this threat in return for concessions on the cruise missile.

In March the U.S. asked for a limit of 150 Soviet heavy missiles, asking them to tear down half the force. By May, the U.S. was willing to allow them to keep the whole force, provided only 190 heavy missiles carried multiple warheads (MIRV). Since this is about the current number of heavy missiles with MIRV, the U.S. in essence asked for a freeze on heavy missiles. When the Soviets rejected the 190 number, the U.S. tried a heavy MIRV limit of 220. With that rejected, it tried 250. Finally, when Mr. Gromyko arrived in town, the U.S. dropped the whole idea.

Similarly, in March the U.S. insisted on specific treaty provisions on how the Soviets could use their Backfire bomber, which they insist is not an intercontinental weapon though it can fly from the Soviet Union over the U.S. to Cuba without refueling. By September the U.S. agreed to keep Backfire out of the treaty if the Soviets would make a separate promise not to increase its production rate, even though they refuse to say what the current production rate is.

To buy the limits on heavy missiles and Backfire sought last March, the U.S. offered a cruise-missile concession limiting the range of air, land and ground-based cruise missiles to 2,500 kilometers. Bombers carrying cruise missiles would not have been counted against the agreed number of MIRV missiles. In the September agreements, if the U.S. builds more than about 120 such bombers it must tear down Minuteman or submarine MIRV missiles. And land-based and sea-based cruise missiles would be limited to a practically useless range of 600 kilometers. In return for scrapping the concessions asked of the Soviets, the Americans are giving larger concessions of their own.

The March proposals were in themselves open to serious question, so the September agreements are drawing serious opposition as they are explained to the Senate. But putting aside the effect on the strategic posture in 1985, the collapse of the American negotiating position raises dangers in 1977. The lack of resolution Mr. Carter displayed to the Soviets between March and September invites them to try pushing him around throughout the world.

A TRIBUTE TO SENATOR HUMPHREY

Mr. DECONCINI. Mr. President, I rise on this occasion to offer into the RECORD a letter to the Honorable HUBERT H. HUMPHREY from the Democrats of Pinal County, Ariz. I am doing so, Mr. President, because I believe that the letter, a tribute to Senator HUMPHREY, sets forth in very simple yet eloquent terms how much we, the people of Arizona, the people of the West, and the people of the United States, not just now, but for generations to come, are indebted to this outstanding gentleman and statesman.

I ask unanimous consent that this material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PINAL COUNTY DEMOCRATS.
Florence, Ariz., October 5, 1977.

Hon. HUBERT H. HUMPHREY,
U.S. Senator,
Senate Wing, U.S. Capitol,
Washington, D.C.

DEAR SENATOR HUMPHREY: As the beloved "Happy Warrior" of the Democratic Party, you have made great contributions to our country and to our party. It may require the perspective of years to truly assess the total impact of Hubert Humphrey.

For now, we can honestly say that you set an example for us to follow; we all feel a little more pride in being Americans and Democrats, because Hubert Humphrey is both of these.

We were happy to stand at your side in 1968, and you inspired us to greater efforts to attain our common goals. It now appears that you are facing an even more dangerous and implacable enemy. Please know that Hubert Humphrey is still our man; we remain at your side, and you are never far from our hearts and our prayers.

From the Democrats of Pinal County, Arizona.

CARL GUILLIAMS, *Chairman.*
MARLENE WHITE,
Vice Chairwoman.
VICTORIA ANA VILLA VERDE,
Secretary.
BOB BROWN, *Vice Chairman.*
JIM DON, *Treasurer.*

STATE MEMORIALS REQUESTING A CONSTITUTIONAL CONVENTION

Mr. MCGOVERN. Mr. President, last year I inserted in the record a historical survey of the convention method of amending the Federal Constitution. Today, I want to share with my colleagues a work which examines in more detail one aspect of the article V convention option, the actual State application process.

It is a troubling study.

It documents the fact that the applications are a tangle of differing State procedures and occasional oversights. The procedures used by the Congress in processing the applications are scarcely any better.

The study, written by Jim Stasny who prepared the earlier convention survey, shows that Congress simply has not acted to establish guidelines for a constitutional convention. The most startling finding is that, if put to the test, there is no guarantee that Congress could even properly count the existing applications and decide whether or not they are valid. My own State of South Dakota, submitted an application for a convention earlier in the year. The legislature followed solid, commonsense procedures and they were fortunate, besides; both the Senate and the House duly noted receipt of their applications. Not all States have been so fortunate and that is a source of real concern to me.

I am frank to say I do not necessarily agree with all the observations made in this study. It is not my present view that a convention would be to our national advantage. But there is little arguing with Mr. Stasny's assessment that the convention process stands "on the constitutional frontier of unanswered questions." At the very minimum, I believe the Congress needs to take immediate stock of its procedures for processing State applications. Those procedures need to be made more consistent and reliable.

Mr. President, I ask unanimous consent that the article on convention applications be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD as follows:

STATE APPLICATIONS FOR A CONVENTION TO AMEND THE FEDERAL CONSTITUTION JANUARY 1974–SEPTEMBER 1977: COMPILATION AND COMMENT

I. INTRODUCTION

Article V specifies two methods of amending the Federal Constitution. The method under which all amendments have been adopted to date requires that both Houses of Congress, by a two-thirds vote, approve amendments for ratification by three-fourths of the state legislatures or by conventions called for that purpose. Through August of 1977, 9,210 amendments have been proposed through this procedure.[1]

The second method requires that, on the petition of two-thirds of the state legislatures, Congress "shall call" a convention for the purpose of amending the Constitution. The Constitution has never been amended through this process. As a consequence of its untested character, much speculation and uncertainty surrounds its use.[2] Even at the foundation level of counting the state applications themselves, problems have arisen because of the inconsistent procedures of the separate Houses of Congress and the unpredictable practices of the state legislatures in submitting their applications.

Since 1789, Congress has received 374 requests from the states for a convention.[3] But in the twenty years since 1957, Congress has received 191 such requests, more than fifty-one percent of the total. Sine January of 1974 alone, thirty-two memorials have been submitted.[4] Of those thirty-two, one dealt with the private ownership of gold (California 1974); one dealt with the use of public funds for secular education (Massachusetts 1974); one dealt with the tenure of Federal judges (Tennessee 1977); two with the item veto in appropriations bills (Virginia 1977 and Tennessee 1977); three concerned busing (Massachusetts 1974, Kentucky 1975, and Massachusetts 1976); three dealt with the coercive use of federal funds (Nevada 1975, Oklahoma 1976, and Tennessee 1976); ten were on the subject of abortion (Indiana 1974, Missouri 1975, Louisiana 1976, South Dakota 1977, Utah 1977, Rhode Island 1977, Arkansas 1977, Massachusetts 1977, New Jersey 1977, and Guam 1977); and eleven asked an amendment requiring a balanced federal budget (Arkansas 1975, Virginia 1975, Mississippi 1975, Louisiana 1975, Indiana 1976, Georgia 1976, South Carolina 1976, Delaware 1976, Virginia 1976, Arizona 1977 and Tennessee 1977).

The mechanism triggering efforts to summon a convention is frequently a dynamic social issue to which the Congress has not responded either through statute or the primary amendment mode. During such times, a frustrated segment of the public seems to sense more clearly the remoteness of Washington in general and Congress in particular. Anti-busing groups as well as pro-life forces (and, earlier in the century, proponents of the direct election of U.S. Senators) have marched on Washington only to find they were unable to convince two-thirds of the membership of each House to act favorably on their amendments. These groups have discovered Article V provides an alternative means of promoting amendments by lobbying legislators at the state rather than national level. State legislators are far more accessible to more people than a Member of Congress sealed tight in Washington ten months of every year. Moreover, in terms of the amendment process, state legislatures have a combined theoretical parity with the Congress.

The purpose of this paper is to provide a complete listing of the thirty-two applications submitted since 1974; compare House and Senate practices for handling the appli-

Footnotes at end of article.

cations and identify the characteristics of states when submitting their memorials; identify some of the problems attending the application process and list legislative proposals on the convention issue.

II. SENATE PRACTICES ON MEMORIALS AND PETITIONS

Rule VII of the Standing Rules of the Senate controls the manner in which the Senate deals with memorials and petitions.

Reception of memorials and petitions makes up part of the Morning Business.[6] While memorials and petitions are technically laid before the full Senate by the presiding officer,[6] he makes no formal announcement of their receipt. They are presented by bringing them to the Clerk's desk, or by delivering them to the Secretary of the Senate. With the approval of the presiding officer, they are entered in the Journal and the Congressional Record and appropriately referred.[7] Despite this practice, at least one application (California 1974) was noted in the House portion of the Congressional Record but failed to appear in either the Journal or the Record of the Senate. The Senate Judiciary Committee advises they have no record of ever having received such memorial.

The presentation of memorials and petitions follows the reading of the Senate Journal, the presentation of reports and communications from the heads of departments and such bills, joint resolutions and other messages from the House of Representatives as may remain on the table undisposed of from any previous day's session. Their reception precedes the reports of standing and select committees.[8]

Memorials from State legislatures are printed in full in the Senate section of the Congressional Record [9] and a memorial may not be received unless signed.[10] In the Senate, the practice is to list memorials from state legislatures under the heading "PETITIONS".

Until the start of the 95th Congress, the Senate had no orderly means of cataloguing memorials submitted by the States. But on December 16, 1976 in a memo from the Secretary of the Senate a new system of control numbers for petitions and memorials was announced to take effect January 4, 1977.

According to the memorandum, petitions and memorials are to be combined into one category and assigned numbers preceded by the initials "POM".[11] Under the new system petitions and memorials go first to the office of the President of the Senate who dates them. They are next sent to the Parliamentarian who assigns the control number and makes the appropriate committee referral.[12] The Official Reporter then inserts them into the Congressional Record and the Bill Clerk sees to it that the appropriate committee physically receives the memorial or petition. This provision appears to be in contravention of Rule VII, paragraph (6) which directs that memorials are to be kept in the files of the Secretary of the Senate.

The December 16, 1976 memo also specifies that the Journal Clerk is to receive a list of the "petitions placed before the Senate and printed in the Record each day."

The new system is an improvement over the previous procedure. Prior to its adoption the Senate had no numbering system whatever for these documents. Even the sharpeyed had to read cautiously to detect in the Congressional Record where one petition ended and another began. Nevertheless, the new system is still less than adequate. For one thing, it is much too fragmented and involves too many processing steps. For another thing, petitions and memorials are still lumped together under the single heading, "PETITIONS". More importantly, there is still no separate category for distinguishing memorials which request Congress to summon a convention for the purpose of amending the Constitution.

Memorials from the State legislatures are, at best, political statements which have small impact and no binding effect on the Congress. However, the Article V applications for a convention are constitutionally authorized instruments which, in the aggregate, impose a specific duty on the Congress. There, at least, ought to be a separate means of counting and tracking the memorials from the States which request a convention.

III. HOUSE PRACTICES ON MEMORIALS AND PETITIONS

Under the Rules of the House of Representatives, Memorials are treated under Rule XXII, paragraph (4) and Petitions are treated under Rule XXII, paragraph (1). They are listed separately and numbered sequentially in the body of House portion of the Congressional Record following the introduction of bills and resolutions at the conclusion of the day's proceedings. It is the practice to have memorials brought to the attention of the House by the Speaker.

Resolutions of State legislatures and/or primary assemblies of the people are received as memorials.[13] They are filed with the Clerk of the House [14] but the office of the Clerk advises they do not, in fact, retain them. Rather, they are transferred to the Speaker who refers them (through the Parliamentarian) to the appropriate committee where they are filed.

Rule XXII, paragraph (4) of the House Rules specifies that memorials and their titles shall be entered on the Journal and printed in the Congressional Record of the next day. *In practice, however, the process is reversed.* According to the House Journal Clerk's Office, staff members clip memorials printed in the Record and subsequently enter them on the Journal.

The office of the Bill Clerk actually prepares the briefs of the memorials that appear in the Record. The Bill Clerk receives the memorials from the Parliamentarian's office and assigns them the number which appears in the Record.[15] He sees to it that the memorial is physically delivered to the committee to which it has been referred.[16]

IV. THE CONVENTION APPLICATIONS: ANOMALIES IN THE CONGRESS AND THE STATE LEGISLATURES

Of the thirty-two applications for a convention received by the Congress since 1974, the texts of all but one (California 1974) were located. Of the remaining thirty-one, sixteen were directed by the respective state legislatures to the Speaker of the U.S. House of Representatives and the President of the United States Senate.[17] Eleven applications were directed to the attention of the Secretary of the Senate and the Clerk of the House.[18] Of the remaining four applications, three were addressed to the Congress without specifying an officer of either House [19] and one was addressed only to the members of the state's congressional delegation.[20]

Of the sixteen applications directed to the President of the Senate and the Speaker of the House, eleven were noted in the Congressional Record by both Houses.[21] Four of the remaining five applications (Arkansas 1975, Tennessee 1976, Massachusetts 1976, and Tennessee 1977 on item veto in appropriations bills) were printed in full by the Senate. One, the 1976 Louisiana application on abortion was printed only by the House.

Of the eleven applications addressed to both the Clerk of the House and the Secretary of the Senate, all but one (the 1974 Indiana application on abortion) were noted in the Record by both the House and Senate. This suggests that when applications are directed to the Secretary of the Senate and the Clerk of the House, they are more likely to be properly received by both Houses of Congress than when they are sent to the presiding officer of each House.

Nevertheless, the principal convention procedure bills introduced in the Congress since 1953, specify that applications for a convention be addressed to the President of the Senate and the Speaker of the House.[22] This provision was included in both S. 215 which passed the Senate 84 to 0 on October 19, 1971 and in S. 1272 which passed the Senate without debate on July 9, 1973.

The provision directing memorials to the Speaker and the President of the Senate also appears to be at variance with established practice in the House of Representatives. Rule XXII of the House directs that memorials be delivered to the Clerk, a procedure dating from 1842.[23] Rule VII, paragraph 2 of the Standing Rules of the Senate similarly notes that Senators having memorials may deliver them to the Secretary of the Senate.

In sum, established procedures in the House and the Senate give to the Clerk and the Secretary the responsibility for the technical processing of the memorials. Moreover, the record shows that since 1974, the Clerk and the Secretary have been shown to be more reliable in handling state memorials than the Speaker and the Vice-President. The clear inference is that future legislation providing guidelines for a constitutional convention should direct that memorials be sent to the Secretary of the Senate and the Clerk of the House.

The question also arises as to whether memorials for a convention, in order to be valid, need to be recorded by both Houses in either the Journal or the Congressional Record. This is another of the myriad unresolved questions attending the convention process. Nevertheless, the legislative proposals on this subject offered in Congress over the years providing as they do for reference of applications to both Houses, imply that the validity of an application would at least be suspect if not officially received and noted by both Houses.

The State memorials received by Congress since 1974 illustrate a variety of problems. The two primary areas of concern are the inconsistent treatment accorded the memorials by both Houses of Congress and the occasional peculiar procedure followed by the state legislatures when submitting their applications. The following examples demonstrate some of those problems.

Guam

On July 1, 1977 the Senate formally acknowledged in the CONGRESSIONAL RECORD its receipt of a memorial from the Legislature of Guam calling for a constitutional convention to draft an amendment on abortion. Article V of the Federal Constitution specifies that ". . . on the application of the Legislatures of two-thirds of the several States Congress shall call a convention for proposing amendments . . ." The problem here, of course, is that Guam is not a State. It is an organized unincorporated territory with a non-voting delegate to the House of Representatives.[24] It is very likely its application would not survive a challenge to its claim to be a valid Article V memorial.

Indiana

In February of 1977 the Indiana legislature sent a memorial to the Congress dealing with abortion. In it, Indiana simply reminded the Congress that in 1973 their Legislature had requested that a constitutional convention be summoned to propose an abortion amendment. The 1977 reminder went on to note that, "thorough an oversight the earlier resolution was not transmitted to Congress". The fact is, there actually had been no oversight at all. The memorial had indeed been submitted at the end of 1973 and was printed in full in the CONGRESSIONAL RECORD of January 21, 1974.

Footnotes at end of article.

123 Cong. Rec. 36534 (1977)

This is a case where a state legislature apologized for an oversight it had not committed. The only oversight in this instance is that the original Indiana memorial was not recorded in the House portion of the CONGRESSIONAL RECORD.

Rhode Island

The treatment of the Rhode Island memorial for a convention to propose an amendment on abortion vividly illustrates the kind of mechanical mix-ups that can plague the application process.

May 13, 1977 the House gave notice in the CONGRESSIONAL RECORD that it had received the Rhode Island memorial.[25] On May 19, 1977 the House printed another notice that Rhode Island had submitted a second memorial for a convention on abortion.[26] It was not possible to determine from the abbrievated notice in the RECORD whether these were, in fact, separate memorials or an accidental double entry of the same memorial. On May 26, 1977 the House Judiciary Committee advised (in a telephone conversation) that no cover letter accompanied either memorial. In fact, the memorials were in the form of two xerox copies of the *identical* document which came to be printed twice in the House section of the RECORD. There was no ready explanation of how this dual printing came about.

Rhode Island's problems, however, were not confined to the House of Representatives.

In the Senate, two identical Rhode Island memorials on abortion were not only printed on the *same day*; they were printed on facing pages (15808 and 15809 of the May 20, 1977, CONGRESSIONAL RECORD) and numbered POM–188 and POM–190. A phone conversation with personnel in the Secretary of the Senate's office revealed that the two copies were received on different days. It was their position that they are only obligated to submit memorials for the RECORD.

They felt it was up to the Judiciary Committee to see how they are counted. An aide in the Secretary's office suggested that if the memorials from one state were identical they would only be counted once even though they may have been printed more than once. Otherwise, he said, it might be possible for one State to submit 34 memorials and force a convention.

South Carolina, Arizona, Virginia

On February 26, 1976 the Senate printed in full the memorial of South Carolina requesting a convention to propose an amendment to balance the federal budget.[27] On February 26, they printed it again.[28] There are at least two possible explanations for why that took place. It may have been a simple oversight by the office of the Secretary of the Senate or the Public Printer.

The more likely explanation is that since the South Carolina Memorial requested that Congress submit an amendment *and* summon a convention, the memorial may have been printed twice to reflect both options under Article V. This, of course, raises the question of whether the South Carolina application qualifies as a valid convention request. It would have to be decided whether a memorial which requests both modes of amendment and which makes the convention method the section choice can be counted in the tally of states requesting a convention.

The same kind of question can be raised about memorials from Virginia and Arizona. In March of 1976, the Senate received and printed a memorial from Virginia regarding a possible constitutional amendment to require a balanced federal budget.[29] The primary intent of the memorial was to request Congress "to prepare and submit to the several states" an amendment on the subject. However the memorial also included the following paragraph:

Resolved further, That, alternatively, this Body makes application and requests that the Congress of the United States call a constitutional convention for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all Federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for the fiscal year . . ."

The June 14, 1977 memorial from Arizona poses a nearly identical dilemma. After requesting that Congress prepare and submit an amendment requiring a balanced federal budget, paragraph 2 provides, "That, in the alternative, the Congress of the United States call a constitutional convention to prepare and submit such an amendment to the Constitution."

It would appear that each of these three memorials from Virginia, Arizona, and South Carolina would at least be subject to challenge by reason of their dual requests. At the very least, it is another of those speculative questions that remains to be finally resolved.

Oklahoma

The House of Representatives on June 7, 1977 printed in the Congressional Record a notice that it had received a memorial from the Oklahoma State Legislature.[30] The memorial asked for a constitutional convention to propose an amendment prohibiting the federal government from imposing "coercive" restrictions as a precondition for receiving federal dollars.

No corresponding application was recorded in the Congressional Record by the Senate. However, a copy of the original application was obtained from the files of the House Judiciary Committee. The copy shows that the resolution was not directed to either the Speaker of the House, the President of the Senate, the Clerk of the House or the Secretary of the Senate. The memorial did, however, direct that copies be distributed to all the members of the Oklahoma Congressional delegation.

Since one member of the delegation at the time was House Speaker Carl Albert, that likely explains its appearance in the House Record. Had it not been for that coincidence it is highly probable that no record whatever would have been made in the Congress of this memorial.

Tennessee

Among the states submitting applications for a constitutional convention since 1974, no state has had greater misfortune than Tennessee.

On February 17, 1976 the complete text of their memorial requesting a convention to propose an amendment dealing with the coercive use of federal funds was printed in the Senate section of the Congressional Record.[31] No corresponding application ever appeared in the House Record as a memorial formally constituting an application from Tennessee for a constitutional convention on this topic.

The same thing happened to Tennessee again in 1977. The legislature memorialized Congress to summon a convention in order to propose an amendment giving the President an item veto in appropriations bills. The Senate printed the memorial in full in the Congressional Record of July 1, 1977.[32] The House did not record the receipt of a similar memorial despite the fact that the Tennessee legislature directed that a certified copy be sent to the Speaker of the House.

Tennessee submitted two other constitutional convention memorials in June of 1977. One requested a convention for the purpose of proposing an amendment to require a balanced budget.[33] The other asked for a convention for the purpose of proposing an amendment to fix the terms of federal judges.[34] Both memorials were noted in the Congressional Record by the House of Representatives on June 10, 1977.

In neither case, however, was a corresponding application recorded in the Congressional Record by the Senate. The omissions are the more peculiar in view of the following excerpt which appeared in both of the Tennessee memorials:

". . . it is requested that receipt of this application by the Senate and the House of Representatives of the Congress of the United States be officially noted and duly entered upon their respective records, and that the full context of this resolution be published in the official publication of both the Senate and the House of Representatives."

In both cases, however, the memorials were addressed to the Senate and the House of Representatives rather than to an official or the presiding officer of either House.

In addition to the memorials already mentioned, there were a number of others which ran into trouble. Arkansas in 1975 requested a convention for the purpose of proposing an amendment to require a balanced federal budget.[35] Masschusetts in 17976 wanted a convention to consider a busing amendment. In both cases, the memorials were printed in full in the Senate portion of the Congressional Record while no mention was made of either memorial in the House. The practical impact of not having the memorial noted in the Record by the House is that it is, therefore, not printed in the Journal since the Journal Clerk merely clips the Record as a source of information on memorials.

Utah experienced reverse treatment. The memorial of their state Legislature on abortion was noted twice in the House portion of the Record on May 3 and May 4, 1977. The Louisiana memorial dealing with abortion was recorded by the House of Representatives but no corresponding application was mentioned in the Congressional Record by the Senate.[36]

This brief survey of the thirty-two state memorials requesting conventions since 1974 indicates that sixteen of them either contained challengeable defects or were procedurally mishandled by either the state legislatures, the United States Senate or the House of Representatives.

But the questions do not end here.

Ten of the memorials received since 1974 specifically allow the state to later rescind its memorial. Although the American Bar Association believes the states should have the option, the opinion is by no means unanimous.[37] On February 15, 1977, Acting Assistant Attorney General John Harmon wrote to Robert J. Lipshutz, Counsel to the President on the power of a state to rescind its ratification of a constitutional amendment. This question of ratification is, obviously, much different from and of considerably more moment than the withdrawal of a memorial requesting a convention. Nevertheless, an excerpt from the letter illustrates that the overall issue of rescission is very much an open question:

"If the issue should arise in connection with the Equal Rights Amendment, it seems virtually certain that the question will be put to Congress again. The functions of the Secretary of State with respect to constitutional amendments have been statutorily conferred on the Administrator of GSA . . . However, the very fact that this function is vested in the GSA Administrator is indicative of its ministerial nature . . . In those circumstances, the Administrator would either have to follow the precedent established by Congress in 1868, i.e., that a State cannot withdraw its ratification, or submit the issue to Congress."

Beyond this question is still another of

Footnotes at end of article.

whether or not the states can limit the subject matter of a convention. Fifteen of the memorials received since 1974 direct that the convention would be for the "sole and exclusive" purpose of considering a particular amendment. The majority of the thirty-two memorials include the text of a proposed amendment.

The main problem with state applications specifying exact language is the objection that a convention called to consider a predetermined amendment would, in effect, become part of the ratifying process. Senator Robert Kennedy criticized the states' insistence on specificity as:

". . . an attempt by the various State legislatures to force Congress to call a convention which can only act mechanically to approve or disapprove a specific amendment. The attempt is to make the convention merely an intial step in the ratifying process instead of a deliberative meeting to seek out solutions to a problem. The word 'propose' cannot be stretched to mean 'ratify'. The Congress cannot properly accept and become part of any prepackaged effort to short cut the amendment process."[28]

But as in so many of the issues surrounding the Article V convention process, there is no agreement on this issue. The legislation passed by the Senate in 1973, S. 1272, did, however, direct that a convention can be called only when at least two-thirds of the state submit applications dealing with the same subject.

V. MAJOR LEGISLATIVE PROPOSALS DEALING WITH THE ARTICLE V CONVENTION PROCESS AND THE HANDLING OF STATE MEMORIALS

Since the initiative for a convention is lodged in the state legislatures, an imminent convention could easily catch the nation by surprise. The confusion would be compounded if there were no adequate guidelines for the conduct of a convention. Yet, despite the fact that the issue stands on the constitutional frontier of unanswered questions, Congress has still to enact convention legislation.

The Senate has twice passed convention procedure bills without comparable House action. The following measures deal generally with the convention process and the excerpts shown deal generally with the handling of the memorials.

A. Constitutional Convention Act of 1953 (Appears in Staff Report to the House Committee on the Judiciary, "Problems Relating to State Applications for a Convention to Propose Constitutional Limitations on Federal Tax Rates", 82d Congress, 2d Session, 1952, pages 21–24.)

Section 2(C)

"Within sixty days after a resolution is adopted by a state legislature under subsection (b) the Secretary of the State shall transmit to the Congress two petitions . . . one addressed to the President of the Senate (or to the Secretary of the Senate if the Senate is not in session) and one to the Speaker of the House (or the Clerk of the House if the House is not in session) . . .

Section 2(D)

"Each petition and notice received under subsection (c) shall be referred to the Committee on the Judiciary of the Senate, if addressed to the President or Secretary of the Senate, or to the Committee on the Judiciary of the House of Representatives, if addressed to the Speaker or Clerk of the House. At the beginning of each session of Congress, the Chairman of the Committee on the Judiciary of the Senate shall report to the Senate and the Chairman of the Committee on the Judiciary of the House shall report to the House, concerning the petitions and notices received under subsection (c) within the preceding seven years, and shall cause to be printed in the Congressional Record the text of such petition and notice which has not previously been so printed. Such report shall state the total number of such petitions calling for a convention to propose a general revision of the Constitution; the total number of such petitions calling for conventions to propose amendments of a limited nature (together with the total number received with respect to each such amendment); the date of receipt of each such petition; which, if any such petitions have been rescinded; and such other information as the Chairman considers appropriate.

B. Brickfield Proposal (Appears in *Problems Relating to a Federal Constitutional Convention*, House Committee on the Judiciary, 85th Congress, 1st Session, 1957, page 75.)

Section 2. The legislature of a State, in making application for a constitutional convention under Article V of the Constitution of the United States, shall, after adopting a resolution pursuant to this Act, petition the Congress stating, in substance, that the legislature favors the calling of constitutional convention for the purpose of—

(a) proposing a general revision of the Constitution of the United States; or

(b) proposing one or more amendments of a particular nature of the amendments to be proposed.

Section 3

(a) For the purpose of adopting a resolution pursuant to section 2, the State legislature shall adopt its own rules of procedure.

(b) Questions concerning the State legislative procedure and the validity of the adoption of a State resolution cognizable under this Act are determinable by the State legislature and its decisions thereon are binding on all others, including State and Federal courts and the Congress of the United States.

(c) A State resolution adopted pursuant to this Act is effective without regard to whether it is approved or disapproved by the Governor of the State.

Section 4

(a) Within 60 days after a resolution is adopted by the legislature of the State 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.

(b) Each copy of the application shall contain—

(1) the title of the resolution,

(2) the exact text of the resolution, signed by the presiding officer of each House of the legislature, and

(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. S. 215. Federal Constitutional Convention Procedures Act (Introduced by Senator Ervin; passed the Senate October 19, 1971 by a vote of 84 to 0).

Section 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.

Section 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 procedures 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) Questions concerning the adoption of a State resolution cognizable under this Act shall be determinable by the Congress of the United States and its decisions thereon shall be binding on all others, including State and Federal courts.

Section 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.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution;

(2) the exact text of the resolution signed by the presiding officer of each house of the State legislature; and

(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) Within days after receipt of a copy of any such application the President of the Senate and the Speaker of the House of Representatives shall report to the House of which he is presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. 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 legislatures of every other State and to each Member of the Senate and the House of Representatives of the Congress of the United States.

D. S. 1272 (Introduced by Senator Ervin; passed the Senate on July 9, 1973, it is identical in its provisions for applications for a convention to S. 215, above.)

E. Other notable legislative suggestions generally consistent with those already described in terms of the sections regulating the procedure for submitting memorials, include:

1. S. 1973, "The Federal Constitutional Convention Procedures Act" introduced by Senator Hathaway on June 11, 1973.

2. H.R. 7008 and H.R. 8560, identical bills entitled, "Federal Constitution Convention Amendment Act", introduced by Congressman Hyde on May 9, 1977 and July 27, 1977, respectively.

3. S. 1880, the "Federal Constitutional Procedures Act", (identical to H.R. 7008 and H.R. 8560 above) introduced by Senator Helms on July 18, 1977.

4. S. 1815, the "Federal Constitutional Convention Procedures Act", (identical to S. 1272 above), introduced by Senator Ervin on May 22, 1975.

5. H. Con. Res. 28, introduced by Congressman Pettis on January 14, 1975, calls for the convening of a convention but sets no guidelines for the state memorials.

6. H. Con. Res. 340, introduced August 5, 1977 (on request) by Congressman Lent, calls for a convention but does not set guidelines regulating the submission of memorials.

Note: The choice of a concurrent resolution for this purpose is questionable. Although concurrent resolutions are often used to authorize actions within the common ministerial orbit of both Houses, this meas-

Footnotes at end of article.

ure would have sizeable impact on State legislatures, as well. In any case, current resolutions "do not become law, are not used to enact legislation, and are not binding or of legal effect." (See generally, "Concurrent Resolutions: A Discussion of Their Force and Effect Beyond the End of the Congress by Which They Are Passed", by Jay Shampansky, Legislative Attorney in the American Law Division of the Library of Congress, June 9, 1976.)

VI. RECOMMENDATIONS

A. The House might reassess its procedure to make certain that when it receives a memorial from a state requesting amendment of the Constitution, the printing of the memorials by title in the Congressional Record include both the subject matter of the desired amendment and a specific notation that a convention is requested, if such be the case. Ideally, the House should also print in full each memorial requesting a convention.

B. The Senate might revise its procedures to require that on January 31 and July 30 of each year, it print in full a complete listing of citations to pages in the Congressional Record at which appeared memorials from the states requesting a convention since the last previous listing. Such listing would include the date, page number, state, subject matter of the memorial and a cross reference to the page number in the House section of the Congressional Record at which the House noted receipt of the identical application. The list would be prepared by the Secretary of the Senate.

3. Both Houses might note and reaffirm that the originals of all such applications are to be retained by the offices of the Secretary of the Senate and the Clerk of the House with copies to be filed with the Judiciary Committees of their respective Houses.

4. The Congress might direct that model guidelines for use by the states in submitting applications for a constitutional convention be prepared and distributed to the secretary of state of each of the states. The guidelines should not suggest any limits on the subject matter of such applications but deal only with ministerial questions such as:

a. to whom the applications should be sent in the Congress;

b. the signatures of state officers required on the application, and;

c. the number of days the legislatures have from the adoption of their resolutions until the time they must be submitted to the Congress.

VII. COMMENT

There has never been a constitutional convention called under Article V. But there have been some near misses. In 1967, for example, state memorials requesting a convention on the reapportionment controversy came within one of the total that, theoretically, would have required Congress to call a convention.

Just prior to the Civil War, a convention to amend the Constitution actually did assemble in Washington, D.C. By February 4, 1861, seven states had already seceded from the Union and their respesentatives were gathering in Montgomery, Alabama to form a Confederacy and draft a new constitution. Meanwhile, on the same day, delegates representing twenty-one states were meeting in Washington at the invitation of the State of Virginia. Known as the "Peace Convention", it was called to propose amendments which, in turn, were to be submitted to the Congress. The convention presided over by former President John Tyler, met for nineteen days and produced one amendment. The seven-section amendment, however, was rejected by the Senate while the House of Representatives refused to consider it. Among the amendment's several sections were provisions authorizing the continued existence of slavery south of the "parallel of 36° 30' north latitude" and generally prohibiting Congress from regulating, abolishing, or controlling slavery in those areas where it then existed.[39]

The convention was clearly not a gathering authorized by Article V of the Contitution. But it did illustrate two of the factors still associated with Article V applications for a convention. For one thing, the applications tend to become more frequent when Congress will not respond to an emotional national issue. Secondly, the application process under which states actually request a convention tends to hinge on grass-roots efforts.

Illustrations of the grass-roots character of the convention movement are plentiful. In 1899, for example, the drive was just beginning for an amendment providing for direct election of U.S. Senators. Faced with a Congress that would not submit such an amendment to the states, the Pennsylvania State Legislature created a standing committee "to confer with legislatures of other states regarding the election of United States senators by popular vote" by the passage of an amendment through a constitutional convention.

Today, there is evidence of a comparable grass-roots push for a convention. Of the thirty-two memorials submitted to the Congress since 1974, seventeen specified that copies of their memorials should be circulated in each of the other state legislatures.

Americans for a Constitutional Convention, based in New York, now publishes a monthly newsletter, "Convention Call", which charts the progress of convention applications on abortion and encourages other states to apply.

In 1972, with anti-busing sentiment at its height, the National Committee for a Constitutional Amendment to Prohibit Forced Busing was formed in Washington, D.C. Chaired by Wayne Connally, brother of former Treasury Secretary, John Connally, the Committee's goal was to get ". . . 34 state legislatures to approve to resolution calling for a constitutional convention to develop the desired amendment" on busing.[40]

Other cause-oriented groups also promote the idea of a constitutional convention as a means of furthering their goals. For example, Congressman McDonald of Georgia has proposed an amendment to the Constitution "which would put an end to the Government engaging in business enterprises that are not Constitutionally authorized." Among those unconstitutional businesses, Congressman McDonald lists TVA, the Commodity Credit Corporation, and the Federal Crop Insurance Administration. Backers of the amendment, according to Mr. McDonald, are engaged in an active campaign to lobby state legislatures to ask Congress for a convention at which the amendment could be considered.[41]

Aside from the grass-roots nature of the constitutional convention proposal, it also tends to reappear at times of national reaffirmation. Aside from the 1861 Peace Convention, calls for a convention accompanied both World War I and World War II. Near the end of World War I, articles appeared in national magazines favoring a constitutional convention to update and reform the system of American government.[42] During World War II it was suggested that a convention be summoned to sit throughout the war as a "democratic gathering to which would come all those who seek revision of our constitutional arrangements."[43]

In 1937 with war tensions growing the United States commemorated its 150th year of life under the Constitution. In an article for the *North American Review*, Malcolm R. Eiselen wrote, "Nothing worse could befall the nation . . . than to make this year's celebration merely a complacent eulogy and uncritical exaltation of the Constitution . . . How fitting it would be, on this anniversary occasion, to summon a second convention for an intelligent and comprehensive re-examination in the light of experience and altered conditions of the workings of the Nation's Charter."[44]

In 1887, the United States staged a three-day celebration in Philadelphia marking the Centennial of the Constitution[45] and with the Bicentennial only ten years away, proposals for constitutional review are already beginning to emerge.[46]

Senator Abourezk has recently called for a constitutional amendment providing for the initiative on a national scale. Although no one has publically raised the prospect of promoting the amendment through the state legislatures, the initiative concept of returning a stronger voice to the people is clearly compatible with the grass-roots character of the convention option. Moreover, Senator Abourezk, in 1975, introduced a constitutional convention procedures bill identical to the Senate-passed Ervin bill of 1971.

The point of this glance at convention history is that, while the idea has never really caught the public imagination, there always seems to be continuing support for it. For the last twenty-years, convention calls have generally issued on questions reflecting the conservative viewpoint. More important, however, than the philosophy behind the memorials is the fact that the Congress has yet to act on guidelines for a convention. When they did act during the emotionally charged battle over reapportionment, the Senate ruled out any court review of convention decisions and gave to the Congress final authority on questions surrounding an *individual state legislature's procedures* used to adopt a resolution forwarding a memorial to the Congress. Beyond that, the bill was so narrow it virtually banned the option of a general convention.

This is not to say that such a general convention is needed. It is to say, however, that it is time the Senate reconsider its earlier action and that Congress open to fresh hearings the entire question of a constitutional convention. It should be done at a time when passions are cool. It should certainly be done soon.

Footnotes at end of article.

FIGURE 1

STATE MEMORIALS REQUESTING A CONSTITUTIONAL CONVENTION, JANUARY 1974 TO SEPTEMBER 1977

State	Subject	Noted in House	Received by Senate	Sent to:	Share with other State legislatures
Indiana	Abortion		Jan. 21, 1974, CR vol. 120, p. 14	Clerk and Secretary	No
Massachusetts	Use of public funds for secular education.	Mar. 18, 1974, CR vol. 120, p. 7014	Mar. 21, 1974, CR vol. 120, p. 7687	Speaker and President of Senate	No
Do	Busing	May 1, 1974, CR vol. 120, p. 12562	May 6, 1974, CR vol. 120, p. 13130	do	Yes.
California	Private ownership of gold	Sept. 11, 1974, CR p. 30714			

State	Subject	Noted in House	Received by Senate	Sent to:	Share with other State legislatures
Arkansas	Balanced budget		Mar. 10, 1975 p. 5793	Speaker and President of Senate	No.
Virginia	do	Feb. 27, 1975, p. 4730	do	do	No.
Mississippi	do	Apr. 29, 1975, p. 12168	Apr. 29, 1975, p. 12175	Clerk and Secretary	Yes.
Missouri	Abortion	May 7, 1975, p. 13433	May 5, 1975, p. 12867	do	No.
Nevada	Coercive use of Federal funds	June 16, 1975, p. 19117	June 26, 1975, p. 21065	Speaker and President of Senate	No.
Louisiana	Balanced budget	July 23, 1975, p. 24412	July 28, 1975, p. 25311	Clerk and Secretary	Yes.
Kentucky	Busing	Sept. 22, 1975, p. 29630	Sept. 8, 1975, p. 27821	do	Yes.
Indiana	Balanced budget	Jan. 28, 1976, p. 1400	Jan. 26, 1976, p. 931	do	No.
Georgia	do	Feb. 16, 1976, p. 3161	Feb. 6, 1976, p. 2740	do	Yes.
Tennessee	Coercive use of Federal funds		Feb. 17, 1976, p. 3316	Speaker and President of Senate	No.
South Carolina	Balanced budget	Feb. 23, 1976, p. 4090	Feb. 25, 1976, p. 4329 and Feb. 26, 1976, p. 4546.	do	No.
Delaware	do	Mar. 4, 1976, p. 5572	Feb. 25, 1976, p. 4329	Clerk and Secretary	Yes.
Virginia	do	Mar. 25, 1976, p. 8019	Mar. 29, 1976, p. 8336	Speaker and President of Senate	Yes.
Massachusetts	Busing		Apr. 7, 1976, p. 9735	do	No.
Oklahoma	Coercive use of Federal funds	June 7, 1976, p. 16816		State congressional delegation	No.
Louisiana	Abortion	July 22, 1976, p. 23550		Speaker and President of Senate	Yes.
Virginia	Item veto	Mar. 28, 1977, p. 9299		do	Yes.
South Dakota	Abortion	Apr. 18, 1977, p. 11041	Apr. 22, 1977, p. 11888	do	No.
New Jersey	do	Mar. 30, 1977, p. 9603	Apr. 5, 1977, p. 10481	Clerk and Secretary	Yes.
Utah	do	May 3, 1977, p. 13301 and May 4, 1977, p. 13471.	May 2, 1977, p. 13057	Senate and House of Representatives	Yes.
Rhode Island	do	May 13, 1977, p. 14649 and May 19, 1977, p. 15539.	May 20, 1977, pp. 15808, 15809	Speaker and President of Senate	Yes.
Arkansas	do	May 16, 1977, p. 14825	May 20, 1977, p. 15808	Clerk and Secretary	Yes.
Arizona	Balanced budget	June 14, 1977, p. 18869	June 14, 1977, p. 18873	Speaker and President of Senate	Yes.
Tennessee	do	June 10, 1977, p. 18419		Senate and House of Representatives	Yes.
Do	Terms of Federal judges	do		do	Yes.
Massachusetts	Abortion	June 23, 1977, p. 20659	July 1, 1977, p. 22002	Clerk and Secretary	Yes.
Guam	do	June 27, 1977, p. 20945	July 1, 1977, p. 22001	Speaker and President of Senate	Utah only.
Tennessee	Item veto		July 1, 1977, p. 22002	do	Yes.

FOOTNOTES

[1] *Proposed Amendments to the Constitution of the United States of America*, 91st Congress, 1st Session, Senate Document No. 91–38, page VII. See also, unpublished compilations of the Senate Library.

[2] See for example: Hearings Before the Subcommittee on Separation of Powers of the Committee on the Judiciary, United States Senate, on "S. 2307, Federal Constitutional Convention," 90th Congress, 1st Session, October 30 and 31, 1967; see also, *Michigan Law Review*, Vol. 66, No. 5, March 1968; see also; James N. Stasny, "Toward a Civically Militant Electorate: A National Constitutional Convention" (excerpts) appearing in the April 1, 1976, *Congressional Record*, Vol. 122, No. 48, page 8984.

[3] See for example: *State Applications Asking Congress to Call a Federal Constitutional Convention*, House Committee on the Judiciary, 87th Congress, 1st Session, July 1, 1961; see also, *Federal Constitutional Convention*, "States Ask for Federal Constitutional Convention," Senate Document No. 78, 71st Congress, 2d Session, February 1, 1930; Fred P. Graham, "The Role of the States in Proposing Constitutional Amendments," American Bar Association Journal, Vol. 49, December 1963, page 1175; "State Applications to Congress for Convention to Propose Constitutional Amendments," Congressional Research Service, June 12, 1973 and *Addendum*, July 2, 1974; "Amendment of the Constitution By the Convention Method Under Artile V," Final Report of the American Bar Association's Special Constitutional Convention Study Committee, Chicago, 1974.

[4] See Appendix for complete listing of the 32 memorials as they appeared in either the *Congressional Record* or in the original state resolutions.

[5] Floyd M. Riddick, *Senate Procedure*, page 542, *Rules of the United States Senate*, Rule VII, paragraph 1.

[6] *Rules of the United States Senate*, Rule VII, paragraph 1.

[7] Floyd M. Riddick, *Senate Procedure*, pages 781–82.

[8] Rule VII, paragraph 1.

[9] Riddick, *op. cit.*, page 328; Rule VII, paragraph 6.

[10] Riddick, *op. cit.*, page 275; Rule VII, paragraph 5.

[11] There are two other categories besides POM. One category is "Executive Communications" with the initials EC and the other category is "Presidential Messages" with the initials PM. Under each category the first item receives the number one with subsequent items numbered consecutively.

[12] Memorials from states requesting a convention to propose an amendment to the Constitution are always referred to the Judiciary Committee.

[13] Jefferson's Manual, page 183, Section XIX, paragraph 389.

[14] Rule XXII, paragraph 1.

[15] *Background Information on Administrative Units, Member's Offices, and Committees and Leadership Offices*, House Document No. 95–178, 95th Congress, 1st Session, page 9.

[16] Supra note 12.

[17] (1974) Massachusetts on busing and Massachusetts on public funds for secular education; (1975) Arkansas, Virginia, Nevada; (1976) Tennessee, South Carolina, Virginia, Massachusetts, Louisiana; (1977) Virginia, South Dakota, Rhode Island, Arizona, Guam and Tennessee on item veto in Appropriation's bills.

[18] (1974) Indiana; (1975) Mississippi, Missouri, Louisiana, Kentucky; (1976) Indiana, Georgia, Delaware; (1977) New Jersey, Arkansas, Massachusetts.

[19] (1977) Utah, Tennessee on balanced budget and Tennessee on Federal judges.

[20] Oklahoma 1976.

[21] (1974) Massachusetts in two instances; (1975) Virginia, Nevada; (1976) South Carolina, Virginia; (1977) Virginia, South Dakota, Rhode Island, Arizona, and Guam.

[22] See "Constitutional Convention Act of 1953" in Staff Report to the House Committee on the Judiciary, *Problems Relating to State Applications for a Convention to Propose Constitutional Limitations on Federal Tax Rates*, 82d Congress, 2d Session, 1952, pages 21–24; See also S. 1272 which passed the Senate July 9, 1973; S. 1973 introduced June 11, 1973; Cyril Brickfield, *State Applications Asking Congress to Call a Federal Constitutional Convention*, House Committee on the Judiciary, 87th Congress, 1st Session, July 1, 1961, page 34–36.

[23] Rules of the House of Representatives, page 561.

[24] By coincidence Guam is now in the midst of a constitutional convention of its own to draft a constitution for local self government.

[25] *Congressional Record*, May 13, 1977, page 14649.

[26] *Congressional Record*, May 19, 1977, page 15539.

[27] *Congressional Record*, February 25, 1976, page 4329.

[28] *Congressional Record*, February 26, 1976, page 4546.

[29] *Congressional Record*, March 29, 1976, page 8336.

[30] *Congressional Record*, June 7, 1976, page 16816.

[31] *Congressional Record*, February 7, 1976, page 2930.

[32] *Congressional Record*, July 1, 1977, page 22002.

[33] *Congressional Record*, June 10, 1977, page 18419.

[34] *Congressional Record*, June 10, 1977, page 18420.

[35] *Congressional Record*, March 10, 1975, page 5793.

[36] *See Congressional Record*, May 3, 1977, page 13301 and May 4, 1977, page 13471.

[37] "Amendment of the Constitution by the Convention Method Under Article V," Special Constitutional Convention Study Committee of the American Bar Association, page 33.

[38] *Congressional Record*, April 19, 1967, page 10116.

[39] See generally L. E. Chittenden, *Report of the Debates and Proceedings of the Peace Convention Held at Washington, D.C.*, February 1861, D. Appleton & Company, 1864.

[40] *Houston Chronicle*, January 15, 1973, page 4.

[41] *Congressional Record*, October 9, 1975, page 32625. For further discussion of citizen's role in promoting a convention, see John E. Bebout, "The Citizen as Institution Builder" in *National Civil Review*, V. 66, January 1977.

[42] See Bouck, White, *The Outlook*, August 22, 1917, page 613; See also Lewis Mayer, "Should We Remake the Constitution?" in *The New Republic*, August 17, 1918.

[43] Alexander Hehmeyer, *Time for Change*, pp. 6 and 34.

[44] Malcolm R. Eiselen, "Dare We Call a Federal Convention?", in the North American Review, Vol. 244, No. 1, 1937, page 27.

[45] *History of the Celebration of the One Hundredth Anniversary of the Promulgation of the Constitution of the United States.* (Philadelphia 1889.)

[46] Conley Dillon, "American Constitutional Review: Are We Preparing For the 21st Century?" in *World Affairs*, Summer, 1970, pages 5-24.