

**North Dakota Senate Concurrent Resolution 4004**  
**Senate Government and Veterans Affairs Committee**  
**January 28th, 2021**

**Testimony of Former North Dakota State Senator Curtis Olafson**

Our Founding Fathers wisely included three provisions in the United States Constitution and they were adopted as part of the Constitution for the very same reason. They instinctively knew that the major population centers would come under one party rule and that the major population centers could run roughshod over the rest of the Republic, so they had to implement a remedy. The three provisions that they adopted to prevent that were: 1) Equal representation in the Senate irrespective of population 2) The Electoral College 3) Article V which provides a method for the state legislatures to address problems that are not being resolved by the federal government.

North Dakota Senate Concurrent Resolution 4004 is part of a nationwide effort in many states for many years (led mainly by the John Birch Society) to revoke previously passed applications for an Article V Amendment(s) Convention. Baseless fear mongering over the Article V process has been a linchpin of their agenda since the 1960's. It has all the markings of being a marketing tool to politically and financially empower themselves. Unfortunately, their reprehensible condemnation of a process wisely included in our Constitution by our Founding Fathers has hamstrung the ability of state legislatures to perform their constitutional duties.

Opponents to the Article V process invariably assert that you should tremble in fear that using the process will result in a "runaway convention." 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.

In order for an Amendment(s) Convention to "run away" and ultimately result in the adoption of an extremist or dangerous amendment, the following implausible (impossible) sequence of events would need to transpire:

1. In order for an Article V Amendments Convention to ever happen in the first place, 34 states need to pass resolutions which propose, in effect, the same amendment(s). This requirement assures that a tremendous groundswell of political will must amass across America in support of a specific idea.

2. Delegates (more correctly called “Commissioners”) to an Amendment(s) Convention are selected by the state legislatures (barring any alternative method already in code in any particular state) and would act as agents of their legislature. It is inconceivable to think that they would vote to ignore the will of their state and the mandate that they would receive to limit their deliberations to the amendment(s) specifically identified in the resolution. If they did the unthinkable and ignored the mandate from their state legislature, they could and should be immediately recalled and replaced.
3. A convention voting to consider ideas beyond the scope and call of the resolution (ultra vires amendments) would immediately be challenged with court action. The court would need to brazenly ignore the clear intent of the Founding Fathers and wrongly rule that the convention is valid.
4. The convention delegates would then need to agree on a radical, extremist or dangerous amendment even though it was not within the scope and call of the convention.
5. Congress, in its ministerial capacity of submitting to the states any proposal agreed to in a convention, has the authority **and responsibility** to refuse to send any proposed amendment(s) to the states for ratification that went beyond the scope and call of the convention.
6. 38 states would need to ignore the fact that the convention delegates went beyond the scope and call of the convention and would need to ratify the proposed amendment(s). Any bad amendment idea can be stopped by the action of only 13 state chambers.
7. The most important protection against the adoption of a radical, extremist, or dangerous amendment was wisely designed into the Article V process by our Founding Fathers: **Unless and until 38 states ratify a proposed amendment, the Constitution is untouched and nothing changes.**

It is clear that our Founding Fathers intended that state legislators would understand that, not only do they have a right to use Article V, but moreover, that they have a **duty** to use Article V when they see a serious challenge facing our nation that is not being solved by Congress. If ever there was a time in the history of our nation when we need Article V, it is now. You have the power to quash this rescission resolution and keep in place our existing Article V resolutions. Our Founding Fathers believed in you.

SCR 4004 is wholly deserving of your **Do Not Pass** recommendation.

*“We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.” Alexander Hamilton in Federalist 85 “*