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WENDELL R. ANDERSON

SPECIAL MESSAGE

**A CONSTITUTIONAL CONVENTION:
TO MEET THE CHALLENGE OF A NEW DAY**



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**THE BASIS OF OUR POLITICAL SYSTEM IS
THE RIGHT OF THE PEOPLE TO MAKE AND TO
ALTER THEIR CONSTITUTIONS OF GOVERNMENT.
GEORGE WASHINGTON
FAREWELL ADDRESS**

**To the 67th Session
of the Legislature of Minnesota**

March 3, 1971

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Mr. Speaker, Mr. President, Members of the 67th Session of the Minnesota Legislature, and fellow citizens of Minnesota:

This is a critical time for America.

The challenges that face us are great ones, and basic ones. Our responses to them will largely determine the quality of our environment, the quality of our social and political systems, the quality of our lives--not only during the rest of this century but well into the next.

These are challenges to Minnesotans as well as other Americans. But state governments have had less and less of a role in meeting them, especially during the past four decades. Today, in dealing with many of our problems, the states are little more than the poor stepchildren of the federal government, helpless victims of their own past.

The greatest challenge facing us in state government, I am convinced, is to do everything in our power to correct the present imbalance in our federal system by restoring state government to the role our Founding Fathers intended.

It is only a myth that Democrats--or liberals--or progressives prefer to see problems handled at the federal level. The truth is that the gradual turn to Washington

came out of necessity rather than preference, because so many states proved unwilling or unable to meet the needs of the times. Given the alternative of state inaction, the decision to seek federal assistance has followed naturally. It has been more important to get the job done than to split ideological hairs over who should do it. And those who have protested most loudly about federal encroachment on state authority have all too often been the same ones who have refused to modernize state machinery and make the state more responsive to contemporary problems.

Now it is clear, however, that the trend must be reversed. All of our problems cannot be solved in Washington. The states must reassert their assigned role in the federal system if that system is to function properly in meeting the demands of the 1970's and beyond.

The problems of modern America require a full marshaling of our resources, and that includes Minnesota's resources. But, burdened with governmental machinery that in many cases is hopelessly out-of-date, we are presently unable to marshal those resources effectively.

Our Minnesota Constitution was adopted more than a century ago. The state's population was then 150,000. The state's problems were, by modern standards at least,

relatively simple and straight forward. Today Minnesota is much more diverse and much more complex. We are highly industrialized; yet we still rely heavily on an agricultural economy. Our population has grown by twenty-five times.

The drafters of the Minnesota Constitution can hardly be faulted for not anticipating the enormous changes that 100 years would bring. But it is a serious indictment of us if we fail to recognize the Constitution's present inadequacies and correct them.

We all want Minnesota to be a state fully capable of meeting its responsibilities. But our basic state document is cumbersome, inflexible and unduly restrictive. It dilutes our effort, and it will continue to do so unless we change it.

PRINCIPLES, NOT SPECIFIC POLICIES

A constitution ought to be a basic document laying out the relationship between the people and their government. It should spell out as precisely as possible which powers the people want their government to have and which powers they do not want it to have. It should assign the granted powers among the different branches of government. It should state fundamental principles within which specific policies can be formulated by those assigned the responsibility of policy-making; it should not itself state specific policies. This

is the problem with the Minnesota Constitution: it is overburdened with specific and detailed policies that are the proper domain of the Legislature. These policies might have served the state well in another time, but for many of them, that time has clearly passed. The inflexibility of these policies--and the enormous difficulty in changing them--is a formidable obstacle to progress in Minnesota.

The genius of the Federal Constitution, by contrast, is that it is as meaningful and applicable today as it was in colonial times. This is the ultimate test of a constitution; is it adaptable to changing circumstances? It is a test too often failed by the Minnesota Constitution.

We cannot expect our state government to serve our people effectively until the state constitution is re-examined and revised. I have concluded that this can best be accomplished by a state constitutional convention. The amendment process, although it has served us well in recent years, simply does not lend itself to the comprehensive effort required of us.

While there are a number of areas in which our Constitution needs revision, four are particularly compelling. I hope a constitutional convention, if created by the Legislature and by the people, will focus on legislative reform, tax policy, an environmental bill of rights, and dedicated funds.

REFORM OF THE LEGISLATIVE BRANCH

Much has been said recently about the need to up-date and reform our state Legislature. I feel very strongly about this need because of my own legislative experience. State government as a whole cannot do the job required of it until its policy-making branch is given the capacity to respond effectively to the state's needs. We cannot afford to run a multi-billion dollar state operation with horse-and-buggy machinery.

I have previously outlined some of the legislative reforms I believe are necessary. Among the most important of these are annual but flexible sessions, reduction in size and party designation. In addition, legislative procedures should be redesigned to distribute the Legislature's workload more evenly over the entire session. There must be an earlier deadline for the introduction of bills and a requirement that appropriations and tax bills be brought up for final passage well before the end of the session. There is no greater travesty of the legislative process than the events which are crammed into the final hectic days of every session.

I will be submitting a special message on the subject of legislative reform within the next few weeks, because I believe special attention should be devoted to that problem

whether or not a constitutional convention is authorized by this legislature and submitted for voter approval. But I am convinced that a patchwork approach to legislative reform is unrealistic.

It will simply take too long, because our Legislature is understandably reluctant to submit more than two constitutional amendments to the electorate at one time. Legislative reform alone requires several such amendments, as our Supreme Court has made clear.

More important, it is difficult for a Legislature to reform itself in any comprehensive way. Too many of those in a position to bring about change have a vested interest in preventing it.

Finally, it is undesirable for the Legislature to reform itself for the same reason that it is unwise for a doctor to operate on himself or for a lawyer to act as his own counsel. In so basic and important an undertaking, a fresh and objective viewpoint is required--one that respects tradition, but does not worship it. Such a perspective could be furnished by a constitutional convention.

SHIFT OF ALL TAX POLICY
FROM CONSTITUTION TO LEGISLATURE

Nothing is so clear in governing our state today as the need for additional revenue to finance state services. Yet in the sometimes desperate search for new revenue, the Legislature continually finds avenues closed to it by constitutional edict--avenues which should be subject to legislative determination. Our voters overwhelmingly declared in the recent election that the legislature should determine what property should be exempt from taxation. Other constitutional tax restrictions are just as deserving of legislative determination.

In fact, much of our chaotic tax structure today is the direct result of an era in Minnesota history when special interests dominated--perhaps even controlled--the Legislature. Powerful timber, mining and railroad interests combined to gain for themselves special tax advantages, some of which still linger in perpetuity in the Minnesota Constitution.

Why should some interests enjoy constitutional protection forever from a revision of tax policies affecting them while other taxpayers--homeowners, consumers, and

businessmen--do not? Why are these tax policies not subject to the same kind of legislative determination as those affecting the rest of us?

These special constitutional protections may have been justified at one time, but I believe the time for them is past. At the very least, fundamental review of the justifications is long overdue, for our state has changed.

It is the responsibility of the Legislature to tax--and to tax fairly. But it cannot perform this basic task unless all options are open to it, unless all sources of revenue are subject to its scrutiny and resolve. The best way to review the present restriction on access to these options, in my judgment, is through a constitutional convention.

AN ENVIRONMENTAL BILL OF RIGHTS

I have already communicated to you my deep concern about the protection of our environment. Our most basic need in this area is a fundamental and comprehensive statement of principle which will guide our actions in this increasingly important area. As I stated in my Inaugural Address, I believe that the need for such a statement is so compelling that it deserves to be incorporated into our

state constitution. No other step open to us would so clearly and effectively dramatize the importance we attach to the protection of our environment.

Perhaps there is no better example of the weakness of our Minnesota Constitution than lack of concern for the environment. At the time our Constitution was created, Minnesota was territory to be exploited, to be civilized, to take from, for the growth and wealth of our people and the nation's. The bounty seemed unending.

Now time and exploitation have changed that. Our mission as a state has also changed. From now as far through the future as we can see, we must protect and preserve. The forces of deterioration are already unleashed, and they must be fought. The fight will last as long as man remains in Minnesota.

An environmental bill of rights in our constitution would make unmistakably clear the people's intention to preserve the quality of our environment for all times. This provision would help ensure that our valuable resources will be no longer lost irretrievably to the greed and short-sightedness of man by providing the legal basis for whatever legislative action is necessary to protect those resources.

Certainly preserving our environment is one of the most vital and difficult challenges we face. Yet the challenge to be faced by future generations will be even more vital and even more difficult. There is no greater legacy we can leave those generations than effective tools to make their task easier.

Our Constitution does not now provide the commitment of principle that constitutes the needed tools. Whether or not there is a constitutional convention, that principle should be established.

But a constitutional convention would provide a forum where one basic need for amendment need not compete with another, where all can be considered. We should not have to choose among environment, tax reform, and legislative reform in amending our Constitution. But we may very well have to choose if we remain limited to the slow process of specific amendment of our State Constitution.

DEDICATED FUNDS

Our present Constitution established several special and dedicated funds which severely limit the Legislature's authority to make use of revenues originating from specified sources. There are nearly a dozen of these, including, among others, the Internal Improvement Land Fund and the Swamp Land Fund.

When each of these funds was created, no doubt there was a sound justification. Whether that justification still exists in each case, however, is subject to serious question.

As a general rule, the Legislature should have the broadest possible discretion in the appropriation of state funds. Circumstances change, the state's needs and priorities change, and those changes ought to be reflected in the state budget. Too often, however, that is impossible because the Legislature finds its hands tied by an outdated and completely inflexible constitutional provision.

This is not to suggest that all currently dedicated funds should be eliminated, but rather that they should all be closely re-examined with a view to their relationship to realistic needs. If dedicated funds are to be retained, there should be a present and potential public purpose achieved in each case by doing so.

Perhaps the dedicated funds in greatest need of re-examination are those resulting from highway user taxes. The Constitution presently provides that revenues from these taxes can be used only for "highway purposes" and must be paid directly into the Highway User Tax Distribution Fund.

It then provides, with only a minimum of flexibility, that 62 percent of the net proceeds of that fund be transferred to the trunk highway fund, 29 percent to the county state-aid highway fund, and 9 percent to the municipal state-aid street fund.

This formula may very well have reflected the state's highway needs when it was incorporated into the Constitution 15 years ago, but there is no guarantee that it does today. There is even less guarantee that it will in the future. We are experiencing significant population shifts, significant changes in transportation patterns and needs, and significant changes in federal approaches to transportation which supplement our own. Yet we are locked into a distribution formula that did not anticipate most of these changes and cannot anticipate future changes, but is a part of our State Constitution.

It is the responsibility of elected legislators to determine the state's most critical needs and to appropriate funds accordingly. This is the procedure followed by the Legislature in nearly every other area of state concern; highway construction is the glaring exception. Highway money is too often spent without determining actual need, but rather simply because the Constitution says it must be spent in a certain way. Conversely, it cannot be spent in other ways because of constitutional limitations.

For example, a district court recently held that wheelage tax receipts cannot be used to support the Metropolitan Transit Commission because they were not being spent for "highway purposes" as the Constitution requires. Yet that tax was specifically established to support metropolitan transit efforts. This kind of constitutional restriction is self-defeating at a time when nearly everyone agrees that our reliance on the automobile must decrease and that we must explore and utilize other forms of transit to achieve a balanced transportation system.

The highway section of the Constitution is, in effect, a circumvention of the legislative process. It is an open and frank declaration that the state's elected representatives are not to be trusted in determining the state's transportation needs. With provisions like this in our constitution, it is small wonder that state government has failed to respond effectively to the state's problems and that it has suffered a corresponding decline in public confidence.

This constitutional provision also has had the important effect of isolating the Highway Department itself from both the executive and legislative branches of government. Because the department does not rely on legislative determination for its funds, it is not hard to understand

why, of all state departments, it is the least responsive to the legislative process. In a sense, the highway department has become the Pentagon of state government: running on its own momentum and beyond the effective control of elected officials, it is almost a fourth branch of government.

Needless to say, this constitutes an unhealthy situation in state government which must be corrected if the state's transportation needs are to be effectively and efficiently served in the future. It is another prime example of the need for thorough revision of the Minnesota Constitution.

OTHER REFORMS

There are a number of other constitutional reforms which would greatly improve the document but which probably will never see the light of day without a constitutional convention.

For example, there is the obvious problem caused by the five percent interest limitation on the sale of highway bonds. The state's recent difficulty in selling highway bonds because of this restriction makes it necessary that some adjustment be made.

There is also the desirability of the Governor and Lieutenant Governor running for election as a team, as the President and Vice President do at the national level. This sound proposal has been around for years. Few seriously disagree with it. But the Legislature has never seen fit to place it before the voters.

In addition, the Lieutenant Governor deserves to be made a full-time state officer, made a member of the Executive Council and given additional responsibilities. I would personally like to see the Lieutenant Governor become a full time ombudsman who could expedite the workings of state government for individual citizens.

Then there is the uncertainty surrounding the Governor's appointive powers between legislative sessions, an uncertainty which has clouded the last three gubernatorial transitions. The constitution should very explicitly clarify these powers once and for all. The Governor should be able to make his own appointments for service during his term of office.

Beyond these specific reforms, there are a number of other provisions which a constitutional convention ought to examine carefully and consider changing. These include the courts system, the possibility of removing reapportionment

from the Legislature and entrusting it to a non-partisan commission, a possible reduction in the number of elected constitutional officers, the process of amending the constitution, staggered terms for state senators, and the possibility of removing legislative election contests from the Legislature itself.

In short, there are few sections of the archaic document which could not be improved upon in one way or another. The Constitution needs both additions and deletions to make it an effective basic document of state government.

There is at least one constitutional change which should not await the convening of a convention, and that is a lowering of the voting age to 18 to bring the state into conformity with federal law. If 18-year-olds are qualified to vote in federal elections, as I believe they are and as the Congress and U.S. Supreme Court have said they are, then they are also qualified to vote in state and local elections. I wholeheartedly support placing an amendment to accomplish this goal before the voters at the earliest possible time.

A CONSTITUTIONAL COMMISSION

It is no simple matter to adopt a new constitution in Minnesota. First, the Legislature must, by a two-thirds

vote, approve the idea of a constitutional convention. Then the proposal must be submitted to the electorate for approval. If that is successful, the next Legislature must provide for an election of delegates and the actual convening of the convention. The convention's recommendations then go before the voters for final approval. Thus, the earliest a convention could convene, assuming the Legislature called a special statewide election for the choosing of delegates, would be late 1973. The new constitution would then go before the voters in the fall of 1974.

To ensure that the convention makes maximum use of its time and produces the best possible product, it should have available to it in-depth research, detailed studies and specific proposals. Therefore, I urge you to create a constitutional commission, whose members are to be appointed in part by the Legislature and in part by the governor. Such a commission could begin assembling the necessary information, researching other state constitutions and formulating suggested provisions so that the convention, when it meets, will be equipped and ready to carry out its responsibility.

While Minnesota has never had a constitutional convention since statehood, we have had a constitutional commission. One was created in the late 1940's and it did

a superb job in proposing needed changes. Although some of its proposals have been adopted by amendment over the years, too many of them, regrettably, have been ignored. The work of this former commission is still relevant to our Constitutional needs.

The ideas of a constitutional convention and a constitutional commission are not inseparable. It is possible to have one without the other. If the convention fails to receive the necessary two-thirds vote during this session, I hope the Legislature will still provide for a commission so that its proposals would be available to a convention established in the future or, alternatively, to be submitted by amendment. Because I believe the task of constitutional review must be comprehensive, however, as attested to by the number of issues raised in this message, I earnestly hope you will authorize both a convention and a commission and I strongly urge you to do so.

MAKING STATE GOVERNMENT WORK

Constitutional reform must be a bi-partisan effort, broadly based and truly representative of the state. It can be done. It is being done in other states. Michigan and Illinois recently held constitutional conventions and

adopted new constitutions. It is not a drastic step to call such a convention; it is, rather, an essential step if we are serious about making state government work in Minnesota.

It is a difficult task to prepare a new Constituion. The idea of changing the Constitution will enlist the active opposition of some who have vested interests in maintaining the status quo. I look forward to their opposition, for we need to evaluate their motives in the light of legislative and public debate.

There will also be those who sincerely fear that a constitutional convention might produce a bad constitution. I do not share their fear, for two reasons. First of all, I believe we can and will create a convention that is dedicated to good state government and is made up of representatives who have the best interests of the state as their goal. Second, any proposed constitution must be submitted as an amendment for voter approval. The history of constitutional amendments in Minnesota is such that serious, active opposition to any amendment has always caused that amendment to fail. If a convention should create a poor document, I promise you that I will actively seek its defeat. I am certain that others will gladly make the same promise. It

will take a bi-partisan campaign to adopt a new State Constitution; there will not be that kind of consensus for a bad constitution.

Whatever the risks and whatever the opposition, however, I am convinced we must make the effort. There is too much at stake not to make it. At the very least, we will emerge from such a convention with specific suggestions for amendment of our present document that can be the basis of state government reform for years to come. At best, we will create an effective working constitution in one large effort.

I ask you to join in this endeavor so that we might make Minnesota government more effective in the service of our people. We have a long and proud commitment in this state to good government. I am confident that the people of this state will join us in this effort in the same positive way they have responded throughout our history. I believe we owe them the opportunity.