

FOAVC Presents New AVC Feature

By Bill Walker

Starting May 31, 2015, FOAVC will publish on a periodic basis, the [Article V Convention Legislative Progress Report](#) created by Georgia attorney David F. Guldenschuh. Mr. Guldenschuh's report summarizes the efforts of various political movements attempting to get various state legislatures to submit applications for an Article V Convention based on "their" amendment proposal/subject. The report gives points for each stage of submission in the various state legislatures to the various groups and lists on a percentage basis how close each state is to achieving the goal of 34 applications for its particular amendment proposal/subject.

This is known as single/same subject applications. All of the groups listed believe Congress is only mandated to call (and MUST call) a convention if the states submit 34 identical applications on the same amendment issue, such as balanced budget amendment. All of these groups believe that if Congress calls such a convention Congress must exclude from consideration at the convention all other amendment subjects except "their" amendment proposal/subject. Many believe the entire process of the convention can be "pre-determined" meaning debate, delegate selection and even votes by the delegates are determined ahead of the convention by these political groups. This raises the question, which all these groups ignore, that given all is already pre-determined, why is there any need to hold the convention at all? Why not simply skip the amendment process entirely and declare the amendment enrolled in the Constitution by simple fiat?

While FOAVC, Congress and Supreme Court as well as the Founders has long since held that a convention call is based on a simple numeric count of applying states regardless of application subject meaning that any convention is open and therefore any issue raised is subject to vigorous debate, these political groups believe otherwise. None of these groups have ever produced a single reference of public record such as a court ruling, statement by the Founders and so forth to support their position. Thus they express their political preference of an unencumbered amendment process favoring "their" proposal (while excluding everyone else) rather than a legal or constitutional position which favors massive public debate and support in order to place an amendment in the Constitution. FOAVC has cited numerous statements by the Founders, the Supreme Court and Congress holding that convention call is based on a simple numeric count of applying states with no terms or conditions and therefore nothing in the convention can be pre-determined *except that if the states apply in sufficient number Congress must call the convention.*

Because these groups believe only "their" applications "count" they believe any applications submitted to Congress, even if it happens to contain the same subject as the group favors, which the political group has not advocated, doesn't "count." Thus, while the public record, for example, shows that the balanced budget amendment proposals have long since achieved the necessary 34 state applications needed to cause a convention call, those groups favoring a balanced budget ignore all these applications and continue to stubbornly seek more applications for something already achieved.

All of these groups favor so-called “rescission” of applications by the states. Congressional rules permit Congress to rescind any application submitted as a memorial to Congress by the states (something Congress has never done despite numerous so-called “rescissions” being submitted by the states until possibly recently when Congress apparently has stopped recording submitted applications as of January, 2015). Thus if so-called “rescissions” exist, it is clear it is a congressional rather than a state power.

The acceptance of “rescission” of applications by Congress advocated by these groups leads to some interesting legal questions the primary being: if Congress has the power to reject previous applications on any subject what is to prevent it from rejecting any set of applications submitted by any political group?

There are several legal questions which the positions of these groups raise. For example, the political movements of Convention of the States (COS) and Compact for America (CFA) each claim identical states as supporting “their” movement. The problem is, when examined, it is quite clear the terms of COS and CFA mutually exclude each other that is to say a state cannot belong to both groups but can only submit an application based either on the premise of CFA *or* COS. Thus, the applications can only be assigned to one group or the other by the terms of the applications submitted by the states. Hence the number of actual applications these two movements claim is in serious doubt.

Then there is the issue of identical applications. Many in these groups believe that Congress can only call if it received 34 *identical* applications, applications identically worded (excluding the obvious changes necessary to reflect an application coming from a different state). Hence, by this theory if even so much as a period or a comma is different from one application to another, those applications can be rejected by Congress. Again there are no legal citations or references from any of these groups which substantiates this microscopic point of view.

Moreover many of these groups advocate that applications can be limited in time length (sometimes referred to as “contemporaneousness”). Thus if an application is too “old” it no longer “counts.” The legal question none of these groups have answered is how “old” is too “old.” Again the legal references from the courts, Founders and so forth are that no such time limit exists. The problem is, however, if these groups hold that applications have a valid age then it obvious Congress can simply declare any set of applications (or part of it) too “old” and reject the applications.

Mr. Guldenschuh has stated that he expects all of these issues will probably end up in court in the future. The problem with that is that the courts have long since ruled that any ruling coming from them is an “advisory” opinion given entirely “without constitutional authority.” Hence, the courts have removed themselves from rendering decisions on these questions. While this legal situation may change, the present fact is given the position of these groups themselves that Congress has more than ample ability *using their own political positions* to reject any set of applications no matter how well or identically written by doing nothing more than simply using one or more of the tools provided by these various political advocacy groups.

On the other hand, FOAVC, who is in the clear minority of opinion, believes no such tools exist for Congress. Hence, it has emphatically stated Congress has been obligated to call a convention since 1908 and remains obligated to do so today. Thus, if FOAVC were listed in this group of advocates its score would be well into the 600 percent range as the states have submitted enough applications to cause not one, but at least six convention calls.

It will be interesting to see what occurs when one of these groups finally achieves its 34th application and then discovers the response of Congress will be to do nothing just as it has for all applications submitted previously. Perhaps then these groups will put aside the position of “their” amendment proposal/subject and instead join together to get a convention based on the proposition that Congress, being peremptorily required to call a convention, must be do *without* any terms or conditions. Perhaps these groups will also come to understand that the Founders intended that any amendment proposal advanced by anyone was intended to suffer great scrutiny thus ensuring its absolute need before becoming public policy. Thus any scheme to “pre-determine” the outcome the convention advocated by these groups is not only politically foolish as it excludes necessary political support required for ratification passage, but unconstitutional as it defeats the primary premise of the Constitution—that the government created is by consent of the people, not some self-interest political group and hence the people must be involved in the entire amendment process by delegate selection and vigorous public debate not mention providing the necessary public support required for ratification.

The pdf link to the tabulation by Mr. Guldenschuh will be updated as new information is furnished.