April 29, 2001
Washington D.C.

Dear Vice President Cheney, Speaker Hastert, Senators Murray and Hatch:

As you are aware, a United States Federal District Court Judge recently rendered a decision in Walker v. United States C00-2125c. As no appeal was made in this case the order became final as of April 17, 2001. A copy of this order is enclosed with this letter. You can view all other court papers in PDF format including the overlength brief referred in the order to at www.article5.org if you are interested. Frankly, considering what you have gained, I doubt you will review the material. Nevertheless the offer is made. As Congress is granted new powers by Judge Coughenour, I'd like to take a few moments to discuss the effect of this decision and point out some issues that may not have been considered. I will finish by posing a question regarding these new congressional powers.

First, I'd like to explain why you are receiving this letter. In his role as president of the Senate, Vice President Chaney is the logical choice to inform as a representative of the Senate. This reasoning also applies to Speaker of the House Hastert. Senator Hatch was chosen because of a bill he sponsored in the Senate aimed at total congressional control of a convention. I feel it's appropriate he should know that now, thanks to a single sentence in a federal district court order, he has his wish. Senator Murray was chosen because she represents the opposition party and in addition, is from my home state.

Actually it doesn't matter which Washington politicians are contacted in this matter. All Washington politicians regardless of party have shown a remarkable bi-partisanship and unanimity in this issue. All have adamantly opposed a convention call thus working diligently toward establishing this new power for themselves as well as Congress. Indeed, to my knowledge, other than James Madison when he was a member of Congress, no member of Congress has ever supported the calling of a convention based on the intent and meaning of the Founders as expressed in Article V of the Constitution. Of course now, with this court order, that language and intent of the Founders, has been nullified. Henceforth, Congress need no longer concern itself with constitutional language or original intent.

As members of Congress I assume United States Attorney Harold Malkin, alerted Congress to this suit and asked how Congress wished to proceed, i.e., whether to fight, or concede. To suggest otherwise would mean Congress left it to an Assistant United States Attorney in Seattle to determine by himself the fate of the United States Constitution and the Congress without him even consulting that body. In short, your lawyer decided how his client would plead without even discussing it with him. Hardly a creditable position. Therefore Congress *intended* to defeat this suit and acquire the additional power it created.

This case deals *specifically* with the calling of a convention to propose amendments under the terms of Article V. This is the first case of this kind in the history of the United States. All other court cases dealing with the amendatory process dealt with the congressional amendatory process but none of these cases ever extended their rulings to include the convention process. That is no longer true. As there is no other ruling, nor any federal law on the subject, and as a ruling of a federal judge extends throughout the entire federal system, this case is ruling law.

Obviously, whichever political entity or entities control the amendatory process of the United States Constitution controls the United States Constitution and thus the entire nation. As of April 17, 2001, that control passed *exclusively, irrevocably and entirely* to Congress. This means neither the People, the courts, the states nor the president participate in the amendatory process, i.e., the control of the United States Constitution The courts have only allowed Congress to control the amendatory process. This is the first time in United States history that any constitutional process has been placed *entirely* under the control of a single political body. Because amendatory power controls all other constitutional processes, it is reasonable to state this nation is no longer a Republic. It is now an oligarchy, composed of the members of Congress.

If you believe the Founders intended for Congress to have this power, I suggest you read my overlength brief. I refer particularly to Mason's comments at the 1787 Convention specifically directed at congressional amendatory power and whether it should be entirely in the hands of Congress. Also I suggest you read what specific action the Founders took in response to his comments.

As this matter stems from an order from a United States Federal District Court judge, this letter doesn't concern political theory or speculation. It is a reasonable interpretation of a legal and binding court order that effects Congress. In that order are described powers none of which Congress possessed by court interpretation previous to the order taking effect. In short, we are discussing new law, and for the first time in history, official government policy on the convention call and Congress' role in it.

While Judge Coughenour cited several cases in his order which gave Congress option in the matter of a convention call and by reasonable interpretation, the other effects I am about to discuss, the fact is that while these sources may have made the matter "unambiguously clear" to Judge Coughenour, *none* of them specifically mentioned or dealt with a convention call. Thus, Judge Coughenour is himself responsible for the decision to grant option to Congress as to a convention call and, in turn, apply the other effects to which I will refer. In our federal legal system, absent appellant review such as

in this case, one judge's opinion is all that is required for there to be legal effect. As there is no other case of this kind and because its effect extends throughout the entire federal court system, it has as much legal impact as a Supreme Court ruling. In fact, as I'm sure you know, all the appellant system does is review district court rulings, affirming or reversing them as is needed, but the authority of the ruling comes from the district court, not the appellant system.

Of course, you will consult with your legal staff on this. They will say this case only concerns the standing of the plaintiff, myself, and therefore means nothing. Were the judge to have only dealt with standing, I would agree with them. You would not be reading this letter. *However, while the judge did dismiss the case due to lack of standing, he did not stop at standing in his ruling. Instead he invoked the political question doctrine and assigned the discretion of that doctrine solely to Congress---not to the states and Congress. That part of the order remains in effect for reasons explained below.*

Technically speaking, the judge ruled I had no standing in my case and thus there was no case. He dismissed the case. Then he proceeded to rule on the central issue of the case anyway: that under the then prevailing language of the Constitution, Congress was obligated to call a convention on the basis of the number of applications from the state legislatures and had no option in this matter. If two-thirds of the states applied, Congress had to call. In fact, Judge Coughenour had no choice but to rule as he did regardless of his determination of standing. Under the old interpretation of the Constitution as expressed in Federalist 85, the convention clause is obligatory on Congress. This fact is mentioned in the judge's order. If he had not addressed this issue of obligation, he would have ruled I had no standing, but the issue I was presenting to the Court was obligatory on Congress and thus must be obeyed. To rule my case had no standing, but that what I asserted as plaintiff was correct and obligatory on Congress is an obvious contradiction of logic. Hence, he would have defeated his own order regarding standing or had to rule in my favor despite finding I had no standing. This fact was pointed out to him in my brief. To defeat the argument of obligation, the judge had to reinterpret the Constitution. Thus he had to rule on the issue of obligation on the part of Congress, the central issue of this case. He did this by assigning political discretion to Congress under the political question doctrine. It must remain in effect for the case to be dismissed.

The political question doctrine has nothing to do with standing. A plaintiff may have standing in court but still run afoul of the political question doctrine which heretofore was nothing more than the separation of powers doctrine restated in a new form. With the creation of a unified amendatory process under a single political body the question of whether the doctrine of separation of powers still exists, I will leave to others to wrangle out. Nevertheless, the political question doctrine is a separate issue and hence is a separate ruling by the Court.

In ruling on political question doctrine, Judge Coughenour clearly *removed* the control of the convention, i.e., the decision of whether it shall occur from the states. Instead he granted a new power to Congress to decide whether or not it would call a convention *regardless of the actions of the states*. This conclusion is based on the simple fact he assigned the political question, i.e., political discretion, to Congress alone and *not* to Congress *and* the states or just to the states alone. Clearly in granting political question, Judge Coughenour obviously intended Congress have discretion as to a convention call which of course means deciding *whether or not a convention will exist at all*. If Congress asserts this Court ruling has no effect on the convention clause, then it follows what the Founders asserted must be the ruling law in this case. The record is clear here. The United States Attorney did not refute my assertion in this case that the language of the Constitution made the calling of a convention obligatory on Congress with no discretion on their part if the states apply in sufficient number, which they have. Further, he did not refute a single application by any state.

Regardless of whether you read Federalist 85 or the Anti-Federalist Papers *all* authors during the time of the Founders, agreed Congress must call a convention if the states applied in sufficient number. Federalist 85 particularly spells out the intent and meaning of the convention clause as to what was to cause Congress to call and the options Congress was to have in this process. Alexander Hamilton, the author of Article V as well as Federalist 85, stated the call was to be based on a simple numeric count of the states and Congress had no option as to issuing convention call. Therefore, this is clearly the intent and meaning of the convention clause as envisioned by the Founding Fathers. As to why the Founders were so adamant about this point, you may find the portion in Federalist 85 discussing the reluctance of national leaders being unwilling to give up their power most enlightening.

The decision by Judge Coughenour also clearly refutes all modern day interpretations of the clause which is Congress must call if the states satisfy certain unwritten conditions (which they have by the way) not contained in the Constitution. Thus even in the modern era where the notion of same subject and other conditions have been asserted, (none of which were contemplated by the Founders) the interpretation by those who have studied the matter is that if the states satisfy these standards, Congress must call and has no option in this regard. This court order refutes that assertion entirely leaving the decision of whether to call entirely in the hands of Congress regardless of what the states do.

With his order, the judge has directly and specifically amended the Constitution of the United States by altering its meaning in order to provide Congress, complete political discretion, i.e., the power to refuse to call even if the states do apply and in addition, the power to regulate the convention in every aspect of its function, if Congress deems it appropriate to call at all. Under this interpretation, there is nothing to prevent Congress from simply declaring itself a convention and writing a new constitution or

even just skipping the convention step entirely and simply dictating the ratification of a new constitution has occurred.

The record speaks for itself. As shown in the overlength brief, the states have applied in sufficient number to have satisfied the numeric requirement of Article V. Congress has been petitioned by states to call on this basis and has ignored these requests. The states have also satisfied every other so-called standard Congress has ever established and still Congress refuses to call as specified by Article V. In short, Congress has *de facto* vetoed the Constitution for the purposes of maintaining its own political power. This court order means Congress need no longer worry about maintaining appearances. It can simply veto, or "amend," the Constitution outright with no one able to stop it.

To be frank, I don't expect you as members of Congress to respond to this letter. I have written to other members of Congress before and received no response. Assuming you do reply telling me Congress always obeys the Constitution as intended by the Founders and will continue to do so, that would, under the circumstances, not only be a false statement, but hypocrisy as well. At least now your refusal is law of the land. This brings up another point. The order establishes that constitutional clauses can be declared "dead letter" by a simple court order. What a wonderful device for pruning political inconvenience. I have no doubt in the coming years this fact will be taken advantage of time and again by those inside the Beltway in the name of political expedience.

The new powers granted Congress by the Court are significant and warrant review. They are:

1. Complete control of the convention process of amendment proposal which at the minimum prevents any amendment to the Constitution unless Congress approves. (Walker v. United States, assignment of political question solely to Congress).

2. Complete control of the ratification process with the legal ability to dictate the ratification vote of the states of a proposed amendment by simple legislative fiat. (Coleman v. Miller, 307 U.S. 433 (1939) referred to in Walker v. United States by Judge Coughenour. In Coleman, the Supreme Court stated that Congress controls all aspects of the amendatory process through the political question doctrine then cited the "ratification" of the 14th Amendment where Congress legislated how states would ratify an amendment. Nothing in Walker removed this power from Congress nor does it refute the actions of the government in having a double standard regarding recessions of ratification, disallowing two such recessions in the north while permitting two recessions in the south. This matter is discussed in detail in the overlength brief.)

3. Control of the promulgation of an amendment, that is, giving Congress a veto of an amendment even if it should be ratified by the states. (Coleman v. Miller. If there is any doubt as to Congress' intention to control the entire amendatory process, I refer you to U.S. Code, Title 1, Chapter 2, Section 106b in which Congress has permitted the national archivists to publish a ratified amendment as part of the Constitution upon "official notice" but fails to describe in any manner who gives the archivists official notice. Thus this power is reserved to Congress. Therefore, under this law, if Congress does not give "official notice" an amendment, even if ratified, cannot become part of the Constitution until Congress consents by giving it "official notice." Hence Congress can veto an amendment simply by not giving "official notice.")

4. Removal of the court review of any amendatory action. (Coleman v. Miller and Walker v. United States. This includes any state challenges to a convention call or lack of it. The Court will reject them due to lack of standing. If Congress exercises its discretionary control in not calling a convention, or dictates the outcome of a ratification vote of the states, of refuses to give official notice of ratification, there is no way it can be asserted any state is harmed because Congress is simply exercising powers granted to it by the Court. As this is a proper use of power under Court interpretation, it can't be said that its use creates harm. Hence, no state can said to have standing to sue.)

5. Removal of any independent state action in the amendatory process. (Walker v. United States assigned political question solely to Congress for the convention method of amendment. Coleman v. Miller did the same for the congressional method of amendment proposal.)

6. Removal of any presidential veto or participation in the amendatory process. (Hollingsworth v. Virginia, 3 U.S. 378 (1798) discussed at length in the overlength brief. Coupled with power granted Congress in Walker v. United States, it is now possible for Congress to pass any legislation it chooses by simply labeling it an amendment and declaring Congress a convention. Your attorney in this case proposed the state legislatures had the authority to declare themselves delegates to a convention and thus skip any elective role on the part of the People. So, as it was your side that suggested this and as it was not refuted by Judge Coughenour, it is not a far stretch to assume the identical power can now be used by Congress. Because the convention is strictly under congressional control, Congress can declare what vote is required in order for a proposed "amendment" to pass. Add to that your legislative power to decree the ratification vote in advance and viola! The "amendment" is passed.)

The most important point about all this how the Court reinterpreted the Constitution and the overall effect on the Constitution. In sum, the court order altered the customary meaning of the word "shall" as used in the Constitution. In order for the Court to arrive at its conclusion, it had to reject any argument which, based on the clear

language of the Founders, held that the word "shall" made a convention call obligatory. Now, in place of the usual obligatory sense of the word "shall" heretofore understood by all, is the new definition of non obligatory sense. This new definition must apply throughout the Constitution for there is nothing to indicate Judge Coughenour's ruled otherwise. Even if there were such an intent, the total control of the Constitution through the amendatory process granted by Judge Coughenour in his political question assignment defeats such a limited interpretation.

Hence, such phrases as, "The right to vote *shall* not be abridged on account of sex," or "The House of Representatives *shall* be composed of Members chosen every second year by the People of the several States…" or "The executive Power *shall* be vested in a President of the United States," or "The judicial Power of the United States, *shall* be vested in one supreme Court,…". can no longer be construed as being obligatory on the government. In short, there is nothing guaranteeing the right to vote exists or that Congress will continue to be elected or even allow the other branches to exist if it finds any of the above cited examples to be a political inconvenience. I could provide numerous more examples of supposed obligation on the part of the government, but I think you get the idea. And in all of this I remind you this is based on a binding court order, not wild speculation. With the elimination of the obligatory "shall" in Constitution, this document has been reduced to no more than advice which the government is free to ignore. If Congress is not going to obey the Constitution, what value is it?

Any doubt that Congress attended to assault of heretofore assumed rights on the part of citizens is quickly dispensed by simply reading the arguments presented by your attorney in maintaining the violation of these so-called rights were not the basis of standing to which Judge Coughenour agreed. You can read the full text of these arguments at www.article5.org web page by clicking on the appropriate link. But to sum the assertions of standing made, which now of course the court established are not valid, I asserted the following:

1. that my right to vote in an election had been denied. Please note I asserted not my right as a voter, but *my right to vote in an election*. As I assumed at the time of my suit that delegates to a convention would be elected by the People and as the states had applied in sufficient number to cause a convention call, it seemed logical to me that my right to vote in an election had been abridged by Congress. As the judge offered no explanation or limitation on his ruling, it can only be assumed he intended to include all elections in this ruling therefore nullifying the right to vote as a basis of redress in the courts. I suggest therefore your civil rights legislation e.g., U.S. Code, Title 42, Section 20 protecting the right to vote in elections, has been voided by Judge Coughenour. But, assuming you are disposed to, these "rights" can be put back into force with your new amendatory power.

2. that my right to seek political office had been denied. Presuming again that there would be an election for delegates, I asserted it was my right to seek that elective

office if I chose to do so and that this right was abridged by Congress not calling. Here Judge Coughenour not only ruled that delegates would not be elected by the People, but that the government reserves the right to determine who seeks political office thus essentially removing that right from the voter. By endorsing the refusal of Congress to call a convention despite the number of states that have applied, the judge ruled Congress may deny people seeking an elected office by simply withholding the election or regulating it so heavily as to render it meaningless. I am certain as members of Congress you can see the political advantage to you personally now that you can determine who, if anyone, will be your opponent in any election you may choose to conduct. If you feel you have a powerful opponent who may win election, you simply withhold the election.

3. that the people's right to alter or abolish their government has been denied. The decision of Judge Coughenour to deny this right, which is the basis of sovereignty in this nation, is significant. In brief, the question of whether or not this nation's sovereignty still rests with the people or, as I believe, now rest entirely with Congress has been answered. It now rests with Congress. As such, the people no longer have the right to alter or abolish the government as they may feel is appropriate. The matter is more fully examined in the overlength brief but the fact Judge Coughenour refuted language contained in the Declaration of Independence is, to say the least, remarkable.

4. that my right to politically associate had been violated. As Judge Coughenour gave no direction in this area, it is clear that proof of compelling state interest that usually limits government interference does not apply in the amendatory process. Thus, if Congress simply refuses to call, that itself is sufficient state interest not to do so. Naturally, through the amendment process, this interference can be extended indefinitely.

5. that avenues of redress guaranteed in the Constitution have been violated by Congress failing to call a convention. The convention was intended to redress wrongs committed by the national government on a constitutional level by proposing amendments to counter these wrongs. Now this right of redress has been eliminated by the order of the federal court. It is quite clear the judge endorsed the option of the government simply ignoring avenues of political redress such as a convention or even elections supposedly guaranteed in the Constitution.

There is a double whammy in this issue of standing. First the judge eliminated these heretofore recognized rights as a basis of standing. In addition, all of these rights somehow derive their substances from the obligatory use of the word shall in the Constitution. To reach his decision, Judge Coughenour had to eliminate the obligatory form of the word "shall." Clearly, therefore, the official position of the government from now on is the "rights" guaranteed in the Constitution are in effect *only* upon the consent, not of the governed, but by the consent of the government. We have arrived at where this

nation began. All rights were controlled by the government, i.e., a king and were only dispensed to the people as that he saw fit.

Now to the question I referred to at the beginning of this letter. Now that Congress has acquired all this power, what do you intend to do with it? For example:

- Are you going to suspend criminal and civil rights by congressional decree in order to eliminate our drug problem and simply execute those using drugs without trial?

- Is it your intention to assume previous executive control of the military?

- Will Congress officially "dead letter" the 10th amendment or will it simply privately notify the states they are no longer sovereign? Clearly the language of the 10th Amendment is in conflict with Judge Coughenour's ruling because a convention was considered a state power and now the order assigns that power *exclusively* to Congress. The reserve clause of this amendment thus is nullified.

- Will Congress continue to hold free elections? Oligarchies are a form of dictatorship. Dictatorships, by their nature and design, do not lend themselves to approval by vote of the masses as these masses might tend to throw out such government should it be in their best interest to do so. (I think I read that in the Declaration of Independence somewhere, something to do with the right to alter or abolish, I believe.) Of course Congress can simply do as many countries do: hold elections, but alter the results so as to achieve the desired result of the "election". In this way you can maintain the *appearance* of a Republic. If you think about it, there really is no difference between controlling an election and controlling an amendatory procedure. They are just different forms of the same thing.

Because of this court order, question like this no longer are the stuff of political fiction, speculation or are happen only in other countries. These and many other such question now face Congress squarely in this new form of government that you have carved out.

Realizing that a government might not always be responsive to the needs of a people and, as was said by one American politician, that which will not be achieved by evolution will be gained by revolution, the Founders designed a convention outside the control of the national government so as to allow the people to peacefully make changes to the republic form of government instead being forced to resort to violent revolution to achieve the same goal. That system has now been abrogated. All the judge did in this case was eliminate a method of change, not the desire and need of the people *to* change. The intent of the Founders was to have the convention obligatory on the national government

so as to prevent the government from essentially committing political suicide by short-sighted assumptions of power.

I expect the more liberal of you are now doing handstands about your office. Think about it. Through total control of the amendatory process, you now have total control of the Constitution and thus control of every so-called citizen of the United States. In short, total government domination of every aspect of human life in the United States. Did you ever think you would achieve your goal by a simple court order? As to the more conservative of you, you have no choice in this issue either. You believe in obeying the law and now this is the law.

Finally, I would like to point out that if you state you don't agree with what I have asserted in this letter, it follows you must agree with my assertion in the brief, that Congress is obligated to call a convention as the states have applied in sufficient number to compel a convention call. Either there is a convention or there is not. This issue allows no room for the usual political spin doctoring of Washington politics. The issue is absolute because it was created by men who believed in absolute values. It appears they no longer fit in this relativists world. If you did believe as I do that Congress must call a convention, you would call a convention. This you will never do. Thus, by your silence and inaction you will affirm Judge Coughenour's ruling and the reasonable conclusions I have outlined above.

Best wishes in the New World Order.