Written by **Christian Gomez** on May 26, 2011

NDRA — The New Push for a Con-Con

Most Americans undoubtedly agree that the federal government cannot continue on its current spending and borrowing binge without wreaking economic havoc. But how must the binge be brought under control? One idea that has just gotten traction in the state of North Dakota is for the states to call for a constitutional convention for the purpose of proposing a National Debt Relief Amendment (NDRA) to the U.S. Constitution. On April 7, the North Dakota House of Representatives passed Senate Concurrent Resolution 4007 by a vote of 68 to 24, completing legislative action on the resolution and making their state the first in the nation to call for a constitutional convention to propose the NDRA.

Created by Texas-based RestoringFreedom.Org, Inc. and supported by the Goldwater Institute, headquartered in Phoenix, Arizona, the NDRA, if added to the Constitution, would limit attempts by Congress to raise the debt ceiling by giving to the states the final say as to whether or not to increase the debt limit.

The proposed NDRA reads as follows: “An increase in the federal debt requires approval from a majority of the legislatures of the separate States.”

With a soaring national debt well over $14 trillion and speculation in Washington of voting to raise the national debt ceiling to $15 trillion or more, a recent push has been made in several state legislatures, in conjunction with RestoringFreedom.Org and the Goldwater Institute, to pass the NDRA by way of a constitutional convention, pursuant to Article V of the U.S. Constitution, which reads:

> 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 Legislature 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 Congress.

Postulating Positive Outcomes

Proponents of the NDRA at RestoringFreedom.Org claim that their proposed amendment is beneficial for the following reasons:

- It creates a national consensus prior to allowing Congress to incur additional debt.
- It returns prudence and fiscal responsibility to -Washington.
- It improves government transparency and accountability.
- It protects all Americans from a runaway Congress.

• It places a restraint on Congress by balancing power.

• It is fair for everyone.

If this amendment is as beneficial as is advocated, with regard to the debt and curbing the power of Washington, then why not propose it in Congress, using the same proven amendment process that has given us all 27 of our present amendments, rather than taking a chance on the never-before-tried amendments convention provision of Article V?

Rather than calling for Congress to adopt the proposed NDRA, advocates at RestoringFreedom.Org and the Goldwater Institute urge that the states call upon Congress to convene an Article V convention to add the amendment to the Constitution.

If enough applications are made to Congress — a total of 34 is needed — and such a convention is convened, it would be the first one since the Philadelphia Convention of 1787 that produced the current U.S. Constitution.

For over three decades *The New American* magazine and its predecessor *American Opinion* magazine have warned against having a second convention and the potential ramifications a modern convention would likely unleash, such as its penetration by special-interest elements that would likely alter the Constitution to include "second generation" or socialist rights.

Eager advocates of this convention process include North Dakota state Senator Curtis Olafson (R-Edinburg), who first introduced and sponsored SCR 4007.

In a speech to the North Dakota Senate Judiciary Committee last January 19, Sen. Olafson argued in favor of his resolution by placing blame for the country's woes on the system of government. "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," he urged.

Rather than place the blame on the elected officials who have failed to obey their oath of office to enforce the Constitution, Sen. Olafson blamed the "system," citing a need to "change" the "ground rules" — undoubtedly referring to the U.S. Constitution.

The Senator does not seem to understand that the problem lies not in the Constitution or in the system of government, as prescribed by the framers of the Constitution, but rather in the lack of adherence to the rule of law and a disregard for the Constitution.

Further making his case for the NDRA bill, Sen. Olafson reassured those present at the committee hearing that a modern convention would not result in a "runaway convention," commenting, "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."

Pondering Possible Problems

Despite Sen. Olafson's ability to correctly read the text of his resolution, it would do him and likeminded individuals a great deal of good if they would reread Article V of the Constitution.

Article V specifically states that Congress, "on the Application of the Legislatures of two thirds of theseveral States, shall call a Convention for proposing Amendments." (Emphasis added.) That is, Article V refers to "*Amendments*" in the plural, not just to the consideration of only one amendment.

Although the end result of a constitutional convention may be the adoption of one amendment, the Constitution authorizes the consideration of more than one amendment at such a convention. Thus the

convention process cannot be limited to the consideration of only one amendment; to do so would be unconstitutional.

To forcefully limit a convention would be an affront to the sovereign right of the people to alter or change the existing form of government, if the unforeseeable need to do so should become necessary, such as providing a peaceful pathway to fundamental changes in our system of government without requiring the people to resort to insurrection or armed revolution. For this reason, the framers of the Constitution inserted Article V.

Intended as an emergency fallback, the framers provided ample warning against calling a new convention. In a letter to George Lee Turberville, dated November 2, 1788, James Madison, regarded as the "father of the Constitution," wrote the following warning against a new constitutional convention:

> If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress.... It would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partisans on both sides ... [and] would no doubt contain individuals of insidious views, who, under the mask of seeking alterations popular in some parts ... might have the dangerous opportunity of sapping the very foundations of the fabric.... Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a second meeting in the present temper in America.

Later that year, on December 12, Madison again warned of a new convention, writing of the need for Congress to "secur[e] the Constitution against the hazardous experiment of a Second Convention."

Even if Congress could authorize a limited convention to consider proposing one specific amendment, there is no reason to believe that the delegates might not go beyond their originally mandated purview, especially since a constitutional convention would consider itself above the jurisdiction of Congress once convened.

Phyllis Schlafly, founder and president of Eagle Forum, in warning against the notion that a convention can be limited, noted the following from personal experience:

> I have been to 15 national Republican conventions plus numerous state, local, and district conventions and I have seen every type of rule broken. The guy wielding the gavel has the power.

I've seen them cut off the mic[rophone]s; I've seen them only recognize the people they want to recognize; I've seen them adjourn early in order to prevent things they don't want to come to the floor; I've seen them throw out duly elected delegates. In other words, the guy with the gavel controls the convention — not the people who wrote any rules ahead of time. I've seen all the rules broken.

In a final attempt to dispel fears of a runaway convention, Sen. Olafson explained that in the event that the convention did become a runaway, receiving the backing of Congress and the courts, there would still be no reason for concern, explaining that "the ultimate protection is that 38 states must ratify the proposal agreed to in a convention."

Nick Dranias of the Goldwater Institute has made the same remark. In an article entitled "The Myth of the Runaway Convention," Dranias wrote: "There is no reason to worry about a 'runaway' convention because three-fourths of the states — 38 states — would have to ratify whatever amendment might be proposed. Moreover, nothing in the nation's history justifies fear of a 'runaway' convention."

As to the claim that the provision for ratification by three-fourths of the states guarantees that no harmful amendments will be ratified, history suggests otherwise.

When Congress passed the 16th Amendment (the individual income tax), the 17th Amendment (direct election of U.S. Senators), and the 18th Amendment (prohibition of alcohol), all three of these amendments were detrimental to the Republic, and yet all three were ratified by three-fourths of the states.

Even in the event that there was clear opposition from the various state legislatures to any newly proposed amendment or new constitution resulting from a constitutional convention, Congress has the power under Article V to circumvent the state legislatures by authorizing special state conventions to ratify the new amendments or new constitution. Such was the case in 1933, when Congress authorized state conventions to ratify the 21st Amendment (repeal of prohibition) knowing that the legislatures of many states, such as Utah, staunchly opposed the 21st Amendment.

Although the Utah state legislature was adamantly opposed to the then-proposed 21st Amendment, the Utah state convention passed it overwhelmingly, resulting in its ratification and addition to the U.S. Constitution.

The passage of the 16th, 17th, and 18th Amendments and the process by which the 21st Amendment was passed serve as testimonies as to why states cannot and should not be regarded as "the ultimate protection."

If a runaway convention would propose a radical or socialist constitution, the convention delegates would likely pre-conscribe a new ratification method that would enhance its chances for ratification, following the precedent of our first constitutional convention. In 1787, the delegates knew that ratification of the new Constitution by state legislatures would be difficult, so they provided a different method for ratification, state conventions, to enhance chances for ratification. Needless to say, both the Confederation Congress and the 13 states accepted this unconstitutional (under the Articles of Confederation) ratification process, and the rest is history.

Although the NDRA might ease the United States' deficit problems, forcing Congress to slash spending and adopt fiscal policies to address the debt — a big "might" because Congress can still raise taxes, use off-budget spending, or simply ignore the law — its enactment by way of a constitutional convention would subject our nation to the very real risk of putting an end to the United States' constitutional republican form of government.

The true myth lies not in false fears of a "runaway convention," as Sen. Olafson and his friends at the Goldwater Institute and RestoringFreedom.Org would have one believe. Instead it lies in the widely accepted notion that an Article V constitutional convention could be limited to the consideration of a specific amendment without any chance that such a convention could become a runaway convention that could propose a major revamp of our current Constitution.

Defying the wisdom of the 2001 North Dakota legislature that rightfully understood the risky ramifications of a modern-day constitutional convention and voted then to rescind all their previous calls for such a convention, the 2011 North Dakota legislature has made the first step in the opposite direction by passing its NDRA bill calling on Congress to convene an Article V amendments convention.

In addition to North Dakota, at least 12 other states have introduced NDRA constitutional convention bills: Arizona, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Hampshire, Oregon, Pennsylvania, Tennessee, and Utah.

The NDRA convention calls have been either defeated or killed in committee in Arizona, Kentucky, Mississippi, Missouri, New Hampshire, and Utah.

A new constitutional convention is not the route that should be taken to address the nation's problems. Rather, instead of trying to fix what is not broken — the Constitution of the United States — elected officials should have a greater regard for the document and the wisdom of the Founding Fathers by enforcing the Constitution through a strict interpretation of it. *Congress is the key*; through it amendments, such as NDRA, can best be proposed without risking the loss of liberty and fundamental change of government that could result from a modern-day constitutional convention.