



NATIONAL  
ARCHIVES

December 3, 2015

Mr. Bill Walker  
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Auburn, WA 98071  
Email: [foavc@isomedia.com](mailto:foavc@isomedia.com)

Dear Mr. Walker,

Thank you for submitting your petition for rulemaking regarding how the National Archives and Records Administration (NARA) processes and maintains Congressional Article V state application records (*Proposed Regulations for the Preservation and Public and Constitutional Presentation of State Applications for an Article V Convention*). We appreciate the thought and effort you put into the petition and supporting analysis.

We have carefully considered your concerns and reasoning for creating a regulation to govern how NARA processes and maintains state applications to Congress for Article V constitutional conventions (also commonly referred to as “memorials for Article V constitutional conventions”). NARA has carefully reviewed your proposal, considered the possible options, looked into the rules and laws you cited, as well as others that apply, and coordinated with the Office of the Clerk and the archival staff at the U.S. House of Representatives (House).

It is important to understand that, even though the state applications for Article V constitutional conventions are records maintained in NARA’s Center for Legislative Archives, they do not actually belong to NARA. In accordance with 44 U.S.C. § 2118, NARA’s Center for Legislative Archives serves as the custodian of the records of Congress for purposes of providing preservation and access, “subject to the order of the US Senate or US 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* (114<sup>th</sup> Congress, January 6, 2015). NARA maintains them on Congress’ behalf, and these records are therefore subject to congressional rules. The Archivist and NARA do not have the authority to generate a regulation related to these records because NARA does not own them.

Congressional records held by NARA (nearly half a billion pages of documents) are typically stored chronologically by congress (59<sup>th</sup> Congress House records are stored together, for example), and described, or sorted, within our data system and finding aids by committee of origin, series, and the arrangement the committee used (rarely by folder or document level), within that Congress’s set of records. This is the original order in which the records come to us.

NATIONAL ARCHIVES *and*  
RECORDS ADMINISTRATION

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[www.archives.gov](http://www.archives.gov)

In addition, most House records are not available to the public for 30 years, so researchers do not have access to those closed records ‘immediately’ after we receive them. Researchers do have access to open records (over 30 years old, or designated by the House for ‘immediate’ access), but must search through entire series to find the individual documents they seek. That’s the fundamental way that research is done in most archival records, including the records of Congress. Like virtually all archival records, the records of Congress are stored within their original order so as to preserve provenance, context, and other data researchers routinely need. This is also standard archival and records practice throughout the rest of NARA’s records and the broader archival world.

We can certainly understand that searching for state application records can be time-consuming and possibly frustrating. However, as noted above, this is the traditional method of researching archival records. (See, for example, the Society of American Archivists’ (SSA) website at <http://www2.archivists.org/glossary/terms/p/provenance>, for a description of the role of provenance, and for the SSA glossary, which also includes an entry on ‘original order,’ a long-standing archival principle.) Keeping them within their original order allows researchers to glean important information about the records from their context and location amongst other records and allows additional insight into development of Governmental functions over time. As a result, we do not remove records from their original order to group them in other ways. However, researchers can make use of our finding aids, the descriptions and categories assigned to records in our electronic database (National Archives Catalog), and other similar research aids to help find the records they seek.

Within your petition, you also request that NARA conduct an inspection of state application records under NARA’s authority to inspect records management practices of federal agencies, as defined in 44 U.S.C. § 2901(14). This authority does not apply to the records of Congress, and NARA is therefore not in a position to conduct the type of inspection that you have requested.

As a result of the considerations above, we regret that we are not able to grant your petition for rulemaking on how NARA manages state applications to Congress for Article V constitutional conventions. Not only would such a regulation involve internal procedures and practices and risk requiring numerous additional parallel regulations on other similar procedures, but it would only reflect the way the records are currently processed and maintained, which is in line with archival records best practices. It would not make the records any easier to find as a collection. And, ultimately, we do not have the authority to regulate congressional records, how they are handled and maintained, or which ones are immediately available to the public. Accordingly, we cannot issue such a regulation as you request.

As you know, the House adopted an order with their rules package for the 114<sup>th</sup> Congress related to Article V memorials. That order designates the Chair of the Judiciary Committee as the person who has authority to designate Article V memorials for public availability. On instruction from the House Committee on the Judiciary, the Clerk of the House, for the first time in the history of Congress, began early this year to publish on the Clerk’s website a list of State legislature applications (2012 to the present) calling for a constitutional convention. The list is at <http://clerk.house.gov/legislative/memorials.aspx>.

A few states have recently sent copies of applications for Article V constitutional conventions to the Office of the Federal Register (OFR), a component of NARA, although the OFR is not legally charged with executing a function or maintaining these copies as records 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 ratifications process, also derived from Article V of the Constitution, where NARA does play a role under 1 U.S.C. § 106b. If you are interested in seeing these documents, please contact the OFR directly.

Currently, the OFR has three state applications for Article V constitutional conventions:

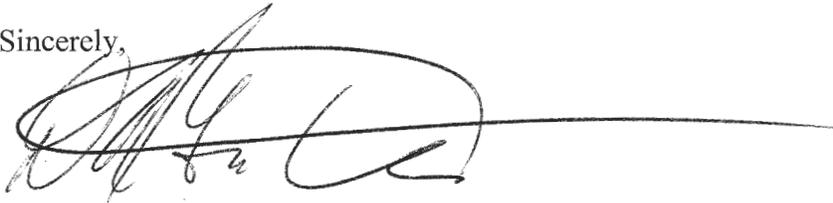
IL: solely for the purpose of addressing Citizens United and related cases

TN: solely for the purpose of a balanced budget amendment

VT: solely for the purpose of addressing Citizens United and related cases

Thank you again for taking the time and effort to submit such a thorough petition for rulemaking and supporting analysis and documents. We appreciate your insight and feedback.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Garland', with a long horizontal line extending to the right.

Donna M. Garland,  
Chief Strategy and Communications Officer  
Office of Strategy and Communications  
National Archives and Records Administrations