this threat in return for concessions on the cruise missile.

In March the U.S. asked for a limit of 150 Soviet land-based 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 they took 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 230. 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 U.S. could use their Backfire bomber, which they insist is not an intercontinental weapon though it flies from the Soviet Union over the U.S. to Cuba without refueling. By September the U.S. agreed to back the U.S. 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 ground-launched cruise missiles to 2,500 kilometers. Bombers carrying cruise missiles would not have been counted against the agreed number of MIRV missiles. Since the U.S. builds more than 120 such bombers it must tear down Minuteman or submarine MIRVs. And land-based and sea-based cruise missiles would be limited to a practically useless range of 600 kilometers. In return for scrapping the U.S. would make a cruise-missile concession limiting the range of medium-range missiles. The range of such missiles would be set very low, at 300 kilometers, which would allow the U.S. to retain Minuteman and submarine MIRVs.

I ask unanimous consent that this matter be printed in the Record.

Mr. DeConcini. Mr. President. I rise to share with my colleagues 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 the 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:

**Final County Democrats, Pinal County, Ariz.**

**October 1, 1977.**

**Hon. Hubert H. Humphrey,**

U.S. Senator,

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, I want to share with my colleagues a work which examines in more detail one aspect of the article V convention process, the actual State application process.

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 Stastny who documented the fact that, if put to the test, there is no guarantee that Congress could even properly count the 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 failed to follow the 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. Stansby'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 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 Constitution. Today, I want to share with my colleagues a work which examines in more detail one aspect of the article V convention process, the actual State application process.

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.

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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:
November 2, 1977

CONGRESSIONAL RECORD—SENATE 36353

positions and identify the characteristics of states when submitting their memorials; ideally, the problems arise in the application process and list legislative proposals.

II. SANTRY 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. The Petitions and Memorials makes up part of the Morning Business.4 While memorials and petitions are technically introduced in the Senate by the presiding officer, he makes no formal announcement of their receipt. They are presented by bringing them to the Clerk's desk. The Clerk then directs memorials 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.5 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 involves too many processing steps, for an entirely new system is still less than adequate. For an ended and another began. Nevertheless, the practice is to list memorials from state categories and assigned numbers preceded by introductory of the House portion of the Congressional Record following the introduction of bills and resolutions at the conclusion of Tuesday by Wednesday, it is the practice to have memorials brought to the attention of the House by the Clerk.

Resolutions of state legislatures and/or primary or secondary assembly are received as memorials.7 They are filed with the Clerk of the House but the office of the Clerk advises they do not deliver them to the Secretary. 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 the Clerk shall enter on the Journal and printed in the Congressional Record of the next day. In practice, however, the process is not necessarily followed. According to the House Journal, the 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 Clerk receives the memorials from the Parliamentarian's office and assigns them the number which appears in the Record. He sees to it that the memorial is physically delivered to the committee to which it has been referred.

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 Illinois petition (S. Res. 51, 94th Cong., 1st Sess.) was 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. Eleven applications were directed to the attention of the Secretary of the Senate and the Clerk of the House. Of the remaining four applications, three were addressed to the Congress without specifying an officer of either House and one was addressed only to the members of the state's congressional delegation.

Of the thirty-two applications directed to the President of the Senate and the Speaker of the House, eleven were noted in the Congressional Record. Four of the remaining five applications (Arkansas 1975, Tennessee 1979, Massachusetts 1976, and Tennessee 1977 on item 89) were printed in the Record but untransmitted to the Senate. One of the 1976 Louisiana application on abortion was printed only by the House. Of the eleven applications directed to both the Clerk of the House and the Secretary of the Senate, all but one (the 1974 Minnesota application) were noted in the Record by both the House and Senate. This suggests that when applications are directed to both the Clerk 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 1974 would have been addressed to the President of the Senate and the Speaker of the House.7 This is in accord with the majority of those petitions which passed the Senate 8 to 0 on October 17, 1971 and in S. 1272 which passed the Senate without debate on July 9, 1973.

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 Senate, the result being that a nuclear inference is that future legislation providing guidelines for a constitutional convention would not 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 submitted by the state legislatures 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 scrutinized, 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 in submitting their applications. The following examples demonstrate some of those problems.

Guam

On July 1, 1977 the Senate formally acknowledged in the Record its receipt of a memorial from the Legislature of Guam calling for a constitutional convention to draft an amendment on abortion. Article X of the Federal Constitution specifies that "... on the application of the Legislatures of either State, or upon 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.4 It would be very unlikely that an application would not survive a challenge to its claim to be a valid Article X memorial.

Indiana

In February of 1977 the Indiana legislative session and the Congress dealing with abortion. In it, Indiana simply reminded the Congress that in 1975 their legislation had requested that a constitutional convention be held and in an abortion amendment. The 1977 reminder went on to note that "thorough an oversight the earlier resolution was not considered. The fact that Congress actually had no oversight at all. The memorial had been indeed submitted at the end of 1973 and was printed in full in the CONGRESSIONAL RECORD on January 9, 1974.

Footnotes at end of article.

CXXIII—2299—Part 28

123 Cong. Rec. 36534 (1977)
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 a memorial from Rhode Island. On May 19, 1977 the House printed another notice that Rhode Island had submitted a second memorial for a convention on abortion. It was not possible to determine from the abbreviated notice in the Record whether these were, in fact, separate memorials or an accidental double entry of the same memorial. On May 20, 1977 the Senate printed a third notice that Rhode Island had submitted a third memorial for a convention on abortion.

In all likelihood Rhode Island’s problems, however, were not confined to the House of Representatives. In fact, separate memorials in Arizona on abortion were not only printed on the same day, they were printed on facing pages of the Congressional Record for the May 20, 1977, Congressional Record. The Arizona memorials were not only printed twice, they were printed in different sections of the Record. This, of course, raises the question of whether the South Carolina application process was at least 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 July 6, 1977 printed in the Congressional Record a notice that it had received a memorial from Oklahoma for a convention for the purpose of proposing an amendment prohibiting the federal government from placing certain 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. It states that the resolution was not directed to either the Speaker of the House or the President of the Senate, but was addressed to 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 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. No corresponding application was printed in the House Record as a memorial from Tennessee for a constitutional convention on this topic.

The same thing happened to Tennessee again in 1977. The legislature memorialized the Congress to summon a convention in order to propose an amendment of the United States Constitution. The section of the Constitutional Convention resolution read: "That, alternatively, this body requests that Congress cause to be printed in the Congressional Record of July 1, 1977 a notice that it has received a memorial from the state of Tennessee for 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 appears as a separate item. After requesting that Congress prepare and submit an amendment requiring a balanced federal budget, paragraph 12 of 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.

Resolved further, That, alternatively, this Body makes application and requests that Congress cause to be printed in the Congressional Record 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.

On June 14, 1977, the Senate printed in the Congressional Record a notice that it had received a memorial from the state of Tennessee for a constitutional convention for the specific and exclusive purpose of proposing an amendment to the 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.

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whether or not the states can limit the subject matter of a convention. If the petition and notice received under this Act are deemed by the Committee on the Judiciary, the Secretary of the Senate and the Speaker of the House to be appropriate, they shall transmit to the Congress two petitions ... one addressed to the President of the Senate and one to the Speaker of the House of Representatives.

Section 4
(a) Within thirty days after the adoption by the legislature of a State of a resolution calling for a convention to amend the Constitution, the resolution shall be transmitted to the Congress of the United States and to each of the States. Each State shall then submit to its legislature a resolution calling for a convention to amend the Constitution.

Section 5
The State legislature shall follow the rules of procedures that govern the enactment of a resolution by that legislature, but without the need for approval of the legislature of any other State, all States and the State of the United States shall be binding on all others, including the States and the Federal Government.

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

A. The House might reassess its procedure to make sure, when it receives a memorial from a state requesting amendment of the Constitution, the printing of the memorials by title in the Congressional Record does not deal with the subject of the desired amendment and a specific notation that a convention is requested, if such be the case. It is to provide only, in the form of full reporting, each memorial requesting a convention.

B. The Senate might revise its procedure to include the report of the Select Committee on January 31 and July 30 of each year, if the requests for a constitutional convention are in full, and the subject of applications but deal only with the states that might be included in the corresponding applications for a constitutional convention. For one thing, the applications are not becoming more frequent when conventions tend to hinge on grass-roots efforts. Illustrations of the grass-roots character of the convention movement are plentiful.

VI. COMMENT

There has never been a constitutional convention called under Article V. There are a few notable proposals for a constitutional convention in recent years, but none have been realized. 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 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 would prevent the South from seceding from the Union. The convention presided over by President John Tyler, met for nine days and adopted one amendment. The seven-section amendment, however, was rejected by the Senate while the House of Representatives refused to consider it. Among the proposals considered were provisions authorizing the continued existence of slavery and the “parallel” 36° 30’ north latitude, and generally prohibiting Congress from regulating, abolishing, or controlling slavery in those areas where it then existed.

The convention was clearly not a gathering authorized by Article V of the Constitution. But it did illustrate two of the factors still at work for a constitutional convention. For one thing, the applications tend to become more frequent when conventions tend 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 a constitutional convention to address the direct election of U.S. Senators. Faced with a Convention that would not submit such an amendment, the Pennsylvania State Legislature created a standing committee “to confer with legislatures of other States regarding adoption 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 constitutional convention. Of the thirty-two memorials submitted to the Congress since 1974, seventeen noted 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 application conventions and encourages other states to apply.

In 1973, with anti-busing sentiment at its height, the National Committee for a Constitutional Amendment, founded by former U.S. Senate Majority Leader Bob Dole, was formed in Washington, D.C. Chaired by Wayne Connelly, brother of former Treasury Secretary, the Committee's goal was to get "... 34 state legislatures to approve a resolution calling for a constitutional convention to develop the desired amendment on busing."

Other cause-oriented groups also promote the idea of a constitutional convention as a means of furthering their appeals. For example, Congressman McDonald of Georgia has proposed an amendment to the Constitution "which would put an end to the Government's engaging in business enterprises that are not Constitutionally authorized." Among those unconstitutions, businesses, Congressmen McDonald, with the Commodity Credit Corporation and the Federal Crop Insurance Administration, backed by the amendments supported by Mr. McDonald, are engaged in an active campaign to lobby state legislatures to ask Congress for a constitutional convention.

Footnotes at end of article.

FIGURE I

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

<table>
<thead>
<tr>
<th>State</th>
<th>Subject</th>
<th>Noted in House</th>
<th>Received by Senate</th>
<th>Sent to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>Abortion</td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Use of public funds for secular purposes</td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Do.</td>
<td>Busking</td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>California</td>
<td>Private ownership of gold</td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>

*123 Cong. Rec. 36534 (1977)*
FOOTNOTES


3 See for example: Hearings Before the Senate Committee on State Applications, page 6113; also, Michigan, State Constitution, page 6113; and, Massachusetts, State Constitution, page 6113.

4 See also, Alabama, State Constitution, page 6114; also, Illinois, State Constitution, page 6114; and, New York, State Constitution, page 6114.

5 There are two other categories besides the initial category, and the other category is "Executive Communications" with the initials EC and the other category is "Presidential Messages" with the initials PM. Each category number receives the number one with subsequent items numbered consecutively.

6 Memorials from states requesting a convention to propose Constitutional Amendments to the Constitution are always referred to the Judiciary Committee.


9 See also, Constitutional Amendments, page 198; also, Constitutional Amendments, page 198; and, Constitutional Amendments, page 198.


12 See Constitutional Amendments, page 198; also, Constitutional Amendments, page 198; and, Constitutional Amendments, page 198.