

Congress Begins Count of AVC Applications

By Bill Walker

With a quiet addition to House rules on [January 6, 2015](#) the House of Representatives began for the first time in history an official process for tabulation of state applications for an Article V Convention. This historic event went entirely unnoticed by the mainstream media as has been the case for all AVC events leaving one to wonder if the press will even cover a convention when it is called. Under newly enacted [House rule Section 3 \(c\)](#) “Separate Orders Providing for Transparency with Respect to Memorials submitted pursuant to Article V of the Constitution of the United States” the rule, proposed by [Congressman Steve Stivers](#) (R-OH) was among several rule changes for the new 114th House of Representative which passed by on a party line vote of 234-172 with all but four Republicans favoring the new House rules.

According to Article V of the Constitution Congress is mandated to call a convention “on the application” of two-thirds of the state legislatures. In today’s terms this means a single application from 34 state legislatures. The public record shows the applications already submitted number nearly 20 times the necessary 34 applications with nearly submitted within the last 114 years. The issue of a convention call has always been not the states failing to submit sufficient applications but Congress, up to now, refusing to count the applications and issue a convention call. Thus the applications have languished among hundreds of thousands of pages of Congressional Record—still constitutionally effective—but ignored. This is no longer the case as the first affirmative step toward calling the nation’s first Article V Convention is underway.

According to [congressional analysis](#) the immediate effect of the rule is to establish a public record of state applications submitted to Congress and catalogue them by submitting state and year of submission. The applications will be posted on a website (currently under construction) run by the Clerk of the House of Representatives. The public will be able to view the text of the applications and easily determine how many states have submitted applications. The new rule is an adjunct to [Rule 12\(3\)](#) which addresses petitions, memorials and private bill submitted to the House.

The rule does not permit the House to catalogue applications according to amendment subject within the application—only by state and date of submission. Thus, with this exclusion, the most important issue of “counting” applications is resolved—the House is cataloguing applications by applying state not amendment subject. Thus a count of applications is a simple numeric count of applying states with no other terms or conditions. This policy updates a rule adopted by the House on May 5, 1789. On that date the House approved the only other official congressional action in regards to processing applications. This was to table all applications (until the proper number necessary to cause a call was reached), record each application in the Congressional Record and archive the application. (See [FOAVC list](#), discussion in Congress following submission of Virginia application May 5, 1789).

The House, led by Founder and member of Congress James Madison of Virginia (later President of the United States) repeatedly stated when the two thirds number of applications was reached,

it was “beyond the power” of the House to refuse to call a convention and further that no “vote, debate or committee” was permitted in the process. Since then both houses of Congress have followed the procedure established in 1789. The procedure complies with several subsequent Supreme Court rulings which have repeatedly stated amendment subject shall have no bearing on the amendment process. Notably, under the rule, the applications are not referred to the judiciary *committee* for process but to the chairman of the House Judiciary Committee exclusively. Technically therefore a single member of Congress has been designated for the task of application management and is given no authority to reject any application except if it can prove the application is not from a state legislature. The new rule is therefore in perfect harmony with the 1789 rule. The new rule permits the chairman to post prior state applications from “earlier congresses” meaning all applications previously submitted by the states are considered valid and therefore in full constitutional force.

Equally important the rule only applies to applications “calling for a convention for proposing amendments to the Constitution of the United States pursuant to Article V or a rescission of any such prior application.” It is important to note the rule does not say “any application or rescission pursuant to Article V as Article V does not allow or recognize that a state may rescind or nullify an application once submitted to Congress. Thus while Congress may gather both applications and rescissions for purposes of public record the rule only recognizes applications as being “pursuant” to Article V. The rule therefore automatically excludes so-called “rescission” applications submitted by state legislatures even though it gathers them for purposes of public record.

The most obvious point is a rescission is not an application. They are two distinct actions as well as terms describing two actions by a state. One is a constitutionally permitted action causing a convention call; the other is not permitted by Article V and therefore unconstitutional. In recent years convention opponents have managed to have several such rescissions submitted by various states asserting the “right” of a state to rescind (or nullify) its applications. These opponents, primarily the John Birch Society, have never bothered to present a legal argument proving the states have such authority but instead relied on unproven fear mongering in their attempt to derail a convention call. Again the Supreme Court decisions rejecting nullification of federal record are reflected in the rule as the Court has explicitly stated that no “rules of construction, interpolation or addition” to the terms of Article V is permitted. Recognizing so-called rescissions would be an addition to Article V. Moreover the Court has repeatedly stated states cannot nullify federal records such as federal laws. Further, as has been explained in prior columns as an application, upon receipt by Congress becomes a federal record, the states are forbidden from rescinding federal record under the terms of the Tenth Amendment. Thus any “rescission” purporting to rescind a prior application is unconstitutional and the new rule reflects this constitutional fact while simultaneously gathering a complete public record of all state applications in regards to Article V.

Thus with a few simple sentences the House rule addresses the most frequently used arguments as to tabulating applications—same amendment subject, contemporaneousness, rescission—and rejects all in favor of what has been repeatedly stated by in this column: a convention call is based on a simple numeric count of applying states with no terms or conditions. This was what Congress stipulated in 2006 in my federal lawsuit through its attorney of record the Solicitor

General of the United States and what the new rule states by excluding from the process all other standards except a numeric count of states. States and dates and nothing more; the terms and conditions of a convention call, or lack of them, have now been officially established by Congress.

Ordinarily I'm not prone to "toot my own horn" as they say but instead rely on facts and record to prove my point and let it go at that. But on this one occasion I'm going break my own rule. To all my detractors who over the years have said I didn't know what I was talking about regarding the terms of a convention call and count of applications: I told you so.

This congressional action does not bode well for such political groups as [Compact for America](#) and [Convention of the States](#). The heart of these groups argument is same subject application and control of the convention by appointed delegates controlled by special interests in the state legislatures. The new numeric based rule entirely defeats this agenda. It denies these groups control of the convention agenda through application text and excludes any ability of the CFA and COS to block amendment subjects CFA and COS find politically distasteful. As much of what these political groups have asserted is based on work of [Robert Natelson](#) it can be stated his "fiduciary" theory has now been officially rejected by Congress.

Upon learning of the rule this weekend, I undertook to contact the House Judiciary Committee and inform them of the [FOAVC list](#) the first list in United States history to gather the applications by presenting the actual text of the applications. I gave Congress the list with the intent of it using it as reference until such time as it was no longer required the necessary research to gather the applications being completed. The process however will be greatly accelerated as the researchers will have the benefit of knowing exactly where to look in the records of Congress for the massive number of applications.

Currently there are 763 applications from 49 states well in excess of the number of 34 applications from 34 states necessary to cause a convention call. While the new rule clearly gives the House Judiciary Chairman authority to determine whether a memorial purports to be an application of the legislature of a state calling for a constitutional convention, in reality this limitation is not an obstacle. All of the applications submitted by the states have accompanying official verification from the appropriate state officials such as the governor, secretary of state or leaders of the state legislatures or in many cases, all these state officials. The original applications reside in the official records of the state legislatures where their authenticity can be easily verified. In addition, the applications have been sent, as described in them, to the House and Senate as well as the President meaning they have been already scrutinized and accepted by Congress.

Therefore the authenticity of the applications is in little doubt. Given the large number of applications, there is also little doubt of a convention call, indeed several, as the Constitution only requires two-thirds of the state legislatures to apply once for a convention leaving the remainder of the applications already submitted still pending and thus viable to cause another call, will occur within months if not sooner.

Because of this constitutional fact, I also sent a copy of a [proposed convention call](#) to my congressional representatives requesting it be published in the Congressional Record for the consideration and reference of Congress. It is time to begin discussion of the next phase of the convention—the call. Because of Supreme Court rulings and the language of the Constitution Congress cannot legislatively control a convention. Therefore it can only issue an advisory call containing within it a structure for the convention addressing the operational issues of a convention. In order for the American people to accept the convention—and this is no small task given the mounds of lies told for literally decades by the likes of Phyllis Schlafly and John Birch Society—the rules of the convention must be fair, unbiased and above all non-political, that is not favoring one amendment proposal or one political group.

Further the rules must involve the American people in a political process that while new, still is familiar to them as well as to state government officials charged with conducting the election of delegates. By electing delegates by congressional district the process will resemble congressional elections with the distinct difference the election will be, in reality, a referendum on the various amendment proposals contained in the applications as well those advanced by the delegate-candidates during the election. The only issue possible in election is the position of the delegate vis-à-vis proposed amendments. In voting on which delegates to elect based on their positions, the American people will, in fact, be voting on the amendment proposals themselves sending sufficient delegates that favor a particular proposal while denying possible passage of other proposals by not electing sufficient delegates favoring the measure. In short the election will be about issues which most Americans have repeatedly stated they desire.

The proposed call deals with several issues including ensuring delegates are elected not appointed as some political groups have urged, ensuring delegates are federal officials thus immunizing them from felony arrest as CFA and COS advocate, establishing a system of check and balance so as to ensure a convention does not exceed its mandated constitutional authority and conduct business beyond proposing amendments as authorized by Article V. Further the proposed call establishes methodology to enable state legislatures to politically affect the agenda of the convention without interfering in its constitutional autonomy. Under the proposal delegates are non-partisan, both political parties as well as political action groups are excluded from their selection or financial contribution. Equal financial resources for all delegate candidates during their campaign are also mandated.

Whether Congress will actually adopt the proposal as far as general principles remains to be seen. One thing is certain. If Congress adopts a politically motivated call it will do so at its peril. In one recent poll support for the Constitution was an overwhelming 98 per cent positive. Support for Congress is in the single digits. Any politician attempting subversion of the Constitution by means a tainted convention call will truly step on the proverbial third rail. Thus starting the discussion with a fair, balanced and unbiased proposal I believe is essential to producing a convention the American people can believe in and thus support.

With this official congressional action the debate of whether a convention should be held and the supposed dangers of a convention ends. Congress, at long last, has finally owned up to its constitutional duty and begun what will be a long process of application gathering (made much shorter by the submission of the FOAVC list). Even with the FOAVC material the work will take

some time to complete. The House, which has never published actual texts of the applications, will be forced to go through its thousands of pages of committee files and locate the actual applications. These applications will require textual comparison to Senate records in order to determine which application as noted in House records corresponds with a Senate record. The Senate has always published the full text of all applications. Only by this comparison can a final list of applications be determined. It is likely the states that have records of applications that have not appeared in the Congressional Record (and there are many) will either re-submit them to the House or demand research to locate them. The FOAVC list allows Congress the ability to post the applications present in the record at this time while continuing the long but necessary research to arrive a final official figure of applications. Like FOAVC the applications will be gathered in a single location on an official government website. When that occurs, FOAVC will close down as its main purpose, presentation of applications, will be superseded by an official government list of applications.

I believe when all is finished the applications will number about 350 applications from 49 states—perhaps more taking in account applications which were passed by state legislatures but somehow were not previously published in the Congressional Record. No doubt once the American public examines what the proposed convention agenda will be based on present applications, some states will submit a flurry of new applications to ensure debate on whatever issue is desired.

However no longer will the main political thrusts of groups desiring an amendment be directed at uselessly getting a new set of 34 applications on the same amendment subject with the hope that someday when this lofty goal is achieved Congress will call on that proposal alone. To date, all such efforts have failed as any political capital was expended attempting to get the magic number 34 when in fact, as the new rule shows, all that was ever required was a single application from a single state.

Those political groups interested in advancing a certain amendment proposal will now turn their attention where it should have been all along—first getting Congress to call based on the currently submitted applications and second within the rules of a call start campaigns to build public support for their proposal. I should note there is no conflict in my proposed call which limits political influence on delegate selection but deliberately ignores political support for a proposed amendment. In order for a convention to be viable and accepted by the American public events leading up to a convention must be charged with as much debate over issues as possible. I once commented when a convention is called the blogosphere will explode. I have not changed my mind about that expectation or its need. To resolve the problems of this nation requires a great deal of introspection by the American public in order for them to arrive at what they desire in fundamental changes to the constitutional system of government. That can only be accomplished by vigorous public debate.

A new day in United States politics has dawned. It will never again be politics as usual. The mere presence of a convention will affect all the federal government. In all its actions Congress, the Supreme Court and the President will have to take into account the fact the people now have a powerful tool poised to review their actions should the people feel it necessary. No longer will the people have accept the endless treadmill of fruitless electing one party then four years later

throwing them out only to go back four years later to put them back in all the time knowing whichever party is in power nothing is solved or resolved.

For years many have stated it is time to “Take America Back” meaning return rule of the Government to the people. With the passage of the new House rule that process has now officially begun.