointed out that where the convention method of ratification is chosen, the state constitutional convention would not have the ability to withdraw its ratification after it had disbanded. Consequently, it is suggested that a state legislature does not have the power to withdraw a ratification vote. This suggestion has found support in a few state court decisions[81] and in the action of Congress declaring the ratification of the Fourteenth Amendment valid despite ratification rejections in two of the states making up the three-fourths.

On the other hand, Article V gives Congress the power to select the method of ratification and the Supreme Court has made clear that this power carries with it the power to adopt reasonable regulations with respect to the ratification process. We do not regard past precedent as controlling but rather feel that the principle of seeking an agreement of public support espoused in *Dillon* v. *Gloss* and the importance and comparatively permanent nature of an amendment more cogently argue in support of a rule permitting a state to change its position either way until three-fourths of the states have finally ratified.*[82]

*These views of the Committee are in accord with the rule which is expressed in S.1272 and its predecessor, S.215, which was unanimously passed by the Senate in October 1971. See page 4, *supra*.

Much of the past discussion on the convention method of initiating amendments has taken place concurrently with a lively discussion of the particular issue sought to be brought before a convention. As a result, the method itself has become clouded by uncertainty and controversy and attempted utilization of it has been viewed by some as not only an assault on the congressional method of initiating amendments but as unleashing a dangerous and radical force in our system. Our two-year study of the subject has led us to conclude that a national constitutional convention can be channeled so as not to be a force of that kind but rather an orderly mechanism of effecting constitutional change when circumstances require its use. The charge of radicalism does a disservice to the ability of the states and people to act responsibly when dealing with the Constitution.

We do not mean to suggest in any way that the congressional method of initiating amendments has not been satisfactory or, for that matter, that it is not to be preferred. We do mean to suggest that so long as the convention method of proposing amendments is a part of our Constitution, it is proper to establish procedures for its implementation and improper to place unncessary and unintended obstacles in the way of its use. As was stated by the Senate Judiciary Committee, with which we agree:

> "The committee believes that the responsibility of Congress under the Constitution is to enact legislation which makes article V meaningful. This responsibility dictates that legislation implementing the article should not be formulated with the objective of making the Convention route a dead letter by placing insurmountable procedural obstacles in its [illegible] Nor on the other hand should Congress, in the guise of implementing

legislation, create procedures designed to facilitate the adoption of any particular constitutional change."[83]

The integrity of our system requires that when the convention method is properly resorted to, it be allowed to function as intended.

Respectfully submitted,

SPECIAL CONSTITUTIONAL CONVENTION
STUDY COMMITTEE

C. Clyde Atkins, Chairman
Warren Christopher
David Dow
John D. Feerick
Adrian M. Foley, Jr.
Sarah T. Hughes
Albert M. Sacks
William S. Thompson
Samuel W. Witwer

July, 1973

Citations

[1] 2 J. Story, *Commentaries on the Constitution of the United States* § 1826 (5th ed. 1905).

[2] *The Federalist No. 43*, at 204 (Hallowell; Masters, Smith & Co. ed. 1852) (J. Madison).

[3] J. Wheeler, *The Constitutional Convention: A Manual on its Planning, Organization and Operation* xiii (National Municipal League Series 1, No. 4 1961); *see* R. Hoar, *Constitutional Conventions* 1-3 (1917).

[4] *See* A. Sturm, *Thirty Years of State Constitution Making: 1938-1968*, at 51-80, 132-37 (National Municipal League 1970).

[5] 369 U.S. 186 (1962).

[6] 377 U.S. 533 (1964).

[7] *See* Black, "The Proposed Amendment of Article V: A Threatened Disaster," 72 Yale L.J. 957 (1963); Fensterwald, "Constitutional Law: The States and the Amending Process – A Reply," 46 A.B.A.J. 717 1960); Oberst, "The Genesis of the Three States-Rights Amendments of 1963," 39 Notre Dame Lawyer 644 (1964); Shanahan, "Proposed Constitutional Amendments: They Will Strengthen Federal-State Relations," 49 A.B.A.J. 631 (1963).

[8] *See* American Enterprise Institute, *A Convention to Amend the Constitution: Questions Involved in Calling a Convention Upon Applications by State Legislatures* (Special Analysis No. 5, 1967).

[9] *See* Martin, "The Application Clause of Article Five," 85 Pol. Sci. Q. 616, 626 (1970).

[10] Ervin, "Proposed Legislation to Implement the Convention Method of Amending the Constitution," 66 Mich. L. Rev. 875, 878 (1968).

[11] *See* Hearings on S. 2307 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess. (1967); S. Rep. No. 336, 92nd Cong., 1st Sess. (1971); 117 Cong. Rec. 36803-06 (1971).

[12] The literature in this field deals with various proposals to "reform" Article V by easing, restricting, or otherwise altering the means of proposing amendments to the Constitution through the convention method. *See, e.g.*, L. Orfield, *The Amending of the Federal Constitution*, Chap. VI (1942); McCleskey, "Along the Midway: Some Thoughts on Democratic Constitution-Amending," 66 Mich. L. Rev. 1001, 1012-16 (1968).

[13] On the other hand, some have suggested that state legislatures will be less likely to seek a national constitutional convention if they are more aware of the risks and uncertainties of the convention method. *See, e.g.*, Buckwalter, "Constitutional Conventions and State Legislators," 20 J. Pub. Law 543 (1971).

[14] J. Wheeler, *supra* note 3, at xv. There have been occasions on which state constitutional conventions ha[illegible]ccessfully exceeded limitations placed upon them. Conventi[illegible]n Georgia (1789), Illinois (1862 and 1869), Pennsylvania (1872), Alabama (1901) and Michigan (1907) all violated legislative directives – either procedur[illegible]

The Virginia Convention of 1901 and the Kentucky Convention of 1890 both wrote major changes in suffrage into their creations, and then proclaimed the new constitutions as law without holding the legislatively mandated popular referenda. (Referenda conducted under the suffrage provisions of the old constitutions would have resulted in disapproval of the new instruments.)

[15] Article 1, § 5, of the Constitution gives the House of Representatives the authority to judge challenges to the election of its members. Since 1798, the House has seen fit to exercise this power through procedures enacted into law. Act of Jan. 23, 1798, Ch. 8, 1 Stat. 537. Subsequent modifications of that law appear in 2 U.S.C. §§ 201-226 (1970). Precedents for the use of this class of legislation, despite recognition that the rules enacted by one Congress in this area cannot bind a successor Congress, may be found in 1 Hinds, *Precedents of the House of Representatives* §§ 680, 719, 833 (1907).

In 1969 Congress passed the Federal Contested Elections Act, 2 U.S.C. §§ 381-96 (1970). In the House Report Accompanying that legislation appeared the following:

> Election contests affect both the integrity of the elected process and of the legislative process. Election challenges may interfere with the discharge of public duties by elected representatives and disrupt the normal operations of the Congress. It is essential, therefore, that such contests be determined by the House under modern procedures which provide efficient, expeditious processing of the cases and a full opportunity for both parties to be heard. H.R. Rep. No. 569, 91st Cong., 1st Sess. 3 (1969).

Similarly, Congress decided in 1877 to establish procedures for handling electoral vote disputes for President rather than adopt ad hoc procedures, as it did in 1876 to resolve the Presidential election dispute of that year. That ad hoc resolution led to a great deal of criticism of Congress, as many felt the issue had been decided on the basis of political bias rather than facts. *See generally* 3 U.S.C. § 15 (1970); Rosenbloom, *A History of Presidential Elections* 243 (1965).

[16] *The Federalist No. 43*, *supra* note 2.

[17] J. Jameson, *A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding* § 585, at 634 (4th ed. 1887); *cited with approval in Dillon* v. *Gloss*, 256 U.S. 368, 375 (1921).

[18] *The Federalist No. 43*, *supra* note 2, at 204.

[19] 1 *The Records of the Federal Convention of 1787*, at 22 (Farrand ed. 1937) (hereinafter cited as *Farrand*).

[20] 2 *Id.* 188 (emphasis added).

[21] Weinfeld, "Power of Congress over State Ratifying Conventions," 51 Harv. L. Rev. 473, 481 (1938).

[22] 2 *Farrand* 558.

[23] *Id.* 559.

[24] *Id.* 629.

[25] *Id.* 629, 630.

[26] *The Federalist No. 85,* at 403 (Hallowell; Masters, Smith & Co. ed. 1852) (A. Hamilton).

[27] T. Cooley, *The General Principles of Constitutional Law in the United States of America* 15 (2d ed. 1891).

[28] Georgia, Massachusetts, New Hampshire, and Pennsylvania provided for amendments by convention; Delaware, Maryland and South Carolina provided methods of amendment, but not through conventions; New Jersey, New York, North Carolina and Virginia lacked any provisions for amendment; and Connecticut and Rhode Island did not adopt constitutions at that time. The constitution of Vermont (then considered a territory) provided for amendments through convention. Weinfeld, *supra* note 21, at 479.

State Constitutions, Colonial Charters, and Other Organic Laws of the United States 383 (1878) [hereinafter cited as *Poore*].

[30] Pa. Const. § 47 (1776), at 2 *Poore* 1548. Vermont's Constitution of 1786 contained a similar amending article.

[31] "Documents Illustrative of the Formation of the Union of the American States," H. Doc. No. 398, 69th Cong., 1st Sess. 41-43 (1927).

[32] A. Sturm, *Methods of State Constitutional Reform* 102 (1954); R. Hoar, *supra* note 3, at 71, 120-1; Dodd, "State Constitutional Conventions and State Legislative Power," 2 Vand. L. Rev. 27 (1948). The following state cases support the proposition: *Opinion of the Justices*, 264 A.2d 342 (Del. 1970); *Chenault* v. *Carter*, 332 S.W.2d 623 (Ky. 1960); *State* v. *American Sugar Refining Co.*, 137 La. 407, 68 So. 742 (1915); *Opinion of the Justices*, 60 Mass. (6 Cush.) 573 (1833); *Erwin* v. *Nolan*, 280 Mo. 401, 217 S.W. 837 (1920); *State ex rel. Kvaalen* v. *Graybill*, 496 P.2d 1127 (Mont. 1972); *Wood's Appeal*, 75 Pa. 59 (1874); *Wells* v. *Bain*, 75 Pa. 39 (1873); *In re Opinion of the Governor*, 55 R.I. 56, 178 A. 433 (1935); *Cummings* v. *Beeler*, 189 Tenn. 151, 223 S.W.2d 913 (1949); *Quinlan* v. *Houston and Texas Central Ry. Co.*, 89 Tex. 356, 34 S.W. 738 (1896); *Staples* v. *Gilmer*, 183 Va. 613, 33 S.E.2d 158, 158 A.L.R. 495 (1945). *See* Annot. "Power of state legislature to limit the power of a state constitutional convention," 158 A.L.R. 512 (1945).

[33] Roger Hoar has expressed it this way:

> [T]here would be no convention unless the people voted affirmatively, that an affirmative vote would result in holding exactly the sort of convention in every detail provided in the act, and that the people are presumed to know the terms of the act under which they vote. The conclusion drawn from this is that the convention act in its every detail is enacted by the people voting under it. R. Hoar, *supra* note 3, at 71.

[34] *State* v. *American Sugar Refining Company*, 137 La. 407, 415, 68 So. 742, 745 (1915).

[35] *State ex rel. McCready* v. *Hunt*, 20 S.C. (2 Hill's Law) 1,271 (1834).

[36] Nearly 15% of the total number of state constitutional conventions called have been substantively limited in one or more respects. The limited or restricted state constitutional convention has been used frequently since World War II. *See* A. Sturm, *supra* note 4, at 56-60, 113; A. Sturm, "State Constitutions and Constitutional Revision, 1970-1971," in Council of State Gov'ts, *The Book of the States, 1972-1973*, at 20 (1972).

[37] 256 U.S. 368 (1921).

[38] 258 U.S. 130 (1922), where the Court stated: "But the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State."

[39] As Justice Felix Frankfurter has observed: "The history of American freedom is, in no small measure, the history of procedure." *Malinski* v. *New York*, 324 U.S. 401, 414 (1945). It is not surprising, therefore, that procedural limitations on conventions have been invalidated. *See Carton* v. *Secretary of State*, 151 Mich. 337, 115 N.W. 429 (1908); *Goodrich* v. *Moore*, 2 Minn. 61 (1858). *See also* Jameson, *supra* note 17, at 364; Dodd, *supra* note 32, at 31, 33.

[40] A number of the Congressional Acts providing for territorial conventions did prescribe that the convention must determine by a majority of the whole number of delegates whether it was expedient for the territory to form a constitution and state government. No such requirement, however, was imposed on conventions in their

of April 30, 1802, ch. 40, 1 Stat. 173 (Ohio); Act of Feb. 20, 1811, ch. 21, 3 Stat. 641 (Louisiana); Act of July 16, 1894, ch. 138, 28 Stat. 107 (Utah); Act of June 16, 1906, ch. 3335, 34 Stat. 267 Oklahoma).

Among those few state constitutional conventions, for which the vote needed to govern convention proceedings was established in enabling legislation were the 1967 Pennsylvania convention, and the New Jersey conventions of 1947 and 1966. *See* Law of March 16, 1967, ch. 2 [1967] Pa. Laws 2; Act of Feb. 17, 1947, ch. 8, [1947] N.J. Laws 24; Act of May 10, 1965, ch. 43, [1965] N.J. Laws 101.

When Congress required that the Twenty-First Amendment (ending Prohibition) be ratified by state conventions, rather than legislatures, forty-three states enacted legislation providing for such conventions. Thirty-two of those enabling acts established the vote required of convention delegates for ratification; either a majority of those delegates present and voting (*e.g.*, New Mexico and North Carolina – such acts also established a minimum quorum) or a majority of the total number of delegates (*e.g.* California and Illinois). In no case was the requirement greater than a majority of the total number of delegates. *See* E. Brown, *Ratification of the Twenty-First Amendment to the Constitution of the United States: State Convention Records and Laws* 515-701 (1938).

[41] To be noted is Gerry's criticism of the August 30, 1787 proposal, specifically, his observation that a "majority" of the states might bind the country in the convention contemplated by that proposal *See* pp. 12-13, *supra.* Gerry's criticism eventually led to the inclusion of ratification requirements. *See* Weinfeld, *supra* note 21, at 482-483.

[42] 74 U.S. (7 Wall.) 506 (1869); *criticized in Glidden Co.* v. *Zdanok*, 370 U.S. 530, 605 n.11 (1962) (Douglas, J., dissenting).

[43] *See* Strong, "Three Little Words and What They Didn't Seem to Mean," 59 A.B.A.J. 29 (1973). *See generally* Fairman, "Reconstruction and Reunion, 1864-88," in VI *History of the Supreme Court of the United States* 433-514 (Freund ed. 1971).

[44] The cases are: *United States* v. *Sprague*, 282 U.S. 716 (1931); *Leser* v. *Garnett*, 258 U.S. 130 (1922); *Dillon* v. *Gloss*, 256 U.S. 368 (1921); *National Prohibition Cases*, 253 U.S. 350 (1920); *Hawke* v. *Smith (No. 1)*, 253 U.S. 221 (1920); *Hollingsworth* v. *Virginia*, 3 U.S. (3 Dall.) 378 (1798).

[45] 307 U.S. 433 (1939).

[46] 369 U.S. 186 (1962).

[47] *Id.* 217.

[48] 395 U.S. 486 (1969).

[49] *See Butterworth* v. *Dempsey*, 237 F. Supp. 302 (D. Conn. 1965), involving a court-ordered state constitutional convention on the subject of reapportionment. *Cf. Sixty-Seventh Minnesota State Senate* v. *Beens*, 406 U.S. 187 (1972).

[50] 3 U.S. (3 Dall.) 378 (1798).

[51] *Id.* 380 n.(a).

[52] III Journal of the Senate 323 (1803) (motion defeated by a vote of 23 to 7).

[53] Cong. Globe, 38th Cong., 2d Sess. 629-33 (1865). Four years earlier a proposed amendment on slavery was presented to and signed by President Buchanan. No discussion took place in Congress concerning this action and the proposed amendment was never ratified.

[54] VI J. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, at 391-392 (1897).

[55] 253 U.S. 221 (1920).

[56] *Id.* 227.

[57] 285 U.S. 355 (1932).

[58] *Id.* 365, 366.

[59] *See Coleman* v. *Miller*, 146 Kan. 390, 71 P.2d 518 (1937), *aff'd* 307 U.S. 433 (1939), upholding the right of a lieutenant governo to cast the tie-breaking vote in the state senate on the ratification o the proposed child labor amendment. In affirming, the Unite States Supreme Court expressed no opinion as to the propriety o the lieutenant governor's participation.

[60] The results of a questionnaire-type inquiry which we sent to th fifty states indicate that a substantial majority exclude the governo from participation and that in a number that include him it is no clear whether his inclusion is simply a matter of form. Historically it appears that the governor generally has not played a role in thes processes, although there are exceptions to this rule. *See* Myers "The Process of Constitutional Amendment," S. Doc. No. 314, 76t Cong., 3rd Sess. 18 n.47 (1940), wherein it is stated that governor gave 44 approvals in the ratifications of 15 amendments. Whethe the approvals were simply a matter of form or were required as matter of state law is not clear. In several cases there were gubernatorial vetoes of ratifications, including the governor of New Hampshire's attempted veto of his state's ratification of the twelft amendment.

[61] H. Ames, "The Proposed Amendments to the Constitution o the United States During the First Century of Its History," H. Doc No. 353, pt. 2, 54th Cong., 2d Sess. 298 (1897); Bonfield "Proposing Constitutional Amendments by Convention: Some Problems," 39 Notre Dame Lawyer 659, 664-65 (1964); Buck walter, *supra* note 13, at 551; Brickfield, Staff of House Committee on the Judiciary, 85th Cong., 1st Sess., "Problems Relating to Federal Constitutional Convention" 7-9 (Comm. Print 1957); Note "Proposing Amendments to the United States Constitution by Convention," 70 Harv. L. Rev. 1067, 1075 (1957). *But compare* 69 Op. Att'y Gen. of Okla. 200 (1969), in 115 Cong. Rec. 23780 (1969), *with In re Opinion of the Justices*, 118 Maine 544, 107 A 673 (1919). *See generally* Dodd, *The Revision and Amendment of State Constitutions* 148-55 (1910); Hoar, *supra* note 3, at 90-93 Orfield, *supra* note 12, at 50 & n.30, 66 & n.89.

[62] 3 U.S. (3 Dall.) 378 (1798). *See also Omaha Tribe of Nebraska* v. *Village of Walthill*, 334 F. Supp. 823 (D. Neb. 1971), *aff'd*, 460 F.2d 1327 (8th Cir. 1972), *cert. denied*, 93 S.Ct. 898 (1973) (governor's approval not required in order for a state to cede jurisdiction over Indian residents); *Ex parte Dillon*, 262 F. 563 (1920) (when the Legislature is designated as a mere agency to discharge some duty of a non-legislative character, such as ratifying a proposed amendment, the legislative body alone may act).

[63] Brickfield, *supra* note 61, at 11-12.

[64] 256 U.S. 368, 375 (1921).

[65] 307 U.S. 433, 453-54 (1939).

[66] Beginning with the proposal of the eighteenth amendment Congress has, either in the amendment or proposing resolution, included a provision requiring ratification within seven years from the time of the submission to the states.

[67] *See, e.g.*, Note "Rescinding Memorialization Resolutions," 30 Chi.-Kent L. Rev. 339 (1952).

[68] 397 U.S. 50 (1970).

[69] *Wells* v. *Edwards*, 347 F. Supp. 453, 455 (M.D. La. 1972), *aff'd* 93 S. Ct. 904 (1973).

[70] *Smith* v. *Gore*, 150 W. Va. 71, 143 S.E.2d 791, 794 (1965).

[71] *See Forty-Second Legislative Assembly* v. *Lennon*, 481 P.2d 330 (Mont. 1971); *Jackman* v. *Bodine*, 43 N.J. 453, 470, 476-77, 205 A.2d 713, 722, 726 (1964). In *Butterworth* v. *Dempsey*, 237 F. Supp. 302 (D. Conn. 1965), a federal court ordered, without indicating the basis for it, apportionment of convention delegates on a one-person, one-vote basis. *See also State* ex rel. *Haste* v. *State Canvassing Board*, 78 N.M. 682, 437 P.2d 143 (19[illegible] where a section of the state constitution, requiring that any amendments to that constitu-

tion affecting suffrage or apportionment be approved by both 3/4 of the voters of the state as a whole *and* 2/3 of those voting in each county, was found to violate the 'one-person, one-vote' and equal protection principles, and was accordingly declared invalid. *Contra, West* v. *Carr*, 212 Tenn. 367, 370 S.W.2d 469 (1963), *cert. denied*, 378 U.S. 557 (1962), holding equal protection guarantees inapplicable to a state constitutional convention since it had no power to take any final action; *accord, Livingston* v. *Ogilvie*, 43 Ill.2d 9, 250 N.E.2d 138 (1969); *Stander* v. *Kelley*, 433 Pa. Super. 406, 250 A.2d 474 (1969), *appeal dismissed sub nom. mem., Lindsay* v. *Kelley*, 395 U.S. 827 (1969). *West, Stander and Livingston*, in reaching this result, emphasized the fact that the entire electorate would be afforded a direct and equal voice, in keeping with the 'one-person, one-vote' principle, when the convention's product was submitted for ratification.

[72] 376 U.S. 1 (1964).

[73] *See Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *Schneider* v. *Rusk*, 377 U.S. 163 (1964); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954). *See also United States* v. *Pipefitters*, 434 F.2d 1116, 1124 (8th Cir. 1971); *United States* v. *Synnes*, 438 F.2d 764, 771 (8th Cir. 1971); *Henderson* v. *ASCS, Macon County, Alabama*, 317 F. Supp. 430, 434-35 (M.D. Ala. 1970). *See generally Griffin* v. *Richardson*, 346 F. Supp. 1226, 1232-33 (D. Md. 1972).

[74] 93 S.Ct. 979 (1973).

[75] 403 U.S. 182 (1971).

[76] 394 U.S. 526, 531 (1968).

[77] The present 1970 census establishes the mean population of congressional districts as approximately 467,000. As Alaska has a population of approximately 302,000, the absolute differential is over 50%. There are similar disparities in some states with two representatives (*e.g.*, South Dakota's two Congressmen each represent 333,000 people), but they are not as great.

[78] *See United States* v. *Germaine*, 99 U.S. 508 (1878); *United States* v. *Mouat*, 124 U.S. 303 (1888); *United States* v. *Smith*, 124 U.S. 525 (1888). *See generally* 1 Hinds, *Precedents of the House of Representatives* § 493 (1907). In *Board of Supervisors of Elections* v. *Attorney General*, 246 Md. 417, 439, 229 A.2d 388, 395 (1967), the court held that a delegate to a state constitutional convention was not an "officer" so that a member of the legislature was not guilty of dual office-holding when he simultaneously served as a delegate; *accord, Livingston* v. *Ogilvie*, 43 Ill.2d 9, 250 N.E.2d 138 (1969). *But see Forty-Second Legislative Assembly* v. *Lennon*, 481 P.2d 330 (Mont. 1971); *State* v. *Gessner*, 129 Ohio St. 290, 195 N.E. 63 (1935).

[79] *See 1 Farrand* 376; *Reservists Comm. to Stop the War* v. *Laird*, 323 F. Supp. 833 (D.D.C. 1971).

[80] Jameson, *supra* note 17, at § § 582-584; Dodd, "Amending the Federal Constitution," 30 Yale L.J. 321, 346 (1921).

[81] *Wise* v. *Chandler*, 270 Ky. 1, 108 S.W.2d 1024 (1937) (also holding that state legislative *rejection* of a proposed constitutional amendment cannot be reconsidered); *Coleman* v. *Miller*, 146 Kan. 390, 71 P.2d 518 (1937) (dicta). The issue was discussed, though not passed on by the Court, in Chief Justice Hughes' opinion in *Coleman* v. *Miller*, 307 U.S. 433, 447-50 (1938).

[82] This rule would take precedence over the action of Congress in refusing to permit New Jersey and Ohio to rescind their ratifications of the fourteenth amendment. The right to ratify after a previous rejection would confirm precedents established in connection with the ratifications of the Thirteenth and Fourteenth Amendments. *See generally* Myers, *The Process of Constitutional Amendment*, S. Doc. No. 314, 76th Cong., 3rd Sess. (1940).

[83] S. Rep. No. 336, 92nd Cong., 1st Sess. 2 (1971).

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This appendix is designed to capsulize our comments regarding various principles reflected in S. 1272 and to cross-reference pertinent parts of our report. The underlining, insertions (noted by brackets) and deletions which appear in S. 1272 have been supplied by us for the purpose of illustrating our comments.

93rd Congress
1st Session
S. 1272

IN THE SENATE OF THE UNITED STATES
March 19, 1973
Referred to the Committee on the Judiciary
Passed the Senate July 9, 1973

COMMENTS

A BILL

Our views as to the desirability of legislation implementing the convention method of initiating amendments appear at pages 7 to 9.

To provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Federal Constitutional Convention Procedures Act".

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

Sec. 2 Our views as to the limitability of a convention are set forth at pages 9 to 17.

The phrase "nature of the amendment or amendments" is unclear and differs from the phraseology contained in Sections 4, 5, 6, 8, 10 and 11. Our discussion of this item appears at pages 18, 19, 30 and 31.

SEC. 2. The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States on and after the enactment of this Act, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more amendments to the Constitution of the United States and *stating the nature of the amendment or amendments to be proposed.*

APPLICATION PROCEDURE

Sec.3 (a) For the reasons set forth at pages 28 to 30, we believe that a state governor should have no part in the process by which a state legislature applies for a convention. This section is unclear as to whether a state may on its own initiative assign a role to the governor. The phraseology concerning the governor also is different from that employed in Section 12(b) with respect to ratification. Additionally, the requirement that state statutory procedures "shall" apply to applications differs from the terminology of Section 12(b) as well as raises questions under *Hawke v. Smith*, No. 1, 253 U.S. 221 (1920), and *Leser v. Garnett*, 258 U.S. 130 (1922). See *Trombetta v. Florida*, 393 F. Supp. 575 (D. Fla. 1973).

SEC. 3. (a) For the purpose of adopting or rescinding a resolution pursuant to section 2 and section 5, the State legislature *shall follow the rules of procedure that govern the enactment of a statute* by that legislature, but without the need for approval of the legislature's action by the governor of the State.

(b) As discussed at pages 20 to 25, the Committee believes that limited judicial review is necessary and desirable and has specifically so provided in a new proposed Section 16. The introduction of such review requires the deletion of the language regarding the binding nature of congressional determinations. The "clearly erroneous" standard suggested in our proposed Section 16 acknowledges the appropriateness of initial congressional determinations in this area but withdraws the finality of such decisions.

(b) Questions concerning the adoption of a State resolution cognizable under this Act shall be [determined] ~~determinable~~ by the Congress of the United States ~~and its decisions thereon shall be binding on all others, including State and Federal courts~~.

TRANSMITTAL OF APPLICATIONS

SEC. 4 (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of state of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House of Representatives.

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(2) *New.* Inasmuch as each legislature receives a copy of all valid applications pursuant to Section 4(d) [4 (c) in S.1272], preparation of the list would be a simple task. In doing so, the state would be able to express the purpose of its application in relation to those already received, thereby assisting Congress in rendering its determination pursuant to Section 6 (a) as to whether the requisite number of applications have been received on "the same subject."

(c) *New.* The adoption of judicial review requires that courts be able to define the accrual of grievances with particularity, S.1272 leaves uncertain the status of an application or rescission absent specific congressional action. Our proposed new Section 4(c) limits the period of uncertainty to 60 days. If Congress does not act upon a state transmittal within that period, it is deemed valid. The period for judicial review thus begins to run no later than 60 days after receipt of the application.

The possibility of a Senate filibuster blocking rejection of a patently defective application, thus causing the application to be deemed valid under Section 4(c), is offset by the fact that an action would lie under Section 16(a) for declaratory relief. Section 4(c) expressly notes that such a failure to act is subject to review under Section 16. State legislators as well as

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution;

[(2) *to the extent practicable a list of all state applications in effect on the date of adoption whose subject or subjects are substantially the same as the subject or subjects set forth in the application;*]

[3]

~~(2)~~ the exact text of the resolution signed by the presiding officer of each house of the State legislature; and

[4]

~~(3)~~ The date on which the legislature adopted the resolution; and shall be accompanied by a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

[(c) Upon receipt, an application shall be deemed valid and in compliance with article V of the Constitution and this Act, unless both Houses of Congress prior to the expiration of 60 days of continous session of Congress following the receipt of such application shall by concurrent resolution determine the application is invalid, either in whole or in part. Failure of Congress to act within the specified period is a determination subject to review under section 16 of this Act. Such resolution shall set forth with particularity the ground or grounds for any such determination. The 60-day period referred to herein shall be computed in accordance with section 11(b) (2) of this Act.]

members of Congress would appear to qualify as "aggrieved" parties. See *Coleman v. Miller*, 307 U.S. 433 (1939).

Section 4(c) thus results in an early determination of the application's procedural aspects. Only the question of the similarity of an application's subject to the subject of other applications is reserved for later determination by Congress.

(d) Same as present Section 4(c) of S.1272 except for the suggested insertions, which are designed to reflect the introduction of judicial review. The requirement for transmittal of applications to state legislatures is limited to valid applications.

[d]

-(e)- Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is the presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. [Within the 60-day period provided for in Section 4(c),] the President of the Senate and Speaker of the House of Representatives shall jointly cause copies of such application to be sent to the presiding officer of each house of the legislature of every other State and to each Member of the Senate and House of Representatives of the Congress of the United States, [provided, however, that an application declared invalid shall not be so transmitted.]

EFFECTIVE PERIOD OF APPLICATION

(a) For the reasons set forth at pages 31 and 32, the Committee agrees that some time limitation is necessary and desirable but takes no position on the exact time, except believes that four or seven years would be reasonable and that a congressional determination as to either should be accepted.

The Committee's views as to the use of the "same subject" test appear at pages 18, 19, 30 and 31.

(b) We believe that it is desirable to have a rule such as that contained in this section permitting the withdrawal of application. See discussion of this point at pages 32 and 33.

SEC. 5 (a) An application submitted to the Congress by a State, unless sooner rescinded by the State legislature shall remain effective for seven calendar years after the date it is received by the Congress, except that whenever within a period of seven calendar years two-thirds or more of the several States have each submitted an application calling for a constitutional convention on the *same subject* all such applications shall remain in effect until the Congress has taken action on a concurrent resolution pursuant to section 6, calling for a constitutional convention.

(b) A State may rescind its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of rescission *in conformity with the procedure specified* in sections 3 and 4, except that no such rescission shall be effective as to any valid application made for a

As for the requirement respecting the procedures to be followed, see our comments to Section 3(a).

(c) See our comments to Section 3(b).

constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subjects.

Questions concerning the recission of a State's application shall be determined by the Congress or the United States ~~and its decisions shall be binding on all others including State and Federal courts~~

CALLING OF A CONSTITUTIONAL CONVENTION

With regard to "the nature of the amendment or amendments" phraseology, see our comments to Section 2.

The concurrent resolution calling the convention may also have to deal with such questions as to when the election of delegates will take place.

The position that the President has no place in the calling process is discussed at pages 25 to 28.

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject. Whenever applications made by two-thirds or more of the States with respect to the same subject have been received, the Secretary and the Clerk shall so report in writing to the officer to whom those applications were transmitted, and such officer thereupon shall announce on the floor of the House of which he is an officer the substance of such report. It shall be the duty of such House to determine that there are in effect valid applications made by two-thirds of the States with respect to the same subject. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject. *Each such concurrent resolution shall* (1) designate the place and time of meeting of the convention, and (2) *set forth the nature of the amendment or amendments for the consideration of which the convention is called.* A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the Governor and to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than one year after adoption of the resolution.

DELEGATES

The Committee believes that the principle of one person, one vote applies and that Section 7(a) violates that principle. The Committee is of the view that an apportionment plan which allotted to each state a number of delegates equal to its representation in the House of Representatives should be an acceptable compliance with those standards. This subject is discussed at pages 34 to 37.

SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of each state.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the Vice President of the United States the name of each delegate elected or appointed by the Governor pursuant to this section.

The persons entitled to vote for delegates could be more clearly stated to include all persons entitled to vote for members of the House of Representatives. The manner of nominating persons for delegate election might, as provided by S.1272, best be left to each state.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.

The question of the eligibility of members of Congress to be delegates is discussed at page 37.

(d) Each delegate shall receive compensation for each day of service and shall be compensated for traveling and related expenses. Provision shall be made therefor in the concurrent resolution calling the convention. The convention shall fix the compensation of employees of the convention.

CONVENING THE CONVENTION

SEC. 8. (a) The Vice President of the United States shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to refrain from proposing or casting his vote in favor of any proposed amendment to the Constitution of the United States relating to any subject which is not named or described in the concurrent resolution of the Congress by which the convention was called. Upon the election of permanent officers of the convention, the names of such officers shall be transmitted to the President of the Senate and the Speaker of the House of Representatives by the elected presiding officer of the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) There is hereby authorized to be appropriated such sums as may be necessary for the payment of the expenses of the convention.

(c) The Administrator of General Services shall provide such facilities, and the Congress and each executive department and agency shall provide such information and assistance, as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

The Committee agrees with the principle that each delegate have one vote.

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

(a) The Committee believes that Congress should not impose a vote requirement on a convention. It views as unwise and of questionable validity any attempt to regulate the internal pro-

SEC. 10. (a) Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a vote of *two-thirds of the total number of delegates to the convention.*

cedures of a convention. It also notes that the vote requirement in S.1272 based on the total number of delegates is more stringent than that required for amendments proposed by Congress. See pages 17 to 20 of this report.

(b) See our comments to Section 2 with regard to the underlining and our comments to Section 3(b) as for the deletions.

(b) No convention called under this Act may propose *any amendment or amendments of a nature different from that stated* in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts~~.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit to the Congress the exact text of any amendment or amendments agreed upon by the convention.

(b) (1) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such amendment to the Administrator of General Services upon the expiration of the first period of ninety days of continuous session of the Congress following the date of receipt of such amendment unless within that period both Houses of the Congress have agreed to (a) a concurrent resolution directing the earlier transmission of such amendment to the Administrator of General Services and specifying in accordance with article V of the Constitution the manner in which such amendment shall be ratified, or (B) a concurrent resolution stating that the Congress disapproves the submission of such proposed amendment to the States because such proposed amendment *relates to or includes a subject which differs from or was not included among the subjects named or described in the concurrent resolution* of the Congress by which the convention was called, or because the procedures followed by the convention in proposing the amendment were not in substantial conformity with the provisions of this Act. No measure agreed to by the Congress which expresses disapproval of any such proposed amendment for any other reason, or without a statement of any reason, shall relieve the President of the Senate and the Speaker of the House of Representatives of the obligations imposed upon them by the first sentence of this paragraph.

(2) For the purposes of paragraph (1) of this subsection, (A) the continuity of a session of the Congress shall be broken only by an adjournment of the Congress sine die, and (B) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the period of ninety days.

(c) Upon receipt of any such proposed amendment to the Constitution, the Administrator shall transmit forthwith to each of the several States a duly certified copy thereof, a copy of any concurrent resolution agreed to by both Houses of the Congress which prescribes the time within which and the manner in which such amendment shall be ratified, and a copy of this Act.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified.

(b) Acts of ratification shall be by convention or by State legislative action as the Congress may direct or as specified in subsection (c) of this section. For the purpose of ratifying proposed amendments transmitted to the States pursuant to this Act the *State legislatures shall adopt their own rules of procedure.* Any State action ratifying a proposed amendment to the Constitution shall be valid without the assent of the Governor of the State.

(c) Except as otherwise prescribed by concurrent resolution of the Congress, any proposed amend-

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(b) The position that the President has no place in this process is discussed at pages 25 to 28.

As for the language "relates to or includes a subject" in (B), see our comments to Section 2.

(b) It is not clear whether this section would accept any special limitation adopted by a state with respect to ratification, other than the assent of the governor or any other body. See our comments to Section 3(a).

The exclusion of the governor from the process, with which we agree, is discussed at pages 28 to 30.

ratified by the legislatures of three-fourths of the several States within seven years from the date of the submission thereof to the States, or within such other period of time as may be prescribed by such proposed amendment.

(d) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RECISSION OF RATIFICATIONS

(a)-(b) As discussed at pages 37 and 38, the Committee agrees with the principle permitting a state to rescind a ratification or rejection vote.

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendments by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c) See our comments to Section 3(b).

(c) Questions concerning State ratification or rejection of amendments proposed to the Constitution of the United States, shall be determined ~~solely~~ by the Congress of the United States ~~and its decisions shall be binding on all others, including State and Federal courts.~~

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 15. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

JUDICIAL REVIEW

New. The purpose of our proposed Section 16 is to provide limited judicial review of controversies arising under S.1272. The procedural framework of the bill sets forth clear standards for adjudication of many of the potential controversies, and to this extent judicial interpretation of the act does not differ from the normal role of the courts. Moreover, determinations such as the similarity of applications or the conformity of proposed amendments to the scope of the convention call are no more difficult than, say, interpretation of the general language of the antitrust laws or the securities acts. The fact that these questions occur in a constitutional context does not diminish the skill of the Bench to interpret and develop the law in light of the factual situations of a given controversy.

Selection of a three-judge district court as the initial forum for controversies acknowledges that many controversies may be essentially state questions. For example, Congress might reject an application because of a defect in the composition of the state legislature. *Cf., Petuskey v. Rampton,* 307 F. Supp. 231, 235 (D. Utah 1969), *aff'd,* 431 F. 2d 378 (10th Cir. 1970), *cert. denied,* 401 U.S. 913. In this instance, it seems preferable to provide that the district court, schooled in state matters, make the initial review. Appeal from three-judge courts would lie in the United States Supreme Court.

[SEC. 16. (a) Determinations and findings made by Congress pursuant to the Act shall be binding and final unless clearly erroneous. Any person aggrieved by any such determination or finding or by any failure of Congress to make a determination or finding within the periods provided in this Act may bring an action in a district court of the United States in accordance with 28 U.S.C. § 1331 and 28 U.S.C. § 2201 without regard to the amount in controversy. The action may be brought against the Secretary of the Senate and the Clerk of the House of Representatives or, where appropriate, the Administrator of General Services, and such other parties as may be necessary to afford the relief sought. The district courts of the United States shall have exclusive jurisdiction of any proceedings instituted pursuant to this Act, and such proceedings shall be heard and determined by three judges in accordance with 28 U.S.C. § 2284. Any appeal shall be to the Supreme Court.]

New. This subsection would establish a short limitation period. Since the introduction of judicial review should not be allowed to delay the amending process unduly, any claim must be raised promptly. The limitations period combined with expedited judicial procedures is designed to result in early presentation and resolution of any dispute.

[(b) Every claim arising under this Act shall be barred unless suit is filed thereon within sixty days after such claim first arises.]

Article V Applications Submitted Since 1789

PART ONE: A Tabulation of Applications by States and Subjects

By Barbara Prager and Gregory Milmoe*

A Note on the Table:

This table is offered as a comprehensive compilation of Article V applications categorized by state and by application content. The table maximizes the number of applications, *i.e.*, whenever any source recognizes an application, it has been included in this table. For this reason it must be emphasized that the totals are valuable only as an overview and not for the purpose of determining whether two-thirds of the states have applied for a convention on any given category.

Allowing for slight semantic differences among the authorities consulted, the categories used are, for the most part, generally accepted. Any readily discernible differences are set forth in the notes below. A more serious problem is the sometimes sharp disparity among the sources consulted with regard to what should be recognized as an application. Rather than attempt to make definitive judgments as to what applications should be treated as such, we have set out in the notes below the generally recognized applications followed by the applications recognized by particular sources.

A total of six sources were selected for consultation in the preparation of this table. They are:

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*Barbara Prager is a student at New York Law School and Gregory Milmoe a student at Fordham Law School. We are deeply grateful to them for their time and efforts in preparing these documents for our Committee and are pleased to have them accompany our report. We believe they present an excellent overview of the types of applications which have been submitted to Congress since the adoption of the Constitution.

Twenty Categories of Applications:	GENERAL	DIRECT ELECTION OF SENATORS	ANTI-POLYGAMY	REPEAL OF PROHIBITION 21ST AMEND.	LIMITATION OF FED. TAXING, REPEAL 16TH AMEND.	WORLD FEDERAL GOVERNMENT	LIMIT PRESIDENTIAL TENURE	TREATY MAKING	REVISION OF ARTICLE V	EXCLUSIVE STATE JURISDICTION OVER SCHOOLS	SUPREME COURT DECISIONS	APPORTIONMENT	COURT OF THE UNION	PRAYER IN SCHOOLS	REDISTRIB. OF PRES. ELECTORS	PRESIDENTIAL DISABILITY & SUCCESSION	REVENUE SHARING	FREEDOM OF CHOICE OF SCHOOLS	PROHIBIT STATE OR MUNI. BOND TAX	MISC.	TOTALS BY STATE
LABAMA					1							2	1				1			3	8
LASKA												1									1
RIZONA												1		1							2
RKANSAS		3			1				1		1	2	1		1					1	11
ALIFORNIA		3	1			1						1								3	9
OLORADO		1			1							2			1	1				1	7
ONNECTICUT			1			1														1	3
ELAWARE			1		1												1				3
LORIDA					1	3		1	1		1	1	1				2			1	12
EORGIA	1				1			1		3	1	1					1				9
AWAII																			1		1
DAHO		2			1				2			2								2	9
LLINOIS	1	3	1		1		1		2			2			1		1			1	14
NDIANA	1	1			2			1	1			2								1	9
OWA		4	1		2		1					1					1				10
ANSAS		4			1				1			2			1						9
ENTUCKY	2	1			1							1									5
OUISIANA		1	1		2					1	1	1					2	1	1	2	13
AINE		1	1		2	1											1				6
ARYLAND			2		1							1		1			1				6
ASSACHUSETTS				1	1									1						3	6
ICH		1	1		2		1		1									1			7
INNESOTA		2	1									1									4
ISSISSIPPI					1					1		1						2		2	7
ISSOURI	1	3							1			2								1	8
ONTANA		6	1		1		1					2			1					1	13
EBRASKA		4	1		1							1			1	1					9
EVADA		6		1	1							3						1			12
EW HAMPSHIRE			1		2							1					1				5
EW JERSEY	1	1		1	1	1											1			1	7
EW MEXICO					1							1									2
EW YORK	1		1	1																2	5
ORTH CAROLINA	1	2	-			1						1									5
ORTH DAKOTA		1	1									2		1			1				6
HIO	1	2	1														2				6
KLAHOMA		1	1		1				1			2			1			1			8
REGON	1	6	1														1			1	10
ENNSYLVANIA		1	2		1															1	5
HODE ISLAND					1							1					1			1	4
OUTH CAROLINA	1		1		1				1			2	1								7
OUTH DAKOTA		3	1		1				3			2			1		1				12
ENNESSEE		4	1		1							1							1	1	9
EXAS	1	2	1		1				2			2			1		1	1		3	15
TAH		1			1							2			1						5
ERMONT			1																		1
IRGI	2				1				1	1		2				1			1	1	10
AS TON	1	1	2									1									5
EST VIRGINIA			1														1				2
ISCONSIN	2	3	1	1	1		1								1					1	11
YOMING		1			2				1			1	1							1	7
OTAL APPLICA-IONS BY SUBJECT	18	75	30	5	42	8	5	3	19	6	4	54	5	4	11	3	21	7	4	36	356

(continued from page 59)

Buckwalter, "Constitutional Conventions and State Legislators," 20 J.Pub.L. 543 (1971) [hereinafter cited as *Buckwalter*]; *Graham*, "The Role of the States in Proposing Constitutional Amendments," 49 A.B.A.J. 1175 (1963) [hereinafter cited as *Graham*]; E. Hutton, State Applications to Congress Calling for Conventions to Propose Constitutional Amendments (January 1963 to June 8, 1973), June 12, 1973 (Library of Congress, Congressional Research Service, American Law Division Paper) [hereinafter cited as *Library of Congress Study*]; *Hearings on S. 2307 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess. 115-18 (1967) [hereinafter cited as *1967 Hearings*]; Tydings, *Federal Constitutional Convention*, S. Doc. No. 78, 71st Cong., 2d Sess. (1930) [hereinafter cited as *1930 S.Doc.*]; and W. Pullen, "The Application Clause of the Amending Provision of the Constitution," 1951 (unpublished dissertation in Univ. of North Carolina Library) [hereinafter cited as *Pullen*].

It should be noted that certain of the studies consider only limited time periods and, therefore, were consulted only for the time periods indicated: *Buckwalter* (1788-1971); *Graham* (1788-1963); *Library of Congress Study* (1963-73); *1967 Hearings* (1963-67); *1930 S. Doc.* (1788-1911); Pullen (1788-1951).

General

Buckwalter, Pullen, 1930 S. Doc. and *Graham* were consulted. All sources cite: Ga. 1832; Mo. 1907; N.Y. 1789; Tex. 1899; Ga. 1788; Wis. 1929.

Buckwalter, Pullen and *Graham* cite: Ill. 1861; Ind. 1861; Ky. 1861; Ohio 1861; Wash. 1901; Wis. 1911.

Buckwalter and *Graham* cite: Va. 1861.

Pullen cites: Ky. 1863; N.J. 1861; N.C. 1866; Ore. 1864; S.C. 1832.

Buckwalter apparently categorized 15 applications as "General" applications, which he also included in his "Direct Election of Senators" category. They are: Colo. 1901; Ill. 1903; Iowa 1907, 1909; Kan. 1901, 1905, 1907; La. 1907; Mont. 1911; Neb. 1907; Nev. 1907; N.C. 1907; Okla. 1908; Ore. 1901; Wash. 1903.

Direct Election of Senators

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Pullen, Graham, 1930 S. Doc., and *Buckwalter* were consulted. All sources cite: Ark. 1901, 1903; Cal. 1903, 1911; Colo. 1901; Idaho 1903; Ill. 1903, 1907, 1909; Ind. 1907; Idaho 1901*; Iowa 1904, 1909; Kan. 1907; Ky. 1902; La. 1907; Me. 1911; Mich. 1901; Minn. 1901; Mo. 1901, 1905; Mont. 1901, 1905, 1907, 1911; Neb. 1893, 1901, 1903, 1907; Nev. 1901, 1903, 1907; N.J. 1907; N.C. 1901, 1907; Ore. 1901, 1903, 1909; Pa. 1901; S.D. 1901, 1907, 1909; Tenn. 1901, 1905; Tex. 1901; Utah 1903; Wash. 1903; Wis. 1903, 1907.

Pullen, Graham and *Buckwalter* cite: Ark. 1911; Iowa 1907; Minn. 1911; Mo. 1903; Mont. 1903; Nev. 1905; N.D. 1903; Ohio 1908, 1911; Okla. 1908 [*1930 S. Doc.* dated this application 1909]; Tenn. 1903; Tex. 1911.

Graham, Buckwalter and *1930 S. Doc.* cite: Kan. 1901; Wyo. 1895.

Graham and *Buckwalter* cite: Kan. 1905, 1909; Mont. 1908; Wis. 1908; Ore. 1907.

Pullen, Graham and *1930 S. Doc.* cite: [as second applications] Ore. 1901, 1903.

1930 S. Doc. cites: [second applications] Iowa 1904.

Pullen cites: [second applications] Cal. 1911; Tenn. 1901; Nev. 1901; Iowa 1911; Ore. 1909.

**Graham, Pullen* and *1930 S. Doc.* note that this application proposed the direct election of the President and Vice President as well as Senators.

Anti-Polygamy

Pullen, Graham, Buckwalter and *1930 S. Doc.* were consulted. All sources cite: Del. 1907; Ill. 1913; Mich. 1913; Mont. 1911; Neb. 1911; N.Y. 1906; Ohio 1911; S.D. 1909; Tenn. 1911; Vt. 1912; Wash. 1909; Wis. 1913.

Pullen, Graham, and *Buckwalter* cite: Cal. 1909; Conn. 1915; Iowa 1906; La. 1916; Me. 1907; Md. 1908, 1914; Minn. 1909; N.H. 1911; Okla. 1911; Ore. 1913; Pa. 1907, 1913; S.C. 1915; Tex. 1911; W. Va. 1907.

Graham and *Buckwalter* cite: N.D. 1907; Wash.

Repeal of Prohibition

Pullen, Buckwalter and *Graham* were consulted. All sources cite: Mass. 1931; Nev. 1925; N.J. 1932; N.Y. 1931; Wis. 1931.

Limitation of Federal Taxing Power and Repeal of 16th Amendment

Graham and *Buckwalter* were consulted.+ All sources cite: Ala. 1943[r]; Ark. 1943[r]; Del. 1943; Fla. 1951; Ga. 1952[(a)]*; Ill. 1943[r]; Ind. 1943, 1957; Iowa 1941[r] 1951; Kan. 1951; Ky. 1944[r]; La. 1950[r]; Me. 1941, 1951[r]; Mass. 1941[r]; Mich. 1941, 1949; Miss. 1940; Neb. 1949[r]; N.H. 1943, 1951; N.J. 1944[r]; N.M. 1951; Nev. 1960[(a)]; Okla. 1955; Pa. 1943; R.I. 1940[r]; Utah 1951; Va. 1952[(a)]*; Wis. 1943[r]; Wyo. 1939; S.C. 1962[(a)].

+Packard, "Constitutional Law; The States and the Amending Process," 45 A.B.A.J. 161 (1959), limiting his discussion to this subject, lists applications (undated) from: Idaho, Mont., S.D. and Tenn., none of which are cited by any other source.

Graham cites: Colo. 1963; La. 1960[(a)]; Md. 1939; Tex. 1961[(a)]; Wyo. 1959[(a)].

[(a)] Repeal of 16th Amendment.

**Graham* cites these as Repeal applications while *Buckwalter* merely cites them as tax limitation applications.

r = Rescinded

World Federal Government

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* Rescinded

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Treaty Making of the President

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Revision of Article V

Buckwalter, Graham, and *Library of Congress Study** were consulted. All sources cite: Ark. 1963; Fla. 1963; Idaho 1963; Ill. 1963; Kan. 1963[r]; Mo. 1963; Okla. 1963; S.C. 1963; S.D. 1963; Tex. 1963; Wyo. 1963.

Buckwalter and *Graham* cite: Idaho 1957; Ill. 1953; Ind. 1957; Mich. 1956; S.D. 1953, 1955; Tex. 1955.

*The *Graham* study continued through 1963, while the *Library of Congress Study* began in 1963.

r = Rescinded

Buckwalter and *Library of Congress Study* cite: Va. 1965.

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Buckwalter and *Graham* cite: Ga. 1955, 1959.

Buckwalter and *Library of Congress Study* cite: Ga. 1965; La. 1965; Miss. 1965.

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*The *Graham* study continued through 1963, while the *Library of Congress Study* began in 1963.

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Buckwalter and *1967 Hearings* cite: Ga. 1965; La. 1965; S.C. 1963.

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Court of the Union

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r = Rescinded

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Buckwalter and *Library of Congress Study* cite: Neb. 1965; Okla. 1965.

Buckwalter and *Graham* cite: Tex. 1963.

Buckwalter cites: Ill. 1967.

While *Buckwalter* cites Colo. 1965 and S.D. 1965, *Graham* cites those applications as Colo. 1963 and S.D. 1963.

r = Rescinded

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Buckwalter cites: N.H. 1969.

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*The La. 1970 application was approved by its House of Representatives only.

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Library of Congress Study was the only source consulted. The study cites: Hawaii 1970; La. 1970; Tenn. 1970; Va. 1970.

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1957—Selection of Federal Judges: *Graham.*
1959—Federal Pre-emption: *Graham.*

Arkansas
1959—Examination of 14th Amendment Ratification: *Buckwalter* and *Graham.*

California
1935—Federal Regulation of Wages and Hours: *Buckwalter* and *Graham.*
1935—Taxation of Federal and State Securities: *Buckwalter, Graham,* and *Pullen.*
1952—Distribution of Proceeds of Federal Taxes on Gasoline: *Buckwalter* and *Graham.*

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1958—State Tax on Income of Non-residents: *Graham.*

Florida
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1963—Direct Election of President and Vice President: *Library of Congress Study.*

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1965—Equal Rights for Women: *Library of Congress Study.*
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PART TWO: A History of Applications

by Barbara Prager

Introduction

Article V of the Constitution provides that "The Congress on the Application of the Legislatures of two-thirds of the Several States shall call a Convention for proposing Amendments . . ." Since 1788, despite a total of more than 300 applications from every state in the Union, there has never been a convention convened by this process. The purpose of this paper is to analyze the unsuccessful attempts made to amend the Constitution by this procedure. When applicable, the following factors will be discussed: description of the problem, reasons for the use of the application process, nature of the requests, reasoning of the states declining to make application to Congress, and the resolution of the problem.

Bill of Rights

The first group of applications was provoked by dissatisfaction with the scope of the Constitution. The Anti-Federalists felt that the Constitution had not provided for certain basic rights of mankind. During the ratification of the Constitution, the Virginia and New York legislatures submitted separate resolutions to Congress applying for a convention. The text of the Virginia resolution read in part:

> that a convention be immediately called . . . with full power to take into their consideration the defects of this constitution that have been suggested by the State conventions . . . and secure to ourselves and our latest posterity the great and unalienable rights of mankind.[1]

Madison and Jefferson opposed the idea of a second convention. Madison expresssed the view that a second convention would suggest a lack of confidence in the first. Others believed that proposing amendments to the Constitution might better be accomplished by Congress. These sentiments found support in the state legislatures. Pennsylvania and Massachusetts explicitly rejected the idea of a second convention, and the remaining states took no final action in making application to Congress.[2]

The underlying issue was resolved in 1789 when Congress proposed the Bill of Rights.

The Nullification Applications

South Carolina was in severe economic difficulty in the eighteen-twenties. Believing that this problem was a result of the high protective tariff levied by the federal government, the state developed the nullification theory, *i.e.*, that a sovereign state could declare an act of Congress null and void. James Hamilton, Jr. advocated a convention of the states to resolve this conflict and recommended to the South Carolina legislature that they apply to Congress for such a convention. South Carolina's petition and a similar application from Georgia took the form of resolutions that Congress call a convention for the purpose of resolving questions of disputed power.[3] Alabama recommended to her co-states and to Congress that a convention be called to resolve the nullification problem and to make "such other amendments and alterations in the Constitution as time and experience have discovered to be necessary."[4]

No other state petitioned for a convention. The problem was considered and the idea of a convention rejected in eight states.[5] Opposition to the South Carolina proposal was manifold. Some objecting to the terminology of the proposal, maintained that an article V convention must be a convention of the people's delegates, and not a convention of the states' representatives. Others, disagreeing with South Carolina's statement that the convention would have the power to determine the constitutional issue, asserted that the convention was limited to proposing amendments. Still others feared the potentially disastrous effects of a convention or considered the call of a convention impolitic, inexpedient, unnecessary, or an appalling task.

The states that declined to apply to Congress during this period apparently were not reaching the merits of the issue. Rather, they rejected the idea of a convention on two main grounds: (1) that South Carolina hoped to invest the convention with arbitration power not provided for by the Constitution; and (2) that such a body would not be subject to sufficient control and might therefore upset the existing governmental structure.

Slavery

The devisive issue of slavery was the next issue to provoke state applications. In 1860 the secession of the lower southern states seemed probable. Seeking to effect a reconciliation, President Buchanan proposed that an explanatory amendment to the Constitution be initiated either by Congress or by the application procedure. In support of this suggestion several Congressmen introduced resolutions in Congress to encourage the legislatures of the states to make applications for the call of a convention. This represented the first attempt by Congress to stimulate the application process. The process received further support from newly elected President Lincoln who in his inaugural address stated:

> the convention mode seems preferable, in that it allows amendments to originate with the people themselves; instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to accept or refuse. . . .[6]

The states, however, were less enthusiastic. During the entire Civil War period, only seven states took affirmative action.[7] The applications tended to be broad in scope, requesting a convention to propose amendments to the Constitution. Several resolutions were merely recommendations that Congress call a convention, while others favored a convention only as a last resort and preferred to rely on Congress to propose any amendments. Many resolutions were tabled in the state legislatures or were referred to a committee which failed to report them back to the legislature. The state of Iowa

rebellion against the Union, no amendment could be ratified without the votes of at least two rebel states.[8]

Procedural problems played a large role in the states' failure to make successful use of the application process during the Civil War period. Given the frenetic pace of the times, the states failed either to act in strict conformity with article V or to direct their energies to the completion of the process.

Modern Period

Since the turn of the twentieth century, the application process has been used primarily to encourage Congress to propose specific amendments.

Direct Election of Senators

In the eighteen-nineties public sentiment grew for an amendment providing for the direct election of U.S. Senators. On several occasions from 1893 to 1902, the House passed resolutions proposing such an amendment which never came to a vote in the Senate.

In 1906, motivated by the inaction of Congress, a conference of twelve states met and decided to initiate a campaign to urge applications on the direct election issue from the requisite number of states. Thirty states adopted sixty-nine applications for the call of a convention during the period from 1901 to 1911.[9] Opposition came primarily from two sources: (1) those who objected to the substance of the amendment; and (2) those who feared the potential power of such a convention. The latter group expressed the view that a convention would open the door to recommendations for amendments on a wide variety of sectional interests. The issue was resolved in 1912 when Congress proposed the seventeenth amendment.

Polygamy

Utah was admitted into the Union in 1896, on the condition that her constitution included an irrevocable prohibition of polygamous marriages. Later, when it was brought to public attention that the state was not enforcing this provision, an anti-polygamy amendment to the Constitution which would give the United States jurisdiction of the matter was proposed as a possible solution. However, the amendment was opposed on several grounds: it would interfere with the sovereignty of the states; the subject was not of sufficient importance to merit a constitutional amendment; and the problem was susceptible of resolution by other means. The state legislatures, however, did not dismiss the problem as quickly as Congress did. From 1906 to 1916, twenty-six states made almost identical applications requesting a convention to propose an amendment prohibiting polygamous marriages.[10] But after this surge of applications, polygamy ceased to be an issue.

Repeal of Prohibition

A movement for the repeal of prohibition began in the nineteen-twenties. Eleven states considered applications to Congress for a constitutional convention. Five adopted resolutions for a limited convention to propose the specific amendment. Congress responded to the pressure by proposing the twenty-first amendment.

Limitation of Federal Taxes

Federal taxes were greatly increased during the mid-nineteen-thirties. The American Taxpayers Association failed in its efforts to exert pressure on Congress for an amendment to limit the federal taxing power. The group then began a quiet campaign to apply pressure by use of the application procedure of article V. By 1945, seventeen states had submitted resolutions for the call of a convention.[11] The movement lost momentum but was revived again at the end of the decade. Representative Wright Patman from Texas attacked the advocates of the amendment, claiming that their purpose was to make the rich richer and the poor poorer. He advised the states to rescind their applications. By 1963, there were claims that thirty-four states had made applications to Congress, thus meeting the constitutional requirements for a convention.[12] Opponents of the amendment pointed to deficiencies in these claims: twelve states had rescinded their applications;[13] some resolutions had not requested a convention, but merely had asked Congress to propose the amendment; some applications were for other purposes; and the validity of resolutions passed fifteen or twenty years earlier was questionable.

Limitation of Presidential Tenure

When Franklin D. Roosevelt was elected to a third term, the belief that the tenure of the office of President should be limited gained adherents. In 1943, four states submitted applications to Congress requesting a national convention to propose

an amendment to that effect. A few years later, an additional state adopted a similar resolution. Congress then proposed an amendment limiting the number of successive presidential terms.

World Federal Governments

At the beginning of the second world war, there was some support for the idea that the United States should commit itself to a world organization aimed at preserving peace. Twenty-three states adopted resolutions urging their representatives in Congress to support such a commitment. In 1949, six states made formal applications to Congress for a constitutional convention to propose an amendment authorizing the United States to participate in a limited world government. Within the following two years, half of the states rescinded their applications.[14]

Apportionment

The Supreme Court decisions establishing the "one-person-one-vote" principle and applying it to state legislature apportionment sparked the latest bout of serious interest in a national constitution convention.

The Council of State Governments in 1962 suggested a constitutional convention to propose amendments a) removing apportionment cases from federal jurisdiction, b) establishing a "Court of the Union" to hear certain appeals from the Supreme Court, and c) easing the process whereby states themselves may initiate constitutional amendments under article V.

In 1964, the Council of State Governments suggested an amendment exempting one house of any state legislature from the "one-person-one-vote" rule. When an amendment to that effect failed in the Senate in 1965 (gaining a majority of the votes but not the constitutionally required two-thirds), the Council and Senator Everett Dirksen initiated a national campaign to convene a constitutional convention to deal with the apportionment problem.[15]

By 1967, thirty-two states had applied for a constitutional convention, although their applications differed in form, content, and specificity. In the following years, one more state petitioned for a convention, and one withdrew its original application. Since 1969, no further applications have been submitted on this issue.

Throughout the 1960's and into the present decade particularly salient issues have at one time or another provoked scattered applications for a constitutional convention; *e.g.*, school prayer in the early 1960's, revenue sharing and busing of school children to achieve integration more recently. None of these issues, however, has produced applications totalling near the two-thirds required by article V.[16]

Conclusion

It is submitted that the majority of applications presented issues of potentially national concern. In some instances, such as the nullification or the slavery issues, the question was initially a sectional concern, but national ramifications developed.

Another generalization that emerges from an historical analysis of the application process is that the majority of concerns raised in state applications have been resolved in some way other than by convention. In a large number of situations Congress took over the initiative and proposed the requested amendment to the Constitution. Numerous examples are readily available. The 1788 and 1789 applications of Virginia and New York for a general convention were resolved by congressionally proposed amendments—the Bill of Rights. Similarly, in the twentieth century, state applications that advocated direct election of senators, the limitation of presidential tenure, presidential disability and succession and the repeal of prohibition were resolved by congressionally proposed amendments. The problems raised by the state applications during the slavery period were resolved in a more revolutionary way. The Civil War and ultimately the thirteenth, fourteenth, and fifteenth amendments rendered the applications moot.

However, there are a number of situations in which there has been no resolution of the problem. In some instances, such as the issue of polygamy, a change in social attitudes over time led to the abandonment of the issue.

This example highlights a problem which may be inherent in the procedure itself: sluggishness. The problem has its roots in a fundamental distinction between the ratification process and the amendment process. While the former only requires the state legislatures to respond to an already form-

ulated amendment the latter requires affirmative action. This is time-consuming since typically before drafting a resolution both houses of each state legislature consider all the other applications on the subject submitted to Congress by other states. The slavery period provides numerous examples of potential applications that were tabled in the state legislatures or were never reported back from committees. Action on the resolution is further delayed by the fact that state legislatures convene at different times during the year. Additional problems arise because Congress has not provided for adequate machinery to handle the applications presented to them. Thus, with the passage of time, new interests tend to replace the proposed interests, so that the issue is eventually resolved by a means other than the convention method or not resolved at all.

It is further evident that the issues that have called for a convention have been popular ones. Historically, although an individual state did not petition Congress for a convention on a particular issue, the state more often than not considered submitting a resolution. The states declining to submit applications generally did not reject the application procedure based on the substantive merits of the problem. Rather, the states expressed fear of the power of a constitutional convention and its potential for revolutionary change.

Notes

1 37 American State papers 6-7.

2 W. Pullen, *The Application Clause of the Amending Provision of the Constitution* 22-28 (1951) (unpublished dissertation in Univ. of North Carolina Library) [hereinafter cited as *Pullen*].

3 *Id.* at 38-39.

4 Massachusetts General Court Committee on the Library, *State Papers on Nullification* 223 (1834). The quote is from the resolution addressed to her co-states. The recommendation to Congress varies slightly.

5 *Pullen* at 66.

6 S. Jour., 36th Cong., Spec. Sess. 404 (1861).

7 *Pullen* at 102.

8 1861 *Iowa S. Jour.* 68-69.

9 *Pullen* at 108.

10 *Id.* at 115.

11 *Id.* at 119.

12 Graham, *The Role of the States in Proposing Constitutional Amendments*, 49 A.B.A.J. 1175, 1176-77 (1963).

13 See Appendix B.

14 *Pullen* at 126.

15 See Dirksen, *The Supreme Court and the People*, 66 Mich. L. Rev. 837 (1968).

16 See Appendix B, Part One, for a complete listing.

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EXHIBIT M

Testimony on AJR-17
March 28, 1979

Dr. Louise Bayard-de-Volo
Executive Director, Planned Parenthood of Northern Nevada

Need to focus on the problem: unwanted pregnancy.

Emphasis must be on primary prevention through education in sexual responsibility. Until adequate education is provided and reliable contraceptives are used consistently, an option must be available to compulsory motherhood. Early abortion is definitely not an ideal solution, but it is currently the only option to bearing an unwanted child. Making abortion illegal will not solve the problem of unwanted pregnancy, and it will not stop abortion.

My name is Ellen Pillard and I am a social worker. Currently I am on the faculty of the University of Nevada, Reno.

As a summary of my testimony I am a strong supporter of a woman's right to choose whether she will have an abortion. I believe a woman's right to privacy and her right to make decisions about her body without governmental interference are the strongest arguments in support of the right to an abortion. However, there are secondary arguments. One of these arguments is that we know there will be a significant personal and social cost to all kinds of people if humane abortions are not legal. This cost will be born by the unwanted child who will be at high risk to become the victim of child abuse or neglect. Or the unwanted genetically defective child who is unadoptable and moved from foster home to foster home without ever receiving the love and nurturing that a child is entitled to. Or the unwanted child of a teenage mother who is denied the opportunity to be raised by a competent mature parent.

The cost is also born by the mother whose life and responsibilities can be drastically changed at the birth of an unwanted child. In some instances this will force women to drop out of school and onto welfare roles. In the most tragic of instances some women who are victims of rape or incest will also then have to pay a life long price by bearing and raising a child who was conceived in violence.

Finally the taxpayers will have to pay a dear price. Welfare and foster home costs will increase significantly just from the women who cannot continue school or their job because they have a child. The cost of adoption services will increase dramatically and the number of unacceptable children who are now supported at state expense will also grow. The number of mentally retarded physically handicapped and emotionally distrubed children who can cost the state anywhere from $2,000 per year to $25,000 per year will climb as well.

It is one thing to take a moral position against abortion. It is altogether another thing to expect your moral position to become law at such potentially staggering cost to other individuals.

THE COST OF UNWANTED PREGNANCIES

FACT: It costs the State of Nevada $3,054 for the first year to support a mother and child on welfare.

FACT: It costs a minimum of $1,943 per year (plus medical costs) to keep an unwanted child in foster care.

FACT: It costs $22,201 per year to keep one unwanted child in a Nevada institution for the mentally retarded.

FACT: Unwanted children run a much higher risk of being abused or neglected children. Substantiated reports of child abuse in Nevada have gone from 431 cases state-wide in 1976 to over 1,100 cases in 1978. Without the humane alternative of abortion, those figures would be even more alarming. It is impossible to put a price tag on each case, but the cost of child abuse in human suffering is staggering.

FACT: There are approximately 25 children today in Nevada waiting to be adopted. Many of these will never be placed because they are mentally retarded, (sometimes as a result of physical abuse), severely physically handicapped, or emotionally disturbed.

FACT: Teen-age pregnancy is a significant and growing problem in Nevada. One out of every six births in Nevada is to a teen-age mother. It is estimated that 60% of all teen-age pregnancies are unwanted. Without abortions in 1977, the number of births to teen-agers in Washoe County would have jumped from 1,797 to 2,958. We also know that teen-age pregnancy is one of the most common reasons why women drop out of school, and teen-age mothers face a much greater risk of unemployment, poverty and welfare dependency than mature mothers.

FACT: There are women who become pregnant as a result of acts of violence--these are victims of incest and rape. One out of four girls is sexually abused in childhood and the most frequent incest occurs between father and daughter or brother and sister. Studies have shown that between 12% and 24% of incest victims become pregnant. Requiring the pre-teen and adolescent victims to become parents is a travesty of justice and flies in the face of everything we know about what it takes to be a good parent.

FACT: Rape is one of the fastest growing crimes in America. According to the FBI, about 4% of the time , women do get pregnant as a result of rape.

Testimony of Mylan Barin Roloff
Legislative Committee
Northern Nevada Chapter
National Organization for Women

ASSEMBLY JOINT RESOLUTION 17 - SENATE AND ASSEMBLY JUDICIARY COMMITTEES

Chairman Close, Chairman Hayes, members of the Committee;

Calling for Constitutional Conventions has become quite a political fad in Nevada. The irresponsibility of these calls can not be over emphasized, nor can we think of anything more treacherous than the efforts afoot to convene a Constitutional Convention as a measure to pressure Congress to submit amendments. Particularly the type of amendment called for by AJR 17, which reflects the narrowest of political and sectarian philosophy.

We would ask you as legislators to consider the actual consequences of the type of amendment AJR 17 proposes. An amendment that would make it a federal crime to terminate a pregnancy. The language of such an amendment can not be debated, but of one thing we can be sure. A woman would completely lose the right of reproductive freedom, and the federal government would intimately be involved in the most personal aspects of her reproductive life.

That a so called right to life amendment could have no loop holes, was clearly stated by Daniel G. Buckley, chairman of Americans for a Constitutional Convention. "If we permit exceptions, the unscrupulous doctors will find an excuse to give abortions." An amendment to "protect the life of the unborn" can make no exceptions. Not for rape or incest, not even to protect the life of the mother.

If the type of amendment AJR 17 proposes is to have meaning and validity we must reconcile ourselves to full federal enforcement and implementation. We can not complain after the fact that the government has spawned the largest Federal Bureaucracy since the GSA. We must be prepared to accept the necessity of reporting all pregnancies to the Federal Government, as well as requiring doctors to submit reports on their patients through out pregnancy, so that the government could be assured no attempts were made to terminate pregnancy.

We must accept the necessity of federal investigations in the event of a miscarriage, to determine if the miscarriage was natural or induced. We must expect that the following case would not be untypical, should the type of amendment AJR 17 proposes find its way into our constitution.

(cont.)

Testimony of Mylan Barin Roloff

Susan Smith, 27 year old mother of 3. Pregnant with her 4th child. On Oct. 23, while climbing to her 3rd floor walk up, accidently catches the heel of her shoe in the frayed carpeting of the stairway. She falls to the landing below. There are no witnesses to the actual fall. Susan is taken to the hospital, suffering from concussion and hemorrhaging. Susan survives the fall, but nothing can be done to save the baby.

A Federal investigator assigned to Susan's case, learns from her doctor and husband that Susan was despondent over this pregnancy. A neighbor further testifies that in a recent conversation Susan confided that she didn't know how this baby would be provided for as the family was in financial difficulty.

The federal investigator determines on this evidence that Susan had reason to deliberately terminate her pregnancy. She has been indicted by the Federal Government for the murder of her unborn child and awaits trial in the Federal Penitentiary. Her three other children have been placed in a Federally Funded Foster Care Program to insure their right to life.

Welcome Ladies and Gentlemen to 1984.

Remarks by Robert J. McNutt, Stated Clerk of the Presbytery of Nevada, before the Joint Judicial Committees of the Senate and Assembly on March 28, 1979.

We have, since 1973, seen the development of a massive campaign to prohibit abortions by an amendment to the Constitution of the United States. Further, efforts to restrict access to abortion have increased sharply at all levels through denial of funding. Poor women and young women have been the particular victims of these efforts. Previously, approximately one-third of the some 250,000 abortions annually funded by Medicare went to teenagers. The withdrawal of these funds for abortions has now put us into a cycle of children being born to children.

The abortion issue arouses intense emotions and most assuredly polarizes the citizens of our country. Abortion is a major issue in the political process. It has seriously affected inter-religious relationships and poses a threat to the Bill of Rights in the Constitution.

We note that the anti-ERA forces which so vehemently stressed the "Right of Choice" now have many of those same advocates urging denial of a "Right of Choice" to those desiring an abortion.

We hold in high respect the value of potential human life; we do not take the question of abortion lightly. We hold varying viewpoints as to when abortion is morally justified. But it is exactly this plurality of beliefs which leads us to the conviction that the abortion decision must remain with the individual, to be made on the basis of conscience and personal

(MORE)

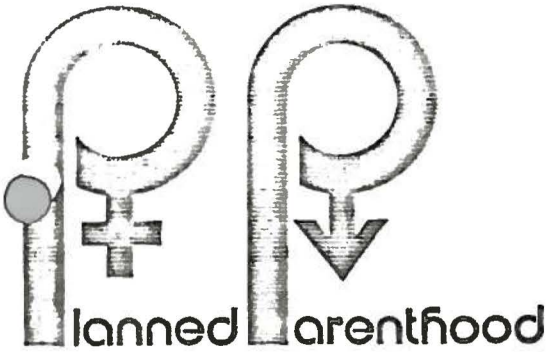
religious principles, free from governmental interference.

We respect the right of those who differ from us (those who hold the absolutist position that abortion is never permissible) to seek to persuade others to subscribe to that point of view. But we are unalterably opposed to the enactment of laws which would impose on all Americans a particular religious doctrine.

It is a frightening aspect of American politics that our elections are becoming controlled by advocates or opponents of single issues. Fine legislators may never be elected or re-elected because of a profound personal belief on a single issue despite their well-rounded knowledge and ability on a vast majority of other issues. Emotions run rampant in our political field today. Instead considered judgment should be the hallmark of a good legislator.

We Presbyterians believe in John Calvin's admonition to elect the wisest of us as our leaders. We believe we have done that. We ask you to show your intelligence and your independence by a negative report on AJR 17.

Speaking for Presbytery of Nevada, I thank you very much.



TESTIMONY OF: STEPHEN L. GOMES, PH.D.
PRESIDENT OF PLANNED PARENTHOOD OF NORTHERN NEVADA

BEFORE: JOINT LEGISLATIVE COMMITTEE

DATE: MARCH 28, 1979

ASSEMBLY JOINT RESOLUTION NO. 17
SENATE AND ASSEMBLY JUDICIARY COMMITTEES

CHAIRMAN CLOSE, CHAIRMAN HAYES, MEMBERS OF THE COMMITTEE

MY NAME IS DR. STEPHEN L. GOMES. I AM CURRENTLY SERVING MY SECOND TERM AS PRESIDENT OF PLANNED PARENTHOOD OF NORTHERN NEVADA. I AM SELF-EMPLOYED, A FISCAL CONSERVATIVE, A GRADUATE OF UNR AND A LONG TERM RESIDENT OF THIS STATE AS ARE ALL MEMBERS OF MY FAMILY. MY WIFE AND I HAVE TWO CHILDREN - 22 MONTHS AND 1 MONTH AND RESIDE IN RENO.

YOU HAVE JUST HEARD EMOTIONAL TESTIMONY FROM THE VIEWPOINT OF A PROVEN MINORITY WHICH IS SEEKING THE PASSAGE OF THIS UNFORTUNATE AND ILL CONCEIVED PIECE OF LEGISLATION. NOW YOU WILL HAVE THE OPPORTUNITY TO HEAR FROM THE MAJORITY WHO ARE OVERWHELMINGLY OPPOSED TO THE PASSAGE OF AJR 17.

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WE HAVE ASSEMBLED A SERIES OF PRO-CHOICE SPEAKERS WHO WILL PRESENT YOU WITH COMPELLING LEGAL, ETHICAL, SOCIAL, MEDICAL AND MORAL ARGUMENTS DESIGNED TO EXPOSE THE ESSENTIAL BANKRUPTCY OF THE LEGISLATION NOW BEFORE YOU.

I DON'T INTEND TO ARGUE THE MERITS OR DEMERITS OF ABORTION DURING THE SHORT TIME AVAILABLE TO ME HERE TODAY. THE FACTS SPEAK FOR THEMSELVES. IT IS A MATTER OF RECORD THAT NEARLY AS MANY ABORTIONS WERE PERFORMED PRIOR TO THE SUPREME COURT DECISION LEGALIZING ABORTION AS WERE PERFORMED AFTERWARDS. NO CONSTITUTIONAL AMENDMENT NO MATTER HOW CAREFULLY WORDED WILL IN ANY WAY ALTER THIS BASIC REALITY. SHOULD YOU BE INTERESTED, I HAVE ATTACHED THE DOCUMENTATION (WHICH IS BEING SUMITTED FOR THE RECORD AS PART OF MY OFFICIAL TESTIMONY) THAT AUTHENTICATES MY STATEMENTS IN THIS REGARD.

MY CONCERN IS WITH A MUCH MORE SINISTER ASPECT OF THIS LEGISLATION. OUR COUNTRY, ITS DEMOCRACY AND ITS VERY ECONOMIC SYSTEM, IS BASED UPON A VERY IMPORTANT TENENT. IT ASSUMES THAT WE HAVE <u>FREEDOM OF CHOICE</u> TO VOTE AND ACT WITHIN THE DICTATES OF OUR OWN CONSCIENCE. OUR NATION'S VERY CONSTITUTION WAS WRITTEN TO "SECURE THE BLESSINGS OF LIBERTY". YET WE SIT HERE TODAY DEBATING A REQUEST THAT

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CONGRESS CONVENE A CONSTITUTIONAL CONVENTION IN ORDER TO ABRIDGE ONE OF A PERSON'S MOST ESSENTIAL RIGHTS AND FREEDOMS, NAMELY, THE RIGHT TO CHOOSE, WHEN, HOW, WHY AND UNDER WHAT CIRCUMSTANCES THEY WILL BEAR CHILDREN. I DON'T THINK THAT I NEED TO POINT OUT TO THIS BODY THAT IT IS PRECISELY THE ENCOURAGEMENT AND EXERCISE OF THIS KIND OF FREEDOM OF CHOICE, NO MATTER HOW WE MAY AGREE OR DISAGREE WITH ANY PARTICULAR PERSON'S OR GROUP'S ACTUALIZATION OF THIS FREEDOM, THAT IS THE UNDERPINING AND CORNERSTONE OF OUR AMERICAN WAY OF LIFE. IT IS ONE OF THE VERY FEW THINGS THAT SETS AMERICA APART FROM ALL OTHER COUNTRIES. DON'T BELIEVE FOR EVEN A MOMENT THAT YOU CAN TAMPER WITH THE BASIC FREEDOMS OF ONE SEGMENT OF OUR POPULATION WITHOUT ASSUREDLY ENDANGERING THE OTHER RIGHTS AND LIBERTIES THAT WE NOW ENJOY.

I RESPECTFULLY SUBMIT THAT WHAT AJR 17 ACTUALLY REPRESENTS IS AN OTHER ATTEMPT BY GOVERNMENT TO LEGISLATE MORALS. AND WE HAVE ALL SEEN HOW SUCCESSFUL THAT WAS DURING PROHIBITION. AS MUCH AS THE PROPONENTS OF AJR 17 WOULD LIKE TO MAKE ABORTION A POLITICAL ISSUE, WHAT YOU ACTUALLY HAVE IS A MORAL ISSUE. IN PLAIN LANGUAGE THIS LEGISLATION PROMOTES COMPULSORY PREGNANCY BY MEANS OF A CONSTITUTIONAL AMENDMENT. IT REMOVES THE STATES LEGITIMATE RIGHTS TO MONITOR AND CONTROL

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VARIOUS ASPECTS OF ABORTION NOW ALLOWED BY SUPREME COURT DECISIONS AND PUTS THEM IN THE HANDS OF THE FEDERAL GOVERNMENT. WHAT WILL WE HAVE THEN A FEDERAL AGENCY WHOSE CHARTER IT IS TO INSURE THAT A WOMAN THAT IS PREGNANT REMAINS PREGNANT. HOW WILL THIS BE ENFORCED: HOW LARGE A BUREAUCRACY WILL IT TAKE: WHAT WILL BE THE PENALTY IF SHE OBTAINS AN ABORTION ANYWAY. SUCH AN ACTION WOULD REDUCE ALL FEMALES IN THIS COUNTRY TO THE LEVEL OF SECOND CLASS CITIZENS, LESS EQUAL THAN ANY MALE IN OUR SOCIETY. THIS INDEED WOULD BE AN ABSURD COURSE OF EVENTS. IT WOULD MAKE A TRAVESTY AND MOCKERY OF OUR CONSTITUTION AND THREATEN THE FOUNDATIONS OF OUR SOCIETY.

WHILE I HAVE BRIEFLY OUTLINED AN AREA OF MAJOR CONCERN TO ME REGARDING THE LEGISLATION BEFORE YOU, THE SPEAKERS TO FOLLOW WILL PRESENT COGENT ARGUMENTS REGARDING OTHER GROSSLY UNACCEPTABLE ASPECTS OF AJR 17. THANK YOU FOR YOUR TIME.

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AJR-17

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SOME REASONS FOR VOTING NO ON ANTI-ABORTION CON CON, AJR 17

Inappropriate Use of Con Con - should be used only for crisis in state-federal relations when Congress is intolerable threat to states.

Risks of Constitutional Convention - no guidelines; probably not possible to limit to single issue; costly

States' Rights/Federal Intervention - with anti-abortion amendment, abortion would be the only issue besides slavery on which Constitution makes direct commands to private and public individuals, circumventing state.

Religious Support for Right of Choice majority of religious denominations in America do not share recent revision of Catholic dogma proclaiming human status at the moment of conception.

Cannot Legislate Moral Issues - prohibition example; church-state separation

Right of Choice in decision of if and when to bear children

Unwanted Children - more often among abused and delinquent youth, and the criminal population.

Making Abortion Unconstitutional Will Not Stop It - return to maiming and death through illegal and self-induced abortion; fostering of illegal underground. Poor women will not have option of foreign or expensive illegal abortion.

Welare/Costs to Nevada - a large portion of Welfare money goes to unmarried mothers and their children. The cost in Nevada in 1978 was $3,054 for one year of support for mother and child (including delivery). Is Nevada financially ready to assume the additional costs demanded?

Invasion of Privacy - with illegal abortion, all miscarriages and D & Cs would require investigation.

NATIONAL POLLS SHOW MAJORITY TO BE PRO-CHOICE AND OPPOSED TO CONVENTION

Cambridge Research September 1978 nationwide poll asking: Do you favor constitutional convention to make abortion illegal?

34% Yes
51% No
Others Undecided

ABC News Harris Poll February 1979 nationwide

73% agreed that choice of abortion should be left to a woman and her doctor

60% said they supported Supreme Court decision legalizing abortion in the first three months of pregnancy (an increase of 7% since 1977 poll)

CBS News/New York Times October 1977 poll asking: Should the right of a woman to have an abortion be left entirely to the woman and her doctor?

74% Yes (76% of Protestants & 69% of Catholics)

22% No (21% of Protestants & 26% of Catholics)

FOR ADDITIONAL INFORMATION, PLEASE CALL DR. LOUISE BAYARD-DE-VOLO, PLANNED PARENTHOOD, 329-1781.

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STATEMENT OF MARY-ELLEN MCMULLEN REGARDING A. J. R. 17

My name is Mary-Ellen McMullen. I am a wife, homemaker, professional woman, a practicing Roman Catholic, and the mother of my four-and-a-half month old son Sam--all by choice. I am here today to speak in favor of a woman's right to freely choose to have, or not to have, an abortion.

The decision to have an abortion is a moral issue that neither you nor I can legislate a restriction upon. It is an issue that is up to an individual woman, her doctor and her God.

Therefore it is right that the Constitution of the United States of America protects the right of an individual to exercise her own conscience regarding abortion. The United States Supreme Court decision on abortion as we know it does not impose upon an individual citizen one position over the other through the force of law. What it does do is give women the power to govern their own bodies and make a choice regarding abortion. Allowing one woman to have an abortion is not forcing any other woman to do the same.

I respect the right of any woman who because of religious and personal beliefs chooses not to have an abortion. But, I realize that the option protecting a woman's right to choose must exist. Anyone who believes that legislating against abortion will stop abortion is burying their head in the sand against what must remain a responsible and personal decision. Abortions will continue even if illegal. They will be dangerous and expensive, but they will exist as a fact of life. I am grateful that the law allows women to have safe abortions and I urge you as legislators to vote against legislation to restrict abortion. We must all fight to resist moral

judgments that would infringe upon or do away with free choice.

I made a free choice to have Little Sam. As a result, he was very wanted, he is loved, he will never be abused, and hopefully, he will grow up to live in a country that continues to allow individuals to function in accordance with their own beliefs by giving them the right to choice.

Thank you.

Northern Nevada NOW
P.O. Box 1265
Sparks, Nevada 89431

Testimony Given Before the Senate and Assembly Judiciary Committees
On Assembly Joint Resolution 17, March 28, 1979

Honorable Committee Chairpersons and Members:

For the record, my name is Susan Hill. I am here to testify before this joint session of the Nevada State Senate and Assembly Judiciary Committees as president of the Northern Nevada chapter of the National Organization for Women. My statement on the issue at hand, the call to a constitutional convention to prohibit abortion, is a difficult and painful one. However, the National Organization for Women, as an association dedicated to the full and equal participation of women in American society, must make its views known to the Nevada legislature and the public it serves.

I do not believe that any member of NOW, or indeed any other person here to speak against AJR 17, is truly "pro-abortion." In the best of all possible worlds, abortion would never be necessary. Young people would be taught in their homes to exercise the highest morality and sexual responsibility. Married couples would use always-reliable birth control methods and would bring into the world only those children for which they were financially and emotionally prepared.

Our world, unfortunately, is far from perfect, and our democratic society recognizes this fact by providing laws to protect its citizens and to safeguard their individual liberties. The United States

Supreme Court, in this regard, ruled in 1973, in Roe v. Wade, a 7-2 decision, that women had a qualified right to abortion. During the first trimester, the court said, abortion is a private matter between a woman and her doctor.

This most personal and serious decision must continue to be protected. The matter of a woman's right to choose becomes even more imperative when the reproductive statistics in this country are considered:

Young girls under 19 years of age had over 30% of the abortions obtained in 1976. Before the Supreme Court established the right to choose, a million women had illegal abortions each year. Over 300 died, and thousands were seriously injured. After the 1973 decision, the same number had legal abortions each year -- but only 30 died.

The constitutional amendment under consideration today would not change what these statistics make obvious: abortions would continue, in the same numbers as before. However, safe, legal abortions would end. A million women each year would subject themselves to possible injury and death in the nightmarish kitchen conditions of illegal abortionists, the same people we had put out of business in 1973.

And, certainly, the drastic and unpredictable measure of a call to a constitutional convention is a step so alarming that few conceivable conditions could justify it. A women's right to choose is not one of those conditions. The United States Constitution safeguards individual rights. Any convention that by its stated purpose seeks to restrict or eliminate existing liberties is, by definition, a threat to all Americans.

Donald I. Mohler, M.D.
Frank V. Rueckl, M.D.

Gynecology and Obstetrics
975 RYLAND STREET • RENO, NEVADA 89502 • 323-0525

March 24th, 1979

The Committee on Judiciary
Nevada State Assembly
Legislative Building
Carson City, Nevada 89710

Dear Sirs:

Please accept my apology for not physically being present to testify on the proposed resolution AJR-17.

I will be attending the National Convention of Obstetricians and Gynecologists in New York City.

I wish to direct my thoughts in opposition to AJR-17. I am representing only myself as a practicing obstetrician in Washoe County, where I have practiced for the past twenty-five years.

A woman's right to the highest level of health protection society can offer is denied if she is not allowed full reproductive freedom, including the right to have an abortion. Any amendment which restricts abortions must be understood for what it is, the "right" to maternal death, infant crippling, and human misery.

In a woman's decision to have an abortion, there are three key considerations - the fetus, the woman herself, and the future of the unwanted child. Abortion opponents make an emotional appeal based on the first consideration alone. It is a woman's fundamental right to control what happens to her body and to her future. She has a right to make her decision, and no one is better qualified.

Maternal mortality for pregnancy and child birth is five to eight times higher than that from legal abortion. Teenagers face the highest risk of toxemia, labor

problems, postpartum infections, hemorrhage, and low birth weight babies. It is estimated that 1.2 million abortions were performed last year, and fifty percent of them were teenagers. Teenage mothers suffer documented marital instability, school disruption, economic difficulty, and child raising and family planning problems.

Restricted access to abortion means an increased number of infants born with developmental defects, and a high risk of mortality. Unwanted children are more susceptible to developmental failure and child abuse. Many of these children will be abandoned to foster care and state institutions, or suffer psychiatric disorders, educational retardation, or vocational failure.

Those who oppose abortions concentrate on the single issue of the fetus, and they have found abortion an easy issue to sensationalize.

In contrast, those who support legalized abortion - and opinion polls demonstrate them to be the majority - have been comparatively quiet. The number of countries where abortion has been broadly legalized has increased steadily, today covering sixty percent of the world population.

The most powerful arguments about abortion are in the field of religious and moral principles. Those opposed to abortion seek to ban it to everyone in society. Their position is thus coercive in that it would restrict the religious freedom of others, and the right to make a free moral choice. Certainly the legalized abortion viewpoint is noncoercive.

Human life is precious and irreplaceable, and entitled to the full protection of the law. When does a living human life begin? My opinion is at the time of viability. Anti-abortionists claim "murder" from the time of conception. Science now has developed "conception in a test tube". If a fertilized egg in a test tube is intentionally destroyed, is this murder? Or, if accidentally this test tube is destroyed, manslaughter?

There is a declining number of abortion deaths. Twenty-six women died from abortion in 1976 compared with forty-six in 1975, fifty-two in 1974, and eighty-nine in 1972. Only

ten women died after legally induced abortions in 1976, compared with twenty-nine in 1975, and twenty-seven in 1974. Illegal abortion mortality has dramatically declined with only three reported in 1976, and there were thirty-nine in 1972. This decline in illegal abortion mortality obviously reflects a decrease in the number of illegal abortions being performed.

Banning abortions does not eliminate them. It never has, and it never will. It merely forces women to go the dangerous route of illegal or self-induced abortions, even worse, it makes abortion a "rich-poor" issue.

If all the money in human resources used to try and prevent abortions were instead used to make contraceptive methods better, safer, and more readily available to everyone, then, and only then, will be see less of a need for abortion.

Thank you.

Very sincerely,

Donald I. Mohler, M.D.

DIM:mct/smm

EXHIBIT U

American Friends Service Committee

Reno Area Office 1235 Pyramid Way, Sparks, Nevada 89431 (702) 358-6800

To: Judiciary Committee members, Nevada State Legislature

March 28,1979

Thank you for this opportunity to give testimony on AJR 17.

The local program committee of the American Friends Service Committee(AFSC) adopted a minute at their recent monthly meeting which says,

"The Reno Area Committee of the AFSC opposes AJR 17, which calls for a Constitutional Convention to ban abortion. While the Committee is not here taking a stand pro or con on the issue of abortion, we do feel opposed to the calling of a Constitutional Convention for the purpose of banning abortion."

Nationally, I would like to share some thoughts from the Women's Support Group Meeting held May 13,1978, in Philadelphia:

"..One of the clearest messages coming out of discussion was our widefelt understanding that abortion has to be considered in its social context.That is, we live in a society that pushes sex, that gives people every indication that to be " a real man" or "a real woman" you have to be sexually active. However, on the other hand, there is a lack of good, accessible knowledge about birth control, of effective birth control methods without negative side effects, and of strong cultural messages to men about their responsibilities in sexual relationships...On the other hand, social and economic realities for many women make the costs of having a baby staggeringly high for both mother and child...We have every responsibility to make that choice (abortion) less necessary - to work for changing sexual attitudes, for better birth control and counseling for both men and women growing up, for adequate child care, work opportunities and wages. But to fail, in these, or to refuse even to see them as serious issues, and then remove even the ultimate choice of abortion from the woman involved is surely cruel..."

Thank you for the opportunity to present this testimony for the offical record of this hearing.

Sincerely,

Joni Kaiser

Joni Kaiser, staff , for the
Reno Area Program, AFSC

734 15

ZERO

The Right to Choose: Facts on Abortion

Abortion was outlawed in the 1800's to protect women from primitive methods and unskilled practitioners of pregnancy termination. Today, the health risks of early abortion under medically-supervised conditions are minimal. According to HEW's Center for Disease Control, early abortion is six times safer than childbirth.

Although much of the current debate on abortion rights focuses on moral positions, there is a growing recognition that abortion is primarily a women's health issue. When life begins and when a fetus becomes a person are questions which may never be answered with certainty, but whether abortion is legal or not, some women will seek abortion to terminate unwanted pregnancy. *Legalized* abortion protects women from unsafe abortion techniques and unskilled practitioners.

Since contraceptive education and services are *not* available to all American women, and since we have not yet developed a reversible contraceptive which is safe, convenient, inexpensive and 100 percent effective, a significant proportion of pregnancies each year are unintended and unwanted. The 1973 Supreme Court abortion rights decision guarantees a woman the freedom to choose whether or not to continue a pregnancy and, if she chooses to terminate it, the right to do so safely, legally and with dignity.

We should make every effort to reduce the necessity for abortion by developing better contraceptives, improving the quality and availability of contraceptive education and services, providing those services to all sexually active Americans regardless of age or marital status, expanding sex education courses, and promoting a healthy and positive attitude toward human sexuality.

How Many Abortions Are Performed?

Over 1.1 million abortions were performed in the United States in 1976, according to Planned Parenthood's Alan Guttmacher Institute. Since 1969, when abortion statistics were first collected, some 4.3 million U.S. women have obtained legal abortions — about one in 11 American women of reproductive age.

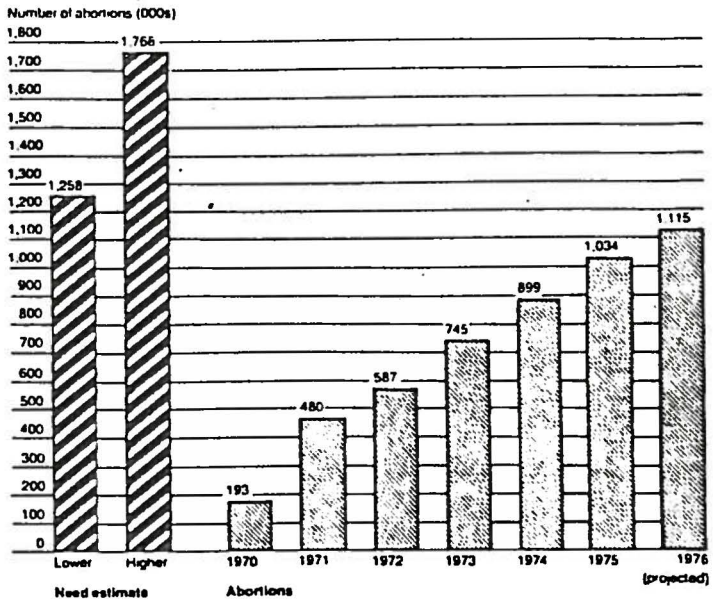
Researchers from the Center for Disease Control estimate that the number of illegal abortions has dropped from about 130,000 in 1972 to 17,000 in 1975; during that period, annual deaths resulting from illegal abortions are estimated to have dropped from 39 to four. In the absence of a liberal law, seven out of 10 legal abortions now performed would take place illegally, according to Christopher Tietze, biostatistician for the Population Council in New York.

Number of Legal Abortions Reported in the U.S.

1969	22,700	1973	744,600	· Supreme Court decision
1970	193,500	1974	898,600	
1971	485,800	1975	1,034,200	
1972	586,800	1976	1,115,000	(projected)

Sources: 1969-72 data from Center for Disease Control, DHEW, *Abortion Surveillance, Annual Summary 1973*. Atlanta, 1975, Table 1, p. 9. 1973-76 data based on national surveys by the Alan Guttmacher Institute reported in E. Sullivan et al., "Legal Abortion in the United States, 1975-76," *Family Planning Perspectives*, IX:3 (1977), p. 116.

Number of Reported Abortions Compared with the Estimated Need for Abortion Services, United States, 1970-76



Source: E. Sullivan et al., "Legal Abortion in the United States, 1975-76," *Family Planning Perspectives*, IX:3 (1977), p. 121; reprinted with permission from the Alan Guttmacher Institute.

The Unmet Need for Abortion Services

Between 143,000 and 654,000 women needing abortion services were unable to obtain them in 1976, according to the Alan Guttmacher Institute. Abortion services continue to be concentrated among relatively few providers — mostly clinics — in the nation's larger cities. Most public hospitals are not meeting the demand for abortion in their areas. Only 30 percent of the nation's non-Catholic general hospitals — 18 percent of public hospitals and 38 percent of private hospitals — reported performing even one abortion during 1975 and the first quarter of 1976.

One-third to two-fifths of all women who obtained abortions in 1975 had to travel outside their own communities — often considerable distances. In 20 of the 50 states, more than 70 percent of all reported abortions for 1975 were performed in a single metropolitan area. In five states — Indiana, Iowa, Mississippi, West Virginia, and Wyoming — more than two-fifths of the women who obtained abortions in 1975 had to travel to another state. Thus, those women least able to travel to obtain an abortion — poor, rural, and very young women — continue to face difficulties seeking safe, legal abortions.

Source: E. Sullivan et al., *"Legal Abortion in the United States, 1975-76," Family Planning Perspectives*, IX:3 (1977), p. 121

Who Has Abortions?

Age Distribution of Women Having Abortions in the United States.

	1972	1975
19 years old and under	32.6%	33.1%
20-24 years old	32.5%	31.9%
25 years old and above	34.9%	35.0%
Marital Status		
Unmarried (includes widowed, separated, divorced, and never married)	70.3%	73.9%
Married	29.7%	26.1%
Race		
White (includes Spanish surname)	77.0%	67.8%
Black and others	23.0%	32.2%
Length of Pregnancy		
Less than 13 weeks of gestation	82.2%	87.9%
13-20 weeks of gestation	16.6%	11.1%
21 or more weeks of gestation	1.3%	1.0%

Source: Center for Disease Control, DHEW, *Abortion Surveillance, Annual Summary, 1975*, Atlanta, 1977.

Health and Social Impacts of Legal Abortion

Mortality

During 1973, the first year that abortions were legal nationwide, there was a 40 percent drop in maternal mortality from abortions. Deaths from illegal abortions dropped from 39 in 1972 to four in 1975.

When compared with deaths from full-term pregnancy and delivery, abortion in the first trimester is six times safer. Legal abortion in the first trimester is nearly 10 times safer than in the second trimester.

Annual Number of Abortion-related Deaths

	Legally-induced	Illegally-Induced	Spontaneous	Total
1963-67	—	—	—	222
1969	—	—	—	145
1972	24	39	23	86
1973	26	19	9	54
1974	27	6	18	51
1975	27	4	12	43

Death Rate from Legal Abortions	1972	1975
Deaths per 100,000 abortions	3.6	3.2
Deaths per 100,000 first-trimester abortions	—	1.7
Comparable Death Rates		
Deaths per 100,000 live births	—	10.2
Deaths per 100,000 tonsillectomies	—	5.0
Deaths per 100,000 appendectomies	—	352.0

Source: Center for Disease Control, DHEW, Atlanta, GA.

Death-to-Case Rate for Legal Abortions (Deaths per 100,000 Abortions)

By Method	1972	1975
Suction/D&C	2.1	1.7
Amniotic fluid replacement	13.2	16.9
Hysterotomy/Hysterectomy	45.4	60.8
Other	9.7	14.4
Total—all methods	3.6	3.2
By Weeks of Gestation	**1972**	**1975**
8 or less	1.0	1.0
9-10	1.7	1.2
11-12	4.9	4.7
13-15	4.5	2.3
16-20	16.6	19.3
21 or more	9.7	33.6
Total	3.6	3.2

Source: Center for Disease Control, DHEW, *Abortion Surveillance, 1973 and 1975*, Atlanta, 1975 and 1977

Teenage Pregnancy

Teenagers accounted for one-third of all legal abortions in the United States in 1975, according to HEW's Center for Disease Control. Of the more than one million pregnancies which occur annually among U.S. teenagers, nearly six in 10 result in live births, nearly three in 10 are terminated by abortion, and one in 10 ends in miscarriage. The abortion ratio among 15-19-year-olds has increased from 181 per 1,000 live births in 1971 to 542 in 1975. Females under 15 have more abortions than births; in 1975, they had 1,193 abortions per 1,000 live births.

Nearly four in 10 (39 percent) of all births to teenagers are out-of-wedlock, and the proportion of births to unmarried teens is rising. Although the increased availability of abortion has slowed the rise in out-of-wedlock births which began in the late 1960's, the trend has not been reversed.

Fetal Disorders

Amniocentesis is a procedure in which a small sample of amniotic fluid that surrounds the fetus is withdrawn from the uterine cavity through a needle and is analyzed for evidence of fetal defects. The fluid withdrawal is rarely performed prior to the 15th week of pregnancy, and fluid analysis often takes two weeks. By the time a diagnosis is completed, the woman is well into the second trimester of pregnancy. If fetal disorders are identified and the woman elects abortion, a second-trimester method, usually saline, must be used. Some 60 inherited genetic and metabolic disorders, such as Down's syndrome and Tay-Sachs disease, can be diagnosed prenatally with reasonable accuracy.

In the case of birth defects from non-genetic causes such as exposure of the woman to rubella or x-rays, or by her ingestion of drugs known to damage the fetus, legal abortion offers an important alternative.

Contraceptive Failure

No reversible contraceptive method currently available prevents pregnancy 100 percent of the time. Even conscientious users of the more effective methods risk unintended pregnancy due to contraceptive failure. One out of every three couples practicing birth control will have an unwanted pregnancy within five years. In addition, incorrect use of birth control methods often results from unclear instructions from a physician or from the manufacturer.

Source: N.B. Ryder, "Contraceptive Failure in the United States," *Family Planning Perspectives, V:3*(1973)

Publicly-financed Abortion Services

Until August 1977, Medicaid financed about three out of every 10 abortions (between 250,000 and 300,000 annually) at an annual cost of $40 million to $50 million. At that time, a New York Federal district court permitted implementation of a Federal law which prohibits use of Medicaid monies in fiscal year 1977 for abortions, except when the life of the woman would be endangered by carrying the pregnancy to term. Exceptions are also made in cases of "ectopic" or tubular pregnancy, rape, and incest. The law will remain in effect until September 30, 1977. Congress has been debating a similar restriction for fiscal year 1978.

Before the law went into effect, the Department of Health, Education and Welfare (DHEW) estimated that without Medicaid funds for abortions, the cost to the government would be between $450 million and $565 million for medical care and public assistance in the first year after birth. These costs would include:

- prenatal and delivery costs
- care for high-risk births
- welfare payments
- foster or institutional care for abandoned infants
- day care and social services
- health care for normal babies born to welfare mothers

For each pregnancy among Medicaid-eligible women that is

brought to term, it is estimated that the first-year costs to Federal, state, and local government are approximately $2,200.

DHEW has estimated that without Medicaid support for women on welfare who choose abortion, there would be an estimated 125 to 250 deaths per year due to illegal and self-induced abortions as well as 12,500 to 25,000 serious medical cases requiring three to five days of hospitalization.

Source: DHEW Office of Population Affairs, *June 1976 Impact Statement*.

Methods of Abortion

Vacuum Aspiration (Suction)

First-trimester procedure involving local anesthesia, dilation of the cervix, insertion of a small hollow tube attached to a vacuum machine which empties the uterus by gentle suction; normally takes a few minutes and patient recovers within a few hours.

Dilation and Curettage (D&C)

First-trimester procedure with local or general anesthesia, dilation of the cervix, removal of fetal material from the uterine wall using a small, spoon-shaped curette; may take a few minutes and patient recovers the same day.

Dilation and Evacuation (D&E)

A relatively new second-trimester procedure usually performed between the 13th and 20th weeks of pregnancy, involving local anesthesia, a slow and gradual dilation of the cervix, and removal of the fetal material by alternating suction and curettage. Preliminary studies by the Center for Disease Control indicate it may be more than twice as safe as amniotic fluid replacement and require only a few hours' recovery period.

Amniotic fluid replacement

Second-trimester procedure usually performed between the 16th and 20th weeks of pregnancy (18-22 weeks from last menstrual period) in which a small amount of amniotic fluid is withdrawn from the uterus and replaced with a concentrated saline solution which causes contractions within 12 to 24 hours and eventual miscarriage; may require a hospital stay. Another method of inducing miscarriage is the injection of a hormone (prostaglandin) into the uterus.

Hysterotomy

Second-trimester procedure considered major surgery, involves Caesarian removal of the fetus through the abdominal wall under general anesthesia; may require a hospital stay of 4 to 7 days and recovery of several weeks; future deliveries must be by Caesarian.

1973 Supreme Court Decisions

Roe v. Wade (Texas), 1973

In a 7-2 decision, the U.S. Supreme Court held that "the right to privacy...is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The Court stated, however, that the right to privacy is not absolute and that "...it is reasonable and appropriate for a State to decide that at some point in time another interest, that of the health of the mother or that of potential human life, becomes significantly involved." The Court also held that "the word 'person' as used in the Fourteenth Amendment, does not include the unborn."

Doe v. Bolton (Georgia), 1973

In a 7-2 decision, the Court struck down requirements that abortion must be approved by a hospital committee and that two licensed physicians must confirm the attending physician's recommendation to abort.

All state and Federal courts are bound by decisions of the Supreme Court which automatically supersede state laws inconsistent with them; therefore, states need not repeal statutes which contradict the Supreme Court ruling on abortion. A state does not need to have an abortion law.

The Court's summary of these decisions is in three parts:

"a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

"b) For the stage subsequent to approximately the end of the second trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

"c) For the stage subsequent to viability, the State, in promoting its interest in potentiality of human life, may, if it chooses, regulate, and proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Other Court Decisions

Public Monies and Hospitals

States are not required to provide Medicaid payments for abortions sought by low-income women, the U.S. Supreme Court ruled in June 1977. Two months later, a Federal district court dissolved its order that had enjoined a Congressional prohibition on the use of Federal Medicaid funds for abortions.

Thus, it is now up to Congress to approve the use of Federal monies for abortions; states may choose to pay all or some of the costs of Medicaid abortions. By August 1977, more than 20 states had cut off funding for abortions for low-income women, according to Planned Parenthood Federation of America. Only 15 states provided free abortions to low-income women.

One-third of all women receiving abortions in 1975 relied on Medicaid programs to pay for them. Lacking the funds for a legal abortion, many low-income women may choose to have illegal or self-induced abortions or may be forced to bear unwanted children.

In June 1977, the Supreme Court ruled that state and local governments may prohibit public hospitals under their jurisdiction from performing non-therapeutic abortions. Only 18 percent of all public hospitals performed abortions in 1975; this proportion can be expected to drop lower as a result of the Supreme Court ruling.

Parental and Spousal Consent Requirements

In a 1976 decision, the U.S. Supreme Court ruled that a woman may have an abortion without her husband's consent and that a minor under the age of 18 does not need her parents' consent to have an abortion. The Court maintained in both instances that "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient."

However, the Supreme Court has not yet ruled on a Massachusetts law which requires a minor to obtain a court order if one or both parents refuse permission for an abortion. The Court's 1976 ruling specifies that it "... does not suggest that every minor, regardless of age and maturity, may give effective consent for termination of pregnancy." Thus, the Court implied that parental consent may be valid in some cases; future litigation may clarify this point.

States may require written, informed consent from a woman prior to an abortion, the Supreme Court ruled in 1976.

Welfare Benefits

On March 18, 1975 the Supreme Court ruled that Federal law does not require states to include benefits for unborn children in their welfare support for needy pregnant women. The decision will not affect 16 states which do include the unborn in welfare plans.

Restrictions on Abortion Techniques

Missouri's law prohibiting use of the saline method of abortion after the first trimester of pregnancy was declared "plainly unconstitutional" by the U.S. Supreme Court in 1976.

Institutional "Conscience Clauses"

In June 1977, the U.S. Supreme Court let stand a New Jersey Supreme Court ruling that a private, non-profit, non-sectarian hospital cannot deny the use of its facilities to provide elective abortions because it is a quasi-public institution. It also ruled that a state law permitting the use of a "conscience clause" allowing hospital staff to refuse to perform abortions did not apply to non-profit, non-sectarian hospitals. However, a year earlier, the Supreme Court let stand a Ninth Federal Circuit Court of Appeals decision that privately administered hospitals have a right to refuse to perform abortions.

Proposed Constitutional Amendments

The only way that the 1973 Supreme Court decision can be overturned is by amendment of the U.S. Constitution. Congressional opponents of abortion rights have traditionally introduced many such amendments which fall into several categories:

Right-to-Life — seeks to insure due process and equal protection for the individual "from the moment of conception" and to forbid the state from depriving "any human being of life on account of illness, age, or incapacity."

States Rights — would leave decisions regarding regulation and prohibition of abortion to the discretion of individual states.

Fetus-as-Persons — states that the word "person" as used in the 5th and 14th Amendments shall apply to all human beings "including their unborn offspring at every stage of their biological development" (Some versions make exceptions in cases where the mother's life is endangered.).

During the 94th Congress (1975-76), the Senate Judiciary Subcommittee on Constitutional Amendments voted against reporting a constitutional amendment to the full committee after holding 16 days of hearings on the issue. A constitutional amendment on abortion was also the subject of seven days of hearings in the House Judiciary Subcommittee on Civil and Constitutional Rights, but no vote was taken before Congress adjourned. During the first half of 1977, neither committee scheduled hearings on the more than 50 resolutions which were introduced.

To bring pressure on Congress to adopt a resolution amending the Constitution, nine state legislatures have passed their own resolutions calling for a constitutional convention to consider an amendment. Several more states are expected to vote on similar resolutions this year. Thirty-four states must call for a convention in order for one to be held. Although provided for by the Constitution, a constitutional convention has never been held, and rules for carrying one out have never been established.

Restrictions on Abortion Services

HEW Appropriations — An amendment to the fiscal 1977 Labor/Health, Education and Welfare Appropriations bill which prohibits use of HEW monies "to perform abortions except where the life of the mother would be endangered if the fetus were carried to term" was approved by Congress. A court injunction against its implementation was lifted in August 1977, thereby prohibiting the use of Federal Medicaid monies for abortion. A similar amendment for fiscal year 1978 beginning on October 1, 1977 is being considered by Congress. The House of Representatives has passed a resolution prohibiting the use of Medicaid monies for abortion except where a woman's life is endangered, while the Senate favors funding of abortions needed in cases of "medical necessity." These differences must be resolved before the final bill is approved. It is likely that some restriction of Medicaid monies for abortions will be included in the final bill.

Legal Services — The Hogan-Froelich amendment to the Legal Services Corporation Act approved by Congress in 1973 prohibits legal service lawyers from handling abortion-related cases except where a woman's life is endangered.

"Conscience Clause" — The Church amendment to the Public Health Act states that no individual or public institution can be required to perform abortions as a condition of receiving Federal funds

Foreign Aid — The Helms amendment to the Foreign Assistance Act approved by Congress in 1973 prohibits the use of foreign aid funds for performing abortions as a family planning service.

Studies Support Abortion Rights

From *Constitutional Aspects of the Right to Limit Childbearing*, a report of the U.S. Commission on Civil Rights, May 1975:

"A woman who must submit her body to carry a child to term without her consent would have submitted her will, her personal liberty, to another. The proposed constitutional amendments would compel a woman to carry a child to delivery, without regard to whether she consented to intercourse or pregnancy.

"So long as the question of when life begins is a matter of religious controversy and no choice can be rationalized on a purely secular premise, the people, by outlawing abortion through the amending process, would be establishing one religious view and thus inhibiting the free exercise of religion of others."

The Commission recommended three measures:

1. "Congress should reject constitutional amendments which seek to abolish the historic freedom to limit childbearing as contained in the Bill of Rights and the 14th Amendment and as recognized by the Supreme Court of the U.S.
2. "Congress should reject anti-abortion legislation and amendments, and repeal those which have been enacted, which undermine the constitutional right to limit childbearing.
3. "Since low-income persons have no other access to legal assistance in attempts to vindicate their rights, Congress should amend the Legal Services Corporation Act to permit legal services attorneys to bring abortion-related cases for their clients."

From *Legalized Abortion and the Public Health*, a report of the National Academy of Sciences Institute of Medicine, May 1975:

"Many women will seek to terminate an unwanted pregnancy by abortion whether it is legal or not. Although the mortality and morbidity associated with illegal abortion cannot be fully measured, they are clearly greater than the risks associated with legal abortion. Evidence suggests that legislation and practices that permit women to obtain abortions in proper medical surroundings will lead to fewer deaths and a lower rate of medical complications than restrictive legislation and practices."

Opinion Polls on Abortion

Harris Poll	1972	1973	1975	1976
Favor 1973 Supreme Court abortion decision (or abortion rights)	42%	52%	54%	54%
Oppose Court's decision	46%	41%	38%	39%
Undecided	12%	7%	8%	7%

New York Times/CBS News Poll, February 2-8, 1976

"The right of a woman to have an abortion should be left entirely up to the woman and her doctor."

Agree	Disagree	Don't Know
67%	26%	7%

DeVries Poll, commissioned by the National Committee for a Human Life Amendment (December 1974).

	Percent In Favor	
	Catholic	All Religions
Permit abortion to save mother's life	88	93
Permit abortion to preserve mother's physical health	77	84
Permit abortion in cases of rape	68	74
Permit abortion if woman is not married	35	43
Permit abortion if couple cannot afford another child	29	38

New York Times/CBS News Poll, July 29, 1977

"Do you think the government should help a poor woman with her medical bills if she wants an abortion?"

Agree	Disagree	Don't Know
38%	55%	7%

Prepared by Susan J. Lowe and Cynthia P. Green.

Additional copies of "The Right to Choose" are available from: **Zero Population Growth, 1346 Connecticut Ave. N.W., Washington, D.C. 20036.** Single copies free; 2-49 copies, 12¢ each; 50-199, 11¢ each; 200-499 copies, 9.5¢ each; 500 or more, 8.5¢ each.

Zero Population Growth, Inc. is a national membership organization which advocates U.S. and world population stabilization. ZPG's lobbying and public education programs address a wide range of issues, including population growth, family size, immigration, teenage pregnancy, abortion, and national growth policy. ZPG welcomes inquiries regarding membership and provides a free publications list upon request.

EXHIBIT W

Poll: Majority support abortion decision

By LOUIS HARRIS

60-37 percent majority of 1,199 adults who were polled in a recent ABC News-Harris Survey supports the U.S. Supreme Court decision that legalizes abortions performed during the first three months of pregnancy.

Two groups of survey respondents, blacks and white Catholics, disagree with the majority. They oppose the court decision by 50-48 percent.

Other groups strongly favor legal abortions, as defined by the Supreme Court: easterners (65-33 percent), westerners (70-27 percent), suburbanites (62-35 percent), small-town residents (67-32 percent), people 30 years old and younger (66-33 percent), people 30-49 years old (66-32 percent), the college-educated (69-29 percent) and political moderates (61-37 percent).

How can these survey results, which show a majority in favor of legalized abortions, be compared with the view that anti-abortion forces are gaining ground politically?

The answer: Many anti-abortionists who answered this survey indicated that they cast their votes dependent solely on the issue of abortion.

When the 37 percent of survey respondents who oppose abortion were asked whether they would vote for a political candidate who stood for many things they agree with but took a stand on abortion they disagreed with, 53-37 percent of the anti-abortionists say they would then vote against the candidate.

When the 60 percent of the public who favor legalized abortions were asked this key political question, a 63-30 percent majority says they would not vote against a candidate who opposed abortion — if they agreed with that candidate on most other issues.

When those who say a candidate's stand on abortion would affect their vote are viewed in terms of how much of the total public they represent, 20 percent of the total are anti-abortion, while 18 percent are pro-abortion. This might appear to be a standoff, but anti-abortionists are extremely well-organized.

Consequently, that 20 percent appears to be more effective politically than the majority 60 percent who favor the court decision on abortion.

Survey respondents were asked about several specific dimensions of the U.S. Supreme Court ruling:

—By 73-25 percent, a majority feels that "any woman who is three months or less pregnant should have the right to decide, with her doctor's advice, whether or not she wants to have an abortion."

—By 61-32 percent, a majority also agrees with the argument that "most unwanted children end up being subject to child abuse, and it's a mistake to force unwanted children to be born."

—By 49-45 percent, a majority rejects the highly emotional argument of Right-to-Life people that "to perform an abortion is the equivalent of murder, because a fetus' life has been eliminated."

—By 55-37 percent, a majority also disagrees with the claim that "the life of a baby is just as important as the life of a mother, so abortions should be banned."

On two other aspects of the original U.S. Supreme Court decision, which has been reaffirmed by the court since 1973, those responding to the survey are divided.

—By 50-46 percent, plurality disagrees wi the high court's decisi that "the states could d cide what reasons wou be required for a leg abortion in the cour through the sixth mon of pregnancy."

TWELVE ABORTION FACTS

1 **Abortion is legal in the U.S.** The U.S. Supreme Court ruled in 1973 that the decision to have an abortion must be left solely to a woman and her physician. Only after viability (24-28 weeks) can the State prohibit abortion, except when a woman's life or health is in danger. In 1976, the High Court ruled that husbands and parents cannot be required to give consent prior to an abortion.

2 **Over 1,000,000 women had legal abortions in 1976. An estimated 1,000,000 women had abortions annually before it was legal.** When abortion is not available legally, women risk their lives with self-induced or non-medical procedures. Seven out of every ten legal abortions performed in 1974 would have occurred illegally, according to Dr. Christopher Tietze of the Population Council.

3 **Early legal abortions are up to eight times safer than childbirth** and far safer than illegal procedures. During 1973, the first year abortions were legal nationwide, there was a 40 percent drop in abortion-related deaths. Early legal abortion resulted in 1.7 deaths/100,000 procedures in 1975 compared to 40 deaths/100,000 illegal abortions before 1973 and 12.8 deaths/100,000 live births in 1975.

4 **Contraceptives are not perfect and abortion is necessary as backup fertility control.** One out of every three couples using birth control will have an unwanted pregnancy in five years. The birth control pill has a failure rate of 1-4 pregnancies per 100 women years* of use. The IUD has a 1-5% failure rate, the diaphragm 3-17%, condoms 3-10%, withdrawal 20-25%, foam 3-22%, and rhythm 3-21%. Four out of ten women (AGI)** in need of subsidized family planning do not now have access to this necessary service.

5 **Opponents of legal abortion also oppose contraception.**

". . . 'Contraception' often turns out to be 'silent' (early) abortion induced by the pill or the I.U.D. . . . . " Fr. Paul Marx, O.S.B., Bible and Liturgy Sunday Bulletin, March 27, 1977

"We are opposed to the continued funding of the so-called 'family planning services and population research act' . . . . both the I.U.D. and one mode of action of the current pill are abortifacients." Robert G. Marshall, Legislative Counsel, U.S. Coalition for Life, in his February, 1977 Testimony before Congress on extension of the Health Services Act of 1977

In 1976, 207 Members of the House of Representatives voted against federal funding for abortion. 185 of the Representatives (or 89%) also voted against increased funding for family planning research.

*means 96-99 out of 100 couples using this method for one year will not have an unplanned pregnancy.
**Alan Guttmacher Institute

NARAL

825 15th St. NW
Washington, D.C. 20005
202/347-7774

6

A clear majority of Americans think abortion should be legal. A 1976 CBS-News/New York Times poll found that 67% of those surveyed favored leaving the decision to have an abortion up to a woman and her doctor. A similar poll by Knight-Ridder Newspapers found that 81% felt the same way. A 1975 Gallup poll found that three out of four Americans approve of legal abortion under some circumstances.

7

One out of every ten teenage girls becomes pregnant: this means 1,000,000 teen pregnancies to 15 to 19 year olds each year, and 30,000 teen pregnancies to girls under 15. In 1974, 600,000 teenagers gave birth and 300,000 had abortions — 33% of all abortions. And 94% of teenage mothers keep their babies. Yet two-thirds of teenage pregnancies are not planned, because many teens do not have access to contraception.

8

Between 143,000 and 654,000 women needing abortion services in 1976 were unable to obtain them, according to the Alan Guttmacher Institute. Most public hospitals are not providing abortion care (only 18% do, in fact), and 33%-40% of the women seeking abortions had to travel to another community to receive this health care.

9

Medicaid is restricted from paying for abortions even when they are medically necessary. The U.S. Congress in 1976 and again in 1977 passed the discriminatory Hyde amendment to the Labor-HEW Appropriations Bill, thus banning the use of federal funds for abortion. An estimated 250,000 to 300,000 women received government financed abortions annually prior to this cut-off.

10

Nearly two-thirds of the world's population lives in countries where abortion is available legally. No democracy has ever reversed a liberal abortion policy. When Rumania reversed a liberal abortion policy in 1968, there was initially a marked increase in live births, with a subsequent drop in birth rate accompanied by a marked rise in maternal death.

11

The U.S. Congress and many state legislatures will be voting on various types of anti-abortion legislation which would either restrict the availability of safe abortion care (such as cutting off public funds, instituting restrictions on a minor's rights and reporting requirements from doctors), or ban all abortions by an amendment to the Constitution that defines personhood as beginning at conception.

12

Two major U.S. Government agencies oppose restrictions to legal abortion: The U.S. Commission on Civil Rights in its 1975 publication **Constitutional Aspects of the Right to Limit Childbearing** recommends that Congress not further restrict access to legal abortion and in fact it should remove existing limitations. The National Academy of Scientists Institute of Medicine in its 1975 report **Legalized Abortion and the Public Health,** concludes that legal abortion leads to fewer physical and emotional complications than restrictive legislation and practices.