

A Case Study in Same Subject Convention Be Careful What You Ask For—You May Get It

By Bill Walker

As part of its continuing policy of updating the only compilation of state applications for an Article V Convention call employing original public record in existence, Friends of the Article V Convention (FOAVC) often researches the Congressional Record to locate new applications submitted by the states for an Article V Convention call. Unlike earlier 1790 to 1995 applications requiring manual research through thousands of pages of Congressional Record, present-day search involves using [Thomas](#), the Library of Congress Internet search engine and a few simple clicks.

A recent search revealed something odd: the 112th session of the Congressional Record apparently was ignoring known state applications. The specific amendment proposal sought was the National Debt Relief Amendment which both North Dakota and Louisiana had submitted applications in 2011. The proposal was [recently defeated](#) in Arkansas. My search turned up neither application nor any others in the Congressional Record.

The National Debt Relief Amendment is the brainchild of [Restoring Freedom.org](#). The single sentence proposed amendment reads, “An increase in the federal debt requires approval from a majority of the legislatures of the separate States.” North Dakota state senator [Curtis Olafson](#) is the group’s national spokesman. I met the senator while I was last year’s [Harvard Conference](#) on an Article V Convention. I liked him. He’s what you want in a public official; integrity, forthrightness, look you in the eye, intelligent, proud to be from North Dakota kind of a man. Restore Freedom made an excellent choice naming him national spokesman. While the main purpose of this column is not a discussion of the specifics of this amendment proposal, never the less a few observations are in order.

First, the Constitution contains a grammatical style primarily employing the word “shall.” This word peremptorily establishes the obligation on those the constitutional text addresses to execute what the text mandates. Thus, to comply with the Constitution, the proposal should read, “Any increase in the federal debt shall require approval of a majority of the legislatures of the separate States.” Beyond making the obligation peremptory, this alteration removes a major weakness of the proposed amendment. As written, the amendment only allows one, single action by the states (“an increase”). After this, the proposed text is self-nullifying. After permitting the states to vote on “an increase” the amendment contains no continuing text expressly authorizing review of any future debt increases proposed by Congress. Congress can therefore ignore them with respect to future debt increases. The revised text resolves this issue. “Any” refers to multiple events; “an” refers to a single event. Clearly, the amendment sponsors do not intend a one-time, self-nullifying amendment; however, their proposed language

indicates otherwise. Good amendment writing requires avoidance of conflicting interpretations if possible.

There are other issues with the proposed text. There is no provision specifying the length of time the states have to decide whether to permit the raising of the national debt. The dynamics of economy demand this. A simple examination of economic history in this nation makes it obvious any market uncertainty can have swift and dangerous economic repercussions on this nation. This amendment proposal, as written, does not provide the economic assurance of certain resolution of the debt question within a given time period needed to forestall market uncertainty. The language must contain a method to avoid this least it cause more issue that it cures.

The current language fails to address the issues of national catastrophes or war usually requiring a swift economic response of debt increase. Presently, this means Congress votes on a debt increase, usually within a day. Can we risk six months of debate in 50 state legislatures, to raise debt in order to pay for a war or a major catastrophe such as subduction earthquake that can wipe out entire sections of our country? What happens if the states do not approve the debt increase? Do we terminate the war and surrender or ignore those in catastrophic need for lack of funds? The amendment must address consequences of including the state legislatures in the federal budget/debt process. While the supporters say they have [a response](#), the fact is an amendment, because it will outlive any of its supporters, must stand on its own language. Assumptions have no place in amendment language. To work, the amendment either must expressly resolve possible contingencies or have in place a process for doing so. The current language does neither.

Moreover, there is no provision dealing with lowering the national debt. If the states have mandated authority preventing debt *increase* should they not also have authority to mandate debt *decrease*? With this authority, debt issues as to national catastrophe or war are resolvable. The states establish a debt increase for a given time period to deal with war or national catastrophe followed by a mandated debt decrease when the crisis is resolved.

This failure of language does not mean the proposal is bad; it is simply incomplete. The language requires polish. Those proposing do not grasp the nuances of constitutional text. Little wonder in this. The latest amendment proposed by Congress was the [26th Amendment](#), (March 23, 1971) ratified July 1, 1971. Congress proposed the [27th Amendment](#) September 15, 1789. Ratification occurred May 7, 1992. So clearly, the 27th amendment is not the “latest” amendment proposed. This means no one has actually written final amendment language to the Constitution in over 40 years or two generations. Those proposing are simply out of practice.

In 1787, the states, acting through state delegations, submitted numerous concept proposals (or plans) intended to correct the problems of the Articles of Confederation. Few proposals, if any, contained concrete proposal language. Instead, they contained general language describing an issue rather than proposing a final solution in precise language. For the most part the proposals were single sentence items creating a checklist

of goals and problems. In sum, the states defined the problems but left the details to the convention.

The states understood the function of conventions: to review, discuss and correct issues producing specific texts of proposal. In 1787, as prescribed by instructions of Congress under the authority of the Articles of Confederation, a convention proposed an alteration to the Articles creating in a new form of government. In 2012 under the authority of that new form of government, a convention is limited to proposal of amendment(s) to that form of government. The states realized the plans (many of which conflicted with one another) required percolation. Thus, the states avoided expressed instructions, which obviously the people of that time were quite capable of writing. After all, they did write the Constitution. The states realized predetermined instructions boxed in the convention meaning it might not arrive at the best solution. As the states had the wisdom to avoid this pitfall in 1787, the convention did an effective job receiving the plans with few attached pre-conditions. The convention became a clearinghouse. The convention took these general proposals, turned them into working language, filtered out bad proposals, and combined others to arrive at workable solutions turning nebulous concepts into a working form of government. That form has served us well from 1787 to the present because the convention was free to debate, edit and revise proposals without outside interference or prejudice in the form of pre-set state instructions. In our present form of government, the convention took care to include language preventing such preconditions on any amendment convention.

Even in its present form, the proposed debt reduction amendment has gathered sufficient support from the states (at least one) to ensure convention agenda consideration *if one reads the text of Article V correctly*. If, however, as the supporters believe, a convention call predicates on “same subject” application-convention, then this incomplete proposal has a long way to go. As with all others advocating “same subject” application-convention, it will fail. The failure is not the fault of the amendment. Rather experience has shown that long before 34 states support it, it will run out of political steam. Such is the fate of all those who fall into the “same subject” application-convention trap, one set by the way by the John Birch Society, a declared opponent of the convention.

Politically however, already submitted state proposals have a political leg up at the convention. These applications already have a place at the agenda table. Eventual amendment passage requires such state support providing an obvious platform for the gathering of public support and awareness not only for the election of favorable delegates but for the all-important ratification battle ahead. Those issues that do not have state applications behind them will not be on the agenda when the convention begins. Delegates can enter these late issues, just as members of Congress submit proposed amendments to Congress. Nevertheless, crucial pre-convention political support will not be available to these delegate submitted proposals making convention support of them more difficult as a base of public support is lacking. Thus acquiring state support in the form of submitted applications is important—politically. All that is constitutionally required to have the proposal already on the convention agenda is a single state application.

However, due in large part to the JBS, the states apparently have decided to remove this proven record of accomplishment of successful convention resolution from the equation. Like many state applications, the North Dakota resolution calls for a convention limited to a single subject in this case the Debt Relief Amendment. This limited convention proposal is presently advocated by the American Legislative Exchange Council ([ALEC](#)) and Balanced Budget Amendment Taskforce ([BBAT](#)). In turn, the basis of these groups' positions stem from a single individual, Robert Natelson who authored both the ALEC and BBAT reports.

To demonstrate how far wisdom can stray since 1787, examine one of Natelson's proposals. Convention delegates digressing from draconian state instructions of amendment proposal are subject to [criminal prosecution](#). I cannot state what others at a convention might do under these circumstances. If I were a delegate and faced criminal prosecution for even appearing to stray from the state mandated text of the "proposed" amendment, I'd forgo any mention of the above weaknesses, pass the amendment forthwith and get the hell out of there. Debate it or even read the text? Forget about it. Pass the thing before they throw me in jail. However, like most people I would probably use common sense: with the threat of jail hanging over me, do not even involve myself in the first place. I cannot think of a more appropriate example to illustrate the meaning of the legal term, "chilling effect" on First Amendment (and other) rights than this.

It should be noted at this juncture however state legislatures still appear to possess the wisdom they did in 1787. [A bill in Idaho](#) mirroring the ALEC recommendations to control a convention [failed to even get out of committee](#). Meanwhile the legislature submitted [an application](#) to Congress for a "same subject" application-convention gives new meaning to that term.

This application is notable for two reasons. First, for the first time in United States history modification of the 2nd Amendment is requested meaning modifying the 2nd Amendment is now part of the convention agenda. This amendment proposal coming from one of the most anti-gun control states in the Union. Just a suggestion to those who until now had nothing to fear regarding a constitutional amendment regarding the 2nd Amendment and gun control—if you don't want it discussed, don't put it in an application. So, just for the record, when the NRA, the ultra-conservatives and the rest, start moaning about gun control and a convention overthrowing the 2nd Amendment—they brought the subject up for consideration at a convention, not the liberals.

Second, Idaho's definition of "same subject" application-convention is about as far from that of North Dakota as possible. North Dakota views "same subject" application-convention as one amendment proposal. The state of Idaho views "same subject" application-convention as no less than 11 different amendment proposals in a single application. Both applications are equally legitimate, legal and constitutional. All the Idaho application does is recognize that, like Congress, a convention expressly can propose [amendments](#). For the record, the Idaho "same subject" application-convention includes balanced budget, debt limitation (making Idaho the third state to support the

NDRA), limited spending and limited, single subject legislation. Given the “limited” nature of “same subject” found in the Idaho application, good luck with that one. Other “same subject” issues are legislative passage time limits, regulation of unfunded state mandates, regulation of commerce clause, wildlife regulation and nullification of federal statutes (the fourth state to requesting this, the first being the [1832 application](#) by Georgia, the first “same subject” application). The state also included in its “same subject” application-convention 2nd Amendment enforcement, elimination of special privileges for members of Congress and lobbying regulation.

The difference between the North Dakota application and Idaho application prove one indisputable fact: “same subject” application-convention advocates can’t even agree on the meaning of the term “same subject” application-convention. Clearly, the meaning varies from state to state and thus from application to application. This brings up an obvious question; who decides? Does the state of North Dakota get to instruct the state of Idaho that North Dakota’s single subject will be the only subject discussed at a convention while Idaho’s 11 issues will not? Given the fact it is likely most in North Dakota politically share some of the sentiments expressed in the Idaho application for needed change, it becomes even more political nonsense for North Dakota to insist Idaho’s issues not be discussed especially when North Dakota agrees with them.

Alternatively, will Congress decide? Will it have the power to declare none of the applications, for whatever reasons Congress chooses to create, have reached the two-thirds mark. Thus, Congress declares it does not have to call a convention to consider amendments that it opposes. Perhaps Congress will incorporate a veto power over the states and the convention as urged by Robert Natelson and incorporate this veto in proposed legislation [introduced in Congress](#) (see Sections 6a, 10 and 11(b)(ii)). By this authority, even if the convention *proposes* an amendment Congress does not favor, Congress simply vetoes it by refusing to send to the states for ratification. In effect, the veto turns the convention into no more than a subcommittee of Congress rendering the entire convention process ineffectual. “Same subject” application-convention advocates have no answer for this congressional veto—how can they? They are the ones proposing it.

The central issue in this “decision” argument is the function of Congress. Is its function in so far as its duty to call “ministerial” or “discretionary?” Webster’s Dictionary defines “ministerial” as “of, relating to, or being an act that a person after ascertaining the existence of a specified state of facts performs in obedience to a mandate of legal authority without the exercise of personal judgment upon the propriety of the act and usually without discretion in its performance.” [Emphasis added]. Black’s Law Dictionary defines “discretionary” as, “When applied to public functionaries, discretion means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others.” [Emphasis added]. Obviously, “judgment” in this instance would refer to the so-called instructions contained in the “same subject” applications. The very definition of the word proves Congress, if given

discretionary authority to determine “same subject” does not have to obey these instructions.

The Founders unequivocally held Congress’ function was “ministerial.” So ministerial in fact they stated [Congress](#) did not even have the right to refer the issue of a convention call to committee, debate the issue or even vote on it. “Same subject” application-convention advocates hold a contradictory position. They state a convention call is mandated (ministerial) never use the word “peremptory” (a legal term meaning absolutely required with no discretion, a term expressly used by Hamilton in [Federalist 85](#)) but then assert Congress has the right to decide whether applications are on the same subject (discretionary) before it has to call. Naturally, they concede if Congress determines the applications *do not* relate to the same subject, Congress may decline to call a convention *despite* the imperative instructions of the Constitution. In short, a disincreistertionailary power.

I sought out the advice of Senator Olafson regarding the missing North Dakota applications. He informed me he was aware of the issue and had requested the secretary of state for North Dakota contact Congress regarding it. The senator sent me a copy of the letter sent by the secretary of state. With both of us working the computer, we managed to find the application. However, as indicated by the [letter](#) from the Secretary of State of North Dakota Alvin A. Jaeger to Vice-President Joe Biden, Jr. president of the senate, it required prodding on the part of the state to get Congress to publish the application. The secretary sent the letter March 1, 2012. The Senate published the application [March 7, 2012](#) after the letter was received in Washington DC. Congress did not publish the [Louisiana application](#) until March 29, 2012.

In his letter, the secretary of state requested the Senate post the full text of the application, as is that body’s custom. The letter also requested the “resolution [from North Dakota] be referred to the appropriate committee(s) of the United States Senate that have the applicable jurisdiction over its subject matter.” The House only publishes a single sentence noting the submission of an application by a state with no details of text. This difference of publication and the fact neither house of Congress has a procedure in place to record applications in orderly manner is the reason it is impossible to state with accuracy exactly how many applications the states have submitted. As an [article published in the Congressional Record](#) shows frequent delay of state applications, sometimes for years. Thus, even if the House and Senate record a particular amendment subject on dates near each other, this does not necessarily mean the House notation refers to the same application in the Senate.

There is another issue regarding the letter. The secretary of state requested that the application be “referred to the appropriate committee(s) of the United States Senate that have the applicable jurisdiction over its subject matter.” This is in stark contrast to the Founders who clearly stated in the [Congressional Record](#) no application was to be voted on, debated or referred to any congressional committee “as this would imply the House had a right to deliberate upon the subject...[and then] it is out of the power of Congress to decline complying.” As no vote, debate or committee is permitted, and yet Congress is

mandated to call a convention by the term "two-thirds" of the several state legislatures, unquestionably the basis of decision must be a fundamental so obvious and conclusive it requires no committee, debate or vote. A simple numeric count of applying states, that is grouping those states that have applied against all the states thus establishing a numeric ratio, is the obvious and indeed the only plausible solution. Presumably, all members of Congress can count to 34 and understand third grade arithmetic. The Founders clearly understood the problem with giving a congressional committee "jurisdiction" over state applications. With such power, a single individual (a committee chairman or even a subcommittee chairman) can simply veto applications and never allow them out of committee. Thus, despite the peremptory mandate recognized by the Founders, a single person determines whether or not a convention exists.

The Congressional Record text proves the Founders were entirely against a committee determining a convention call understood the obligation of Congress to call and what options it had regarding that call. Having read the secretary of state's letter before meeting with Senator Olafson, it appeared this is exactly what happened and may have happened with the Louisiana application: the committee received the application and simply vetoed it by refusing to file it in the Congressional Record. Had they done this, the request by North Dakota giving the committee "jurisdiction" would have justified such action on their part. As other recent events prove, such action is no surprise.

Recent action by another congressional committee proves Congress' refusal to call a convention is deliberate. Despite a request by John Guise prior to his filing his [criminal complaint](#), the Senate Ethics committee, charged by Senate rules to investigate violations of law by members of the Senate, voted to [refuse Mr. Guise's request](#) of investigation. The [oath of office](#) requires members of Congress "support" the Constitution and "discharge their duties of office." One of the "duties of office" is Congress call a convention when the states have applied. Refusal to do so "advocates the overthrow of our constitutional *form* of government." Our constitutional form of government involves two autonomous methods of amendment proposal, not one. Our form of government requires a peremptory act on part of Congress i.e., a convention *if the states so apply*. The peremptory action exists to preclude any possibility of Congress limiting the proposal of amendments only to Congress. Our form of government provides for a second method of amendment proposal, a convention, to ensure needed changes to our form of government despite a recalcitrant Congress. Violation of the oath of office is a criminal offense ([Link 1](#), [Link 2](#), [Link 3](#)). As noted in the letter, violations of law are under the jurisdiction of the Senate Ethics committee. However, as the letter proves, a small group of individuals or perhaps only one, determined Congress can ignore the Constitution.

[Executive Order 10450 Sec. 8 \(a\) \(4\)](#) defines what specific acts constitute a violation of oath of office. This includes "advocacy...of the alteration of the form of government of the United States by unconstitutional means." The courts have clearly stated (see U.S. v Sprague below) the national legislature may not alter the process of amendment by any means including interpolation, construction or addition. Any act including not calling when compelled to so is an unconstitutional means to alter our form of government. Therefore, the only alternative open to Congress under the law is by amendment of

Article V. No such amendment exists and therefore Congress, by law, is bound to the terms and conditions of Article V *as expressly stated*. Any other action on the part of Congress not to obey Article V is an “alteration of the form of government of the United States by unconstitutional means.”

The question presented by the John Guise criminal complaint to before Attorney General Holder is whether Congress has violated its oath of office in not calling a convention when mandated to do so. The fact AG Holder has referred this complaint to the DOJ criminal division after first taking three days to consider whether to do so is significant. The criminal division, in turn, referred the matter to the FBI. Under the law that agency is required by law to conduct a “full field investigation” of this complaint. In this case, the FBI is required to investigate every member of Congress. The law specifies an investigation begins only if the evidence presented asserting violation is credible. That evidence advanced “numeric count” as the basis of a convention call.

The fact the federal government is conducting an investigation at all means the theory of “same subject” application-convention as far as the federal government is concerned, is wrong. Every “same subject” application-convention advocate states no amendment subject have ever achieved the required two-thirds number (34) to cause Congress to call a convention. If this assertion by these proponents were true then it follows Congress cannot be charged or even investigated for violation of oath of office for failure to call a convention because the condition required by the Constitution has never been satisfied.

The fact is an investigation *is* underway. The criminal complaint filed specified violation of oath of office for not calling an Article V Convention. The attorney general acted on the complaint and began an investigation. The FBI *is* investigating and under law can conduct only one type of investigation, a full field investigation. The only way these facts make sense is the federal government has reason to believe a violation of oath of office has occurred. Indeed, the law mandates before an investigation begins, the credibility of the evidence is determined. If evidence is not credible, no investigation is conducted. The sum of that evidence is there has been a violation of oath of office by Congress based on the fact over two-thirds of the state legislatures have numerically applied for a convention call and Congress has ignored these applications. Neither subject content of application or state instructions in an application, both points central to the theory of “same subject” application-convention was presented as evidence in this complaint. If the theory were correct, it follows the government would not have acted, as the necessary evidence was not presented. However, the government has acted. Therefore, the needed evidence was presented. The government based its action on the evidence supporting numeric count of applying states and not on “same subject” application-convention clearly validating the former and invalidating the latter.

As shown on [its website](#), the Senator’s Olafson’s group believes in the “same subject” application-convention principle. This is the mistaken belief by some that in order to hold an Article V Convention, the states must submit 34 identical applications on the same amendment subject in order for the applications to “count.” The argument goes that if 34 states do not present 34 identical applications on the same amendment subject, Congress

has the right to refuse to call a convention. Therefore, this argument holds *the states* propose the amendment and in turn, can limit a convention to a specific amendment subject. The only problem with this argument which some have term “intuitive” is the facts do not support it. In case of Restoring Freedom, as has come to be expected with groups who accept the “same subject” application-convention theory, the public record which politically and constitutionally benefits its cause is ignored. Thus, according to amendment’s sponsors, the proposal has only [two states](#) supporting it with submitted applications to Congress. They do not even recognize Idaho’s support in that state’s application.

The public record contradicts their statement. As noted in the 1990 [Hamline Law Review article](#) by Lynn Boughey and confirmed by FOAVC, the public record shows [18 states](#) have submitted “general applications” that is, applications containing no specific amendment proposal desired at a convention. One of these states is North Dakota. Therefore, it cannot be “counted” in this instance, as it is one of the states on record as supporting the specific amendment. Thus, the number of supporting states varies from amendment issue to issue depending on which states have submitted applications directly supporting the specific issue in question. As the remaining 17 states have submitted applications for a general convention with no terms or conditions as to proposed amendment, this means these states *automatically* are counted as supporters for this amendment or any other specific amendment proposed *if the so-called “logic” of “same subject” application-convention is accepted*. No “subject” is as valid an application subject as a specific subject is—the choice of amendment subject is entirely up to the state. Hence, according to public record, the states supporting this proposed amendment already number 19, not two. (Three if you add Idaho thus totaling 20 states). Such support brings additional political support, which brings more applications, which brings political support and so on. However, Restore Freedom chooses not to benefit from this fact by ignoring public record as its record of [supporting states](#) proves.

The proper and correct interpretation of a convention call that a convention call based on a simple numeric count of applying states with no terms or conditions enjoys broad support from the Founders, the Supreme Court and even Congress itself. There is no legal support for the states having authority to propose amendments, limit convention agenda, its discussion and compel passage of a specific amendment proposal. This last point is obvious. It is what is really behind the “same subject” application-convention movement. The attempt to have “his or her” issue passed but no one else’s. What political movement seeking an amendment would urge it *not* passage at a convention? Therefore “same subject” application-convention not only refers to the limitation of subject matter discussed but passage of the proposal running roughshod over any opposition, or other issues i.e., a runaway convention.

If such legal authority existed to prove “same subject” application-convention, advocates would cite it *ad nauseam*. They do not. As I have stated before regarding JBS lies and the so-called “dangers” of the convention: ask to see their references. The same applies to “same subject” application-convention advocates. Most especially, ask for their explanation regarding expressed language in Supreme Court rulings that directly refutes

their position. For example, the U.S. v Sprague ruling limiting actions by the states to expressed text in Article V and no more. The ruling in Hawke v Smith expressly stating conventions are elected eliminates any possible use of so-called “fiduciary” as a basis of state control of a convention. These references will have to be something else than those of “same subject” application-convention most recent advocate, Robert Natelson. His argument that fiduciary law (law dealing with relations between employer and employee) somehow grants the states authority to regulate all aspects of convention agenda have been rebutted and refuted. In sum, Natelson bases his argument on actions taken by the states under the authority of the Articles of Confederation. Someone needs to inform him we no longer operate under that form of government. What the states did under that form of government does not mean they can do under our present form of government. His use of such examples is irrelevant.

While we worked to locate the North Dakota application, I asked the senator about legal recourse if the application was not located. He indicated this was always an option but not at this time. The problem with those who believe in the “same subject” application-convention is there is no basis for legal recourse. Those who believe in a “same subject” application-convention have the untried, untested and unproven legal theory of fiduciary law of Rob Natelson on their side. John Guise whose criminal complaint is based on a numeric count of applying states with no terms or conditions has federal criminal law, the Founders, the Supreme Court and Congress on his side.

The latest “same subject” application-convention advocate, Robert Natelson, has never sought judicial review of his unproven theory of “same subject” application-convention. This is not surprising as Natelson frequently publishes misinformation in his writings. This obviously unchecked misinformation, is published by “same subject” application-convention advocates eager for any validation of their belief. Because the view fits nicely into their political view of having only their amendment issue ratified, they ignore all other credible information.

In a court of law, any competent attorney opposing Natelson would rip his credibility apart for such errors. For example, Robert Natelson and Restoring Freedom has stated Senator Robert Kennedy opposed a convention and therefore opposed “same subject” application-convention. The senator’s public statements prove otherwise. As noted in the Congressional Record, “The main problem with state applications specifying exact language is the objection that a convention called to consider a predetermined amendment would, in effect, become part of the ratifying process.” Addressing the matter of “same subject” application-convention, Senator Kennedy criticized, “...an attempt by the various State legislatures to force Congress to call a convention which can only act mechanically to approve or disapprove a specific amendment. The attempt is to make the convention merely an initial step in the ratifying process instead of a deliberative meeting to seek out solutions to a problem. The word ‘propose’ cannot be stretched to mean ‘ratify’. The Congress cannot properly accept and become part of any prepackaged effort to short cut the amendment process.”

Senator Kennedy's intent is clear. He advocated the only constitutional means to properly "count" applications—a numeric count of applying states with no predetermination, resulting in an open convention with no "prepackaged effort to short cut the amendment process." This method unquestionably not only is constitutional, but politically more desirable. It is far easier politically to get a single state to propose an amendment subject in its application than to get 34 states to do this. This means once a movement achieves a single state application (and if a national movement can't get that much accomplished, they need to go home) ensuring a place on the convention agenda, political attention is focused elsewhere. Instead of wasting valuable political capital getting more applications which are meaningless unless Congress calls a convention, political attention is focused where it belongs: getting the amendment issue *passed through the convention and ratified.*

The [public record](#) proves more than 34 states (49 in all) have applied for a convention call. Therefore, Congress must call the convention. It is a political advantage for those saying they want amendments to accept this premise. The premise is sufficient applications already exist to cause a convention call. These amendment advocates then can move on what they say they want: an amendment, not an endless series of applications. Politically, getting stuck in an amendment movement that has as its goal gathering 34 applications instead of focusing on causing Congress to call *based on the fact Congress has already admitted it must do so* is about as politically effective as remembering who was the losing candidate for vice-president in the 1980 election. Nobody cares (except the JBS who lies about it). For a movement it makes more political sense to get the minimum number of applications (one) then use the premise to get a convention called *and then go back getting additional applications as well as gathering delegate support in the election cycle* so as to ensure the amendment issue is ultimately proposed and finally ratified.

The [application record](#) shows the states wish to discuss some 25 different amendment subjects. This total does not include some of the 11 subjects submitted by the Idaho application, which, like Louisiana, has yet to appear in the Congressional Record). The correct method of application count means the politics of the issues take over where required: at the convention. As with the 1787 convention, the amendment convention serves as a clearinghouse dealing with various amendment proposals, rejecting some, improving others, and combing others to resolve problems. Free of predetermination there is nothing to prove such a convention will not be as excellent in formulating amendments as the 1787 convention was in formulating a form of government.

Senator Kennedy favored a convention, just not a "same subject" application-convention. His words simply rephrase two Supreme Court decisions. The first, *Hawke v Smith*, 253 U.S. 221 (1920) stated, "The language of the article is plain and admits no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed." The court also stated conventions are "deliberative assemblages representative of the people..." The second, *United States v. Sprague*, 282 U.S. 716 (1931): The United States asserts that article 5 is clear in statement and in meaning, contains no ambiguity, and calls for no resort to rules of

construction. A mere reading demonstrates that this is true. It provides two methods for proposing amendments. Congress may propose them by a vote of two-thirds of both houses, or, on the applications of the legislatures of two-thirds of the States, must call a convention to propose them.”... “Where intention of words and phrases used in Constitution is clear, there is no room for construction, and no excuse for interpolation or addition.”

Indeed, the earliest source of “same subject” application-convention is the John Birch Society’s [1980 anti-balanced budget amendment campaign](#). I have written extensively about JBS “evidence” of the “dangers” of a convention. My investigations, using nothing more than public record available to anyone proves irrefutably their “evidence” is nothing but lies. Examples of these lies include their centerpiece of evidence, the so-called Burger letter ([Link 1](#), [Link 2](#), [Link 3](#)), taking comments made by James Madison in a historic letter [out of context](#) and the most infamous—the “[runaway convention](#)” myth.

To learn the JBS is behind the “same subject” application-convention myth should surprise no one. No court has ever ruled in favor of “same subject” application-convention. Indeed, the exact opposite is true particularly in the U.S. v Sprague ruling. The court stated (without dissent) no interpolation, addition or rules of construction applied to Article V text. If the stipulation of “same subject” application-convention existed, obviously created by use of addition and interpolation, the mandate requires a caveat. No such caveat exists in the ruling. Instead, the court was absolute. It did not recognize such “addition” to Article V. In fact, there has never been an official action by any court recognizing the “same subject” application-convention myth. The reason the JBS created the “same subject” application-convention myth was political necessity. Without the myth, they had no campaign against the balanced budget or any other amendment proposal for that matter.

Had the JBS told the truth about how the Founders intended [applications be counted](#) or discussed the full [public record](#) of applications, their anti-bba campaign would not even begun. The entire campaign hinged on making people believe a lie of omission. The JBS repeatedly stated throughout the years 32 of the required 34 states had already submitted applications for a balanced budget amendment. They whipped up fear using their lies about a “runaway convention” and the so-called “Burger Letter.” Implied in their 32 states have applied statement was the idea that for applications to “count” they all had to be on the same amendment subject. The problem was the public record did not support the JBS. That public record shows long before the JBS began their campaign against the bba, based on how the Founders intended applications be counted, more than a sufficient number of states had submitted applications for a convention call.

So if you are the JBS, you need to discredit a part of the Constitution for your own political gain, and the public record does not support you, what do you do? *Simply ignore the public record and lie about the total of applications by focusing on a small number instead. Ignore any contrary court rulings that expose your lie. Repeat the lie often making people believe this small number is all that exists. Above all, if challenged with the truth always refuse to answer.* While the JBS may say they want the Constitution

obeyed, “as is”, in fact their opposition to an Article V Convention mandated by the Constitution and their basis for this opposition [proves otherwise](#). The JBS has no problem about discrediting the Constitution if it advances their political agenda. JBS has done this and continues to do so to this day. It is effective. Those who are too lazy to learn the facts themselves and rely on others to think for them have bought the JBS lie of “same subject” application-convention. They are easily identified. Despite federal court rulings and public record they always assert the states have never achieved enough applications to cause a convention call.

Their lie is very pervasive among the public. However, the federal government is a different story. The federal government has never accepted the “same subject” application-convention as the basis of a convention call *even though such acceptance benefits Congress in its opposition to a convention*. Instead all Supreme Court decisions reflect the government’s 200 year old position: a convention call is based on a simple numeric count of applying states—period. Under the “same subject” application-convention theory, states can “rescind” previously submitted applications. The JBS has worked incessantly in the state legislatures to accomplish such rescissions. Yet the fact remains Congress has never rescinded a single application despite these state actions. In short, it has steadfastly refused to recognize such rescissions *even though such action would allow Congress a political basis to remove applications and thus not be obligated to call a convention*.

Why have they not? First, Congress knows what the real basis of a convention call is. Second, it is possible members of Congress actually read the Constitution. Third, they are familiar with the terms of the [Tenth Amendment](#). As I have noted before the Tenth Amendment precludes states from rescinding federal records such as submitted applications. Congress records state applications in the Congressional Record. The Constitution expressly requires Congress to maintain this record. Thus, it is a power “delegated” to the United States by the Constitution. Hence, states cannot delete items from the Congressional Record.

There is one other example of “evidence” “same subject” application-convention advocates use to support their position. This “evidence” is an article entitled, “[The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process](#)” published in 2007 in the [Harvard Journal of Law & Public Policy](#). James Kenneth Rogers, a 2nd year law student at Harvard Law School and [senior editor](#) for the Journal wrote the article. The Journal, according its website is “an organization of Harvard Law School students” published “three times annually by the Harvard Society for Law & Public Policy, Inc.” The journal asserts it is “the nation’s leading forum for conservative and libertarian legal scholarship” and states it is the “official Law Journal of the [Federalist Society for Law & Public Policy Studies](#),” usually called the Federalist Society. It is “is a group of conservatives and libertarians dedicated to reforming the current legal order, ... [that it is] “committed to the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be.” Frankly, if these journals hope to reform “the current

legal order” they need to present more accurate information than Mr. Rogers’ student article. Few people accept as credible statements of a group that makes factual misstatements. Perhaps the reason for any errors is Mr. Rogers was a senior editor at the Journal when he wrote the article. Possibly his position prevented others from validating his references before publication.

Now a Harvard Law School graduate, Mr. Rogers is employed by the prestigious law firm of Osborn Maledon, Phoenix, Arizona. This law firm deals in [numerous legal fields](#), but does not list constitutional law among them. Mr. Rogers’ [impressive biography](#) states his legal experience includes “civil litigation, appellate and professional liability matters” but not constitutional law. Undoubtedly he is now a competent, skilled, professional attorney in his areas of legal expertise. However, as “constitutional law” is not listed, it is fair to assume he has less experienced in this area of law than those listed. The issue concerning his article involves research, not expertise. Poor research is a known weakness of many students. Regardless of whether he was student senior editor at the Journal when he wrote the article, factual errors in the single legal article he wrote as a student indicate a weakness in accurate legal research.

There are certain standards about research, legal or otherwise. Easily the most fundamental is the research is accurate. This fundamental principle demands certain standards of conduct on those writing, researching and editing any work they present. At the minimum then, editors *read* the material submitted and *verify* all references, such as footnotes, within the article are accurate as to what the author says they state. When the premise of an entire article depends on the accuracy of a single footnote or reference, in that all other premises stated in the article hinge on the accuracy of that original reference, the necessity of accuracy becomes obviously paramount. There is no excuse for inaccuracy especially at Harvard Law School.

As Harvard has one of the finest law libraries in the nation, the demand of *absolute accuracy* is obligatory. Certainly within that library exists a copy of Max Farrand’s universally recognized original source work, “[The Records of the Federal Convention of 1787](#)”. Mr. Rogers article leans heavily on this source as the basis of his primary argument that states have the right to propose amendments, i.e., “same subject” application-convention. As described in [one website](#), “In 1911, while Professor of History at Yale, [Max] Farrand compiled all of the records, diaries and notes of the members of Constitutional Convention and published them in a three volume set. ... In his words, Farrand placed “every scrap of information accessible upon drafting of the Constitution of the United States [in his book].” The New York Times called his work “the standard authority on the work of the Constitutional Convention” and “indispensable for any real interpretation of the Constitution.” (December 17, 1911). Farrand published a revised edition of his work in 1937 incorporating a fourth volume based on new material uncovered after the first printing.”

Mr. Rogers is a supported of the “same subject” application-convention as the conclusion [page 1018](#) proves. In sum Mr. Rogers states applications for different amendment subjects “should be counted separately.” The first problem with this assertion is Mr.

Rogers does not address Supreme Court decisions already discussed in this article, which expressly refute his assertions. This fact alone is enough to refute his article. However, it is not the only conflict. Mr. Rogers' main reference problem is a single sentence on [page 1007](#). The sentence states, "Gouverneur Morris and Elbridge Gerry made a motion to amend the article to reintroduce language requiring that a convention be called when two-thirds of the States applied for an amendment." [Emphasis added]. His footnote cites "[Volume] 2 Records Of The Federal Convention, *supra* note 5, at [page] 629."

In sum, as indicated in Mr. Roger's text, was this the purpose of the motion made by Morris and Gerry i.e., does Mr. Rogers' state accurately reflect the intent of the motion? Ignoring for the moment that four Supreme Court decisions have expressly stated Congress must call a convention and have never mentioned the call be based on "the States applied for an amendment" the question then becomes: did Mr. Rogers accurately describe the actions of the convention? The validity of the remainder of his article depends on the accuracy of the statement contained in this single sentence. This in turn depends on whether or not his legal research is accurate.

On [page 1017](#) of his article, Mr. Rogers makes four assertions. First, the historic record of the convention clause "shows...the Clause's accepted meaning...was that applications by the States to Congress could be limited...and thus limit the subject matter of a convention. Second, prior language giving Congress "the power to propose amendments whenever it would "deem necessary, or on the application of two thirds of the Legislatures of the several states..." is "nearly identical to the Convention Clause language in Article V that requires Congress to call a convention." Third, the similar language in the final version of Article V to earlier draft language "should thus be interpreted to have the same meaning: the States may make limited applications." Finally on [page 1019](#) he states, "Congress's ministerial duty to call a convention also includes the duty to group applications according to subject matter. Once a sufficient number of applications have been reached, Congress must call a convention limited in scope to what the States have requested." [Emphasis added].

There is no language in Article V authorizing Congress to "group applications according to subject matter." Such language is an interpolation of Article V an act *expressly* prohibited by U.S. v Sprague. This is reinforced by Madison's comments [made in Congress](#) i.e., no committee, no debate, and no vote. Without these how can Congress go about "grouping" applications as it surely requires a committee to decide which application subjects relate to which other application subjects, meaning there must be debate and naturally such conclusion requires a vote. Yet the Founders clearly understood none of this was permitted and obviously therefore was not required. Thus, the only "grouping" permitted by Congress under the terms of Article V is that of "grouping" two thirds of the state legislatures that have submitted application for a convention call, i.e., a numeric count of applying states. Mr. Rogers obviously did not read the dictionary while writing his article. He misuses the word "ministerial" asserting it permits Congress a choice, that is a determining what application subjects relate to other application subjects. That act is the definition of "discretionary." As he combines the meaning of "ministerial

and discretionary”, he should have used the proper word—dismincreistertionailary. Roget’s Thesaurus lists “[choice](#)” as synonym for “discretionary,” not ministerial.

Was Mr. Rogers’ legal research as sloppy as his choice of words? The facts appear to indicate this. An examination of Farrand’s Records shows a different conclusion than Mr. Rogers asserts. Until the late August, the records indicate the convention debated general concepts regarding amendment. Beginning with Volume 2, [page 467](#) actual proposed texts begin to appear to Article XIX (later to be renumbered Article V in the Constitution). That text states, “On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose.” The text is plain and obvious. The state legislatures have the right to propose an amendment, which shall be referred to a convention “for that purpose.” There is no question that had the convention this point the “same subject” application-convention would be correct. The text limits application to “an amendment” (single) and *clearly* requires a convention “for that purpose (again singular). The conclusion is obvious and inescapable: a limited application, a limited convention.

Mr. Rogers did not cite this as the basis of his assertion of the states having the right to propose amendments. The text of the proposal is indisputable and fully supports his contention. Why then, does he not cite this text to support him? The reason is obvious and significant. This was not the final version of Article V. Indeed, as described below, the convention made massive and permanent alterations in the proposal, which completely scrapped this text rendering it irrelevant.

On September 10, 1787, the convention amended the article, now numbered Article 19 to allow the national legislature to propose amendments then set it aside. (See [page 555](#)). The convention never returned to this language. Thus, the convention *abandoned* language that expressly allowed “same subject” application-convention. Instead, the convention accepted entirely new language as the basis of what was to become Article V. (See [page 556](#)). This language stated, [in part] “The Legislature of the United States, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution...” The intent of this language is also clear. Congress was empowered to propose amendments, not the states. The convention *entirely reversed itself*; states could still submit applications but the only proposing body for amendments was Congress. Thus, the convention removed the power of the states to propose amendments.

After the delegates expressed concerns the text of the new proposal permitted “two thirds of the States [to] obtain a Convention [in which] a majority [of states] can bind the Union to innovations that may subvert the State-Constitutions altogether” Article XIX was again taken up by the convention. Alexander Hamilton expressed concerns that the proposal as it stood meant “[t]he State Legislatures will not apply for alterations but with a view to increase their own powers.” Following the discussion, the convention amended Article XIX, requiring ratification by the states before an amendment became part of the Constitution. (See [pages 557, 558](#)).

James Madison then introduced yet another version of Article XIX, which still required Congress to propose all amendments but now included ratification language from earlier versions. The convention voted to take up this new version and never again returned to the previous version under discussion. (See [page 559](#)). On September 10, 1787, the convention submitted approved drafts of the Constitution to the Committee of Style who revised them and reported to the convention on September 12, 1787 for final review by the convention. It was at this time Article XIX was renamed Article V in the final draft of the Constitution. (See [page 602](#)).

On Saturday, September 15, 1787, the convention took up the language of Article V and began final debate on its language. The substance of that debate is on [page 629](#), the sole reference page Mr. Rogers cites in his article. It should be repeated: by this time in the convention, two previous versions of what was now Article V had been rejected by the convention. This included an earlier version that clearly allowed the states to propose amendments for a “convention [called] for that purpose.”

The language in the current version troubled delegates. As expressed on [page 629](#) Col. Mason “thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second, ultimately, on Congress...” The footnote on [page 629](#) showing Mason’s notes remove any question as to the interpretation of the proposal language of Article V. “By this article Congress only have the power of proposing amendments at any future time to this constitution...” Obviously, the Founders understood the language to mean the states had no authority to propose amendments.

The actual text of [page 629](#) refutes Mr. Rogers. He states in his article, “Gouverneur Morris and Elbridge Gerry made a motion to amend the article to reintroduce language requiring that a convention be called when two-thirds of the States applied for an amendment.” [Emphasis added]. This statement is incorrect. The text of [page 629](#) reads, “Mr. Govr. Morris & Mr. Gerry moved to amend the article so as to require a Convention on application of 2/3 of the Sts.” [Emphasis added]. Thus the actual text in Farrand does not support Mr. Rogers, it refutes him. The convention record clearly shows (see [page 467](#)) the Founders were quite capable of writing constitutional language describing the right of the states to propose amendments if that is what they intended. The fact such plain language does not exist in the final language of Article V leads to only one conclusion: the Founders did not intend the states have the power to propose amendments either to Congress or to a convention.

The convention abandoned that amendment approach two draft versions before taking up the language Rogers quotes in his article. The fact is, as *proven* by the text of Mason’s comments, at the time of the Gerry-Morris amendment Congress was the only body intended to propose amendments. While earlier versions of the amendment process did allow states to propose amendments, later versions prove the Founders entirely rejected this amendment approach and never again considered it. Thus, the Founders did not intend the states propose amendments. Moreover, the comments of James Madison not

only following the motion but later in Congress leave no doubt as to the intention of the Founders and the meaning of the text—the single, sole purpose of an application is to cause Congress to call a convention, not for the states to propose an amendment. Madison stated, “[he] did not see why Congress would not be as much bound to propose amendment applied for by two thirds of the States [referring to rejected text on [page 467](#)] as to call a Convention on the like application [referring to the accepted text on [page 629](#)].” Unquestionably, Madison recognized the Gerry-Morris amendment did not refer to the states proposing amendments but instead referred to calling a convention—two distinct, mutually exclusive, separate powers. Otherwise, his comments make no sense. He spoke of one action versus another action. This is only possible if by changing the text in Article V the motion created a different response on the part of Congress based on the applications submitted by the states. Hence, the motion gave the states one power while permanently removing another. Had the Founders wished to have the states propose amendments, they would have simply used the rejected text on [page 467](#).

Before the Gerry-Morris amendment, the purpose of the applications was to cause Congress to propose an amendment, not the states. After the Gerry-Morris amendment, the purpose of applications by the states was to cause Congress to call a convention—two distinct actions. Only the latter action became part of the final language of the Constitution eliminating the former—the power of the states to propose amendments through their applications. Thus, original source text indisputably defeats “same subject” amendment-convention proving the Founders never intended in their final version of Article V that states can propose amendments in their applications. The only authority granted in Article V to the states in proposal portion is the right to apply for a convention, which then, like Congress, is free to propose amendments as it wishes.

However, as I have [discussed previously](#) the fact application texts cannot control convention agenda does not mean the states cannot control convention agenda. Two great forces will control a convention: ratification and politics. Those who fear a “runaway” convention in their fantasy world discount the former and ignore the latter. In the real world, neither will be ignored. Thus, the fact a convention is free to propose is not a danger. It is merely part of the American political process.

Mr. Rogers based his assertion on inaccurate research either because he did not read all the text of the page he cited or possibly, because that text did not support the position he wished to take in his article. Therefore, his primary assertion is inaccurate and invalid. What does this then mean for his other presumptions on pages [1017](#), [1018](#) and [1019](#)? They are also invalid.

Mr. Rogers’ first statement on [page 1017](#) is “The history of the drafting of the Convention Clause at the Philadelphia Convention shows that the Clause’s accepted meaning at the time was that the applications by the States to Congress could be limited and could thus limit the subject matter of a convention.” His statement is directly refuted by Col. Mason’s comments that expressed, “By this article Congress only have the power of proposing amendments...and should it [Congress] prove ever so oppressive, the whole people of America can’t make, or even propose alterations to it.” Hardly the language one

would expect if the delegates believed the applications to Congress could “limit” Congress. Clearly, the Founders understood Congress had authority to refuse state applications and not obey them. Otherwise, Mason’s comments make no sense. Thus, the Founders understood there was no such thing as a “limited” application. Consequently, the Founders established the ratification procedure so that even if Congress proved “oppressive” the states still had the means to limit its proposals, not in applications but in negative ratification votes. Thus, the “accepted meaning at the time” was not that State applications could limit Congress or a convention.

Mr. Rogers’ next says “The draft language surely meant that the States could make applications to Congress to propose amendments on specific issues.” His “statement” is a presumption, not a statement of fact. Mr. Rogers provides no valid references supporting this presumption. He quotes an earlier version of Article V (rejected by the convention as already noted; see [page 555](#)). That version contained the text “deem necessary, or on the application of two thirds of the Legislatures of the several states...” He then asserts this text is “nearly identical to the Convention Clause language in Article that requires Congress to call a convention ““on the Application of the Legislatures of two thirds of the several states.”” Mr. Rogers ignores the fact the convention had already voted to reject the earlier text he cites in his comparison. Therefore, any similarity of text is irrelevant as the convention no longer considered this earlier text germane to the form of government it was creating.

The reason the earlier version is not germane lies in the difference in purpose and intent between the two texts, not in any linguistic similarity. Mr. Rogers’ citation on [page 555](#) (“deem necessary...”) replaced earlier proposed text giving the states the right to propose “an amendment.” (See [page 467](#)). Mason’s later comments are emphatic (see [page 629](#)). The intent and purpose of the later text was to give Congress exclusive power of proposal and remove the states entirely from the amendment equation. Mr. Rogers’ erroneous assumption the “draft language surely meant” states could make applications to propose specific issues simply does not square with all the relevant evidence presented by Farrand. In sum, as the Founders advanced from one textual version of Article V to another, they altered the intent and purpose of amendment proposal, and thus the form of government. These fundamental alterations of form of government means there can be no textual comparison between different versions of Article V. Instead, only those comments *relating to the text at hand under consideration by the Founders at the time* are relevant.

Indeed, the motion introducing state ratification of proposed amendments in the amendment process (see [page 555](#)) makes it clear the states were not empowered to propose amendments. If the states were empowered to submit a specific amendment proposal to Congress who in turn proposed it, there was no need for ratification. The states would simply accept what they themselves had proposed with no further action necessary. However, if as the language of the ratification motion indicates, the applications did not bind Congress, the need for ratification is obvious. The fact the Founders included ratification as part of the amendment process refutes Mr. Rogers’ assumption. Again, this fact proves he failed to fully research his subject.

Having already discussed the fact Mr. Rogers obviously did not understand the difference between “ministerial” and “discretionary” there remains his assertion on [page 1018](#) that applications should be “grouped together” in regards to subject matter i.e., “same subject” application-convention. He acknowledges, “If the above arguments about the States’ power to limit a convention are valid, then applications for a convention for different subjects should be counted separately.” Those arguments, as demonstrated, are not valid. Therefore, his conclusion different amendment subjects be counted separately is invalid. As already noted, Madison’s comments clearly show applying for an amendment and applying for a convention are considered two distinct, separate powers or actions of the states. The convention chose the states would have the power of application for a convention rather than application for an amendment.

In sum, Mr. Rogers’ article contains flaws. These flaws occurred because of poor research. This failure highlights an apparent intent to avoid any information, which might interfere with an obviously pre-planned template. Mr. Rogers might have addressed these flaws with more diligent research. However it is doubtful a 2nd year law student could convincingly present evidence to refute two subsequent Supreme Court decisions whose texts expressly refute his assertions. Thus, the facts do not support his conclusions. They must be rejected.

The states, as expressly stated in Article V *directly reflecting the motion made by Gerry and Morris* are not empowered to request an amendment, only to request Congress issue a convention call. The preemptory nature of the call means it is binding on both states and Congress. Congress has no vote, debate or even the power to commit the applications; the states therefore cannot submit applications, which mandate a vote, debate and committee to determine—“same subject” application-convention demands all three. What is ignored by all “same subject” application-convention advocates is the application constitutionally is asking for an action by Congress; *but the amendment subject requested is politically directed at the convention not Congress.*

This is the fundamental point of Article V; *precisely and expressly* what is the purpose of an Article V Convention application by the state? The only way to determine that is to read the actual wordage of the motion that proposed the language in Article V, i.e., refer to the expressed language found in the records of the 1787 Convention. No other interpretation or instruction is relevant, irrefutable or definitive. Only the original source in this instance can have any bearing on answering this basic question. It appears there is a great debate on this issue. In fact, it is nothing more than a smoke screen behind which so-called “academics” and others can advance their own cockamamie theories as to meaning and intent of Article V. Knock down that wall, and their entire premise falls to the ground. The evidence to do exactly that is available, public and irrefutable meaning there is no excuse whatsoever that can be offered by any so called advocate of “same subject” application-convention except that they are deliberately misleading the public (and themselves) in order to further their own political ends. The problem politically is “same subject” application-convention does the exact opposite. It does not further the political ends of those advocating it. It requires huge expenditures of political capital

sorely needed for later parts of the amendment process based on a disproved theory which, to date, has a 100% failure rate.

These facts cannot explain why when presented irrefutable evidence in the form of public record those who say they want an issue to become an amendment via the convention method, i.e., have a convention called *shrink* from them. They refuse to recognize or even refer to the public record, which does nothing but benefit them and their political causes. The worst example is the movement to repeal federal income tax. The public record irrefutably shows the states have submitted sufficient applications on this issue alone to cause a convention call and have the proposed amendment ratified. This conclusion is reached by simply adding all the states that have asked for income tax repeal together with those states asking for a convention with no specified amendment, i.e., a general convention as discussed above. The next worst examples are apportionment followed by balanced budget amendment, all of which have garnered enough applications to cause a convention call by themselves and all of which their supporters ignore instead being content to use bogus information provided by the JBS, a known opponent of the convention.

The “same subject” application-convention is a bogus theory based on unproven legal theories or poor research. This country needs a convention now. It must reject this discredited theory. The nation is constitutionally entitled to have a convention. The ever-growing list of national issues, now numbering over 30, the government will not address require solution. Our nation cannot continue this way. Eventually the weight of these unresolved issues will crush us. The “same subject” application-convention theory stands squarely in the way of our needed progress. It defeats the very goal those who advocate we resolve our problems by use of amendments say they want to achieve. It is stupid and politically defeating. Where else in American politics can an example be cited that a political candidate or issue is presented the means to win using far less effort than the path they insist on following which has a record of complete failure and then refuses it. “Same subject” application-convention literally snatches defeat from the jaws of victory.