

NARA Terminates Article V Convention

By Bill Walker

No paperwork, no count, no call.

In sum that is the official response by the National Archives and Records Administration (NARA) to both [a petition by this author for rulemaking](#) for regulations regarding Article V Convention applications and [a letter from Indiana Congressman Luke Messer](#) requesting inspection of the application records currently in NARA archives.

In letters to [Congressman Messer and myself](#), citing bureaucratic inconvenience as well as a questionable interpretation of federal law and congressional rules they say allows them to refuse the requests, the NARA declined to consider creating regulations intended to consolidate and organize applications for an Article V Convention into a single public collection thus permitting Congress to count the applications and issue a convention call as mandated by Article V of the Constitution. NARA also declined to conduct an inspection of the applications as requested by Congressman Messer.

Without NARA cooperation there can never be an official count of Article V applications. NARA archives contain all enrolled copies of Article V applications which, according to NARA, are currently mixed in with nearly a “half billion [500,000,000] pages of documents” generated by Congress over the past two centuries. To give an idea of the scope of the problem, if every page in the archives took one minute to read in order to locate the applications and a person performed this task 24 hours a day, seven days a week, it would require 347,222 days or just over 951 years to read all the congressional documents stored in NARA in order to locate the applications. Obviously, given the sheer mass of the problem, the only solution is forcing NARA to go through the records, gather the applications into a single collection which then can be maintained and used to officially count the applications which then causes Congress to call a convention or conventions. NARA has sufficient trained personnel to accomplish the job in a reasonable period of time.

Without that official count there can be no official convention call by Congress as Congress lacks the official references needed to determine whether or when the states have satisfied the sole requirement of Article V—that Congress shall call a convention on application of two-thirds of the several state legislatures.

In order to accomplish an official count Congress must use official state records—what are known as “enrolled” state documents. The process of enrollment is a necessary and required legal step described in federal (and state) statutes intended to create an exact master copy of the final law or resolution (known as an “engrossed” copy) adopted by a legislative chamber. The intent of enrollment is to record the exact and precise language of the measure and thus serve as the official reference of that law or resolution. The only legal form of a law or resolution that is considered legally binding is the enrolled copy of a law or resolution. Enrollment has existed for hundreds of years dating back before the Declaration of Independence and the original Constitution. Both of these documents were enrolled on parchment paper (a practice which continues at the federal level to this day) and at that time became official documents of the

governments or bodies which issued them and the official reference of the exact and precise language contained in the document.

The enrolled resolution (and all state applications are enrolled resolutions created by the state legislature) is signed by state officials and stamped with the official state seal and then enrolled creating an official state document. It is this document which is then sent to Congress as an official application for an Article V Convention call. Without these original signatures and seals as well as enrollment, the document is not a legally binding official state document. While the state laws governing enrollment vary all states as well as the federal government mandate all official documents be enrolled in order to be legally binding. If a document is not enrolled then that document it is not an official application by the state legislature for a convention call because it is not an official act of the legislature i.e., that the state in question is employing its federal constitutional authority officially requesting Congress call a convention. Hence Congress need not call the convention based on information contained in an unenrolled document because it is not legally binding. Of course, Congress could, by law, get around this issue by exempting applications from the enrollment requirement but shows no signs of doing so. The only official enrolled state application with signature and seals apparently available from NARA [can be seen here](#).

These official enrolled applications are now buried among the half billion pages of congressional records. Until they are physically extracted from the pile, an official count of state applications is impossible because they can't be located to perform the count. By refusing to establish a process where the documents can be located, NARA has willfully obstructed the Constitution. This bureaucracy has thus established constitutional policy placing its interpretation of federal law and its convenience above that of the United States Constitution. State applications are not archival records. They are in fact perpetual and current constitutional documents intended to trigger a perpetual constitutional requirement on the federal government. They can only be considered archival after they have accomplished that purpose, namely causing a convention call. Hence, until they have accomplished that purpose all submitted applications are current federal record. These constitutional facts fell on the deaf ears of NARA.

The purpose of the requests by Congressman Messer and me was to ensure Congress can satisfy the Supreme Law. Obviously NARA operates under another law—its own. The NARA acknowledges “that searching for state application records can be time-consuming and possibly frustrating. However ... this is the traditional method of researching archival records.” The NARA goes on to state that “Keeping them [the applications along with everything else NARA receives] within their original order [as sent from Congress] 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.” Whenever God wishes to curse this nation he creates a bureaucracy. The petition and letter were not submitted to NARA to complete a doctoral thesis or academic research project. They were sent to NARA to accomplish a constitutional mandate.

Obviously NARA believes stacking papers in order is more important than the Constitution. This, despite the fact every NARA employee is sworn by oath of office to support the

Constitution without mental reservation. Obviously refusing to provide records demanded by the Constitution in order for that Constitution to function properly demonstrates clear mental reservation at obeying the Constitution and thus is a violation of oath of office.

Asserting that proposed regulations intended to separate the applications from the rest of the congressional records such that the applications can actually be used by Congress in its required duty to call a convention rather than just sitting around in some government storehouse shelf gathering dust are irrelevant, NARA stated, “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.” This NARA statement shows even if NARA had agreed to create regulations it would ignore the petition entirely. Instead NARA would create a set of meaningless regulations aimed at rendering necessary access impossible. In short, no way is NARA voluntarily going to pull the records so they can be used.

It is not “best practices” if federal government records cannot found when needed to be used. The mandates of federal recordkeeping (and the federal laws described in the petition back this up) require federal records be grouped together and available for immediate use. Thus, according to federal law, whenever the government needs to use a federal record (or records) it must be able to be locate those records quickly and accurately. Convenience for academic scholarship to study government development isn’t even a consideration in federal law.

Based on the mandates of federal recordkeeping laws I drafted my proposed regulations to treat applications the same way as all other federal records—that they be available for immediate public and constitutional use. I was already aware the applications were buried in the paper pile; the idea was to extract them so they could be used. Federal law permits, indeed requires, related federal records to be stored as a collection. Thus, the proposal regulations in my petition mandated all applications be gathered in single location within NARA with each state application and congressional record acknowledging receipt placed in a single file. The regulations mandated an electronic and paper catalogue system based on the date of submission by the state to Congress in order to determine when the states reached the required two thirds mark of the Constitution something they have done on several occasions. Finally the regulations provided a procedure whereby NARA notified Congress of this information on a regular formal basis so Congress could then execute its assigned constitutional duty. The regulations specifically forbid NARA from issuing a convention call and made provisions for use of a temporary public record of applications so Congress could fulfill its obligation immediately.

Federal law does not permit appeal of this bureaucratic constitutional policy decision by the NARA. Inspection of records and establishment of recordkeeping standards is, by federal law, the sole responsibility of NARA. It is its own appeal board. NARA has refused to bring its own recordkeeping standards in line with those required by federal law on every other agency in the federal government. What about a new federal law to address this problem? Given their opposition reflected in the Sibley suit, frankly the chances of Congress passing a law compelling NARA to constitute the applications into a collection so Congress can use them for a count is nil.

NARA did not just use bureaucratic inconvenience as an excuse not to separate applications from the paper chaff. It referred to a [federal law](#) in both letters. According to NARA, this law precludes it from enacting any regulations regarding convention applications as convention applications are the property of Congress. Under this federal law, according to NARA, this means Congress must issue any rules regarding applications including those related to collection of applications. NARA conveniently ignored existing federal laws and congressional rules requiring NARA establish public use catalogues for of all congressional records (including applications), a point repeatedly raised in the petition.

At least one issue has been settled however. State applications are now officially federal records and the property of Congress not the states. The whole problem of failure to call therefore rests squarely on Congress and nobody else. Of course this has been true all along but finally an official government agency has actually declared this fact thus ending a major debate in the Article V movement—whether applications are state or federal property and thus which entity state or federal is responsible for the operational aspects of a convention together with answering an endless procession of now debunked theories of state control of the applications; remember possession is nine tenths of the law.

This federal property fact means the end for most of the Article V advocacy groups who hold applications remain state property even though they are in the hands of the federal government. Based on this false assumption these political groups have contrived all sorts of state regulation and control of the convention, the delegates and its agenda as well as asserting continued authority over the applications even after submittal to Congress. It is this political perjury which keeps the money flowing in and gives the leaders of these groups jobs. No way are they going to cut off their income meaning they will neither acknowledge nor inform their followers of the facts of this article. Moreover these groups have never had any official evidence to support their position and have even less now. These groups have ignored the law as well as relevant Supreme Court rulings which disproved their pet state control theories long before these groups were even formed. The 1920's Hawke v Smith Supreme Court decision stating states operate under the federal constitution when involved in the federal amendment process should have been their first clue not to mention the infamous 1939 Coleman v Miller giving Congress "absolute" control of the entire amendment process.

To be frank, the intelligence level of these groups when it comes to accepting anything that doesn't fit into their preformed view of the world is slightly less than a fence post. It should come as no surprise that these same groups want to predetermine everything about a convention to their political advantage. To demonstrate their dumber than a fence post ranking, obviously to achieve their goal of proposing their particular amendment all these groups require a convention call which means a count of the applications by Congress. To achieve that requires having NARA separate the records so the applications can be counted. However after reading this article I predict ALL groups will reject the statements herein (despite supporting federal laws, regulations and court rulings) and continue on as if nothing has changed. They will make no effort to support getting the applications available so they can be counted. Hence they will never get a count and never get their amendment proposed. I predict not one group will even acknowledge this NARA issue by as much as a single post on their website. Now that is dumber than a fence post.

Instead these groups will assert, despite all evidence to the contrary, that when their identical set of applications for their particular amendment proposal is reached the trumpets will blare, the walls of Jericho will fall and Congress will issue a call based solely on their applications. But what these groups forget is in the meantime while they spend years getting their applications passed by state legislatures Congress has been or will send them year after year to NARA as mandated by federal regulation and congressional rule to be buried along with the rest of the applications. So when it comes time for the trumpets to blare all you will hear is a pathetic peep because these groups won't have the official enrolled applications of their amendment proposal to assert anything. None of these groups is capable of creating the required 34 applications in a single current session of Congress so their applications will be as unavailable as the rest of the applications, a situation that would be untrue if the applications were catalogued separately by the NARA as required by my propose regulations.

The NARA/congressional rules raise another issue of availability these groups haven't thought about. In order to have political support for their amendment they require political support now. Political support is like boiling water; it evaporates quickly. But the reality of the current NARA/congressional rules is they evaporate any such support. At the minimum, as NARA points out in its letter to me, their applications will be unavailable to the public for 30 years after submission under current congressional regulation. Moreover none of these groups are authorized either by state or federal law to remove official enrolled records from NARA meaning they cannot go in to NARA archives, remove the enrolled documents and present them to Congress themselves. Nor can any presentation by them of their applications in any other form be considered official presentation of enrolled state documents received by Congress as these remained stored and unavailable in NARA. There is only one enrolled copy of a state or federal law or resolution so anything else they present would not be considered a legally binding document. Naturally they will simply ignore all this and somehow assume the government will simply ignore the law for them which again demonstrate why they are all dumber than a fence post.

Now if they want to refute my "dumber than a fence post" charge these groups would set aside their ceaseless efforts at acquiring unneeded state applications (as the states have long since satisfied the two thirds requirement several times) and instead turn their attention to Congress. They would insist on federal laws forcing NARA to extradite the applications from their mass of paperwork and advocate a convention call as the Founders intended—a numeric count with terms or conditions thus depriving Congress (and the states) of rescission of applications or the ability to add additional unconstitutional standards which might otherwise prevent a convention call. They would endorse election by the people of delegates leaving decisions as to convention agenda to the people rather than picked political operatives which is what the courts have already ruled must happen. Operationally they would endorse a federal law dealing with all operational aspects of the convention such that an objective process for submitting applications, issuing a call and holding a convention and so forth that would not favor any political group or agenda. Meanwhile they would turn their attention to developing political support among the voters such that they might accomplish their political goal in a freely elected open convention by electing delegates who favor their amendment proposal. But never fear; none of these groups believe in

the American Constitution or its form of government by the people so none of this will ever happen. They have earned their “dumber than a fence post” label.

For those of us living in the real world however the refusal of NARA to act is a substantial obstacle to getting a convention call. Without the records there is no call. Applications cannot be affected by state laws once they are submitted to Congress meaning this is a problem Congress must solve and they are not disposed to do so. These are federal records (and as stated by NARA) property of Congress. The language of Article V, numerous court rulings and federal law and regulation indisputably support this. Hence, “state” applications, once submitted, are affected only by federal law and the Federal Constitution not state law or state constitutions. The fact not one state constitution contains any authority to regulate state applications at the federal level should give even the most fanatical state control advocate pause—state authority under state constitutions stops at the state boarder; the Constitution contains several passages which do grant such authority to the federal government.

This fact of federal property ownership affects most the so called state “rescissions” applications. They are all unconstitutional. First, as the matter is entirely federal the Constitution does not permit rescission of anything including Article V applications. The federal courts have addressed this matter directly in numerous decisions; bottom line: states can’t nullify federal records. Second, if rescission of applications is a power (and current congressional rules discussed in the petition allow for such action on the part of Congress) it is a power of Congress not the states.

Obviously if Congress can rescind applications (and current congressional rules do not exempt applications from these rules), Congress is not bound to rescind only those applications called for by the states in their rescissions because the states have no authority over federal records. Congress therefore can rescind any application. To prevent this the Founders described the call as “peremptory” and forbid debate, vote or even a committee in Congress to judge applications as well as basing a convention call strictly on a numeric count of applying states with no other terms or conditions. If Congress can rescind applications (or establish any other condition for a call other than the numeric count called for in the Constitution) then they can refuse to call a convention despite the mandate of the Constitution which states Congress “shall” call a convention by simply rescinding the applications or imposing an unconstitutional standard whatever that might be.

This is also why NARA cannot refuse to provide or otherwise obstruct the convention process by not producing the applications. Such action violates the peremptory intent of Article V. Hence, no rescission or addition on the part of the states or Congress (or the NARA) is permissible as it defeats the entire purpose of the convention clause of the Constitution. The 1931 United States v Sprague Supreme Court case stated this fact emphatically and unequivocally when it stated “no additions” were permitted in Article V. Naturally the Article V advocacy groups ignores the Sprague ruling because it defeats their agenda of control of the convention. Obviously NARA ignores this same ruling. Perhaps for the first time these groups will see the consequences of rejecting court rulings and wasting all their political capital on getting applications for their amendment proposal instead of concentrating efforts on Congress to get a convention call.

This fact of federal property ownership reinforces Robert Natelson's [recent article](#) regarding federal authority in the convention process. I have held this position for 25 years and based it on a massive federal public record which I have repeatedly published and therefore will not repeat here. However Natelson, who up to now, was a staunch states control advocate appears to have just seen the light—at least for the moment. In a surprising turnaround, Natelson states in his article applications are federal, not state, in nature. Given that the record of the national government on this point stretches back to at least [May 5, 1789](#) and includes not only statements from Congress but several Supreme Court rulings and statements in the 1787 convention that applications are, in fact, federal I think it is safe to say the government is not about to change its mind on this point.

In a final rebuff NARA referred to the enactment of [House Rule VII](#) on January 6, 2015 in which the House took the first steps to count the applications in a House committee as a basis of refusal to respond to Mr. Messer and my requests. (By the way to prove again the “dumber than a fence post charge—none of the Article V advocacy groups to my knowledge have even published the fact Congress is counting the applications on their websites). NARA maintained Congress, acting through these rules, is responsible to separate the applications from the mass of congressional records. To the best of my knowledge, currently a single House committee employee is going through the NARA records page by page in order to separate the applications and only when other duties permit. Ignoring the fact House rules permit a single member of Congress to reject any application (an example the ultimate in power of rescission of applications, veto by a single individual) and that the Senate has yet to take any action on the applications meaning the entire task of separation will have to be repeated by that body at some time in the future if they ever take any action at all before a count occurs, this means we should have an accurate count of applications ready for a convention call by Congress in the House at least in approximately 1000 years (3015 A.D.) thanks to the constitutional policy decision by NARA.