

Messer Introduces AVC Official List Legislation

By Bill Walker

In a [May 24, 2016 press release](#) Indiana Republican Congressman Luke Messer announced the submission of a historic piece of legislation in Congress. After being signed into law [H.R. 5306](#) will create the first official list of state Article V Convention applications in United States history.

The bill enjoys wide bi-partisan support in Congress. Supporters include: Rep. Jared Polis (D-CO); Rep. Dan Lipinski (D-IL); House Republican Conference Chair Cathy McMorris Rodgers (R-WA); the Judiciary Subcommittee Chair on the Constitution and Civil Justice Trent Franks (R-AZ); the Rules Subcommittee Chair on the Rules and Organization of the House Steve Stivers (R-OH); Rep. Bradley Byrne (R-AL); and Rep. John Ratcliffe (R-TX).

In 2015 Congressman Stivers introduced a rule change in the House of Representatives ([House Rule Section 3c](#)) which created [a collection of Article V Convention applications](#) through the House Judiciary Committee but not an official list. This was the first time in United States history Congress created any process for counting state applications. Before the rule was implemented, the official count of state applications by Congress [stood at zero](#). In the two years since rule was instigated the committee has managed to gather 37 applications.

According to the [FOAVC website](#), which, for the first time in U.S. history gathered the state applications into a single list in 2008-09, as of May 28, 2016, 49 states have submitted 573 applications to Congress dating back to 1789. At its current rate of collection, the judiciary committee will require 30 more years to gather all the applications into a single list assuming the rule is renewed by the House at the beginning of each new session of Congress, by no means a certainty. Congressman Messer's legislation creates a permanent solution to the issue of cataloging Article V applications by formalizing the process under federal law and creating a process whereby the applications will be gathered by the National Archives and Record Administration (NARA) from its archival records in two years.

According to Congressional Research Service (CRS) report R42592 (July 10, 2012), "Between 1973 and 1992, 22 bills and resolutions to enact congressional procedures that would be implemented in response to a successful call for an Article V Convention were introduced in the House of Representatives, while 17 were introduced in the Senate." Not one of the proposed legislation contained any procedure to collect the state applications and create an official government list of applications in order to serve as the official basis for a convention call. Without such a provision not one of these proposed legislations could actually cause a convention call to occur because there was no official basis for Congress to make a convention call. As a result of this oversight by Congress, throughout U.S. history, [a total chaotic mess of hundreds of applications has been allowed to accumulate in the files of NARA making them constitutionally useless](#).

The CRS report also stated, “Congress has addressed the convention issue with study and legislative proposals in the past, particularly in the 1970s and 1980s, when it seemed possible that enough states would petition for a convention to consider a balanced budget amendment.”

The absolute need for an official list becomes bluntly obvious when it is realized according to officials records of Congress (which were used by FOAVC to create its list and are available to Congress at all times) [the states have already submitted sufficient applications to cause TEN convention calls](#) and [in so far as a balanced budget amendment is concerned sufficient applications to cause a convention call were reached in 1979.](#)

The major difference between Congressman Messer’s bill and previous proposed legislation is Congressman Messer’s bill requires NARA to gather the applications from its files, an action NARA has previously refused to do. [Both I and Congressman Messer](#) requested for NARA to voluntarily produce the necessary application list [but were refused late last year](#). NARA asserted its interpretation of federal law as well as bureaucratic inconvenience as the basis for refusing to permit Congress to obey the Constitution.

In its basic form the official list will resemble the FOAVC list. Like the FOAVC list it will be published on the Internet through the two judiciary committees of Congress. The electronic list will present textual copies of the applications just like the FOAVC list. Under the terms of the proposed legislation NARA is obligated to use all means to locate all “missing” applications not found in the NARA files but which evidence shows do exist. Such evidence of course includes any application showing on the FOAVC list or in state records. The bill requires NARA to submit a report to Congress to explain “why” official state applications sent from state legislatures to Congress could be missing from government files.

Of course Congress cannot know how this will all officially play out when the list is completed two years after enactment but everyone (including Congress) already knows because of the FOAVC list. Thus the FOAVC list becomes a checklist for the government. This checklist also means NARA will be able to proceed at a much faster pace to complete the task assigned them meaning it may take less than two years to complete. The FOAVC list gives the date and location of the state application in the Congressional Record meaning NARA will know where to look in its files. Hence, knowing which box to open will speed the process immensely.

Preparing this proposed legislation was not an easy achievement. I have been at work with Congressman Messer and his staff since last October to bring about this widely supported legislation. While the scope of the bill is quite narrow—creation of an official list of applying states and the date they applied—it still required countless hours of work to create its few pages. As with all legislation, contrary to popular belief, proposed congressional laws are read repeatedly and parsed literally by the word if necessary by numerous individuals in Congress in order to produce the exact intent and purpose of the proposed law.

Compromise is always the word with Congress which is why many have said whenever someone wants a piece of legislation proposed in Congress they must be prepared to accept not getting all that they set out to get. Several months ago I submitted [a proposed convention call](#) to Congress. Aware of the compromise adage I did not expect my proposal would be accepted carte blanche by Congress. Instead it was intended to serve as template presenting the various issues that a

convention call must address. As part of my proposal based on historic, legal, constitutional and political reasons, I sought the creation of an official public electronic list of all state applications using an alphanumeric designation system, gathered by NARA, but managed by the clerical staff of Congress. All I got in the Congressman's proposed legislation was the creation of an official public electronic list of all state applications using an alphanumeric designation system, gathered by NARA, but managed by the clerical staff of Congress.

Nearly all of the major Article V interest groups and several individuals in the Article V Convention movement have come together to support of this bill. This really is no surprise. Without an official list there can never be a convention call. The basis of all other groups in the Article V Convention movement (other than FOAVC) is an amendment proposal or proposals. No call, no amendment proposal, no donations, no reason for the group. At least on this issue, (and maybe from now on if these groups finally realize it is politically smarter to work together toward the common goal of getting a convention call rather than squabble over such issues as rescissions, same subject and so forth when these issues have already been decided long ago by the courts meaning Congress will use that determination to make its decision) the groups appear ready to bury the hatchet and get this legislation passed in Congress.

The mainstream press and the ever present opposition to an Article V Convention, the Eagle Forum and the John Birch Society (JBS) all have thus far been silent. I've yet to find a single news story about the Congressman's proposed legislation. It could be all realize the need for the law is so obvious there is no basis for a protest and thus there is no real news story. Obviously, before any action regarding a convention call can occur Congress has to know how many states have officially applied and how many times this has happened; hence the need for a list. Even JBS and Eagle Forum will be hard pressed to find a reason why Congress should not know whether it must call a convention and obey the Constitution.

Besides a [letter of support from FOAVC](#) Congressman Messer has received letters of support from the [American Legislative Council \(ALEC\)](#), the [Assembly of State Legislatures](#), [Compact for America](#), [Compact for a Balanced Budget](#), [Lawrence Lessig, Professor of Law, Harvard Law School](#), and [Robert Natelson](#).

The official list, created by the bill, will lay the groundwork for research by both states and the general public as to the issues the conventions will address. This research will fuel a massive political debate on the fundamental policies of this nation which, of course, are enshrined in our Constitution. It will help solve some of our national problems by providing a solution rather than endless debate. It will vent a lot of the pent up anger in this nation and direct it to a positive result. It will not divide as so much of current politics does now but unify because all realize an actual solution to a problem can occur. That is what is missing in today's politics—an actual result at the end of all this debate—and a convention provides the means to actually accomplish something. I believe people will feel a lot better about our country and our form of government when they realize they are empowered to make decisions about it rather than it making decisions about them. And finally, it will be a historic event—for the first time in 238 years the United States will be operating under the United States Constitution—the entire United States Constitution with no asterisk beside it.