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The Honorable Luke Messer
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Messer:

This letter responds to your November 6, 2015 inquiry about the “recordkeeping process” associated with state applications for Article V constitutional conventions. More specifically, your letter asked the National Archives and Records Administration (NARA) to “undertake an inspection of the recordkeeping status of these applications pursuant to 36 C.F.R. § 1239.20 and report to Congress on the inspection in accordance with 44 U.S.C. § 2904.”

The documents at issue here are the applications that states send to Congress for Article V constitutional conventions. The applications that Congress receives are Congressional records which NARA has no authority to regulate. In accordance with 44 U.S.C. § 2118, NARA’s Center for Legislative Archives serves as the custodian of Congressional records for purposes of providing preservation and access, “subject to the order of the Senate or House of Representatives.”

Accordingly, the U.S. House of Representatives retains ownership of the records it transfers to NARA, including Article V constitutional convention records, per Rule VII of the House Rules. *See e.g., Rules of the House of Representatives* (114th Congress, January 6, 2015). At the start of the 114th Congress the House adopted an order that designated the Chair of the Judiciary Committee as the person with the authority to designate Article V petitions for public availability. Since that rule went into effect, the Chair has designated 20 state petitions from 2012 to 2015 as publicly available, and per

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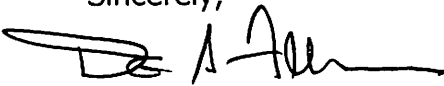
the House order they may be found on the Clerk of the House's website at <http://clerk.house.gov/legislative/memorials.aspx>.

Because NARA's authority to inspect records management practices of federal agencies, as defined in 44 U.S.C. § 2901(14), does not apply to the Records of Congress, NARA is not in a position to conduct the type of inspection that you have requested.

Finally, although some states also send copies of applications for Article V constitutional conventions to the Office of the Federal Register (OFR), a component of NARA, the OFR is not legally charged with executing a function in support of the convention process. These copies are likely sent to the OFR because states are confusing the convention process with the constitutional amendment ratification process, also derived from Article V of the Constitution, where NARA does play a role under 1 U.S.C. § 106(b).

I certainly appreciate your concern regarding this important subject and invite you to communicate with John Hamilton, NARA's Director of Congressional Affairs, at (202) 357-5100 should you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Ferriero", with a long horizontal flourish extending to the left.

DAVID S. FERRIERO
Archivist of the United States