

2011 SENATE JUDICIARY


SCR 4007

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SCR 4007
January 19, 2011
Job #13120

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Proposing an amendment that provides that an increase in the federal debt requires approval from a majority of the legislatures of the separate states.

Minutes:

Attached Testimony

The Senate Judiciary met for discussion on SCB 4007. **Senator Olafson** introduced and explained SCB 4007. (Attached Testimony #1) The federal debt is not a partisan issue. The website usdebtclock.org gives us a sobering view of the running meter that is our federal debt. Unless 38 states ratify a proposal, nothing changes and the Constitution is untouched.

Senator Joe Miller supports SCR 4007.

Senator Jim Kasper supports SCR 4007.

Representative Thorson supports SCR 4007.

Nick Dranias, Attorney, expert on Constitutional Law, appearing as private citizen, **Director of Goldwater Institute**, supports SCR 4007. My research revealed that, the "Founders", designed Article 5, for this moment in time." He suggests that people read, **Federalist #85, written by Alexander Hamilton**. This is what our "Founding Fathers" intended. **Nick Dranias** states, "This 18 word amendment gives that voice back". This amendment simply says, we want a co-signer in the states, for any new Federal debt, under the circumstances. **Nick Danias** states he has a document that outlines the 10 facts that completely demolish the fear of "runaway convention". The Founders anticipated the possibility and deliberately chose language, the current language of Article 5, to prevent that.

Senator Sorvaag asks that **Mr. Dranias, who** is the director of the Goldwater Institute and research, however, could you give me more background on your qualifications?

Nick Dranias states he has been an attorney since 1996. I spent 8 years in private practice in Chicago. I was engaged in private, commercial and business litigation. I went to the chapter of the Minnesota chapter of the Institute for Justice, which is considered to be a conservative libertarian, equivalent of the ACLU. I decided to pursue a dream and left

my private practice. The Goldwater Litigation team in Phoenix suggested I go there and that's where I ended up, for the past three years.

Senator Sitte states she is looking at something that was given to her on the Goldwater Institute. There are questions, I have. She asks, "The states will determine how the delegates are selected, how can anyone think that we will not have a very partisan and the most partisan people wanting to get on, one of the powerful conventions, ever called?"

Nick Dranius states "We can't know, nothing is perfect, nothing in politics is guaranteed". However, I think it all depends on what the agenda is for the amendments convention. If the convention is, like the national debt relief amendment, which is policy neutral, I don't see a reason, why that would lend itself, to easy partisan politics. I see that as a vehicle for bipartisanship. Of all the things I see, this idea I see, that is not partisan.

Senator Sitte states she agrees with the premise completely. What it is really all about is, either we are going to have to cut government programs or the states are going to have to pick up the costs. When political rally hits the road, I have to disagree. It will become partisan. My second concern is that the convention establishes its own rules, including its voting rules. The initial default rule is one state, one vote. That can be easily amended and /or the rules can be suspended.

Nick Dranius states that he wants to put this in context. The constitution gives undefined rule making power to Congress, as well. The chances of a majority of state delegates voting as states, disenfranchising themselves, is probably as likely as, a majority of congressman voting to disenfranchising themselves.

Senator Sitte states that when they had the "Articles of Confederation", they just wanted to amend them; they did not intend to have a completely new constitution.

Nick Dranius states that we are coming out with a new publication called "**Federalization Tool Kit**" and among the ideas in there is this idea. It takes the time to show, it is a myth, that the original Constitutional Convention of 1787, was a "runaway" from an original Articles of Confederation" authorization. What the Articles of Confederation authorized, and what it says in the language, is that the states can alter the Articles of Confederation. The word alter, at the time, was mirroring the word of the Declaration of Independence. It talked about the right of man to alter their form of government. It signified, a much broader change, than the word "amend" at the time. It actually had a revolutionary significance. The Articles of Confederation was actually drafted, initially, just a few months after the Declaration of Independence. So the authority that the original Constitutional Convention was convened, under was one that was much broader, than a mere amendment. It was under the auspices of "an alteration of a form of government". The other thing is, if you look at the congressional call for the Constitutional Convention, it says in the "call", that is to "establish a national government", also to alter and revise the Articles of Confederation. The word "revise" at the time, has also structural significance beyond an amendment. At the time, the term "revise", was meant to mean, "a total rewrite". So leading into the Constitution Convention of 1787, you have "authority for alteration, a revision, all the delegate commissions, except NJ, mirrored that language. So the delegates were authorized to go in there, to establish a new national government, to rewrite it and that is,

exactly what they did. That is completely different than what Article 5, authorizes. In fact during the Constitutional Convention, they debated, whether to give that kind of authority, to the states, in the Constitution. That language was rejected, in favor of the current language. Which is one that is not for a Constitutional Convention, but for a convention for proposing amendments? The bottom line is, that the history, custom practice and precedent, really clearly establishes, that we have never had a "runaway convention, of any kind. It is a safe process. In the end, 38 states have to ratify, whatever comes out of this.

Senator Sitte states that in SB 4007, page 26, second to the last paragraph, it says because the Constitution grants the convention, not the states, power to propose amendments, the states cannot require the convention to adopt a particular amendment or dictate its language. The actual drafting is the conventions prerogative. How can you say, from your own writing, that this can't be a "runaway, when in fact, you are saying that the subject matter, can be framed, once they are there?

Nick Dranias states, that the point is, you can limit the agenda, just like a special session of the legislature. The governor can't say, in a special session, here is the bill you are going to run, you can't make any amendments to it, and this is what you are going to do. You can't, if you are going to have a convention. You can't demand that they vote up or down, on a particular text. You can specify the agenda.

Senator Olafson asks **Nick Dranias**, if he would detail the other method, that Congress can propose, an amendment to the Constitution? If you could address that other method, under Article 5, and then address the question, why does nobody worry about a "runaway Congress" proposing something radical?

Nick Dranias states that Article 5 has two amendment processes. One is entrusted to Congress, and one is entrusted to the states. The bottom line is, even if the states never use their parallel process to amend the Constitution, that means that 2/3 of Congress can propose anything they want. If you are looking for "runaway" potential, which is the greater threat, the actual law making body that can propose anything it wants, that is in Washington, DC, that is distant from the people, where the 'special interests, have the relative advantage, or a process that arises from states and state legislatures, which are closer to the people, where "special interests" have less influence. The greater risk, I feel, is from Congress.

Senator Sitte asks what is your optimum time frame for getting this convention underway? What is the shortest time?

Nick Dranias states that he thinks it is realistic, giving the success that **Milton Freedman** had with the balanced budget amendment, in the 70's and 80's, was able to get to 32-33 states in seven years, in age of faxes and snail men. I think in the internet age, it is realistic, to see this get into 34 states in 3-7 years. Our target is five years. Right now there are six states that are introducing this resolution; given the way the balanced budget amendment idea went in the 70's and 80's. If we get four of these past, in this first year, then you see a "snowball effect". In my opinion, this is a better idea than a balanced budget. Here's why. 48 states have the equivalent of a balanced budget amendment and courts generally don't enforce them. The beauty of this amendment is that you can actually rely on the "body

outside the courts" to enforce it and that is the financial markets. Who is going to buy a federal bond in the financial markets, for face value, that hasn't been approved by the states? Obviously, a greater risk of default, obviously they are not going to pay the same value for it, if there was a risk of default and so the amendment idea is so flexible. It only requires a majority to approve it so it can be used when it is needed. It is also more flexible than a balanced budget amendment because you are not relying entirely on the courts. You can actually rely on the financial markets to impose discipline.

Hearing on SCR 4007 closed.

Date: 1/26/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4007

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman		X	Carolyn Nelson	X	
Curtis Olafson - V. Chairman		X			
Stanley Lyson		X			
Margaret Sitte	X				
Ronald Sorvaag		X			

Total (Yes) 2 No 4

Absent _____

Floor Assignment S.

If the vote is on an amendment, briefly indicate intent:

Date: 1/24/11
 Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4007

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Olafson Seconded By S. Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson		X
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte		X			
Ronald Sorvaag	X				

Total (Yes) 4 No 2

Absent _____

Floor Assignment S. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4007: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SCR 4007 was placed on the
Eleventh order on the calendar.

2011 HOUSE CONSTITUTIONAL REVISION

SCR 4007

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee
Prairie Room, State Capitol

SCR 4007
March 30, 2011
Job #16199

Conference Committee

Committee Clerk Signature

Mary Main

Explanation or reason for introduction of bill/resolution:

A concurrent resolution providing for the application for an amendments convention to the Constitution of the United States to be called for the purpose of proposing an amendment that provides that an increase in the federal debt requires approval from a majority of the legislatures of the separate states.

Minutes:

Attachments #1 and #2

Chairman Koppelman: We'll open the hearing on SCR 4007.

Representative Thoreson: I am not the prime sponsor of this bill but I did want to stand in support of it. I am going before the prime sponsor as I have another commitment in a few minutes. I would like to urge your support of SCR 4007. The House did just pass a resolution that I had dealing with the 'runaway convention'. I'm not concerned about those so with what we did today and what this will do, we have a very nice package here.

Senator Curtis Olafson, District 10: SCR 4007 has been given the name the National Debt Relief Amendment. (See attached testimony #1).

Article V provides two processes by which amendments can be proposed to the Constitution and I think we should take a minute to review those. Either Congress by two thirds vote of both chambers can propose an amendment or the states can, by application of 34 states, convene a convention to propose an amendment to the Constitution. The history of the article V process is very interesting. There has never been a convention convened by 34 states to propose an amendment. There's a very good reason why it hasn't happened. The states have drafted hundreds or thousands of applications submitting a proposal for amendments but what happens as Congress watches numbers of states applying for the same idea, Congress says these states are building a lot of political will and they jump and propose the same idea. That's how all of the amendments have come to be adopted to the United States Constitution.

(Read lines 3 and 4 of the bill and lines 18 through 22).

This is a golden opportunity for people from all parts of the political spectrum to say to your constituents, to the citizens of North Dakota, and most importantly to Congress. In North Dakota, the most fiscally responsible state in the nation, there is bipartisan understanding that the federal debt is a serious problem and we want something done about it.

(Refer to page 3 of attachment #1).

(He gave examples of no fear of a 'runaway convention' as covered in page 2 of testimony).

Think about the last two phrases of our National Anthem, the land of the free and the home of the brave. If we have a little fear, we have to set that aside because if we are going to remain the land of the free we have to become the home of the brave and take some action.

Our generation is going to send our grandchildren's generation the bill for the spending that we are currently engaged in. That's wrong and we have to take action. Doing nothing is not an option. I'll stand for questions.

Representative Owens: I'm not crazy about this debt and I agree with you 100% on the article V. I don't believe that there could be a runaway convention. I believe its fine like it is but we passed the other one just to belay the concerns of all those worriers. The thing that comes to mind is the 'the Great Depression' and 'WWII'. At those times, there's no guarantee that states would respond and the federal government would still be looked upon to respond. It's just a simple majority of the states but there's no guarantee that the majority would respond. I just wondered if you'd considered that. You said this was model legislation. I'm sure this was brought up by the people.

Senator Olafson: It's a concern that I had going into this. What happens in the case of a true national emergency, a 9-11, hurricane Katrina, or a Pearl Harbor? Under our current system, the federal government can't incur debt immediately. It's a process that takes time. The bonding process takes time. They can't immediately incur the debt anyway. A lot of state legislatures are meeting in session every year or all of them can be quickly called into session if there's a true national emergency. Congress would have to make a compelling case to increase the debt limit if there was a true national emergency, a great depression, a world war attack. I can't imagine that we as state legislatures would say no, we don't want you to increase the debt, we don't want you to fight the war, and we don't want you to deal with the depression. If there's a compelling need for debt, I am very confident that the wisdom of 26 state legislatures would prevail and they would say yes, we have a compelling need to increase the debt and borrow some money and get through this crisis. I considered it, it's a legitimate concern, but when you think through the process, you begin to be much more comfortable with that because that would all take time anyway and during that time we can have a national discussion about the need.

Representative Holman: To me the reality of the situation comes into play when we have neither party willing to attack the obvious problem that we have because the minute that you throw something like this out and say we're going to do it and then you say 'I'm going to cut your social security and the military and the health care is going to be cut down' because those things are things we're failing to address. Now you throw these cuts to a vote of the people because this is how we do it. That makes it a really hard sell and that's partly why we're in the mess we're in.

Senator Olafson: It's proven that both parties are unwilling and afraid to tackle the problem and address it. I've had people say to me if you think we're going to get this debt under control, what would you cut? My response to that has been your question presupposes that cutting spending is the only way to avoid incurring more debt. They will say you either have to cut spending or you have to increase taxes. Both of those may be true but there is a third way and a much better way to avoid incurring further levels of debt.

If Congress would put confidence back in the American people to invest; confidence that tax policy is going to be stable; confidence that we are not going to be killed by regulation in our businesses. If people had some confidence in that, we would unleash a tremendous amount of entrepreneurial spirit in this country. There are right now record cash reserves being held in the private sector in this country and why is that? Because people don't know what tomorrow will bring. They don't have the confidence to invest and grow the economy. If we could grow the economy and expand it and create better jobs and higher paying jobs, we may very well be able to avoid incurring more debt without drastic spending cuts or tax increases. That's where they should start in my opinion; getting the confidence back in the economy. Then we need to look at a combination of whatever it would take; if it were spending cuts or tax increases. I think if businesses in this country had some confidence and taxes were raised some, they would say now that I know what the ground rules are; I can set up my business accordingly.

Representative Meier: Out of the 8 states that have proposed this legislation, have any of them passed?

Senator Olafson: No they have not and I'm sure hoping North Dakota will be the first. There are people all across this country looking at this effort in North Dakota very closely because what North Dakota does is going to have an impact at the federal level of what other states do. I'm working with the people at the national level who first proposed the idea. I've been looking at the article V process for a long time and when I saw this idea, I thought it had a lot of merit because of its simplicity. It has not passed in any other state. The two other states that have voted on it are Arizona and Utah. Arizona had a tie vote in the Senate, 15 to 15 and it was narrowly defeated in Utah. The reason it was defeated in those two states is because there is a couple of organizations that are making their living by fear mongering over the article V process. They have a strong presence in those states. There are so many article V efforts out there now. This process is generating a lot of interest.

Chairman Koppelman: Further testimony in support of SCR 4007? Opposition? Seeing none we'll close the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee
Prairie Room, State Capitol

SCR 4007
April 6, 2011
Job #16412

Conference Committee

Committee Clerk Signature	<i>Mary Mauer</i>
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Minutes:

Chairman Koppelman: Let's take a look at SCR 4007. This is the appeal for a constitutional convention in article V for the purpose of proposing an amendment to the United States Constitution that would hold that the federal debt limit cannot be increased without approval from the majority of the legislatures of the states. It would take 26 state's legislatures approving an increase in the debt limit on the federal level. What are the wishes of the committee?

Representative Schatz: I move a do pass on SCR 4007 just to get the conversation started.

Representative Louser: Second

Representative Winrich: I don't believe that any nation within the modern world structure has ever gone to war without incurring national debt. It seems that is such an extraordinary situation that there may not be time to wait for all the legislatures in the country to meet and approve some sort of debt limit if it becomes necessary in that situation. Such an amendment to the federal constitution would be rather dangerous for our own security.

Chairman Koppelman: I don't know whether this resolution specifies the specific amendment language or not; it doesn't appear to. It just describes what the purpose would be. I don't know if it would be crafted in such a way to allow for that kind of a temporary emergency measure or not. It seems silent on that issue. It's a valid point.

Representative Holman: The timing of this resolution is quite appropriate because we are probably about to raise the debt ceiling at the federal level. We go through that every 3 to 6 years at the federal level. We who live in North Dakota where we have to balance the budget, which I like and I think most of us do like that. There are two reasons that I will oppose this. One - at the federal level there are reasons to exceed the limit and need or borrow more money. Second - I don't see this as realistic as being presented at this time.

Representative Kasper: Let's talk about what's facing the Congress right now with them talking about we have to increase our debt. If this resolution were in law right now, let's look at what the debate would be in the United States Congress. It would be where can we do some cutting? Where can we trim back our federal spending because we can't have a

debt increase without the vote of 26 states? I submit that it would have Congress looking at what they do, how they do it, and when they do it totally differently than what they've been doing for the last 20, 30, or 40 years which has been atrocious, particularly the last 3 or 4 years. An amendment like this would change the dynamics of the Congress for the better because they are out of control right now on both sides of the aisle. I really think this would be helpful to get our members in Congress focusing entirely differently. Such as, do we really need the department of education when education we hear in our legislative body that it is a local control issue? Our school boards ought to be deciding. Do we really need a department of environmental protection where we have public service commissions in all the various states that can implement and have laws that protect their citizens? What do we need that for? I think this would change the dynamics of Congress for the better. On the national defense, I would assume that if they had this convention to put this debt limit in effect, they could make an exception for a national defense crisis. I don't know if this allows that room or not but one of the fears is a runaway convention. What if they just ran just a little bit and said we'll have an exception for the national defense?

Representative Holman: In order to have a balanced budget, the money coming and the money going out has to balance. As we have seen in the past, that means we change the tax code to adjust it to balance the budget so it's not just about cutting programs. We probably, at this point in history, our general tax rate is a relative to GDP or income is at quite a low rate right now. Adjusting things such as corporate income tax and other taxes may be on the table and probably will be before this current cycle of debate finishes in the next month or two.

Representative Streyle: The Federal Reserve is just printing money so there is a way to get money into the system as we've seen. We haven't discussed that. They are flooding the markets with money which devalues our money and yet allows them to buy our debt up so it's interesting what they are pulling off.

Chairman Koppelman: Theoretically, I suppose they could keep doing that even if this were part of the Constitution. They wouldn't be raising the debt limit but you'd be flooding the market in monetary supply.

Representative Streyle: Correct.

Chairman Koppelman: Interesting point. Further discussion? Call the roll on a do pass recommendation on SCR 4007.

8 Yes, 3 No, 0 Absent

Do Pass

Carrier: Representative Kasper

Date: April 6, 2011
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4007

House Constitutional Revision Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Representative Schatz Seconded By Representative Louser

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conklin		✓
Vice Chairman Kretschmar	✓		Representative Holman		✓
Representative Kasper	✓		Representative Winrich		✓
Representative Louser	✓				
Representative Meier	✓				
Representative Owens	✓				
Representative Schatz	✓				
Representative Streyle	✓				

Total (Yes) 8 No 3

Absent 0

Floor Assignment Representative Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4007: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **DO PASS** (8 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4007 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SCR 4007

①

Senate Judiciary Committee Testimony of District 10 State Senator Curtis Olafson

January 19th, 2011

I am here this morning to provide information on Senate Concurrent Resolution 4007. This resolution is part of a nationwide effort to invoke our rights as a state legislature under Article V of the US Constitution to make application to Congress to convene an Amendments Convention. The proposed amendment is contained in the text of the resolution and specifies that "An increase in the federal debt requires approval from a majority of the legislatures of the separate states."

This idea was first proposed by Restoringfreedom.org and has been thoroughly researched by the Goldwater Institute in Phoenix, Arizona. It has also just recently been adopted as model legislation by the American Legislative Exchange Council. The nationwide effort is called the National Debt Relief Amendment and North Dakota is the first state in the US in which the resolution is being heard in committee. The resolution has prime sponsors in about 8 states so far with potential prime sponsors in about 6 other states seriously considering sponsorship.

I want to emphatically state that this is not a partisan effort. The federal debt is not a partisan issue. We all have to acknowledge that the debt has increased under the control of both parties. Moreover, people from all parts of the political spectrum are rightly concerned about the federal debt. Everyone I have talked to universally understands that the level of debt is a serious problem. I believe that it is so serious that it is an imminent threat to the very sovereignty of our country.

Everyone agrees that we have a problem, but some offer old ideas as the solution to the problem. Some say, "We need to change the people in Congress." We have done that. We have a far different group of people in Congress now than decades ago when the problem began to grow. Others say "we need to change parties." We have changed the party in control more than once and more than twice. We have changed people and we have changed parties and the problem continues to grow. The problem is not based on people and it is not based on party. The problem is systemic and the system and the ground rules need to be changed.

The federal debt has recently rolled beyond \$14 trillion dollars, which translates to over \$45,000 per man woman and child in the US. And remember, not every man, woman and child is a taxpayer, so each taxpayer's share of the debt is now over \$126,000. The website usdebtclock.org gives a sobering view of the running meter that is our federal debt.

You may be hearing from opponents to this resolution that you should fear a "runaway convention." I had that concern myself at one time, but after researching the issue, I strongly agree with the conclusion

of constitutional experts that the fear is unfounded. Note that in the text of the resolution beginning on line 18 that the resolution requires that the convention be strictly limited to the consideration of this one proposed amendment. There are complex legal and constitutional reasons why one need not fear a runaway convention, but there are also some very compelling political reasons why the process should not be feared.

Delegates selected by state legislatures would go to a convention with a powerful mandate from their state legislature that they limit their deliberations to the consideration of one issue and one issue only. If they went beyond the scope and call of the convention, that would be immediately challenged in a court of law, and should be challenged by Congress, as a convention whose results should be considered null and void. If both the courts and Congress fail to declare the convention as invalid, the ultimate protection is that 38 states must ratify the proposal agreed to in a convention. It is important to remember that unless and until 38 states ratify a proposal, nothing changes and the Constitution is untouched. It is interesting to note that Congress, on a 2/3 vote of both chambers; can propose amendments for ratification by the states, but you never hear opponents to the state initiated method expressing fears about a "runaway Congress."

The strength of the proposed amendment is its simplicity. The amendment does not dictate policy. It only specifies that if Congress feels that they have a compelling need to increase the federal debt limit, they need to come to the government closest to the people, our state legislatures, to seek their approval. It does not require tax increases or spending cuts. It simply provides a check and balance to prevent Congress from arbitrarily and unilaterally raising the debt limit and charging off that debt to our children and grandchildren. They did not sign a mortgage and they did not cast a vote, but they are going to be handed the bill for today's spending. We must act now. A runaway Article V amendments convention is a myth. A runaway federal debt of \$14 trillion is a reality.

House Constitutional Revision Committee

Testimony of District 10 State Senator Curtis Olafson

Senate Concurrent Resolution 4007

March 30th, 2011

I am here today to provide information on Senate Concurrent Resolution 4007. This resolution is part of a nationwide effort to invoke our rights as a state legislature under Article V of the US Constitution to make application to Congress to convene an Amendments Convention. The proposed amendment is contained in the text of the resolution and specifies that "An increase in the federal debt requires approval from a majority of the legislatures of the separate states."

This idea was first proposed by the Restoring Freedom Foundation and has been thoroughly researched and has been endorsed by the Goldwater Institute in Phoenix, Arizona. It has also been adopted as model legislation by the American Legislative Exchange Council. The nationwide effort is called the National Debt Relief Amendment and North Dakota is the first state in the US in which the resolution is being heard in committee. The resolution has prime sponsors in about 8 states so far with potential prime sponsors in about 6 other states seriously considering sponsorship.

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Everyone agrees that we have a problem, but some offer old ideas as the solution to the problem. Some say, "We need to change the people in Congress." We have done that. We have a far different group of people in Congress now than decades ago when the problem began to grow. Others say "we need to change parties." We have changed the party in control more than once and more than twice. We have changed people and we have changed parties and the problem continues to grow. The problem is not based on people and it is not based on party. The problem is systemic and the system and the ground rules need to be changed.

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You may be hearing from opponents to this resolution that you should fear a “runaway convention.” I had that concern myself at one time, but after researching the issue, I strongly agree with the conclusion of constitutional experts that the fear is unfounded. Note that in the text of the resolution beginning on line 18 that the resolution requires that the convention be strictly limited to the consideration of this one proposed amendment. There are complex legal and constitutional reasons why one need not fear a runaway convention, but there are also some very compelling political reasons why the process should not be feared.

Delegates selected by state legislatures would go to a convention with a powerful mandate from their state legislature that they limit their deliberations to the consideration of one issue and one issue only. If they went beyond the scope and call of the convention, that would be immediately challenged in a court of law, and should be challenged by Congress, as a convention whose results should be considered null and void. If both the courts and Congress fail to declare the convention as invalid, the ultimate protection is that 38 states must ratify the proposal agreed to in a convention. It is important to remember that unless and until 38 states ratify a proposal, nothing changes and the Constitution is untouched. It is interesting to note that Congress, on a 2/3 vote of both chambers; can propose amendments for ratification by the states, but you never hear opponents to the state initiated method expressing fears about a “runaway Congress.”

The strength of the proposed amendment is its simplicity. The amendment does not dictate policy. It does not require spending cuts or tax increases. It only specifies that if Congress feels that they have a compelling need to increase the federal debt limit, they need to come to the government closest to the people, our state legislatures, to seek their approval. It simply provides a check and balance to prevent Congress from arbitrarily and unilaterally raising the debt limit and charging off that debt to our children and grandchildren. They did not sign a mortgage and they did not cast a vote, but they are going to be handed the bill for today’s spending. We must act now. A runaway Article V amendments convention is a myth. A runaway federal debt of \$14 trillion is a reality.

The text of Article V:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Federal Debt as of 8:00 AM CDT on 03/30/2011:

US National Debt of Record: \$14,263,715,600,000

US National Debt of Record per US Citizen: \$45,852

US National Debt of Record per US Taxpayer: \$128,388

US National Debt to GDP Ratio: 97.42%

US Federal Budget Deficit: \$1,339,506,000,000

Source: usdebtclock.org

Oppose Senate Concurrent Resolution 4007

North Dakota Senate passed SCR 4007, which asks the federal government to convene a national constitutional convention (Con-Con) for the first time since 1787. The North Dakota House of Representatives can stop this reckless move.

The case against calling such an amendments convention, also referred to as an Article V constitutional convention, in a nutshell: A large number of constitutional scholars agree that an Article V constitutional convention cannot be restricted as to what amendments they consider and ultimately propose. After this constitutional convention would "propose amendments," the amendment(s) would then be submitted to the states (either state legislatures or special state conventions as designated by Congress according to the Constitution, but possibly some other bodies proposed by the constitutional convention itself following the precedent of our original Constitutional Convention in specifying the means for the ratification of the Constitution) for ratification. Although three-fourths of the states would have to ratify an amendment for it to become part of the Constitution, there is still the all-too-real risk that a harmful amendment or series of amendments could be ratified due to the extraordinary influence exerted on American voters and their representatives by powerful elites in our news media, government, educational institutions, and foundations.

The Goldwater Institute has been among the most active working to persuade state legislators that convening an Article V constitutional convention would be safe. In order to effectively rebut their claims, please read:

Constitutional Convention: 10-Point Refutation

Written by Joe Wolverton, II

Published Wednesday, 16 March 2011

<http://thenewamerican.com/index.php/usnews/constitution/6707-constitutional-convention-10-point-refutation>

In order to buttress its call for an Article V convention, the Center for Constitutional Government at the Goldwater Institute has published a document entitled "10 Facts to Rebut the Mythology of a Runaway Convention." This list is designed to set forth a roster of reasons that an Article V convention is not only safe, but necessary. In order to effectively rebut the Goldwater Institute's rebuttal, the definition of a few key terms and concepts must be set forth. Principally, the reader must be familiar with Article V of the Constitution, the type of convention it anticipates, the history of such a provision, and the likely metes and bounds that would establish the legal territory of any convention authorized under the relevant constitutional grant of power.

First, let us look at the black letter of Article V. Article V of the Constitution reads in relevant part:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress.

Plainly stated, Article V requires the Congress of the United States to call "a Convention for proposing Amendments" upon receipt of applications for such by two-thirds of the states. Then, any amendment proposed by such a convention becomes for "all Intents and Purposes ... part of this Constitution" if subsequently ratified by three-fourths of the states, either by state legislatures or by state conventions, as determined by Congress. To date, no such convention has been held. Recently, however, a significant bloc of erstwhile conservatives and constitutionalists has united in pleading with the states to apply to Congress to convene just such a convention.

What would be the purpose of such a convention, and why are otherwise conservative organizations working so

diligently to bring it to pass? The answers to these questions are revealed through the “10 Facts” document and this article’s refutation of those “facts.” What follows is a recitation of the “10 Facts” followed by the appropriate constitutional response.

Verifying Facts

The first fact, verbatim, says: “Article V does not authorize a constitutional convention; it authorizes a convention for proposing specific amendments.”

Right out of the chute, the “10 Facts” author adds a word to the Constitution that isn’t there. Article V does not contain the word “specific” as a modifier of the noun “amendments.” While this might seem like an inconsequential and picayune point, it is anything but, especially in light of the gravity of the matter at issue. The plain language of Article V limits neither the scope of the convention it anticipates nor the number or substantiveness of the amendments that may be proposed therein. In fact, if the purpose of the suggested convention is to propose amendments to the Constitution, doesn’t that make it per se a constitutional convention, regardless of how narrow an agenda those calling for the convention say they will follow? It seems so very dangerous to rely upon semantics as a balance to the risks that would attend such a convention, regardless of the nomenclature preferred by its advocates. Besides, adding and deleting words from the Constitution is a trick typically employed by enemies of our Republic, not by those sailing under the colors of the Constitution.

The second of the Goldwater Institutes “10 Facts” states: “When the Founders drafted the U.S. Constitution in 1787, they specifically rejected language for Article V that would have allowed the states to later call for an open convention.” As with the previous claim, this one is a mixture of a thimble of fact in an ocean of fiction. A brief recap of the relevant debate at the Constitutional Convention of 1787 is called for.

With so many of the conflicts at the Philadelphia Convention, the debates over Article V fractured along the line separating the powers retained by the states and those to be granted to the new national authority.

There was general consensus among the delegates that the new charter should include an effective mechanism for enacting amendments. Their common experience under the impotent Articles of Confederation confirmed to the delegates that the process established by the new Constitution should be easier than the method under the Articles whereby one state could veto any proposed amendment, regardless of the number of sister states in favor of its passage. The delegates were not, however, in favor of reducing the process of amending the Constitution to something that would undermine the stability they sought to ensure by the working out of the difficult “bundle of compromises” that would hold the new union together.

The compromise that resulted in the version of Article V that was written into the Constitution revealed two salient points: First, Congress was not to have the exclusive power to propose amendments; and second, state legislatures were not to retain the power to propose and ratify amendments, as such a scheme could be manipulated by states to increase the scope of their power. The balance between state and federal power would be divided thus: The state legislatures could call for the convention and ratify any amendments proposed therein, but Congress must convene a convention upon receipt of the appropriate number of state applications. (Congress may also propose its own amendments that, like amendments proposed by a convention, must be ratified by the states.)

Put simply, if state legislatures were allowed to write the proposed amendments, as well as set the scope of the agenda for the Article V convention that would consider them, Congress’ power would be effectively reduced and the delicate balance worked out by our Founding Fathers would be upset. Alternatively, if Congress were permitted to define the scope of the Article V convention called for by the states, then Congress would be usurping power not granted to it by the Constitution, also an outcome inconsistent with the principle of federalism that is the fulcrum upon which our Republic is balanced.

The third fact claims that as 38 states would have to ratify any proposed amendment coming out of an Article V convention, the potential for a “runaway” convention is reduced by the requirement of such a “broad consensus.” As demonstrated in the historical information presented above, it is given to neither the states nor the national government to assume the role of arbiter of what is or is not a permissible proposal at an Article V convention. This “broad consensus” relied upon by the Goldwater Institute could likely prove broad enough to accommodate all manner of frightening meddling with our beloved Constitution, such as changing the method of ratification. But could a new proposal for ratifying amendments be adopted based on the newly proposed method as opposed to the method now in place? It’s possible. Consider that the Constitutional Convention of 1787 scrapped the then-existing constitutional amendment process requiring ratification by all of the states in favor of a new process requiring ratification by only a three-fourths majority — and the new Constitution was then ratified based on the three-fourths majority. But even assuming that the Article V amendment procedure is strictly followed, Congress could still submit amendments proposed by the convention to special state ratifying conventions as opposed to the state legislatures as a means of circumventing the wills of the state legislatures. Congress sent the 21st Amendment (ending prohibition) to state ratifying conventions, in fact, fearing that it might not be possible to get three-fourths of the state legislatures to ratify an amendment ending prohibition.

Fourth, the Goldwater Institute assures readers that an Article V convention “couldn’t simply rewrite the entire Constitution.” Why not? Why couldn’t an expansive amendment (or amendments) strike most or all of the language of the Constitution and replace it with new language?

But replacing the Constitution with a new constitution would by no means be necessary to radically alter the document. It wouldn’t have to. The Constitution, as originally drafted and ratified by the states, has been amended into a document that would be unrecognizable to the Founders and that is irreconcilable with the principles of federalism and limited government that were the two chief cornerstones upon which our Republic was built (see, for example, the 16th Amendment, which gave Congress the power to collect income taxes, and the 17th Amendment, which provides for the direct election of U.S. Senators, rather than allowing their appointment by state legislatures).

The fifth fact is as fictional as the others in its insistence that the “convention can be limited to specific topics.” This is mere wishful thinking. There is no legally binding precedent that would control in such a matter. In fact, as set forth above, the Founders purposefully avoided granting such power to either the states or the federal legislature. As eloquently addressed by Walter E. Dellinger, “To permit the state legislatures to dictate to the convention the exact terms of its proposals is to short-circuit the carefully structured division of authority between state and national interests.” Our Constitution is the palladium of the viability of the coexistence of dual sovereignties. If we accept the logic of the “10 Facts,” then we eviscerate the strength of the Constitution: the balance between state and federal authority.

The next fact listed by the Goldwater Institute contends that “one cannot take the Constitution seriously and contend that Article V was not meant to be used.” Serious opponents of an Article V constitutional convention do not argue that Article V was never meant to be used. There are, perhaps, in the universe of possibilities compelling reasons for the calling of an Article V convention. The purpose relied upon by the Goldwater Institute and its fellow Article V advocates is not one of those, however. This coterie of self-styled constitutionalists insists that an Article V convention is needed in order to curb the “endless growth of the federal government” and to “regain control over the federal government.” We, the opponents of a new constitutional convention, counter by asserting that it is irrational to hold a convention to propose amendments whose purpose is to clarify what is already part of the Constitution. Why, for instance, propose a balanced-budget amendment when most congressional spending is in violation of the Constitution? Why would Congress ever follow new amendments when the American people don’t require them to follow the present ones? Note that most states have strict rules about balanced budgets or have passed balanced-budget amendments, yet almost none have balanced budgets. We don’t need amendments to save our Republic; we need renewed commitment to the Constitution — as written — and to the timeless principles of self-government and

republicanism that undergird it.

Next, the Goldwater Institute wants to have its cake and eat it, too. In regard to concerns that a constitutional convention would exceed the scope of that set by those who called for the convention, it insists that there is "zero precedent" that any convention of the states has ever "run away" from its assigned agenda. This thesis is supported by the statement that "nearly all of the commissions for the delegates for each state" authorized them to "revise" and "alter" the Articles of Confederation — basically trying to undermine the argument that the Philadelphia Constitutional Convention in 1787 is a prime example of a runaway convention. Take this thought out of historical context and apply it to our own situation. Would the amendments proposed by a modern Article V constitutional convention be binding on the states whose delegates were not specifically authorized to vote on any amendments that fell outside the scope of their commissions?

"Fact 8" sets forth the rules by which an Article V convention would be governed. The fact is the Constitution is silent on the point and all of these assurances proffered by the Goldwater Institute are unreliable and self-interested attempts to soft-pedal the very real risks posed by the lack of enumerated rules that would govern the proceedings of an Article V constitutional convention and the legal scope thereof.

The last two points made by the Goldwater Institute read as restatements of earlier ones. The advocates of an Article V convention argue that the scope of an Article V convention would be "similar to that of state ratification conventions." That is not accurate. The state conventions that ratified the original constitution were limited to debate and vote on an already complete slate of proposals. Even the most cursory study of the history of those conventions revealed that delegates did not bind themselves by those rules, and numerous amendments were proposed, 10 of which eventually became the Bill of Rights. An Article V convention would potentially be in the hands of designing delegates of all political and social stripes, and it strains credulity to imagine that the product of such a confab would be as sound as our Bill of Rights, but it would still be just as much a part of our constitution.

Why? Because "mere amendments" become the law, and very often with devastating effect upon the remarkable and unmatched system established by our Founders (again, see the 16th and 17th Amendments).

A Way Forward

There is a simple answer: Look to the plain language of Article V. Not a single assurance provided by the Goldwater Institute in its "10 Facts" has any basis in that provision of our Constitution. As constitutionalists we should never be guilty of skulking about in penumbras to find tenuous justifications for our causes, no matter how noble their underlying intent.

Finally, why run the risk posed by an Article V convention? There is a substantial risk that the very foundations of our Republic would be left vulnerable to destructive forces inimical to our Constitution. Ironically, this risk is protected by the black letter of Article V and thus must be avoided at all cost.

If the true aim of the proponents of an Article V constitutional convention is to redress the imbalance between the states and the increasingly despotic federal government, should we not encourage the very fine organizations founded and funded by brilliant patriots to employ their time, talents, and treasure in the cause of supporting the election of candidates committed to hewing rigidly to the enumerated and limited powers already clearly written into our Constitution?

One mustn't sit idly by as otherwise right-minded constitutionalists lift the tub of our Republic and throw out the water of our Constitution with the bathwater of federal usurpation of powers. Frequent elections is the drain by which the filth of congressional and executive tyranny is removed, and it is the clear water of the Constitution with which the tub must be refilled and used to cleanse the body politic. We should not mix this purifying liquid with the potentially muddying and infected draughts of an unnecessary Article V convention.