

Montana State Legislature

2015 SESSION ADDITIONAL DOCUMENTS

Business Page [Signed by Chairman]

Roll Call

Standing Committee Reports

Tabled Bills

Fiscal Reports

Rolls Call Votes

Proxy Forms

Visitor Registrations

*Any other documents, which were submitted after the committee hearing was ended and/or was submitted late [within 48 hours], but regarding information in the committee hearing. Witness Statements that were not presented as exhibits.

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2015 Legislative

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BUSINESS REPORT
MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION
SENATE JUDICIARY COMMITTEE

Date: Tuesday, February 3, 2015
Place: Capitol

Time: 9:00 AM
Room: 303

BILLS and RESOLUTIONS HEARD:

SB 209 - Regulate vehicle event data - Sen. Matthew Rosendale
SB 227 - Increase penalties for domestic violence offenders - Sen. Jonathan Windy Boy
SJ 7 - Joint resolution for a convention of the states to impose federal fiscal limits-Sen. Rober Webb

EXECUTIVE ACTION TAKEN:

HB 75-Be Concurred In
HB 136-Be Concurred In As Amended
SB 115-Do Pass As Amended
SB 187-Do Pass As Amended-TIE (motion failed)
SJ 7-Tabled

Comments:



SEN. Scott Sales, Chair

MONTANA STATE SENATE

2015 JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/3/15

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, SENATOR SCOTT SALES	—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—	
SENATOR DIANE SANDS	—	
SENATOR ROBYN DRISCOLL	—	
SENATOR KRISTEN HANSEN		—
SENATOR JEDEDIAH HINKLE	—	
SENATOR DOUG KARY	—	
SENATOR CLIFF LARSEN	—	
SENATOR MARY MCNALLY	—	
SENATOR MARY SHEEHY MOE	—	
SENATOR NELS SWANDAL	—	
SENATOR CHAS VINCENT	—	



SENATE STANDING COMMITTEE REPORT

February 3, 2015

Page 1 of 1

Madame President:

We, your committee on **Judiciary** report that **House Bill 75** (third reading copy -- blue) be **concurrred in**.

Signed: _____

Senator Scott Sales, Chair

To be carried by Senator Diane Sands

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required

HB0075001SC13941.spt



SENATE STANDING COMMITTEE REPORT

February 3, 2015
Page 1 of 1

Madame President:

We, your committee on **Judiciary** report that **House Bill 136** (third reading copy -- blue) be **concurrent in as amended**.

Signed: 
Senator Scott Sales, Chair

To be carried by Senator Douglas (Doug) Kary

And, that such amendments read:

1. Title, page 1, line 5.

Strike: "MAIL"

Insert: "MEANS"

2. Page 1, line 14.

Strike: "e-mail"

Insert: "electronic"

3. Page 1, line 20.

Following: "electronic"

Strike: "mail"

Insert: "means"

Following: "address,"

Strike: "e-mail"

Insert: "electronic"

4. Page 1, line 21.

Strike: "e-mail"

Insert: "electronic"

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required

HB0136002SC12606.spt



SENATE STANDING COMMITTEE REPORT

February 3, 2015

Page 1 of 2

Madame President:

We, your committee on **Judiciary** report that **Senate Bill 115** (first reading copy -- white) do **pass as amended**.

Signed: _____

Senator Scott Sales, Chair

And, that such amendments read:

1. Page 1, line 16.

Following: "(1)"

Insert: "(a)"

2. Page 1, line 17.

Following: "for"

Insert: "by a law enforcement officer"

3. Page 1.

Following: line 18

Insert: "(b) Before a seizure occurs, the prosecutor may request that a licensed veterinarian accompany a law enforcement officer to the premises to evaluate the extent of the animal's disease, injury, or suffering."

4. Page 1, line 23.

Strike: "and"

5. Page 1, line 26.

Following: line 26

Insert: "(d) the evaluation of the licensed veterinarian if an evaluation was provided under subsection (1)(b)."

6. Page 1, line 29.

Following: "posted"

Committee Vote:

Yes 7, No 5

Fiscal Note Required

Insert: "by a law enforcement officer"

7. Page 2, line 5.

Following: "posted"

Insert: "by a law enforcement officer"

8. Page 2, line 20.

Following: "suffering and shall"

Insert: ", no more than 5 days after the hearing,"

9. Page 2, line 24.

Strike: "the"

Insert: "a"

Following: "proceeding"

Insert: "initiated for an alleged violation of 45-8-210, 45-8-211, or 45-8-217"

10. Page 2, line 28.

Strike: "alleged"

11. Page 3, line 1.

Following: "seizure"

Insert: ", if the court finds that the seizure was justified"

12. Page 3, line 4.

Strike: "determines"

Insert: "finds, by a preponderance of the evidence submitted,"

13. Page 3, line 6.

Strike: "may"

Insert: "shall"

14. Page 3, line 15.

Strike: "If the court orders a bond to"

Insert: "Upon an order of the court that a bond"

15. Page 4, line 2 through line 3.

Following: "veterinarian"

Strike: "or officer" on line 2 through "seizure" on line 3

16. Page 4.

Following: line 5

Insert: "(15) Any testimony of the respondent in a hearing held as provided in this section may not be used against the respondent in the criminal proceeding."

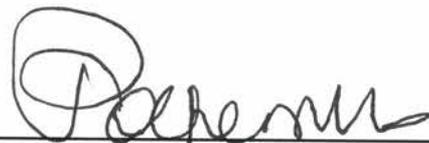
- END -

BILL VOTE TIED - REMAINS IN COMMITTEE

SENATE JUDICIARY COMMITTEE

The vote in **SENATE JUDICIARY COMMITTEE** for bill **SB 187 - Generally revise criminal laws - Sen. Jennifer Fielder** was tied on **Tuesday, February 3, 2015** and the bill remains in committee. (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).



(For the Committee)

(For the Secretary of the Senate)
10:45 / 2/4
(Time) (Date)

February 4, 2015 (9:44am)

Pam Schindler, Secretary

Phone: 444-4618

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

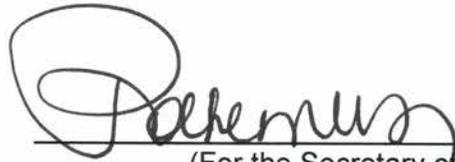
The **SENATE JUDICIARY COMMITTEE** TABLED

SJ 7 - Joint resolution for a convention of the states to impose federal fiscal limits - Sen. Roger Webb

by motion, on **Tuesday, February 3, 2015** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).



(For the Committee)



(For the Secretary of the Senate)

12:55, 2/3
(Time) (Date)

February 3, 2015 (12:25pm)

Pam Schindler, Secretary

Phone: 444-4618

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 2/3/15 BILL NO SB115 MOTION NO. 6

MOTION:

amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT	—		—
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR DIANE SANDS		—	
SENATOR CLIFF LARSEN		—	
SENATOR ROBYN DRISCOLL		—	
SENATOR MARY MCNALLY		—	
SENATOR MARY SHEEHY MOE		—	
SENATOR KRISTEN HANSEN	—		—
SENATOR JEDEDIAH HINKLE	—		
SENATOR DOUG KARY		—	
SENATOR NELS SWANDAL		—	
CHAIRMAN, SENATOR SCOTT SALES		—	

4/0

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 2/3/15 BILL NO SB115 MOTION NO. 6

MOTION: Doters as Amend

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR DIANE SANDS	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR MARY MCNALLY	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR KRISTEN HANSEN		—	—
SENATOR JEDEDIAH HINKLE		—	
SENATOR DOUG KARY	—		
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES		—	

7/5

MONTANA STATE SENATE
ROLL CALL VOTE
2015 JUDICIARY COMMITTEE

DATE 2/3/15 BILL NO SB187 MOTION NO. 4

MOTION: Strike sect. # 2 in prev. amend.

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	—
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR DIANE SANDS	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR MARY MCNALLY	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR KRISTEN HANSEN		—	—
SENATOR JEDEDIAH HINKLE		—	
SENATOR DOUG KARY		—	
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES	—		

7/5

MONTANA STATE SENATE
ROLL CALL VOTE
2015 JUDICIARY COMMITTEE

DATE 2/3/15 BILL NO SB187 MOTION NO. 4

MOTION: Dotas As Amended

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	—
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR DIANE SANDS	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR MARY MCNALLY	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR KRISTEN HANSEN		—	—
SENATOR JEDEDIAH HINKLE		—	
SENATOR DOUG KARY		—	
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES		—	

6/6 (motion failed)

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 2/3/15 BILL NO SS7 MOTION NO. 1

MOTION:

table

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT	-		-
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	-		
SENATOR DIANE SANDS	-		
SENATOR CLIFF LARSEN	-		
SENATOR ROBYN DRISCOLL	-		
SENATOR MARY MCNALLY	-		
SENATOR MARY SHEEHY MOE	-		
SENATOR KRISTEN HANSEN	-		-
SENATOR JEDEDIAH HINKLE	-		
SENATOR DOUG KARY		-	
SENATOR NELS SWANDAL		-	
CHAIRMAN, SENATOR SCOTT SALES	-		

10/2

SENATE PROXY

I, Senator CHAS VINCENT, hereby authorize Senator Scott Salis to vote my proxy before the Senate JUDICIARY meeting held on 2/3, 2015.

Chas Vincent
 Senator Signature (Sen. Vincent)

2/3/15
 Date

Said authorization is as follows: *(mark only one)*

- All votes, including amendments.
- All votes as directed below on the listed bills, and all other votes.
- Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB 75 - Concurrence In	x	
HB 136 - amendment	x	
HB 136 - Concurrence in as amended	x	
SB 115 - amendment (Swanda)	x	
✓ - amendment (✓)	x	
- - amendment (✓)	x	
- - amendment (Salis)	x	
SB 115 - Do Pass As Amended		x
SB 187 - amendment	x	
✓ - amendment (Camp)		x
SB 187 - Do Pass As Amended		x
SB 7 - Table	x	

SENATE PROXY

I, Senator KRISTEN HANSEN, hereby authorize Senator J. Fiedley to vote my proxy before the Senate JUDICIARY meeting held on 2/3, 2015.

[Signature]
 Senator Signature (Sen. Hansen)

2/3/15
 Date

Said authorization is as follows: *(mark only one)*

- All votes, including amendments.
- All votes as directed below on the listed bills, and all other votes.
- Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB 75 - Concurrent	X	
HB 136 - amendment	X	
HB 136 - Concurrent amendment	X	
SB 115 - amendment (Socmbal)	X	
✓ - amendment (✓)	X	
✓ - amendment (✓)	X	
✓ - amendment (sales)	X	
SB 115 - Dotan's amendment		X
SB 187 - amendment	X	
✓ - amendment (Lands)		X
SB 187 - Dotan's amendment		X
SS 7 - Table	X	

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 3, 2015

SJ 7 - Joint resolution for a convention of the states to impose federal fiscal limits

Sponsor: **Sen. Roger Webb**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Martin Wangen	Convention of States	✓		
Barbara Delsigne	" " "	✓		
James R. Delsigne	" " "	✓		
John Kato	CONVENTION OF STATES	✓		
Victor Metastki	Convention of States	✓		
Mark Meckler	Convention of States	✓		
Brandon DeShan	" " "	✓		
Becky Stockton	self	✓		
Jane Le Hamman	self "	✓		
Robb KOLM	self "	✓		
Sharon Grace	Self	✓		
Shirley Battershell	self	✓		
Jane's Lee Griffin	Self.	✓		
James Quilley	Self		✓	
Bill Courtnoze	Self			✓
Deborah Zuller	self		✓	
Roger Nummerdor	SELF		✓	
Thyllis "Tee" Lampson	SELF		✓	
MYRNA SUMMERS	"		✓	
Jody Loomis	Self	✓		
Jenet Cunningham	"		X	
Joe Eisinger	"	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Sandy Esinger

"

✓

✓

MONTANA STATE SENATE

Visitors Register

2015 JUDICIARY COMMITTEE

Date 2-3-15

Bill No. SJ-7 Sponsor(s) Sen Roger Webb

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Robert Brown	self		X	
Daniel Kedon 4117 157th Ave SW Gili MT	self		X	
Dewell Rob	self		X	
Lola Galloway	self		X	
Chris Stevens	self		X	
Kathleen Archobing	self		X	
Ruth Coster	self		X	
Jill Guthrie	self		X	
Susan Getz	self		X	
Clarence Getz	self		X	
Mirelle Stevens	self		X	
Titus Stevens	self		X	
Victoria Stevens	self		X	
Liberty Stevens	self		X	
Pristine Stevens	self		X	
Jon Goff	self	X		
Fritz Pettyjohn	BISA Task Force	X		
Becky Stockton	Self	X		
Marsha Austin	self	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Mr. Chairman, members of the Committee. My name is Trude MacDonald—that's MACDONALD. I was a young ballerina on the stage of the great Vienna Opera House in the Republic of Austria. In 1938, tyranny marched in. The Opera House was shut down and later it was bombed. My house was bombed to rubble. There were times when we dancers were instructed to perform for the German officers. Americans liberated me in 1945.

Tyranny is on the march in America and around the world again. I can feel it -- and it scares me. Please vote for this bill so we can restore the Republic of America -- and not fall to tyranny here. Thank You for your support.



SENATE JUDICIARY
Exhibit No. Adell doc.
Date 2/3/15
Bill No. 557

The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress

Thomas H. Neale
Specialist in American National Government

March 7, 2014

Congressional Research Service

7-5700

www.crs.gov

R42589

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Article V of the U.S. Constitution provides two methods of proposing amendments. First, Congress, with the approval of two-thirds of both houses, may propose amendments to the states for ratification, a procedure used for all 27 current amendments. Second, if the legislatures of two-thirds of the states apply, 34 at present, Congress “shall” call a convention for considering and proposing amendments. This alternative, known as an Article V Convention, has yet to be implemented. This report examines the Article V Convention, focusing on contemporary issues for Congress. CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress*, examines the procedure’s constitutional origins and history and provides an analysis of related state procedures.

Contemporary developments give evidence of renewed interest in the Article V Convention alternative as emerging Internet- and social media-driven public policy campaigns embrace the convention alternative as a vehicle to bypass perceived policy deadlock at the federal level. In 2011, individuals and advocacy groups ranging on the political spectrum from conservative libertarian to progressive joined in a 2011 conference, “ConConCon,” to discuss and promote an Article V Convention. In November 2013, the Ohio legislature applied for an Article V Convention to consider a balanced federal budget amendment, the first new state application received since 1982. On December 7, 2013, a group of 100 state legislators convened to promote an Article V “convention of states,” while a new policy advocacy group of the same name is promoting an Article V Convention to propose amendments that “impose fiscal restraints and limit the power of the federal government.” Earlier in 2013, the Compact for America, a group initially sponsored by the Goldwater Institute, proposed the “Compact for a Balanced Budget.” This initiative would involve an interstate compact that would provide a single package by which states would call for a convention, agree to convention format, membership and duration, agree to and propose to Congress a specific balanced budget amendment, and prospectively agree to ratify the said amendment.

The Constitution provides a brief description of the Article V Convention process, but leaves many questions unanswered. If an Article V Convention seemed imminent, Congress would face a range of issues and questions associated with a convention summons. These would include the following: Is Congress required to call a convention? What constitutes legitimate applications from the states, and what authority does Congress have to decide this question? What sort of convention would it be: “general,” open to consider any issue, or “limited,” confined to a specific issue? Could a “runaway” convention propose amendments outside its mandate? Is Congress required to submit to the states *any* amendment proposed by an Article V Convention? Does Congress establish the procedures for a convention, and has it addressed this issue in the past? How should Congress process state applications for a convention? How many delegates should a convention include? How should the states vote? How long should the convention last? Could Senators and Representatives serve in an Article V Convention? Would a simple majority suffice to propose amendments, or is a super-majority appropriate? Would the District of Columbia, U.S. territories, and other associated jurisdictions participate? What would the President’s role be?

If Congress were called on to summon a convention, it could consult a range of information resources in fashioning its response. These include the original intent of the founders, scholarly works cited in this report and elsewhere, historical examples and precedents, and the work of previous congressional examinations of the issue from the 1970s through the 1990s.



SENATE JUDICIARY
Exhibit No. addl. doc.
Date 2/3/15
Bill No. SJ7

Please Vote yes on SJ7, My name is Robert Kolar (spell) I am a concerned Business owner, and a very concerned citizen, taxpayer and voter.

I am concerned for the future of my country, under a federal government that's increasingly bloated, corrupt, reckless and invasive, we have a constitutional option. We can call a Convention of States to return the country to its original vision of a limited federal government that is of, by and for the people.

The doom and gloomers and the sky is falling crowd will try to convince you to vote against this bill. Do not be persuaded. This are very good bill and this movement is growing like wildfire. This may be our last chance to reign in our Federal Government.

I am an Independent voter who does not belong to either political parry, but has been involved with both. Let me leave you with one question, if not now, When?

Thank you for your time
God Bless
Your Friend
Bob Kolar

A handwritten signature in black ink, appearing to read 'Bob Kolar', is written over the typed name.

First, Article V delegates important and exclusive authority over the amendment process to Congress. As noted earlier in this report, first among these are the right to propose amendments directly to the states for their consideration on the vote of two-thirds of the Members of the House of Representatives and the Senate and the responsibility for summoning a convention for consideration of amendments on application of the legislatures of two-thirds of the states *and* submitting any amendments proposed by an Article V Convention to the states for their consideration.

Second, while the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures, including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states.

Traditional Deterrents to an Article V Convention

It may be argued that there is no immediately pressing need for Congress to examine its Article V options and responsibilities. Historical precedent suggests that attaining petitions from two-thirds of the states in a timely manner is a difficult obstacle, as demonstrated by the several unsuccessful convention drives in the latter part of the 20th century. As noted earlier, these fell short of the two-thirds mark, despite the vigorous efforts of organized support groups over a period of several years, and until recently, there has been little apparent interest in the Article V Convention mechanism in the states since the 1980s. Judging by the historical record, the process might arguably be described as a footnote to constitutional history.

The obstacles to any campaign for an Article V Convention remain daunting even in the face of rapid change: the Constitution sets a considerable hurdle for the Article V Convention process by requiring that applications for a convention be made by the legislatures of at least two-thirds of the several states. Further, as this report demonstrates, there are competing schools of thought on how a convention should be called, what would be an appropriate mandate for the convention, the scope of any amendments it might propose, and, perhaps most important, the role of Congress in all these questions. Moreover, any amendments proposed would face the same task of securing approval of three-fourths of the states before they were ratified.

The measured pace of the legislative process in the states has also traditionally served as a check to haste in calling such a convention.¹¹ For instance, in the case of the balanced budget amendment convention drive, it took seven years for an organized campaign to gain convention applications from 32 of the necessary 34 states.¹² Nevertheless, given the extraordinary speed and

¹¹ As Supreme Court Justice and constitutional commentator Joseph Story noted, "The great principle to be sought is to make the changes practicable, but not too easy; to secure due deliberation, and caution; and to follow experience, rather than to open a way for experiments, suggested by mere speculation or theory." See Joseph Story, *Commentaries on the Constitution of the United States* (Boston: Hilliard, Gray & Co., 1833), §1821. Available in *The Founders Constitution*, a joint venture of the University of Chicago Press and the Liberty Fund, Web edition, at <http://press-pubs.uchicago.edu/founders/documents/a5s12.html>.

¹² See under "The Balanced Budget Amendment: 1975-1983" in CRS Report R42592, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress*, by Thomas H. Neale. While most state legislatures convene annually, their sessions are frequently limited by law; 32 states place some form of time constraint (continued...)

states. The House and Senate, by concurrent resolution, would then call for a convention, designating the place and time of the meeting, which would be not less than one year after the adoption of the resolution, and the nature of the amendment or amendments to be considered.

Number and Apportionment of Delegates

Apportionment of convention delegates among the states was generally set at the formula provided for the electoral college, with each state assigned a number equal to its combined Senate and House delegations. Some bills included the District of Columbia, assigning it three delegates, but others did not include the federal district. When combined with the per capita voting which most bills provided, this formula gave greater weight to differences in state population; as with the electoral college, it also recognized the federal system's position on constitutional equality of the states by providing each with an extra two delegates and votes, regardless of population.

Funding

Most bills provided that delegates and convention staff were to be compensated from federal funds, and delegates received immunity from arrest in most instances during the convention. Various federal agencies were authorized to provide support for the convention as requested, and convention expenses were to be covered by appropriated funds.

Convention Procedures

The Vice President was authorized in most versions to preside over the inaugural session and swear in the convention officers, after which time the permanent officers would preside over later sessions and the delegates would adopt their rules and procedures.

Most bills required that amendments were to be approved by two-thirds of the whole number of delegates, and that amendments were required to be consistent with the issue which the convention had been summoned to address. In most versions, as noted earlier, Congress reserved to itself the right to decide whether proposed amendments met this criterion.

The President pro tempore of the Senate and the Speaker of the House were required to transmit proposed amendments to the Administrator of General Services for circulation to the states unless both chambers passed a concurrent resolution of disapproval. Valid grounds for disapproval included departure from the policy issue for which the convention was called or failure to follow procedures prescribed in the authorizing legislation. Amendments proposed by a convention would be subject to standard constitutional requirements, that is, ratification by three-fourths of the states, either in their legislatures, or by ad hoc ratification conventions, as determined by Congress.

A Defined Term for the Convention

The convention was given a limited term, generally either six months or one year.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased [sic] during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.¹⁵⁹

The report also cites assertions that Members serving as delegates would constitute “great potential for conflict of interest because Members would be viewed as acting both as regulators and as persons regulated.”¹⁶⁰ Finally, it notes arguments also cited elsewhere in this report that the founders intended the Article V mechanism to be a way around congressional unwillingness to propose amendments.

At the same time, other observers have suggested that there is no constitutional prohibition against Senators and Representatives serving as delegates to an Article V Convention. In a 1974 study, the American Bar Association determined that the constitutional mandate prohibits Members from holding any additional office in one of the three branches of the U.S. government, but concluded that service as a “state-elected delegate to a national constitutional convention does not meet this standard.”¹⁶¹ Another commentator agreed, suggesting that Members of Congress could make a substantial addition to a convention: “in light of the delegates’ function and possible impact on the constitutional scheme, it seems desirable that interested members of Congress be allowed to participate.”¹⁶² Finally, both the aforementioned sources cite as precedent the fact that several incumbent Delegates to Congress under the Articles of Confederation, “the United States in Congress Assembled,” served with distinction as delegates to the Philadelphia Convention of 1787.

Convention Procedures: Ancillary Issues for Congress

The Article V Convention carries with it a range of ancillary questions, several of which are addressed in this section.

Would State Representation and Voting in the Convention be Equal? Proportional to Population? Or Both?

One issue would likely arise over the state representation formula at an Article V Convention. As noted earlier, the most widely discussed model would establish a convention including 535 (or 538, depending on whether the District of Columbia is included) delegates, allocated to each state according to the size of its electoral college delegation, that is, the combined total of each state’s House of Representatives and Senate delegations.

A related question concerns vote allocation in an Article V Convention. Would delegates vote per capita, or would each state cast a single vote, during the convention’s deliberations, and on the final question of proposing amendments? Here again, contemporary democratic practice might

¹⁵⁹ U.S. Constitution, Article I, Section 6, clause 2.

¹⁶⁰ *Is There a Constitutional Convention in America’s Future?*, p. 20.

¹⁶¹ American Bar Association, *Amendment of the Constitution by the Convention Method Under Article V*, p. 37.

¹⁶² Forkosch, “The Alternative Amending Clause in Article V: Reflections and Suggestions,” p. 1073. Professor Forkosch further suggested that federal judges would be able to serve as delegates to an Article V Convention, although he advised Congress to exclude them.

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SENATE JUDICIARY
Exhibit No. addl docs
Date 2/3/15
Bill No. 57

February 2, 2015

Montana State Legislature
Senate Judiciary Committee
P.O. Box 200400
Helena, MT 59620-0400

sent via email to:
pschindler@mt.gov

RE: SB 209, Event Data Recorder – NAMIC’s Written Testimony in Opposition to Legislation

Dear Senator Sales, Chair; Senator Fielder, Vice-Chair; Senator Sands, Vice-Chair; and honorable members of the Senate Judiciary Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Business and Labor Committee for the February 3, 2015, public hearing.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country’s largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 134 members who write property/casualty insurance in the State of Montana, which represents 40% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC and its members appreciate and respect the importance of consumer privacy rights. However, NAMIC believes that consumer privacy rights have to be balanced against other important consumer needs, like the need to have their insurance claim adjusted in an efficient and timely manner, or for the consumer’s insurer to be able to provide its policyholder with a competent and effective defense pursuant to the contractual duty to defend.

Senator Webb,

First, thank you for your service and desire to protect liberty in Montana. I greatly appreciate it.

I am writing you to strongly urge you to support any bills proposed to call a Convention of States under Article V of the United States Constitution to limit federal power. I know there are opponents of using Article V who base their position on fear. However, I believe the fear rationale is wholly misplaced and ignores the trend and obvious desire of States to take back political power from the federal government and control spending. Think about it, 49 of 50 states have a balanced budget requirement under law. Yet, we are supposed to believe that the States who meet in convention will give the federal government a blank check to spend the money that they want back in State treasury? This makes absolutely no sense and rejects what human nature proves: that we want money and power in our own hands. The States are trying to take it back, but to date, nothing has worked sufficiently. Article V is the answer.

The Founders put Article V in the Constitution as a means of checking federal abuse of power. Rob Natelson is the nation's leading expert on Article V. He demonstrates the constitutionality of a limited convention specific to the applications to Congress to call. This is the strongest tool in the bag we have to correct constitutional problems. The Eleventh Amendment is a direct example of using that tool. You likely know, but the Eleventh Amendment was ratified to correct what the States deemed to be an incorrect US S CT decision on state sovereignty. This is significant given that the Founding generation was still alive and in active political practice when this was done. The same is true for the 14-16th amendments, which were to correct erroneous US S CT decisions that rule that black people could be enslaved and treated harshly under protection of law. And think about women's suffrage as well.

Notably, I know you support the Bill of Rights. Think about if we did not have, for example, the Fourth Amendment in the Constitution. This Amendment was ratified by the States in 1791. Despite its age, it is so intertwined in our jurisprudence as a way of limiting government police power that it is considered a bulwark protection of liberty. We know Amendments work. It has been too long since the people and States injected their will into the system to correct what is always the natural tendency of humanity and society.

I am sure you are listening to your constituents on this issue and there are likely some who oppose Article V. But you are also a leader. A leader must have vision and show direction. I believe we cannot let fear dictate our direction. Executing our will through law should be the legislators desire to change the system—and it needs to be changed. No amount of “nullification” by the States could ever change the system as it has developed. The problem is systemic and requires more

fundamental action by the States—action that will be made a part of THIS Constitution and the supreme law of the land.

Thank you for your consideration here. If you think this email can help the Article V movement among other legislators, please feel free to pass this along.

Tim Baldwin

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Attorney at Law

SENATE JUL 1807
Exhibit No. addl. doc.
Date 2/3/15
File No. 557

The Constitution Was Not Illegally Adopted ~ by Michael Farris

The following nine points constitute an argument outlining the actual chain of events leading to the ratification of the Constitution. Many Americans fear a Convention of States because they believe it will "run away" like the Constitutional Convention supposedly did. As Farris proves below, this argument is based on a misrepresentation of history. The Founders followed the rules: the Constitutional Convention did not "run away" and neither will a Convention of States.

1. The Constitutional Convention was not called by Congress, as is commonly thought. It was called by the states. Seven states had called for the convention and named their delegates before Congress endorsed the convention in February, 1787. The states gave the delegates their instructions and authority. They told them to "render the federal constitution adequate for the exigencies of the union." Madison wrote in Federalist 39, that the authority of the delegates came "in the strict sense" from their commissions from each of their states.
2. Even if Congress called the Convention (which it did not do), it also told the delegates to "render the Constitution adequate for the exigencies of the union." It is true that they also said it was for the sole purpose of amending the Articles of Confederation. But the law can be amended a little or a lot. There were provisions from the Articles that came forward into the Constitution. The "sole purpose" language meant that they were to focus solely on revising the "federal constitution" [which was a term of art meaning the governing document] as opposed to trying to make decisions about revenue measures or other issues that would constitute the daily operation of the government.
3. Everyone--including the states that called the Convention--expressly (in most cases) or implicitly (in others) contemplated using the method found in the Articles of Confederation as the method for approving changes to the "federal constitution."
4. We all know they didn't ultimately use that method. And it is in this detail that most of the questions arise. But again, the failure to know the full story of the adoption of our Constitution lies at the root of the unjustified fear that the Founders acted illegally.

5. When the Founders finished drafting the Constitution, they did not send it to the states for ratification, as is commonly thought. They sent it to Congress with two recommendations. First, they asked Congress to approve the Constitution itself. Second, they asked Congress to approve and then recommend to the State legislatures *a new process for ratification*.

6. Congress unanimously approved both items: 1. the Constitution itself; and 2. the new method for ratification. If Congress thought the Convention had behaved illegally, they were in the perfect position to say so. They said no such thing but approved the work unanimously.

7. Congress then sent the package to the state LEGISLATURES. Ratification was to come in state conventions, but state conventions could not be called until the legislatures approved the new process. All thirteen state legislatures approved the new process and called ratification conventions. Even the legislatures of Rhode Island and North Carolina, where the Conventions initially rejected the Constitution, voted to approve the new process.

8. Thus, before the Constitution was approved, the Founders properly followed the process of the Articles of Confederation and unanimously approved the new process for ratification. The new process was perfectly legal under the Articles of Confederation.

9. There was no runaway convention. The delegates obeyed their instructions. They followed the process of the binding law at the time. There is no reason to fear that "this will happen again" because it never happened in the first place.

NAMIC is concerned that SB 209 may seriously hinder insurers in their efforts to timely procure motor vehicle event data recorded auto accident information that is often necessary for the insurer to determine legal liability for the auto accident, and comply with the insurer's Insurance Code claims adjusting regulatory responsibilities, i.e. duty to timely adjust claims, and duty to properly investigate and evaluate liability and damages claims.

Consequently, NAMIC is opposed to the proposed legislation as being overly and unnecessarily broad in scope to the point where it protects the consumer's privacy right to the detriment of the consumer's insurance needs.

If the committee believes that the proposed legislation needs to be enacted, NAMIC respectfully requests that several amendments be adopted to make the proposed legislation more insurance consumer-friendly, and workable for those who need auto accident information to honor their contractual and statutory duties to insurance consumers:

1) In Section 1, Definition of "owner" – NAMIC believes that the insurance consumer would benefit from the definition including "attorney" or "authorized agent", because these individuals frequently represent consumers in the insurance claims process.

2) In Section 2, Ownership of Recorded Data – NAMIC is concerned that the proposed legislation could unnecessarily delay the adjusting of insurance claims by requiring written consent of *all* owners. Parents, who may live in another state or country, often cosign loans on their adult children's vehicles to help them purchase the motor vehicle, but for all practical purposes the vehicle is "owned" by the child using and possessing the vehicle. NAMIC respectfully recommends amending this definition to only require the written consent of "the owner using and in lawful possession of the motor vehicle".

NAMIC also requests that the proposed bill expressly allow consumer consent to be effectuated by any demonstrable form of acknowledgement (oral, written or email consent by the consumer) and that the proposed legislation allow for consent to be given by the consumer at any time contemporaneously with or after the execution of the insuring agreement by the policyholder.

3) In Section 3, Effect of vehicle ownership transfer on ownership of data - NAMIC is concerned that this section could arguably be interpreted as altering, modifying, or abrogating the insuring agreement provision that requires the policyholder to cooperate with the insurer in processing and adjusting the insurance claim and assisting the insurer in its duty to defend the policyholder against a liability claim. Consequently, NAMIC respectfully requests that a subsection 4 be added to this section, which reads:

(4) Nothing in the section alters, modifies, or abrogates the insuring agreement provision that requires the policyholder to timely cooperate with the insurer in processing and adjusting the insurance claim and assisting the insurer in its duty to defend the policyholder against a liability claim.

4) In Section 4, Retrieval or use of data – exceptions - NAMIC respectfully recommends two amendments to this Section:

1(a) if a court orders the production of the data pursuant to a valid search warrant, or pursuant to a court order as part of the discovery process in a civil suit or regulatory action (underlining denotes suggested amendment);

(2) [Sections 1 through 4] do not apply to data that is stored or transmitted pursuant to a subscription service agreement for the use of a recording device to record a history of where a motor vehicle travels, or as used in conjunction with an insurance telematics program or mile-based insurance program consented to by the policyholder, or for the transmission of data to a central communications system. (underlining denotes suggested amendment).

For the aforementioned reasons, NAMIC respectfully requests that the Senate Judiciary Committee **VOTE NO on SB 209**, or in the alternative, adopt NAMIC's suggested amendments to the proposed legislation.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs
Western Region

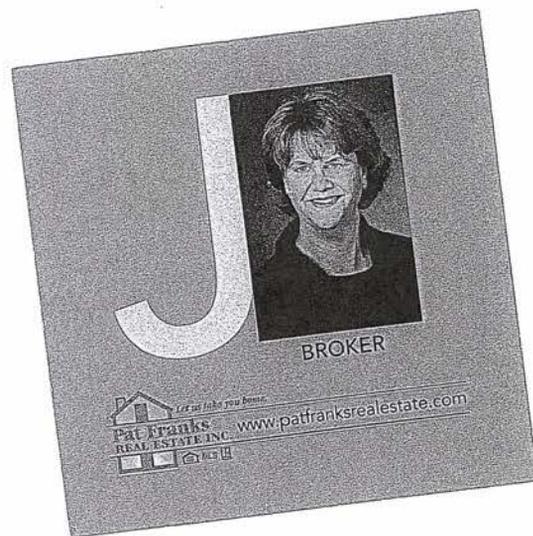
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