

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HCR 3017

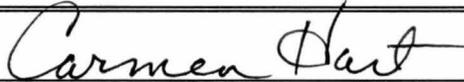
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HCR 3017 (AM)
2/5/2015
23307

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to provide states a process to collectively countermand or repeal any law or ruling

Minutes:

Attachment 1-2

Chairman Kasper opened the hearing on HCR 3017.

Rep. Fehr appeared in support. Attachment 1 (:13-3:05)

Rep. Amerman Line 20 shows "providing states a process to collectively countermand or repeal." How will that process work?

Rep. Fehr I would like to defer it to our constitutional expert who will be following me.

Senator Oley Larsen appeared in support. We as a legislature need to be enlightened of our true power and our true state sovereignty that we have. We have the ability to say enough is enough coming from the feds. When our citizens are scared of our government, something is messed up with that. We as a state have the ability to put checks and balances into the federal government, and we don't have to continue to be taking this overreach from the federal government suppressing our state sovereignty.

Charles Kacprowicz, National Director, Citizen Initiatives, appeared in support. My concern is that we would retain our constitutional republic rather than to surrender it to a national government that literally takes the character of the individual states away. Given that, we have evolved into an amendment called the countermand amendment, because we felt that the urgency of the hour was so serious that we had to provide a way for the state legislatures to reclaim this republic quickly. We are asking under Article V for the legislatures to consider these as preapproved amendments by the state legislatures. We currently have about 16 sponsored states for the countermand amendment. We have at least 6 or 7 that are filing or already have the amendment for this session. The fact is that legislatures around the country are receiving it well. He gave a little history on why this

amendment is so terribly important. (09:02-12:40) Why is the countermand amendment so important? Because the state legislatures are sovereign they can modify the constitution under Article V in any way that they choose. He read portions of the amendment and why it is important and allowed comments or questions as he went along. (13:43-20:01)

Rep. Laning If you were to assume that this budget passed, you said that the states can rescind it. Who determines which law they want to challenge, and how do you go about getting the states to agree that this law should be challenged?

Charles Kacprowicz Citizen Initiatives has initiated a national strategy committee. It is composed of legislators and citizens. The purpose of that committee is to identify laws and rulings that are burdensome to the states and then to select those rulings and prioritize them. Then, through the work of Citizen Initiatives, advance that work in the state legislature so that the 30 countermands can be secured. Article I, Section 10, says that states cannot have interstate compacts and as a result, if you want to have a compact with another state, it has to be with congressional approval. We would like to avoid that.

Rep. Schneider Is there anything that is written out that is a countermand amendment that has the process and procedures in it? Can we have that?

Charles Kacprowicz Yes, you can. I don't have a copy of it here. It is online. There is also the delegate resolution this afternoon that we will be talking about as to how to make this work.

Rep. Schneider That was what I was asking. I was trying to see how they were related. Can you tell us a little bit about what Citizen Initiatives is?

Charles Kacprowicz It is going to be mostly legislators. You would be representing yourself more than your state even though you will be connected to your state. As a legislator, you could have a problem with coming up with interstate compacts, violating Article I. If you have a national strategy committee that is actually operated by a cooperative group of independent legislators and citizens, there is no threat of violating Article I. As a result, your input is there. Your strength of opinion is there. You are prioritizing of what laws need to be addressed is there, and then your selection of what was you wanted to address. The moment that the state legislature begins to work with another state legislature and say we want that agreement, it could be a problem. Somebody will sue. There is no question about it. The national strategy committee is a group that is primarily put together for the purpose of assisting the legislatures in the way to advance the selection of laws and rulings that need to be countermanded and then rescinded.

Rep. Wallman I think we heard testimony earlier that this was only dealing with one thing. Countermand authority kind of opens a door to be able to rescind laws like the budget which is what this addresses?

Charles Kacprowicz Absolutely.

Rep. Wallman Once the door is open, is there a process for closing it? Is it the same process? Rep. Fehr's testimony had a definition of countermand which means collectively

repeal or rescind specific federal law, but then it says such an amendment would not replace or nullify anything currently existing in the constitution. Can you explain?

Charles Kacprowicz The first one deals with a termination point. Yes, it is 18 months. If one state initiates a countermand, there is 18 months that it needed to complete that 30 state countermand before that law is rescinded. We don't want to paralyze the federal government. We are creating a balance between the federal government and the states where the states are looked at as a respective partner.

Rep. Amerman Let us say North Dakota wants to be one of the 30 states. Would we have to go to the citizens? Do we have to make a law that allows us to tell the government for the repeal or do we just have the power automatically?

Charles Kacprowicz There is an organizational issue that has to be addressed. That is part of the reason for the national strategy committee. That is why the legislatures are the key on that committee. At the same time, you already have the power. You don't need our permission. You don't even have to use Citizen Initiatives to initiate these countermands. You really could do it on your own. The problem is you need 30 states. All of a sudden you may need somebody to move this forward and quickly. In order to do that, Citizen Initiatives would be a facilitator and would be the ability that the legislatures had in at least advancing it. He continued on with his testimony (28:37-34:18)

Chairman Kasper Explain to the committee exactly the process HCR 3017 would go through if it were passed by enough states. What would happen? How would it work?

Charles Kacprowicz We have to secure 34 state legislatures in the application process. When we get the 34, congress calls a countermand amendment convention.

Chairman Kasper What happens at the convention?

Charles Kacprowicz Congress will summon delegates, probably 534. The states appoint the delegates.

Chairman Kasper Would each state have an equal vote?

Charles Kacprowicz No, unless we determine that. That is what this afternoon's meeting is about.

Chairman Kasper Now we are in the convention. What is going to happen?

Charles Kacprowicz Let us assume now that we win, and the countermand amendment has been approved as written and it goes back to congress. Congress then sends it to the states for ratification.

Chairman Kasper What if congress does not send it to the states?

Charles Kacprowicz They have to. We have 60 days that they have to do it in the application. After the convention, congress will have received it for the purpose of

processing and not for the purpose of approving it. They do have this prerogative. Will they decide to have it ratified by state conventions, or will it be done by state legislatures? If it is approved by $\frac{3}{4}$ of the states, then it becomes part of the constitution.

Chairman Kasper Now it is carried forward. This has all occurred and everything has happened and has passed. Somebody says I want to countermand this. What is the process of the countermand?

Charles Kacprowicz There really is no process from your standpoint. You can countermand, and you can notify the other states immediately that you want that particular law rescinded. You could pursue 30 states on your own. If you want us to facilitate it, then we would try to secure those 30 states for you.

Chairman Kasper What is the approval process?

Charles Kacprowicz It would be an individual decision by each legislature, and it would have nothing to do with the national strategy committee.

Chairman Kasper 30 legislatures would have to vote affirmatively to countermand?

Charles Kacprowicz On that particular law or ruling. That is correct.

Chairman Kasper It is automatically rescinded because the convention of the states adopted the countermand resolution and 38 states ratified?

Charles Kacprowicz That is correct. Now it is just like the first amendment.

Chairman Kasper We are no longer in the constitution. Once the countermand amendment is implemented, we are no longer dealing with the constitution. We are dealing with the sovereignty of each state legislature to make a decision to vote the countermand, and if 30 state legislatures do so, we countermand whatever the congress does with the...

Charles Kacprowicz We tried to design it so that there was a balance. The federal government has a legitimate role. We are not trying to put them out of business, but we don't want them to do it at the expense of the states. The countermand amendment is the most powerful tool that the states will have in making certain that this is a constitutional republic. This is the fastest way to make the federal government listen. This amendment will make it happen quicker so that you will have the option in addition to whatever they do to address issues that are very burdensome to you.

Rep. Wallman The countermand amendment would not replace or nullify anything currently existing in the constitution. Could it?

Charles Kacprowicz No. The only thing that it can do is make sure that the enumerated and unremunerated rights in the constitution are not violated. It doesn't add anything to the constitution.

Rep. Wallman It can't take away anything that is in the constitution?

Charles Kacprowicz No. It will preserve the constitution. The states will learn how to work with one another with this.

Chairman Kasper recessed the hearing until this afternoon in the Ft. Union room.

Attachment 2 was submitted by Andrew Bornemann in opposition to this resolution.

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HCR 3017 (PM)
2/5/2015
23363

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to provide states a process to collectively countermand or repeal any law or ruling

Minutes:

Attachment 1

Chairman Kasper reopened to continue the hearing on HCR 3017.

Rep. Mooney ... (inaudible)

Charles Kacprowicz, National Director of Citizen Initiatives, continued on from the morning hearing. ... (inaudible) limited applications of that, but they are legitimate, and they need to be protected. That is why we inserted in the countermand provision 60% of the states, not 25.

Rep. Mooney The military would be one. Are there other examples then?

Charles Kacprowicz There are certain tax issues that have to be addressed. Commerce is certainly an issue.

Rep. Mooney Land and water resources?

Charles Kacprowicz Very much so.

Rep. Mooney You are saying that isn't a legitimate role for the land and water resources?

Charles Kacprowicz There is a legitimate role to keep our water safe. Certainly the states are capable of doing that just as well as the federal government. If you are doing it in cooperation with one another, you are going to come out with an answer that is much better for everybody's self-interest.

Rep. Wallman We do have a process in place?

Charles Kacprowicz Yes, we do have a process. Congress has a very important role. They are representing the people in the House and also in the Senate. The 17th amendment came by and you no longer appointed US senators. That meant that the state legislatures lost some of its authority in the constitutional powers of our nation. In our case the countermand amendment balances that.

Rep. Wallman I understand the spirit of what you are saying, but my concern is on the one hand we are being told this is only going to affect the balanced budget amendment. The last budget that congress passed would say we can repeal that and we want to work with you to put something in place that we think is better as the states that are being represented. I feel on the one hand it is being proposed as a one-time thing. We want to balance the budget. On the other hand I can't help hearing that this is a door that is going to be open that will constantly provide a second, third, whatever check this would be in our system. There is a lot of gridlock as it is and if you add this other group with whatever makeup it has that is questionable in my view, it is just another dysfunctional group that is going to be weighing in. What do you think about that?

Charles Kacprowicz I think it is an incorrect assessment. States' rights are at risk. We are a constitutional republic. You created the federal government. Now that the federal government has become so dominant, you are subject to the federal government. All the countermand amendment would do is to create that balance that would be needed before the federal government did anything. Our goal is seeing this ratified in 2016.

Rep. Wallman I hear what you are saying that the countermand amendment gives the states more power. Who gets to decide what the changes are? How would you feel if the majority of states were controlled by a democratic majority? Would you still like this idea?

Charles Kacprowicz Yes, because as long as the states have the right to defend their standing as a republican form of government, this is an appropriate amendment to our constitution. The federal government is out of control. He talked about the recent immigration situation and what would happen if you had a countermand amendment.

Rep. B. Koppelman It has been stated earlier that this countermand amendment gives the states more power. Would you agree this is just exercising the power we had before we were a nation?

Charles Kacprowicz I believe that is the case. You never lost it. It has always been your sovereign authority under Article V for proposing amendments to control the federal government. You are right. That sovereignty is still there, and that is one of the things we try to emphasize in our presentation for our delegate resolution especially.

Rep. Mooney In a new age where all of this comes to pass, what does that leave as the actual legitimate role of federal government?

Charles Kacprowicz Federal government can perform military responsibilities. They could help to regulate interstate commerce to the degree that there is some commonality between the states, but that the states are not offended by.

Rep. Mooney The distinction of that legitimate role then is arrived at through this process is what you are saying as an end result?

Charles Kacprowicz Everything in the constitution stays the same.

Rep. Mooney The delegation of states would really assign what the federal role is versus the states' role. Is that correct?

Charles Kacprowicz With this amendment you would have an immediate way of countermanding anything that is burdensome to you, your citizens.

Rep. Mooney Maybe by retraction then?

Charles Kacprowicz Yes. It is not an enforcement. It is simply to say to the government look, on this issue you went too far, and, therefore, we want you to take another look at it.

Chairman Kasper It is an after the fact look at congressional and presidential action as well as the supreme court.

Charles Kacprowicz I believe so.

Rep. Wallman Right now there is a remedy, and it would be a lawsuit. This would just consolidate the power of a remedy with a group of states?

Charles Kacprowicz There is a process in place that can remedy. Supreme court almost always votes against the states. The problem is they don't respect the will of the states. This does not change the supremacy clause of the constitution.

Rep. Chuck Damschen appeared in support. Attachment 1(amendments for 3017).

Chairman Kasper These amendments look like cleanup language.

Rep. Damschen The most important part is where it says "directs" instead of "urges".

No opposition or neutral.

The hearing was closed.

Rep. Steiner I would move the amendment 15.3073.01001.

Rep. Seibel seconded the motion.

Voice vote. Motion carries.

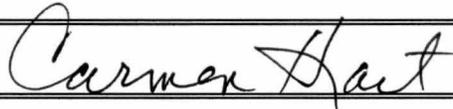
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HCR 3017
2/5/2015
23368

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to provide states a process to collectively countermand or repeal any law or ruling

Minutes:

"Click to enter attachment information."

Chairman Kasper opened the discussion on HCR 3017. This is a different approach to the Article V convention. This would also be a convention of the states to propose an amendment. Under this process the amendment would be a single issue, and it is called the countermand. If the convention achieves enough support by 34 states, it would be called. The convention would consider the countermand amendment. Under the countermand, it is not amending the constitution. It does amend the constitution from the respect that the countermand amendment will be part of the constitution, but that just adds to the amendments. If the countermand amendment is approved by the convention of the states, it would have to be ratified by 38 states just as all the other amendments if they came out of that convention of the states. If it would be effective, when in the future the congress passes legislation, bureaucracies propose rules and regulations, the commander-in-chief writes executive orders, or the supreme court makes a ruling that is not satisfactory to any state, any state could say I want to propose that the states combine and countermand that item. When 30 state legislatures approve the countermand, that action would become null and void, and it would require the executive or judicial branch or congress to relook at the situation.

Rep. B. Koppelman What is nice about this amendment is that it is a one-step process to deal with many issues. I make a motion for a DO PASS AS AMENDED.

Rep. Steiner seconded the motion.

Rep. Amerman I don't like this. If this happens, we will have states battling states.

Chairman Kasper Remember it takes 30 state legislatures to stop any action.

Rep. B. Koppelman If you look at our recent voting for various at the national level, I would challenge you to see 60% of the states that agree on just about anything.

Rep. Schneider This is a real dangerous one that changes the whole dynamics in our separations of power. It is a developed and an irresponsible way that would lead to gridlock. If we are going to consider it, it deserves to have a clear and open debate with information on both sides of this issue. With the no clarity in the testimony that we heard this morning and afternoon, it would be irresponsible on our part to pass this one, and it certainly isn't necessary with the passages of the other ones that you have done.

A roll call vote was taken. 7 Yeas, 6 Nays, 1 Absent.

Rep. B. Koppelman will carry the bill.

15.3073.01001
Title.02000

Prepared by the Legislative Council staff for
Representative Damschen
January 23, 2015

SK
2/6/15

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3017

Page 1, line 1, after the second "a" insert "countermand amendment"

Page 1, line 5, after "a" insert "countermand amendment"

Page 1, line 6, replace "amendments" with "a countermand amendment"

Page 1, line 18, replace "urges" with "directs"

Renumber accordingly

Date: 2-5-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3017**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15.3073.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Steiner Seconded By Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chair Karen Rohr			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Mary Schneider		
Rep. Mary C. Johnson			Rep. Kris Wallman		
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Jay Seibel					
Rep. Vicky Steiner					

*Noise
Vote
motion
Carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-5-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3017**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Ben Koppelman Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson	X		Rep. Kris Wallman		X
Rep. Karen Karls		X			
Rep. Ben Koppelman	X				
Rep. Vernon Laning		X			
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 7 No 6

Absent _____

Floor Assignment B Koppelman

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

REPORT OF STANDING COMMITTEE

HCR 3017: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HCR 3017 was placed on the Sixth order on the calendar.

Page 1, line 1, after the second "a" insert "countermand amendment"

Page 1, line 5, after "a" insert "countermand amendment"

Page 1, line 6, replace "amendments" with "a countermand amendment"

Page 1, line 18, replace "urges" with "directs"

Renumber accordingly

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

HCR 3017

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee

Missouri River Room, State Capitol

HCR 3017

3/19/2015

Job # 25145

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a countermand amendment convention for the sole purpose of proposing an amendment to the Constitution of the United States to provide states a process to collectively countermand or repeal any law or ruling.

Minutes:

Attachments 1 - 3

Chairman Dever: Opened the hearing on HCR 3017.

Representative Damschen, District 10: Testified as sponsor and in support of the bill. Explained the bill. A countermand amendment would allow the state legislature, if 60% of them agreed, to object to a law passed by Congress, possibly a Supreme Court ruling, or an Executive Order that they did not agree with and felt that it is unconstitutional. I am not an expert but I do know that it does return power to the states and there are others that will explain this in greater detail.

(2:40) Charles Kacprowicz, Executive Director, Citizen Initiatives and The Countermand Amendment: Testified in support of the bill. We take a different approach to the Article V process. Our approach is through the word "sovereignty". With all the testimony you have heard I am not sure how to focus on where it is that we need to fit. We are not associated with the others but we look at them as allies but not necessarily partners because they are advancing Article V initiatives and I also see them as patriots and conservative men that are trying to find ways to get this nation back on course. I have had 40 years of experience in advancing amendments to the US Constitution through Article V either through Congress or the state legislatures. There have been many late comers. The biggest issue that state nations had under the articles of confederation which required unanimous consent before the articles could be ratified for an amendment was sovereignty. The nation states did not want to surrender that sovereignty. They had to figure out a way to solve their problem however and that problem had to be solved in a way that the federal government would not be gridlocked requiring unanimous consent. The first problem that they had was how to vote at the constitutional convention. The question was whether the voting should be by the population of states or by one vote per state. It was a big issue. They had to settle this before the convention started. Every Article V convention that we see convened today; this issue will have to be settled also. There are some who believe

that will be controlled by convention experience prior to the constitutional convention, some believe that legal precedents will make a difference, and others believe that historical experience will make a difference. I disagree with all of that. Sovereignty trumps it all. The fact is that the legislators had to settle the issue politically and so they assigned a man by the name of George Worth who was a delegate, founder, and a notable scholar/professor to start a committee and decide how this issue of voting would be settled. He put together 8 points that were necessary for the convention to be convened and organized. That is the same with an Article V convention. There has to be an organization. The most important point was that he recommended to the delegates that it would be one vote per state. There was debate. The smallest states wanted it to be one per state and the larger states wanted to be by population. It was decided that it would be a republican convention and that would be one vote per state. That decision has to be decided every time an Article V convention has to be convened. That is one of the reasons that we have a delegate resolution that assigns to the delegates the specific tasks as to how to organize the convention. When 26 states agree to that same delegate resolution the convention can be organized safely, quickly, and successfully. I believe with our delegate resolution the countermand amendment can be approved within 7 days at the convention. There are three different approaches: The Balanced Budget Amendment approach which is taskforce, the Compact for America approach which you just heard from Mr. Dranias, and then there is Mr. Farris's approach with the convention of states. All of them have some form of merit. I am not here to discredit what they are doing. I want to talk about what we are doing and why the countermand amendment is so powerful. We have an amendment that actually restores state legislature sovereignty in Article V. It does it without permission of Congress, the delegates, the Supreme Court, or the Executive. No one you have to answer to under Article V because you are sovereign. The state legislature sovereignty in 1787, that same sovereignty has been passed down to you. You have the same right to decide what direction this federal government is supposed to go in. The federal government was created by the state legislatures. The legislatures were not created by the federal government. They reserved to themselves in Article V the sovereign authority to modify the conduct of the federal government. How they do that is by making sure that the constitution is supreme, by making certain that it is perpetual, and so that that it would never become a constitutional convention contrary to forward arguments. And Mr. Farris is absolutely correct on this; there is no option for a constitutional convention- it is for proposing amendments. The fear mongering that has been going on for the last 30 years saying that you can only have a constitutional convention is simply wrong. It is not what you folks have in Article V. You can change it by proposing an amendment saying that you don't want to only have proposing amendments and you want to have a constitutional convention under Article V and 38 states ratify it then we have a different constitution. Right now, we are bound to proposing amendments. That is what gives us safety with this Article V process. Because the legislators have been paralyzed by the fear mongering for so long, we literally have an \$18 trillion debt. We have it today because we could not use Article V before. Second, we have perhaps 50 million babies that have been murdered with Roe vs. Wade. We couldn't stop it with Article V because of the fear mongering. We are here to tell you that we have a safe way to amend the Constitution and that is through Article V. See Attachment #1 for information pertaining to the bill. The opposition to the compact that I have is that it requires that the Congress approve the compact before the convention can convene and that is not sovereignty. It also requires that the Governor of 38 states approve the compact. That is not a legislative sovereign position of authority. The Governor has no authority under Article

V and Congress has no authority through state legislatures. (12:23 - References Attachment #1) We are talking about sovereignty under Article V. We are not talking about getting permission from somebody else. It is not a political matter. Your sovereignty is not based on what someone else thinks it is. It is there and I am trying to help the legislatures realize that they cannot surrender it no matter how good a proposal sounds. This is a serious matter for us and we want the legislatures to retain that sovereignty.

(20:35)Chairman Dever: In North Dakota the Governor signs the bills but not the resolutions. So when we propose an amendment to the North Dakota constitution he does not sign that. We pass it in the legislature and it goes before the people.

Charles Kacprowicz: I would say sir that when you propose amendments under Article V to the US Constitution he should have nothing to do with that either.

Chairman Dever: That would be my understanding.

Charles Kacprowicz: That is one of the reasons why the idea that requiring his signature to move an amendment forward, such as the Balanced Budget Amendment, I would be opposed to that strategy and that process.

Chairman Dever: Would I be correct in my understanding that what you are proposing as a countermand amendment would be similar to have a national referendum in which the legislatures are the ones that represent the people and the vote.

Charles Kacprowicz: Absolutely. You see there is a representative from NC that came on our radio program and said to me that it just occurred to him that with the countermand amendment I am going to be able to listen to my constituents and when they tell me they have an issue that deals with federal encroachment of any kind that he was able to start a process to get it working. The countermand amendment does not alter the Constitution. There is nothing about it that makes any of the other rights in the Constitution different. It simply gives you the authority to make certain that the Constitution is protected by countermands and second that you can stop other kinds of federal encroachment on your state. Yet what is happening with it is that we are not putting the federal government out of business. The federal government has a legitimate role. They have to be able to conduct their business so that they can protect us as states and serve us as states but not in a way that they lord over us. When we are looking at the balance of power between the state legislatures and the federal government, the countermand amendment makes it possible. Now the federal government would have to say to the states before they pass something that it would be acceptable because they would not want 30 countermands. You become a respected partner in government now rather than an addendum subject to federal mandates. It is a great tool and you will learn how to use it. We have a national strategy committee and we have legislators and citizens on it. It has not actually decided on identifying laws and rulings that need to be countermanded but it will and then we will be recommending those back to you as to what laws and rulings need to be addressed. Then your countermand committee will decide if that is something that you want to countermand. You also will have the option of countermanding anything you want just by deciding as a state that particular law or ruling is burdensome and you would like to see others join you.

(25:50) Representative Fehr, District 36: See Attachment # 2 for testimony as sponsor and in support of the bill. See Attachment #3 for additional information to the bill.

(30:00) Chairman Dever: You say that the US Constitution is a living document and is subject to amendments that are ratified by the states in your testimony. I understand what you mean by that, that you can amend it but a lot of the interpretation taking place particularly by the courts is that it doesn't say what it says and it kind of says how we interpret it to say.

Representative Fehr: Our North Dakota Constitution is also a living document and we are familiar with the amendment process that goes with that; meaning that it is not a static document forever. It is something that can be amended over time and is intended to be amended over time.

Chairman Dever: And it is subject to change by election not by judicial fiat. That is what some people interpret the constitution to be changes with the times.

Representative Fehr: On some topics I might agree with you.

Senator Flakoll: I was looking at the spreadsheet provided to us by Charles, one of the ones at the bottom of the page kind of goes back to what was brushed up against on court decisions, and I question if they can they override a court decision even if the court decision seems to align with the constitution; whether it is freedom of speech or guns. How will that work in practice?

Representative Fehr: I have the same question. I do not know how that would work. I would have to defer that question back to Charles.

Chairman Dever: Closed the hearing on HCR 3017.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

HCR 3017
3/20/2015
Job # 25167

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

No Attachments

Chairman Dever: Opened HCR 3017 for committee discussion and explained a countermand amendment to the committee. I like its intent but I am not sure how it would play out.

Senator Nelson: I have a number of concerns. One, I think somewhere in this one it is retroactive and you could go back and go after Roe vs. Wade or Common Core etc.

Chairman Dever: I heard that in the conversation but I did not see it.

Senator Nelson: My bigger concern is that there are people out there that may decide to do it and then we get called into session and does it count against our 80 days. It takes at least 3 days to pass a bill. What does that do to our calendar?

Chairman Dever: I could list a number of improvements to congress and one of them would be to limit them to 80 days.

Senator Nelson: I wish they had to pass all bills like we do but they don't.

Chairman Dever: We are unique among the states in that regard to. One of my frustrations with Congress is that it does not exercise its responsibility in checks and balances. It seems to me that there is something terribly wrong when an unelected body can develop regulations that go far beyond what an elected body would do. I wish that Congress would countermand the actions of those kinds of actions.

Committee Discussion: The committee discussed the legislative process in North Dakota in comparison to the national government and cited several examples.

(7:20)Senator Davison: Moved a Do Pass.

Motion Failed for lack of a Second.

Senate Government and Veterans Affairs Committee
HCR 3017
03/20/2015
Page 2

Senator Poolman: Moved a Do Not Pass.

Senator Cook: Seconded.

A Roll Call Vote Was Taken: 4 yeas, 3 nays, 0 absent.

Motion Carried.

Senator Cook will carry the bill.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3017**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Poolman Seconded By Cook

Senators	Yes	No	Senators	Yes	No
Chairman Dever		✓	Senator Marcellais		✓
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison		✓			
Senator Flakoll	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Cook

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

REPORT OF STANDING COMMITTEE

HCR 3017, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3017 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HCR 3017

**Testimony on HCR 3017
Rep Alan Fehr, District 36**

#1
2-5-15
HCR 3017

Mr Chairman and members of the Government and Veteran Affairs Committee, I am Representative Alan Fehr of District 36.

I am here to introduce HCR 3017, the Countermand Amendment, which has the potential to resolve some major issues that we face in this country involving over-reach by the federal government.

The word "countermand" means to rescind or repeal. In short, the Countermand Amendment is being sought as a tool whereby states can collectively repeal or rescind specific federal law. For this tool to exist, it needs to be authorized in the US Constitution as an amendment. Such an amendment would not replace or nullify anything currently existing in the Constitution. It would be an addition, specifically allowing the states a way to collectively nullify an act of Congress, a rule in code, or an executive order. If the states collectively agree, the law is overturned.

When the US Constitution was ratified by the states, those states did not cease to exist or give up all their authority to the federal government. Today, there are many circumstances which we believe are an over-reach by the federal government. The Countermand Amendment is a tool whereby the states can provide one more level of checks and balances on the federal government.

In order for the Countermand Amendment to be in law, it would require placement of this amendment in the US Constitution. The US Constitution is a living document and is subject to amendments that are ratified by the states. Article V of the US Constitution allows a process for amendments to be initiated by States.

HCR 3017 initiates this process, adding the voice of North Dakota to call on Congress to call a convention of states for the sole purpose of this amendment to the US Constitution. Article V of the US Constitution allows for states to initiate a convention and send delegates to produce the best wording for an amendment. For a convention to be called, 2/3 of the states will need to call the convention.

This resolution has a companion resolution, HCR 3016, which you will hear this afternoon, which directs that this is a single issue convention for which delegates are allowed to act only as directed.

Thank you for your consideration of HCR 3017. I welcome your questions.

Members of the committee,

3017 #2
2-5-15

My name is Andrew Bornemann, and I have been a lifetime resident of our great state of North Dakota, currently farming near Kintyre, ND.

I am standing before you today to state my opposition to HB 1138, and resolutions HCR 3014, HCR 3015, and HCR 3017, which are simple variations of the same bill, and to raise some questions for your consideration.

First though, let us take a moment and read Article V of the US Constitution to which this resolution appeals:

"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."

I would like to point out that the wording of Article V leaves a lot of questions unanswered. Those in support of an Article V convention like to refer to it as a "Convention of the States", but that language is simply not in the constitution. Granted, that may have been the original intent of our founding fathers, but is that how a proposed convention would work out today? As the wording of Article V does not include specifics such as what is the scope of a convention, who forms the convention, are the delegates apportioned by states or by population, may the delegates be bound by the states sending them to certain topics, who will make those decisions? While I would like to believe that those powers would be reserved to the states, I find it hard to believe that the US congress would not take it upon themselves to make such rules, as they expressly have the responsibility to "Call" the convention, *and they have been told it is their responsibility and have tried to in the past!*

According to a briefing sent to congress April 11th, 2014, by the Congressional Research Service entitled "The article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress" (Extremely informative of the views of the National government on this topic, available at <https://www.fas.org/sgp/crs/misc/R42589.pdf>),

"Second, while the Constitution is silent on the mechanics of an Article V convention, Congress has traditionally laid claim to broad responsibilities in connection with a convention, including (1) receiving, judging, and recording state applications; (2) establishing procedures to summon a convention; (3) setting the amount of time allotted to its deliberations; (4) determining the number and selection process for its delegates; (5) setting internal convention procedures,

including formulae for allocation of votes among the states; and (6) arranging for the formal transmission of any proposed amendments to the states."

Farther, it goes on to say regarding limiting the convention to a certain topic:

"One point on which most observers appear to agree is that an Article V Convention, either limited or general, could not be restricted to consider a specific amendment. During the 1980s campaign for a convention to consider a balanced budget amendment, a number of state legislatures proposed specific amendment language. Some would have accepted a "substantially similar" amendment, while others attempted to limit the convention solely to consideration of their particular amendments. In its 1993 study, the House Judiciary Committee indicated the former might be qualified, but:
'... an application requesting an up-or-down vote on a specifically worded amendment cannot be considered valid. Such an approach robs the Convention of its deliberative function which is inherent in article V language stating that the Convention's purpose is to "propose amendments." If the State legislatures were permitted to propose the exact wording of an amendment and stipulate that the language not be altered, the Convention would be deprived of this function and would become instead part of the ratification process.' "

As can be readily seen, there are grave concerns as to the likelihood of either the states being able to set the rules for a convention, or for the scope of a convention being limited to certain topics. Do we really want to open up the doors to a convention where ANY topic may be discussed, or potentially the delegates be apportioned by population or electoral votes? I do not think this is in the best interest of North Dakota.

And besides, is the constitution we have flawed, or just ignored?

I submit that though there is reason for concern at the blatant disregard for the constitution plainly visible in Washington, I believe that changing the constitution is not going to fix the problem, and that a constitutional convention is NOT the right way to address the problem. It would be ineffective at best, and downright dangerous to the very fabric of our society at worst. A much better option would be to start holding our national government accountable to their oaths to uphold the constitution, be it through voting them out, legal proceedings, or even impeachment for their crimes. The problem we face today is not one of an inadequate constitution, but one of an immoral and corrupt government.

In the words of John Adams:

"Gentleman,

While our country remains untainted with the principles and manners which are now producing desolation in so many parts of the world; while she continues sincere, and incapable of insidious and impious policy, we shall have the strongest reason to rejoice in the local destination assigned us by Providence. But should the people of America once become capable

of that deep simulation towards one another, and towards foreign nations, which assumes the language of justice and moderation while it is practicing iniquity and extravagance, ... expressing in the most captivating manner the charming pictures of candor, frankness, and sincerity, while it is rioting in rapine and insolence, this country will be the most miserable habitation in the world; because we have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. " (October 11th, 1798, letter to the officers of the First Brigade of Militia of Massachusetts)

These almost prophetic words, spoken over 200 years ago, are I believe coming true today. The problem is not the constitution, but the people responsible for the carrying out of it. Changing the constitution is not the answer, education of the people on the responsibilities of freedom, and the responsibilities and limits imposed on governments by our constitution is I believe the only answer to the problems we now face.

Thank you for your time, and if there are any questions I will do my best to answer them now.

1 3017 2-5-15

15.3073.01001
Title.

Prepared by the Legislative Council staff for
Representative Damschen
January 23, 2015

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3017

Page 1, line 1, after the second "a" insert "countermand amendment"

Page 1, line 5, after "a" insert "countermand amendment"

Page 1, line 6, replace "amendments" with "a countermand amendment"

Page 1, line 18, replace "urges" with "directs"

Renumber accordingly

3/19

HCR 3017

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pg 1

ARTICLE V AMENDMENT COMPARISONS

"SOVEREIGNTY AND DELIBERATIVE STATUS" GUARANTEED TO LEGISLATURES

	Countermand Amendment	Convention of States ^B	Balanced Budget Amendment ^C	Compact for America ^D	Term Limit Amendment
Full Legislature Article V Sovereignty	Yes	No	No	No	No
Full Legislature Deliberative Authority	Yes	No	No	No	No
Legislatures Countermand Fed Laws and Rulings	Yes	No	No	No	No
Legislatures Rescind Fed Laws and Rulings	Yes	No	No	No	No
Amendment Preapproved by Legislature	Yes	No	No	Yes	No
Delegates Bound to Delegate Res	Yes	No	No	No	No
Convention Adjourns in One Week	Yes	No	No	Yes	No

URGENT ISSUES THAT CAN TO BE ADDRESSED "IMMEDIATELY"
WITH DIFFERENT AMENDMENTS PROPOSED BY ARTICLE V GROUPS

	Countermand Amendment ^A	Convention of States ^B	Balanced Budget Amendment ^C	Compact for America ^D	Term Limit Amendment
Enumerated Rights	Yes	No	No	No	No
Unenumerated Rights	Yes	No	No	No	No
Environmental Issues EPA	Yes	No	No	No	No
Federal Land Control	Yes	No	No	No	No
Free Market Economy	Yes	No	No	No	No
Bureau of Land Management	Yes	No	No	No	No
Internal Revenue Serv	Yes	No	No	No	No
Court Decisions	Yes	No	No	No	No
Tax Issues	Yes	No	No	No	No

Congressional Statutes	Yes	No	No	No	No
Energy Issues	Yes	No	No	No	No
Congressional Budgets	Yes	No	No	No	No
Executive Orders	Yes	No	No	No	No
Executive Memoranda	Yes	No	No	No	No
Department of Education	Yes	No	No	No	No
Common Core issues	Yes	No	No	No	No
Unfunded Liabilities	Yes	No	No	No	No
Healthcare Issues	Yes	No	No	No	No
Non Gov't Mandates	Yes	No	No	No	No
Social Issues	Yes	No	No	No	No
Privacy Issues	Yes	No	No	No	No

^A With the COUNTERMAND AMENDMENT States will be able Countermand and rescind Federal laws and regulations that infringe on Constitutional Rights of the States and their citizens: When 60% of the States Countermand a law or regulation, it is immediately rescinded. The Federal government will have two choices: one, rewrite the law in a way more amenable to the States; or abandon it. If they decide to rewrite it, they will do so mindful that the new law can also be countermanded. Once the law or ruling is rescinded it is no longer enforceable by the Federal government. Countermands can also address existing laws and rulings.

All delegates sent to the Countermand Amendment Convention are bound to a preapproved Amendment text and Delegate Resolution that instructs the delegates how to organize and vote at the Convention. With the Delegate Resolution the Convention can be adjourned in 7 days.

Ratification of the Countermand Amendment could take place in 2016 with individual Countermands and rescissions by the States starting in the 4th quarter of 2016.

^B With the CONVENTION OF STATES CONVENTION unbound delegates from the 50 States will deliberate on three general subjects: Reigning in Government; Fiscal Policies; and Term Limits. An estimated timeline before adjournment of the Convention 12 to 24 months. Assuming one or more proposed Amendments by the COS Convention are ratified, it may take two or more years before its provisions are ratified and enforceable on the Federal government. It is also uncertain if any Amendment sent to the State Legislatures for ratification will be ratified by 38 States.

^C With the BALANCED BUDGET AMENDMENT CONVENTION unbound delegates from the 50 States will deliberate on creating a Balanced Budget Amendment. Similar timelines and restrictions exist as with the COS Convention.

^D With the COMPACT FOR AMERICA CONVENTION a process is initiated that requires 38 Governors and 38 State Legislatures approve the Compact for the preapproved text of the BBA. The strategy also requires Congress to give its approval of the Compact between the 38 States before the CFA Convention can be convened. Neither Congress nor Governors have authority under Article V to convene a Convention. Congress is the facilitator for the States, not controller of the Convention process. This process greatly diminishes the sovereignty of State Legislatures under Article V.

**Testimony on HCR 3017
Rep Alan Fehr, District 36**

3/19

#2
pg 1

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3/19 HCR 3017

#3

Text of proposed
COUNTERMAND AMENDMENT

Section 1. The Article restores State sovereignty in our Constitutional Republic by providing State Legislatures Countermand authority.

Section 2. State Legislatures in the several States shall have the authority to Countermand and rescind any Congressional Statute, Judicial decision, Executive Order, Treaty, government agency's regulatory ruling, or any other government or non-government mandate (including excessive spending and credit) imposed on them when in the opinion of 60 percent of State Legislatures the law or ruling adversely affects their States' interest. When the Countermand threshold has been reached, the law or ruling shall be immediately and automatically nullified and repealed. This Countermand authority shall also apply to existing laws and rulings.

Section 3. From the time the initial Countermand is issued by a State Legislature, the other Legislatures shall have 18 months to complete the Countermand process. If the Countermand process is not completed in 18 months, then the law or ruling that is being challenged shall remain enforceable.

Section 4. Each State Legislature must complete their Countermand affidavit and deliver a certified copy to the Chief Justice of the United States Supreme Court, the Leader of the United States Senate, the Speaker of the House of Representatives, the President of the United States, and when applicable the Government Agency or Body that is being challenged.

Section 5. Any elected or non-elected government official, or any non-government individual or organization, who intentionally obstructs or prevents the implementation of any provision in this Article shall have committed a criminal offense and shall be subject to impeachment (when applicable) and criminal prosecution and upon conviction serve up to five years in prison.

Section 6. Individual States shall have authority to prosecute violators of this Article under State laws in the absence of Federal prosecution after 90 days from the date of the alleged violation. Multiple prosecutions, by multiple States, for the same alleged crime are prohibited.

Section 7. The Article shall be immediately part of the United States Constitution upon ratification by three quarters of the State Legislatures in the several States.

Section 8. The provisions of this Article are enforceable within the United States which shall include the Several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and the territories and possessions of the United States.