HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: SCR 10 Balanced Federal Budget [SPSC]
SPONSOR(S): Atwater and others
TIED BILLS: **IDEN./SIM. BILLS:** HCR 8001

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Rules & Calendar Council	13 Y, 3 N	Rubottom	Birtman
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

SCR 10 makes application under Article V of the United States Constitution, for Congress to call a convention for the purpose of proposing amendments to the Constitution to achieve and maintain a balanced federal budget and to control the ability of the Congress and the various federal executive agencies to require states to expend funds. The Resolution supersedes all previous memorials applying to Congress to call a convention. The Resolution provides for its own retroactive nullification "if it is used to amend the Constitution for any purpose other than the two stated in the Resolution."

The "Senate Bill Analysis and Fiscal Impact Statement" for SCR 10, revised March 10, 2010, is incorporated by reference into this Staff Analysis.

Article V provides that, upon application of the legislatures of two-thirds of the several states, Congress shall call a convention for proposing amendments. The convention mode is the only mode of proposing amendments other than the proposals deemed necessary by two-thirds of both houses of Congress. Amendments proposed by either mode must be submitted to the states for ratification by the legislatures, or state conventions, at the choice of Congress. An amendment must be ratified by three-fourths of the states to be binding on the nation.

Although there is limited legislative history behind the convention language in Article V, it appears clear that Congress was empowered to propose amendments and select state conventions as the mode of ratification, in order to allow the people of the United States to overcome excesses by state governments, and the state legislatures were empowered to initiate conventions as might be needed to propose amendments without the approval of Congress, to overcome excesses by the Congress. Congressional spending and Congressional mandates addressed in the Resolution appear well suited to the convention mode of proposing amendments.

No convention for proposing amendments has been called under the 1787 Constitution. The political and legal questions that must be answered before a convention assembles, as well as those certain to arise during the convention's proceedings and in any review of its work are numerous. The effect of an application, such as SCR 10, limited in scope, is also uncertain.

In the early 1980's Congress passed significant budget reforms when it became likely a convention might be called. Present proponents of a convention argue that reigniting the push for a convention might motivate Congress to propose a balanced budget amendment to diffuse the effort. In 1995, the newly elected Republican controlled Congress came within one vote in the Senate of submitting a balanced budget amendment to the states for ratification. Opponents of a convention argue that the risks of an unlimited convention are too great to hazard that approach.

The possibilities and questions that may surround the calling of a convention are many.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The "Florida Senate Bill Analysis and Fiscal Impact Statement" for SCR 10, revised March 10, 2010, is hereby incorporated by reference[1] and adopted excepting any conclusions inconsistent with the discussion below. That document is herein cited as "Senate Analysis."

The effect of the Resolution would be nil unless counted with applications of a number of states sufficient to require the convening of a constitutional convention. The effect, in that event, can neither be fully predicted nor analyzed.

Present situation:

Demands for a Balanced Budget Amendment

The Senate Analysis briefly explains the present situation regarding the history of states' requests for amendments and applications for conventions. However, it is extremely difficult to properly categorize such state communications in that some simply request the passage of an amendment by Congress, some request a convention for limited subject matter purposes and some request conventions open as to subject matter. Moreover, those applying for a convention for limited purposes including or exclusively relating to a balanced federal budget do not describe the purposes consistently. Thus, the Senate Analysis claim of at least 400 convention applications to Congress constitutes a maximal characterization of the evidence. Minimizing the same evidence, it is sufficient to say that no one has successfully petitioned the Congress or the judiciary for a determination that a sufficient number of applications have at any time been submitted to require a convention. Counting states' applications is further discussed in the Constitutional Issues discussion below (Part III, A.).

The Senate Analysis thoroughly describes the past efforts of Florida to encourage adoption of a balanced budget amendment via memorials to Congress including applications for a convention. Those efforts date back to 1976, the bicentennial of American Independence.

Federal Debt and Spending

The Senate Analysis thoroughly examines the present status and trends regarding the spending and debt of the federal government as of March 10, 2010. Since that time, Congress has enacted the largest social welfare program in the history of the Republic. The 2010 federal health care legislation purports to expand access to health care to all residents of the United States through massive

[1] http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s0010.ju.pdf

spending, tax subsidies, and direct and indirect compulsion of both individuals and employers. The program purports to be funded by multi-billion dollar tax increases, including "Medicare" taxes not dedicated to Medicare expenditures, putative cuts in Medicare expenditures, and billions of dollars in individual and business penalties. These penalties include between $240 and $360 million that would be assessed against the State of Florida, as an employer, if it continues to employ OPS (part-time and temporary) workers without offering health insurance to those employees. While Congressional leadership claimed the program to be in fiscal balance over its first 10 years, its benefits and subsidies begin long after the tax increases take effect. Too, there is no way to discover how individuals and businesses might adjust their behavior (or even decrease their economic productivity) in order to maximize enjoyment of subsidies and minimize the taxes and penalties incurred. Therefore, one must conclude that, at least by the second decade, the plan may very well add many billions of dollars to federal deficits and trillions of dollars to federal indebtedness. Thus, the federal long term fiscal outlook described in the Senate Analysis has worsened significantly in recent weeks.

Federal Mandates

The 2010 federal health care legislation has sparked a new round of lawsuits by states and local governments questioning the limits of federal interference with individual liberty and with state and local government authority and discretion. While those cases raise important issues, a less open question is the capacity of Congress to use its spending power to coerce state action and increased state expenditures. Medicaid alone is the fastest growing part of state government budgets and state expenditures for that program alone have grown unrelentingly for decades, generally faster than state tax revenues and faster than any other area of state spending. The Senate Analysis more thoroughly discusses the general issue of federal mandates and their detrimental impact on states.

B. SECTION DIRECTORY:

The first "resolved" clause provides the application for calling a convention and contains limited purposes for the application, set forth in two provisions outlined below:

(1) Specifies the Legislature's intention with respect to achieving and maintaining a balanced federal budget. The provision sets out a suggested framework:

(a) requiring a balanced budget account for all federal obligations
(b) providing for national emergencies
(c) imposing spending limitations
(d) setting extraordinary vote requirements for tax increases
(e) prohibiting federal mandates on states or local governments to raise taxes or fees

(2) Specifies the Legislature's intention with respect to controlling the ability of Congress and federal agencies to require expenditures by states:

(a) limiting mandates compliance with which are not fully funded by federal dollars
(b) limiting mandates on the expenditure of federal funds

The second "resolved' clause provides for repeal, rescission, nullification and superseding of all previous Florida applications for a balanced federal budget and for a constitutional convention.

The final "resolved" clause provides for self-revocation, retroactive to date of passage, in the event the application is counted in calling a convention for purposes not expressly permitted by the Resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If the intentions of the resolution were ever realized, revenues received from federal sources would likely decline significantly

2. Expenditures:

If the intentions of the Resolution were ever realized, expenditures mandated by federal law and agencies would likely decrease significantly, and state expenditures presently funded by revenues received from federal sources would need to be replaced in part by state revenues. Total expenditures would likely decline.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Effects similar to those described for state government would likely be incurred.

2. Expenditures:

Effects similar to those described for state government would likely be incurred.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector from reductions in federal spending and borrowing combined with possible increases in state and federal taxes are incalculable, but substantial, should the intentions of the Resolution ever be realized.

D. FISCAL COMMENTS:

No immediate fiscal impact is foreseen or likely as a result of adoption of the Resolution.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

Constitutional Conventions

Organizational Challenges and Concerns

The nature of the legislatures' applications poses the first challenge to organizing a convention. The attributes of a proper application are subject to scrutiny by Congress. All that Article V requires is an "application" of "the Legislatures." Clearly if 400 putative applications have been submitted, some discretion lies in Congress to ignore those it deems insufficient. The only language that would certainly be sufficient would be an unconditional application for Congress to "call a Convention for proposing Amendments." Whether applications may be conditional is a subject of great disagreement among scholars and politicians.

Limited Applications

The most significant legal question raised by the Resolution is whether it constitutes a valid exercise of the Florida Legislature's prerogative under Article V to apply for Congress to call a convention. Some prominent scholars have argued that an application for a convention of limited purview should have no effect. This is based on a textual interpretation that there is only one kind of convention contemplated in Article V: "a Convention for proposing Amendments, which…shall be valid to all Intents and Purposes." The power to limit an application revolves in part on the power of Congress to limit the call in Article V.

Under Article II, the President may "convene both Houses" of Congress, with no provision there for limiting the purview. Based on parliamentary law that goes back to the Glorious Revolution in Great Britain, it is clear that, once convened, a parliamentary body may not be limited, unless by express

constitutional provision, in the purview of its considerations. From this perspective, an application for a convention of limited purview asks for what cannot be done.[2]

Others hold a more open view of the question, opining that "the state mode for getting amendments proposed was not to be contingent upon any significant cooperation or discretion in Congress,"[3] meaning, at least in part, that Congress has no authority to excessively scrutinize convention applications. The author just quoted, however, also opined that Congress would be bound to cooperate with limited applications by limiting its call in accordance therewith, and that the appropriateness of a convention actually increased with the narrowness of the state applications.[4]

Disputing this "narrow is better" approach, another author has provided a more thorough historical analysis of the question. This scholar asserts that the 1787 Constitutional Convention clearly rejected giving authority to states to directly propose amendments, opting instead for two different national bodies to propose amendments: Congress and a convention. In rejecting conventions restricted to specific propositions pre-agreed by the legislatures, this writer argues:

> If the aim had been to give the state legislatures the power to propose as well as to ratify amendments, it would have been unnecessary to provide for conventions. The drafters could simply have provided that when two-thirds of the state legislatures agree on the wording of an amendment, some central authority must automatically submit that amendment for ratification by the required three-fourths of the states. Of course, a convention whose sole authority would be to vote "yes" or "no" on a proposal dictated in advance by state legislatures could, by delaying the amendment process, serve an important function by allowing time for reflection and debate and by providing an additional hurdle for any proposed amendment. Assembling a tightly controlled convention for this limited purpose, however, would have made little sense to the drafters in 1787. The difficulty of choosing and assembly delegates from all the states was extraordinary; commencement of national meeting was sometimes delayed for weeks by the late arrival of many of the delegates. Delegates to such convention would likely be frustrated by the delay and anxious to get on with the sole official act permitted them: voting on an amendment whose wording had been determined beforehand. The framers understood that "conventions are serious things" and it is doubtful that they meant to suggest such a meeting by the phrase "a Convention for proposing Amendments."[5]

Thus, the idea that a convention can be called to consider a single specific proposal should be rejected.

This same author argues further that Congress should not assume a major role in setting the convention's purview. "That role should be left to the convention itself in order to avoid undue congressional influence over the convention mode of amendment."[6] This author suggests that Congress may count applications that express a purpose for a convention, but not if the application evinces the assumption that "the applying state legislatures or Congress can limit the convention's agenda."[7]

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[2] Black, "Amending the Constitution: A Letter to a Congressman," 82 Yale L.J. 189 (1972); Ackerman, "Unconstitutional Convention," New Republic, Mar. 3, 1979.

[3] Van Alstyne, "Does Article V Restrict the States to Calling Unlimited Conventions Only?—A Letter to a Colleague," 1978 Duke L. J. 1295, 1303 (1978).

[4] Van Alstyne, 1978 Duke L.J. at 1306.

[5] Dellinger, "The Recurring Question of the 'Limited' Constitutional Convention," 88 Yale L.J. 1623, 1632-33 (1979)(citations omitted).

[6] Dellinger, 88 Yale L.J. at 1634 (citations omitted). Dellinger considers and rejects Van Alstyne's analysis. 88 Yale L.J. at 1631-32.

[7] Dellinger, 88 Yale L.J. at 1636. Dellinger would count applications that express purposes without expressing limiting intentions. He points out that Black would not count any application expressing a purpose. 88 Yale L.J. at 1636. Van Alstyne acknowledges that Ackerman agrees with Black. 178 Duke L.J. at 1296.

Therefore, SCR 10 would not be counted by three of the four scholars cited above. If it would be counted by Congress in calling a convention, the capacity of the states and Congress to limit the purview of the convention remains disputed.

Limitations in the Call of Congress

Most analysts agree that once a convention convenes, it may undertake to adopt any proposal that it may allow under its own rules. Section 299 of Mason's Manual of Legislative Procedure affirms that there are few occasions when an objection to consideration is appropriate in a legislative body, but even when it is, the objection ought to be sustained by the majority. Thus, the majority of a parliamentary body is the sole judge of the subject matters it may deliberate. Further, the notion that the convention may be limited in subject matter by the will of those who applied for the convention, against the will of the actual delegates thereto, has scant support among anyone who has ever participated in a political convention or engaged in similar efforts to restrain the purview of any parliamentary body.

In Florida, by way of comparison, express provision is made for "special sessions" of the legislature to be called, during which "only" business "within the purview of the proclamation" OR introduced "by consent of two-thirds of the membership of each house." No such limitation applies to general sessions of the Florida Legislature or to any general session of any Legislature seated in North America. As stated above, the President can call Congress into session, but has no power to limit its purview once assembled. The same has been true of Parliament since the time of Charles II. Even where such limitations do apply to special sessions, the power of the parliamentary body to expand the purview of its session by some extraordinary vote appears to be generally preserved. Furthermore, there is no authority external to a parliamentary body that may regulate its internal conduct, whether that power may be executive or judicial.[8] The power of judicial review may be utilized to nullify an unauthorized enactment of a legislative body but no power exists to block the legislative acts creating such enactment.

(The principle arguments concerning a possible "runaway convention" relate to the *political* consequences of unanticipated results. Even if it were presumed that Congress had some unenumerated power to limit the purview of a convention, once the convention acted outside that limitation, the question would then arise as to the effect of such action. This and many of the questions raised in this discussion may be characterized as "political questions" and would likely be carefully avoided by the judiciary, leaving only political bodies to resolve them.)

Process and Substance Concerns

SCR 10 explicitly provides that its intent is limited to calling a convention for purposes relating to federal budgeting and mandates. Once a convention is organized though, it appears highly unlikely that it could be dissolved by a challenge from a state that intended only a convention of limited scope. Moreover, even if sufficient power to appoint, recall and replace delegates existed, it may not be possible to affect the result of a convention by a number of states withdrawing from the convention by state action. The Convention would be a national legislative body not subject to state powers. Thus the ability of the Florida Legislature to impact the purview a convention would be minimal.

Congress may have power to impose some limitations on the purview or procedural discretion of a convention, particularly if Congress remained determined not to submit proposals to the states for ratification if adopted outside the limitations. However, two powers, the federal judiciary, and successor Congresses, might successfully overcome such limitations by requiring submission, in the case of the judiciary, or revisiting the limitations, in the case of a successor Congress, making later ratification possible. Omitting any limited ratification period from one or more of its proposals might preserve a convention's proposals making them available for submission and ratification at any future time.

[8] See generally, Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951).

In addition to subject matter limitations, Congress might attempt to pre-determine procedural rules governing the convention. The 1787 Convention began when a quorum of seven states assembled. (Rhode Island never did participate.) It chose its own presiding officer and adopted its own rules of procedure. Following the pattern of the successive Continental Congresses and the Congress meeting under the Articles of Confederation, voting was by state, with each having a single vote[9]. Congress might attempt to set a particular quorum requirement, impose procedural rules or limitations, set deadlines, appoint a presiding officer, and impose voting rules similar to the electoral college, the Senate (two votes per state), the House (votes apportioned based on population) or the 1787 Convention. Yet, the convention itself would have clear authority to govern itself and get around many such restrictions. As with subject matter limitations, the judiciary or successor congresses, could also nullify such Congressional limitations on process and voting. Even a minimum quorum requirement may be questioned, as the Electoral College has no quorum requirement: a President may be elected by the majority vote of electors appointed, with no minimum quorum required. Yet, without a quorum requirement, a "rump" convention would be a real possibility.

The most difficult procedural question presenting itself would be how delegates are selected. This question could create an impasse in Congress when formulating a call, and in the states, it could create great conflicts. May Congress appoint its own members as delegates? They have been elected by the people. They are apportioned by population. They meet all requirements for a representative body.

Or, might Congress require the popular election of delegates, apportioned in a manner determined by Congress? Might Congress rig the rules to ease the election of many of its own members as delegates? Who would pay for the elections and who would regulate the election procedures? Could Congress grant the power to appoint delegates? Would partisan interests control all these decisions? Would delegate elections be by partisan ballots?

Could states refuse to comply with Congress's limitations or requirements and send a delegation more pleasing to their legislatures or executives? Would partisan interests in the states affect each state's decisions respecting delegates? Would the convention itself, once convened, have final say over which delegates are admitted to represent each state? Would it look like a joint convention of the National Republican and Democratic parties, split evenly, never to agree on anything?

Finally, could terms or term limits be imposed on the delegates by the convention itself, by the states or by Congress?

The last procedural question that could arise would be final dissolution of the convention. Ordinarily, a parliamentary body is the only power that may dissolve itself unless some constitutional calendar deadline or external power is provided to dissolve it. Once convened, might the convention adjourn from time to time without limitation, available at any time in the future to assemble again to propose additional amendments deemed necessary? If the assembly of the convention proves as difficult as imagined, would it not be prudent to keep the convention going to avoid repeating the battles inherent in convening?

Logrolling is seldom considered in convention literature, but would clearly be available to the convention. It is a common practice in Congress, expressly restricted in Florida's Constitution by single subject requirements imposed on both general laws and initiative petitions. Although Congress has not proposed multiple amendments in recent history, it is notable that the first ten amendments to the United States Constitution, encompassing the Bill of Rights, were approved in one single Resolution adopted by the First Congress convened under the 1787 Constitution. Thus logrolling by the convention would be clearly legal.

Logrolling allows the cobbling together of the vote required for passage in a parliamentary body through inclusion of multiple propositions important to a minority of delegates, though not necessarily having

[9] A picture of page 1 of the convention vote sheet is available at: http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/voting_record.jpg

majority support standing alone. In order to make its work easier the convention might include any number of diverse proposals supported by any delegates into a single report of the convention. Such proposals might even be mutually contradictory. Both pro-life and pro-abortion amendments could be included. Both pro-gay-marriage and anti-gay-marriage amendments could be included. Both pro-gerrymandering and anti-gerrymandering amendments could be included. Both pro- and anti-amendments relating to partisan politics might be included, leading to constitutional enshrinement or abolishment of political parties. And both pro- and anti- "states rights" amendments might be included. Delegates could rely on the three-fourths ratification requirement as the real check and balance on each proposal, letting the American people make the final decisions on many controversial issues.

Given that no convention has assembled in 220 years, and the likelihood that one might not ever assemble again, the temptation to logroll and to submit everything with any articulate proponent into the mix of ratification might be irresistible for delegates. This is particularly so with respect to serious amendment proposals likely never to attain two-thirds approval of the Congress. Regardless of the passage requirement used by the Convention, whether majority, supermajority, by state, fractional or other voting method, logrolling could vastly expand the number of distinct propositions approved.

Ratification Concerns

Ratification is the final step in adoption of an amendment to the United States Constitution. Ratification may be by the legislatures, or by conventions in the states, as Congress may choose. All more recent amendments proposed by Congress have contained ratification deadlines within the amendment itself. Such deadlines, typically seven years from submission, are prudential limitations intended to assure a broad contemporaneous national consensus for change. Many amendments, however, were proposed without a deadline for ratification. Thus, the most recently ratified amendment, certified as ratified in 1992, more than 200 years after its submission in 1789.[10] To have the maximum chance at ratification, proposals by the convention might omit any deadline, leaving each pending until finally ratified. On the other hand, if Congress chose state conventions as the mode of ratification, if no deadline were placed on ratification, activists might be encouraged to immigrate from state to state in order to effect ratification of a less popular amendment one state at a time, thereby effecting super-majority adoption by concerted minority activism.

Without considering the possibilities arising from unlimited ratification periods, most convention proponents take comfort in the three-fourths ratification requirement in Article V. Proponents perceive the three-fourths requirement as adequate protection of the Union from precipitous and ill-considered amendments. Yet, although not discussed in the literature surrounding convention proposals, the question clearly arises whether a Convention might propose amendments that might have the effect of forming a new union upon ratification of less than three-fourths of the states. Or, it might propose amendments that would have some *local* effect upon ratification of less than three-fourths of the states. For example, an amendment might state that it is binding upon each state that ratifies it, or, following the example of 1787, state that the ratification of some number of states would establish the amendment, including an entirely new constitution, as binding between the states so ratifying.

The 1787 Convention that drafted the Constitution of the United States was convened under the authority of the Articles of Confederation which required that amendments thereto had to be ratified by all 13 states in the Union. The Articles themselves asserted a "perpetual" Union of those States. The Constitution, however, became effective upon the ratification of the conventions of only nine States pursuant to *its* own terms, set in Article VII, in direct conflict with the terms of the Articles of Confederation. In the process of ratification, the perpetuity of the Union was seriously contemplated, with proponents concluding that all 13 states would eventually ratify the Constitution, but its effectiveness could not await unanimity.[11]

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[10] The Twenty-seventh Amendment, approved by Congress in the same Resolution proposing the Bill of Rights, provides:

> No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

[11] In Federalist No. 43, James Madison reflected on the nine state ratification requirement:

> In general, it may be observed that although no political relation can subsist between the assenting and dissenting States, yet the moral relations will remain uncancelled. The claims of justice, both on one side and on the other, will be in force,

Some might argue that it would be absurd for the Constitution to have differing terms in differing states, yet that is exactly the present effect. All fifty states have state judicial systems that may interpret federal constitutional questions in slightly diverse ways. State courts are bound by the precedent of their own state's highest court. Moreover, the federal judicial system is divided in to fourteen appellate circuits, each having a distinct territorial jurisdiction within the nation. On questions not decided by the U.S. Supreme Court, all United States District Courts and the courts of the 50 states are bound by the often conflicting precedents of their respective Circuit Court of Appeals. Thus, on many fine points of interpretation, America has in effect 13 slightly different constitutions containing a total of 50 variations.

In matters of concern significant enough to generate constitutional amendments in numerous states, but not having popularity among all states, it would not be so absurd for differences from state to state to be affirmed by express constitutional provisions. A number of current national movements are looking for ways to assure that state policy choices will be respected by the federal judiciary. Federal constitutional provisions binding only in consenting states would be better suited to such purpose than state constitutional provisions. For that reason provisions not binding in every state might be attractive to convention delegates challenged with issues that divide the states. Even without a radical imitation of the 1787 ratification by less than the “required” number, a patchwork effect could result from an amendment that, by its own terms, was only binding on states that ratify. Similarly, an amendment might extend supremacy within each state to state constitutional provisions within particular subject areas such as individual liberties, establishing a type of super Tenth Amendment approach binding on Congress. Such amendment would be attractive to every state during ratification.

Too, the Constitution has a very different effect (exclusive legislative authority vested in Congress) on federally owned lands, Indian lands and in federal territories and possessions than it has in the states (where the legislative powers of Congress are specifically enumerated). Consequently, while slightly different from the experience of the first 250 years of American Union, it is not unimaginable to have a constitution that has different provisions applicable in different places.

B. RULE-MAKING AUTHORITY:

No rule-making is authorized by the Resolution.

C. DRAFTING ISSUES OR OTHER COMMENTS:

If Congress does respect the limited purposed of application, and such limitations are applied and respected, SCR 10 appears clear that it may be used to support calling a convention only to consider balanced budget proposals even if federal mandates are excluded in the call. In such case, a balanced budget amendment that might allow Congress to shift all deficits to the states in the form of mandates might be a likely result.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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and must be fulfilled; the rights of humanity must in all cases be duly and mutually respected; whilst considerations of a common interest, and, above all, the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped, not urge in vain MODERATION on one side, and PRUDENCE on the other.

The Federalist, p. 238 (1987)(Chadwick, Ed.) Thus, the proponents of the 1787 Constitution were convinced that "a more perfect union" was not only necessary, but that necessity might require at least a temporary disunion of nine states from the others until reunion might be accomplished. See also, Harry V. Jaffa, A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War, pp. 193-197 (Rowman & Littlefield, 2004 paperback ed.)(discussing the implications of Madison's commentary in the context of 19th century secession arguments).