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**Sent:** Thursday, February 6, 2020 7:15 PM

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Apelbaum, Perry

**Subject:** Head's up on ERA resolution (H.J.Res.79) !!

**Importance:** High

Friends,

I understand the House may consider the Speier ERA resolution next week. I wanted to alert you (as some of you already know) to a significant concern about one potential risk in the ***debate and discussion – not about the policy of the bill itself***. As explained below, this bill has an indirect but extremely important link to the efforts that we are helping to lead across the country (along with Fred Wertheimer, SIX, AFSCME and other groups) to stop the right wing from forcing a new Constitutional Convention.

The attachments and points below explain it, but here's the gist of the concern we have – which has nothing to do with the “deadline” issue for the ERA: after many states had ratified the ERA, Phyllis Shafly/right wing groups successfully got 5 states to RESCIND their ratifications, leaving the Constitutional amendment short of the 38 states needed to ratify it. Many of the those promoting the ERA now choose to ignore those rescissions – and ***some even go so far as to argue the rescissions don't count***. Meanwhile, the Koch brothers, ALEC and other right-wing groups have been working for years in the states to get 34 states to adopt “Article V” resolutions calling for a Constitutional Convention to require a balanced budget (aka “BBA,” or Balanced Budget amendment). If 34 states adopt these resolutions, Congressional leaders are required to hold a Constitution convention. *We (working with other national and state groups) have been able to prevent a new Constitutional Convention ONLY by getting several states to rescind their previously approved BBA resolutions.*

*There are now a total of 8 states (see attached map) that have rescinded their old BBA Constitutional Convention resolutions. **So if Democrats or ERA proponents argue in the debate around this bill that “rescissions don’t count,” they will hand a powerful argument to the right that will be used in court to undercut these 8 BBA rescission – and we could find ourselves on the way to a new Constitutional Convention.*** Moreover, we have a very good chance of securing two more rescissions in the next few months in CO and NH – so any claim that rescissions don’t count would likely blow up our chances to pick up two more states. (Of course, if there’s a Constitutional Convention it cannot be limited to the issue in those resolutions: instead, the entire Constitution is effectively open for business.)

It’s extremely important that members do not go to the floor to argue that state rescissions of the ERA do not count, because that will be used by the right to argue state rescissions of the BBA do not count. Ideally, Members would not say that VA’s ratification brings them to 38 states – which implies rescissions don’t count, but that may be hard to stop VA Dems from saying this. From a legal perspective, it’s most important for Members to just not talk about the rescissions at all on the floor.

Bob and I have met directly with Bobby Scott on this and he is aware and well-versed on this issue, so hopefully he can help. And, of course, Perry and his Judiciary Committee staff are all over this.

Here’s a bit more information on this. We are not planning on doing a big email to the Caucus Dems; we obviously defer to you all as to how to handle this to avoid any unintended harmful discussion on the floor about rescissions. But feel free to share the two NONPUBLIC pieces attached w/ your Caucus as long as they are not given to the press.

1. Attached is CBPP’s confidential 2-pager (which some of you have already seen) on rescinding resolutions, but here are the relevant passages:

“Article V of the Constitution states that a convention must be called by Congressional leaders if 34 state legislatures pass resolutions calling for it. Convention advocates have explicitly stated that they would seek a balanced budget amendment (BBA) to the Constitution, which would hurt the U.S. economy and the federal government’s ability to finance key services and programs. Other conservative forces are working to force a Convention on their ideological goals, e.g. term limits, limiting the power of the federal government. The potential damage from a convention would certainly reach much further. A convention’s purpose and scope cannot be limited, potentially risking hard-won freedoms and protections including voting rights, reproductive choice, birthright citizenship, marriage equality, and civil rights.

In order to avoid a Constitutional Convention, progressive organizations have worked to stop legislatures from passing additional resolutions and rescind prior ones. To date, this strategy has worked: 8 states have rescinded their resolutions call for a constitutional convention, keeping us safely below the 34-state threshold. In Delaware, progressive organizations helped to rescind their state’s Convention resolutions in 2016, quickly followed by New Mexico, Maryland and Nevada in 2017. A number of other states rescinded their Article V balanced budget (or other) resolutions calling for a Constitutional convention years ago. Some national and state groups are working to secure two more rescissions of existing resolutions calling for a Convention (Colorado and New Hampshire) in early 2020.

**If rescissions to the ERA do not count, then this implies that rescissions do not count for resolutions calling for a Constitutional Convention to pass a balanced budget amendment (or other stated purposes).**

Proponents of the BBA currently claim 28 state resolutions – however, without rescissions, these same conservative interests could claim to have already surpassed the 34 state threshold.

For several years, a diverse group of organizations have helped to fend off a Constitutional Convention, to make the issue toxic and reverse the efforts of those who seek to put our rights and freedoms at risk. In Congress, and in the states, efforts to advance the ERA and language used to describe the status of the states' ratifications should be done very carefully without handing right-wing special interests a clear path to a Constitutional Convention.”

2. I've also attached a good memo from Fred Wertheimer (Democracy 21) on the ERA and BBA, which raised this new issue:

“On January 29, 2020. The attorney generals of the last three states to ratify the ERA, Virginia, Illinois and Nevada filed a federal lawsuit taking the opposite position and asking the court to declare that the ERA is now part of the constitution. The lawsuit asks the court to determine that rescissions aren’t in the constitution and do not matter, and that the ten year deadline on ratifying the ERA which ran out in 1982 also does not matter.”

3. Finally, I've attached a map of the BBA state of play, showing states that have passed resolutions calling for a BBA, those that have passed rescission, and top-tier threats.

Happy to discuss or help in whatever way you need. Thanks in advance for your help on this.

Ellen

1Attached Images

